

***Hilda's Unanswered Question: What about the Palestinian Refugees?***

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*Author's Preface: I'm deeply honored to have been asked to give this inaugural lecture for Hilda Silverman. I'm particularly honored because although I knew Hilda for close to 20 years, I did not know her nearly as well as many of you in this room. Before I begin, I would like to tell a quick story as background to the conversation I want to have with, and about, Hilda tonight.*

*The story has to do with a very dear friend of Hilda's who is in the audience tonight: Elaine Hagopian. From Elaine, who seems to have known Hilda forever, I learned a great deal, including Hilda's trajectory of beliefs about the Israel-Palestine conflict. Hilda, it seems, defined herself as a Zionist until 1982, until the invasion of Lebanon and the horror of Sabra and Shatila. In her trajectory from Zionist to liberal Zionist to non-Zionist, Hilda came to believe that the Palestinian refugees were, indeed, key to resolving the conflict. At the end, she needed to overcome this one barrier in her mind to understanding the Palestinian perspective: if Palestinian refugees were to return, what would happen to Jews? And she decided, Hilda-fashion, that she had to find out for herself. Hilda wanted to go on a Sabra and Shatila commemoration delegation in 2007 to meet and talk with Palestinian refugees, to get first-hand answers to her questions. Hilda got too sick then and could not make that trip. So I would like to have the conversation with Hilda that we might have had about justice and the Palestinian refugees, ending with what Hilda would have seen if she had been able to visit the camps in Lebanon and Syria as she had wanted.*

*Hilda had some earlier questions over the years that brought her to her meta-question about what was to happen to Jews after Palestinian refugees returned-- questions I will come back to tonight as a way to keep her points of reference firmly in mind to find common ground with my point of reference. Her reference point was always justice, and mine has always been that justice relates to international law.*

In an earlier time, Hilda Silverman had grappled with the question: How can you criticize people who had survived the Holocaust? She was at that time unable to compare the Palestinian Nakba with the Holocaust, unable to find

an equivalence in the historical experiences of both people. Yet, Hilda made a comment at an Edward Said lecture in the 1990's to the effect of: Why should the Palestinians forget their history when Jews never forget theirs? She had by then reached the conclusion that there was a moral equivalence, at least, between the histories of both peoples, and that Israelis and Jews had to be criticized, despite their history, for how they were and are treating the Palestinians.

I am ill-equipped to discuss the morality of the historical equivalence here, but my reply to Hilda is that there is a legal equivalence to consider. Focusing on the massive displacement common to both histories, both peoples share the experiences of forced population transfers—identification by race, ethnicity or religious origin and then forced by virtue of such identification, from their homes and communities. The Jewish forced displacement is well known, the ghettoization of Jewish communities in Europe, and forced transfers of Jews out of their homelands to forced labor and concentration camps. The Palestinian forced displacement is less well understood, but the historical record is increasingly clear thanks to Ilan Pappé<sup>1</sup>, Benny Morris<sup>2</sup>, Nur Masalha<sup>3</sup>, Simha Flapan<sup>4</sup> and other archival historians. Population transfer was key to Zionist thinking since its inception in the late 19<sup>th</sup> century, and remains central to both left and right wings of contemporary Zionism.<sup>5</sup> Explicit plans and implicit policies to transfer Palestinians out of their homeland have been a major strategy to “create for the Jewish people a home in Palestine” as stated in the Basle Program in 1897,<sup>6</sup> and manifested in a score of Transfer Plans from the 1930's onwards.

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<sup>1</sup> See, e.g. Ilan Pappé, *The Ethnic Cleansing of Palestine*, (Oxford: Oneworld Publications, 2006); Ilan Pappé (ed.), *The Israel/Palestine Question*, (London: Routledge, 1999).

<sup>2</sup> See, e.g. Benny Morris, *The Birth of the Palestinian Refugee Problem 1947-1949* (New York: Cambridge University Press, 1987).

<sup>3</sup> Nur Masalha, *Expulsion of the Palestinians: The Concept of “Transfer” in Zionist Political Thought, 1882-1948*, (Washington, D.C.: Institute for Palestine Studies, 1992).

<sup>4</sup> Simha Flapan, *The Birth of Israel: Myths and Realities* (New York: Pantheon, 1988).

<sup>5</sup> See Chaim Simons, *International Proposals to Transfer Arabs from Palestine, 1895-1947, A Historical Survey* (Hoboken, New Jersey: Ktav Publishing House, 1988).

<sup>6</sup> The first Zionist Congress was held in Basel, Switzerland in 1897, led by Theodor Herzl. Herzl's *Der Judenstaat* (*The Jewish State*) provided the inspiration for the Zionist Congress, which adopted a program on the basis that “The aim of Zionism is to create for the Jewish people a home in Palestine secured by public law.” The Basel program called for obtaining diplomatic support for Jewish settlement in Palestine. “The Basel

Displacement of Palestinians *as* Palestinians can be tracked by political period and deliberate policy: between 750-900,000<sup>7</sup> people due to Plan Dalet<sup>8</sup> and other measures in the 1947-1949 conflict<sup>9</sup>; 35-45,000 due to Israeli military policies from 1949-1966<sup>10</sup>; hundreds of thousands in the ongoing Israeli policies of occupation, colonial settlement, land seizures, wall construction, house demolitions and religio/ethnic-preferenced citizenship/residency laws. The 47-49 displacement represented 85% of the total indigenous Palestinian population of the area that became Israel<sup>11</sup>. Some 500 Palestinian villages, from territories of an area of 17,000 km<sup>2</sup>

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Programme” in John Moore (ed.), *The Arab-Israeli Conflict* (Princeton: American Society of International Law, 1974) vol. III, p. 4.

<sup>7</sup> The Final Report of the United Nations Survey Mission for the Middle East (part I), UN Doc A/AC.25/6. The total number of refugees rises from 750,000 to 900,000 when adding persons who lost their livelihood, but not their homes. Badil, *Survey of Palestinian Refugees and Internally Displaced Persons 2008- 2009*, (Bethlehem: Badil, 2009), p.34. Israel estimates the total number of Palestinian refugees to be around 530,000, not including the 30,000 to 40,000 refugees who spontaneously returned to Israel, even though they may remain internally displaced. *Id.*, p. 34-5. As of 1953, the United States estimated the total Palestinian refugee population at 875,000. *Id.*, p. 35 citing “The Problem of Arab Refugees from Palestine,” US Government Report of the Subcommittee on the Near East and Africa (24 July 1953). “Had no displacement taken place, between 494,000 to 508,000 Palestinian Arabs would have been living inside the armistice lines in Arab-held territory, with 890,000 to 904,000 living in territory held by Israel.” *Id.*

<sup>8</sup> Morris first revealed the existence of ‘Plan Dalet’ and the ‘Transfer Committee’ comprising the key Jewish leaders who organized the expulsion, See Morris, *The Birth of the Palestinian Refugee Problem*, *supra*, note 2. See also Walid Khalidi, “Plan Dalet: Master Plan for the Conquest of Palestine,” *Journal of Palestine Studies*, 28, (1988) p. 1; and Ilan Pappé, *The Ethnic Cleansing of Palestine*, *supra*, note 1.

<sup>9</sup> One of the earliest documented massacres was in the village of Deir Yassin of April 1948, in which 250 Palestinian men, women and children were killed. Other massacres followed, including nine in October 1948 alone, in which hundreds of Palestinians villagers were killed and thrown in mass graves. For a thorough description of Israeli massacres of Palestinian populations, based on a wide range of sources, see Abu Sitta, *The Palestinian Nakba 1948: The Register of Depopulated Localities in Palestine* (London: Palestinian Return Center 2001).

<sup>10</sup> See Benny Morris, *Israel’s Border Wars 1949- 1956* (Oxford: Clarendon Press, 1993).

<sup>11</sup> See figures cited in *Final Report of the United Nations Survey Mission for the Middle East*, UN Doc. A/AC.25/6; Janet Abu-Lughod, “The Demographic Transformation of Palestine,” in Ibrahim Abu-Lughod (ed.), *The Transformation of Palestine* (Evanston: Northwestern University Press, 1971), p. 159.

were depopulated in the process, and at least 70 massacres against Palestinian civilians have now been recorded.<sup>12</sup>

It is this continued displacement and dispossession that Palestinians experience as an ongoing Nakba, a forced population transfer that easily fits the UN definition of ethnic cleansing: “the systematic, coercive and deliberate movement of a population into or out of an area with the effect or purpose of altering the demographic composition of a territory, particularly when that ideology or policy asserts the dominance of a certain group over another.”<sup>13</sup>

Hilda accepted these facts; she had certainly read and respected these sources. Her related question about the historical narratives was: How can you accept and hold both Palestinian and Jewish narratives at once and reconcile them? To my mind, asking the question is to answer it, if the ‘narratives’ are as I have briefly summarized. However, these are not the only narratives, and whether the two histories can be reconciled depends on which of the multiple competing narratives you find credible. Hilda had long since gotten past the myth of a land without people for a people without land. However, less easily dismissed were the claims that i) Palestinians fled on their own, unfortunate casualties of war, and hence have no right to return, just as Jews were displaced and sought a new homeland; ii) that Palestinians and Arab Jews were an exchange of populations, and the Arab states should absorb the Palestinians as Israel absorbed the Jews; iii) Israel was legally given to Jews by the UN as part of the Partition resolution of Sept. 1947.<sup>14</sup> I take each of these in turn, but recasting the narrative from the perspective of international law.

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<sup>12</sup> See Walid Khalidi, *All That Remains: The Palestinian Villages Occupied and Depopulated by Israel in 1948*, (Washington, D.C., Institute for Palestine Studies, 1992); Nur Masalha, *Expulsion of the Palestinians*, *supra*, note 3; Ilan Pappé, *The Ethnic Cleansing of Palestine*, *supra*, note 1.

<sup>13</sup> According to United Nations authoritative interpretations, ethnic cleansing is defined as: “a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious groups from certain geographic areas.” *Report of the Commission of Experts Established Pursuant to United Nations Security Council Resolution 780* (1992), UN Letter Dated 24 May 1994, S/1994/674.

<sup>14</sup> The claims that the ‘Jewish people’ are an internationally-recognized ‘nationality’ entitled to self-determination is analyzed (and refuted on legal grounds) in W.T. Mallison, “The Zionist-Israel Juridical Claims to Constitute ‘The Jewish People’

To begin, there is the claim that: *Palestinians voluntarily left in the war of 1948, and there is no obligation on Israel to permit war refugees to return.*

From the lens of international humanitarian law, refugees have an absolute right to return after displacement—there is no distinction between forcible or non-forcible displacement in guaranteeing persons fleeing conflict their right to return to their homes. Treaties such as the Fourth Geneva Convention and the Hague Convention and Regulations on laws of war incorporate provisions regarding return that cover all categories of persons, whether civilians or combatants.<sup>15</sup> Israel has accepted the Geneva and Hague obligations concerning return, including provisions that forbid forcible transfers of individuals or groups of people from territories taken during war and require their repatriation ‘back to their homes’ as soon as hostilities have ceased.<sup>16</sup> State practice on individual return or organized repatriations was entrenched in every part of the globe long before the first treaties incorporated the principles, and without serious question about the underlying right of the individual returnee. In 1985, in an unpublished study conducted for UNHCR on global voluntary repatriation movements, Gervaise Coles pointed out that large population displacements always occurred during warfare, but such displaced populations simply returned once the fighting was over—and this was state practice, or internationally

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Nationality Entity and to Confer Membership in It,” *George Washington Law Review* 32, (1964), p. 983.

<sup>15</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 6 U.S.T. 3316, 75, U.N.T.S. 287 (12 August 1949); Hague Convention (II) with Respect to the Laws and Customs of War on Land, July 29, 1899, 32 Stat. 1803, T.S. No. 403; Hague Convention (IV) Respecting the Laws and Customs of War on Land, Oct. 18, 1907, [1910] 36 Stat. 2277, T.S. No. 539; see Christa Miendersma, *Population Exchanges: International Law and State Practice -- Part I*, 9 Int’l J. Refugee L. 335, 335-37 (1997).

<sup>16</sup> List of the Signatory and Contracting Powers of the Hague Conventions of 1899 and 1907 and Dates on which the Convention(s) Took Effect for Each of Them (June 2007), available at: [5](http://wwi.lib.byu.edu/index.php/Hague_Convention; International Committee of the Red Cross, Geneva Conventions of 12 August 1949 (2005), available at http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=375&ps=P; see John Quigley, “Displaced Palestinians and a Right of Return,” <i>Harvard International Law Journal</i>, 39, no. 1 (1998); see also Gail J. Boling, <i>The 1948 Palestinians and the Individual Right of Return: And International Law Analysis</i>, (Bethlehem: Badil Resource Center, Jan. 2001); Eric Rosand, “The Right to Return under International Law Following Mass Dislocation: The Bosnia Precedent?” <i>Michigan Journal of International Law</i> 19, (Summer 1998), p. 1091.</p></div><div data-bbox=)

binding, well before 1947.<sup>17</sup> There is more to say about the legal principles underlying return, but that will come later.

A second persistent claim is that: *Palestinians were part of an ‘exchange of populations’ between Israel and the Arab states as a result of the war of partition; Israel has absorbed the Arab Jewish refugees, and the Arab states are obliged to absorb the Palestinian refugees.*

The arguments that there was a ‘transfer’ or ‘exchange of populations’ misconstrues both the historical record and the international human rights and humanitarian principles on exile, return and displacement. First, there is no historical support for the notion that there was an ‘exchange’ of populations. The record is quite clear now that the major wave of Palestinian displacement took place in 1947-1949 due to deliberate Zionist/Israeli expulsion policies.<sup>18</sup> The story on the flight of Jews from Arab states is less clear, but the Jewish Arab exoduses chronicled by such historians as Tom Segev, Joel Beinin and Ella Shohat give the picture of many different factors, from political tensions, changing economic prospects, the rise of Zionism among Jews inside and outside the Arab states, and Zionist pressure to provoke Jewish emigration to Israel<sup>19</sup>. Without crediting any of the particular historical versions, it is safe to say that the record simply does not support a conclusion that there was any exchange of populations.

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<sup>17</sup> Gervaise Coles, “Voluntary Repatriation: A Background Study,” Unpublished Study Prepared for the Round Table on Voluntary Repatriation Convened by UNHCR and the International Institute of Humanitarian Law, San Remo, 16-19 July 1985 (“Coles Study”), on file with author, and available at UNHCR archives (Geneva, Switzerland). *See also*, Christa Miendersma, *Population Exchanges: International Law and State Practice -- Part II*, 9 Int’l J. Refugee L. 613, 652 (1997) (“The notion of a right to remain and a right to return, as well as a right of people not to be uprooted, are not modern concepts, but already influenced international thinking in the early decades of this century... in accordance with the ‘natural and undisputed right of all populations to inhabit the districts where they are settled’”).

<sup>18</sup> *See sources cited supra*, note 12.

<sup>19</sup> For historical literature supporting that Jews left Arab states after the creation of the state of Israel for many reasons, but not because they were forced out by Arab countries or because there was an inter-government agreement to ‘exchange’ Palestinians for Jews, *see generally*, Tom Segev, *The First Israelis* (New York: The Free Press, 1986); Joel Beinin, *The Dispersion of Egyptian Jewry* (Berkeley: Univ. of California Press, 1998); Ella Shohat, *Sephardim in Israel: Zionism from the Standpoint of its Jewish Victims*, Social Text, no. 19/20, pp. 1-35 (Duke University Press, 1988). *See also* Gudrun Kramer, *The Jews in Modern Egypt, 1914-1952* (Seattle: University of Washington Press, 1989).

Second, although transfers of populations have taken place throughout history, they are illegal under modern principles of international law.<sup>20</sup> Forced expulsion was already a war crime prior to 1948,<sup>21</sup> had been incorporated as such in the Charter of the International Military Tribunal,<sup>22</sup> and was one of the critical charges in the prosecution of Nazis on behalf of Jewish victims during the Nuremberg Tribunals.<sup>23</sup> The principles prohibiting forcible displacement were drafted in specific response to the forced displacement of Jews.<sup>24</sup> If it is illegal to forcibly transfer Jews, it is illegal to transfer Palestinians. If it is a war crime to transfer Jews, it is a war crime to forcibly transfer Palestinians.

Claiming that Israel's absorption of Arab Jewish refugees created an obligation on Arab states to absorb Palestinian refugees is also not legally credible. Israel offers automatic citizenship to Jews from anywhere in the world; hence, Arab Jews entered Israel *as citizens*, not as refugees.<sup>25</sup> As a sovereign state, Israel has great discretion in defining who will be entitled to citizenship—within certain limits I will come to later-- and it can offer Arab

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<sup>20</sup> See Christa Miendersma, *Population Exchanges: International Law and State Practice -- Part II*, *supra* note 16, at 650 (“population transfers and exchanges are incompatible with current human rights norms and therefore can no longer be considered as a (potential) solution to conflicts.”).

<sup>21</sup> “[The] articles of the Geneva Convention of 1949 merely codify the prohibition of deportations of civilians from occupied territories which in fact already existed in the laws and customs of war.” Alfred M. de Zayas, *International Law and Mass Population Transfers*, 16 Harv. Int'l L.J. 207, 210 (1975). DeZayas refers to Article 50 of the Hague Convention of 1907, still a binding treaty, which states that, “No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the act of individuals for which they cannot be regarded as jointly and severally responsible.” *Id.* p. 211.

<sup>22</sup> Charter of the International Military Tribunal, 82 UNTS 279, Art. 6 (b) (1945).

<sup>23</sup> See Charter of the International Military Tribunal, 82 UNTS 279, Art. 6 (1946); *The United States of America against Josef Altstoetter, et. al.*, “The Justice Case,” Military Tribunal III, Case 3, p.3 (1946); *United States against Erhard Milch*, Military Tribunal, p. 3 (1946).

<sup>24</sup> See sources cited *supra* note 19; Charter of the International Military Tribunal, 82 UNTS 279, Art. 6 (1946) (defining “crimes against humanity” as including deportation and “other inhumane acts committed against any civilian population”); The Allied Declaration on German War Crimes, adopted in 1942 by nine occupied countries, declared Germany's “regime of terror [as] characterized in particular by...mass expulsions,” Alfred M. de Zayas, *International Law and Mass Population Transfers*, *supra*, note 19, p. 213 - 14 (citing 144 B.F.S.P. 1072).

<sup>25</sup> The Israeli “Law of Return” provides that: ‘Every Jew has the right to come to [Israel] as an [immigrant].’ Law of the State of Israel: Law of Return (July 5, 1950).

Jews or anyone else Israeli citizenship without constraint by international *refugee* law. In contrast, no state is obliged to grant residence or citizenship to refugees, whether on a reciprocal basis or otherwise.<sup>26</sup>

The third claim to address here is *Israel was legally given to Jews by the UN as part of the Partition resolution of Nov. 1947.*

Israel relies on General Assembly Resolution, 181 of 29 Nov. 1947, the Partition Resolution, to justify its very creation and existence as a ‘Jewish state.’<sup>27</sup> It is helpful to read Res. 181, for nowhere does this Resolution authorize a Jewish- defined state that would supersede the rights of any other communities then residing in Palestine. True, it divided territory and defined each part as ‘Jewish’ or ‘Arab;’<sup>28</sup> however, the division of territory was not to characterize the granting of rights within each state. Jews and Arabs in either state were required to have full and equal rights as citizens in whichever state they were in, and the opportunity to move to the other territory with full and equal rights there if they so chose.<sup>29</sup> It did not authorize population transfers.<sup>30</sup> The Resolution required both states to incorporate the non- discrimination and equal rights provisions in a Constitution as a prerequisite to statehood.<sup>31</sup> It described the territorial boundaries of each state, and prescribed Jerusalem’s special character as a

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<sup>26</sup> See Guy Goodwin-Gill, *The Refugee in International Law*, pp. 27, 30 (2d ed. 1996); James Hathaway, *The Law of Refugee Status*, p. 114 (1991).

<sup>27</sup> Government of Palestine G.A. Res. 181 (II), U.N. GAOR, 2d Sess., 128th plan. mtg., at 131-32 (29 Nov. 1947); for background on passage of UNGA Res. 181, see Mallison and Mallison, *An International Law Analysis of the Major United Nations Resolutions Concerning the Palestine Question*, UN Doc. ST/SG/SER.F/4 (1979), p. 9-17.

<sup>28</sup> G.A. Res. 181 (II), part I, § C, ch. 3, ¶ 1, U.N. Doc. A/RES/181(II) (Nov. 29, 1947) (referring to a “proposed Jewish State” and a “proposed Arab State”).

<sup>29</sup> G.A. Res. 181, Part 1B (8), at 134; G.A. Res. 181 (II), part I, § C, ch. 3, ¶ 1, U.N. Doc. A/RES/181(II) (Nov. 29, 1947) (providing that Palestinians living in Palestine, and Arabs and Jews living in Palestine who are not Palestinian citizens will automatically become citizens of the state in which they reside, with full civil and political rights, and may also opt to become citizens of the other state, “providing that no Arab residing in the area of the proposed Arab State shall have the right to opt for citizenship in the proposed Jewish State” and vice versa).

<sup>30</sup> See *Id.*

<sup>31</sup> G.A. Res. 181, Part III C 12(a), at 149; G.A. Res. 181, Part 1B (requiring the constitutions of each state to guarantee “equal and non-discriminatory rights in civil, political, economic and religious matters” and “enjoyment of...freedom of religion, language, speech and publication, education, assembly and association”).

*corpus separatum* under international jurisdiction.<sup>32</sup> Israel has used 181 as the mandate from the international community for its creation<sup>33</sup>; however, it has ignored all of the most critical provisions of 181, expanded the territorial boundaries set out under 181 for the Jewish area, and maintained a belligerent occupation in the rest of historic Palestine, including all of Jerusalem, in direct contravention of the Resolution itself.<sup>34</sup>

Hilda's next question was about why the refugees made the conflict so intractable: why is the Palestinian demand to return so central to resolving the ME conflict?

Well, in the first place, let's look at the numbers. At the end of 2008, at least 7.1 million of the worldwide population of Palestinians of about 10.6 million are forcibly displaced. That represents about 67% of the entire Palestinian population. About 6.6 million are Palestinian refugees, while another about 427,000 are IDPs.<sup>35</sup> In addition, there are an unknown number of displaced Palestinians who are neither 1948 nor 1967 refugees, but have also been displaced outside their original homeland, and would likely qualify as refugees under international law. Then there is the 62-year problem of the massive Palestinian refugee populations confined in camps. United Nations Relief and Works Agency for Palestine Refugees (UNRWA)<sup>36</sup> figures show

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<sup>32</sup> G.A. Res. 181, Part III A (providing that “[t]he City of Jerusalem shall be established as a *corpus separatum* under a special international regime and shall be administered by the United Nations”).

<sup>33</sup> For the Declaration of the State of Israel of 14 May 1948, see *Israel's Written Constitution: Verbatim English Translations of the Declaration of Independence and of the Basic Laws* (3rd ed. Haifa: Aryeh-Greenfield-A.G. Publication, 1999).

<sup>34</sup> On the illegality of Israeli territorial expansion and land acquisition, see, *inter alia*, UNSC Res. 298 (25 September 1971) UN Doc S/RES/298; UNSC 478 (20 August 1980), UN Doc S/RES/478; UNSC Res 465 (1 March 1980), UN Doc S/RES/465. For a thorough discussion by the International Court of Justice of the international legal consensus on the illegality of Israel's prolonged occupation, settlement construction, acquisition of territory beyond the Green Line and other violations, see *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136, paras. 120, *passim*.

<sup>35</sup> Badil, *Survey of Palestinian Refugees and Internally Displaced Persons 2008- 2009*, *supra*, note 7, p. 56.

<sup>36</sup> UNRWA was established under UNGA Resolution 302(V) of 8 December 1949 to provide humanitarian assistance to Palestine refugees. UNRWA's definition of 'Palestine refugee' towards whom it is mandated to provide assistance is, in essence: '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 means of livelihood as a result of the 1948 conflict.'

that 1,373,732 Palestinians are registered in UNRWA's 58 official camps in Jordan, Syria, Lebanon and the OPTs,<sup>37</sup> while hundreds of thousands of others live in about 17 unofficial camps in the region.<sup>38</sup> Although conditions for the camp-dwellers range dramatically from one territory to another, the common long-standing problems remain lack of permanent status, lack of freedom of movement, lack of social and educational mobility, lack of physical security and human dignity, and lack of a durable solution for their condition.<sup>39</sup>

Simply knowing these figures and realities is to understand why dealing with the rights of the refugees is central to resolution of the conflict.

So, acknowledging that the refugees need to have a durable solution, need to be integrated into communities with security and status, Hilda would ask, why could their rights not be satisfied by return to the Occupied Palestinian Territories? Why would that not be fulfillment of a right of return, along with compensation and an Israeli apology?

To answer this, we must address the strange exceptionalism of the Palestinian case. Palestinians comprise the largest and longest-standing refugee, or 'refugee-like' populations in the world. Palestinians as a nationally-identifiable population comprise the largest global population of

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UNRWA's assistance encompasses health, education, housing and social benefits, and is limited to its five fields of operation: the West Bank, Gaza, Jordan, Lebanon and Syria. A/RES/302(IV) (8 December 1949).

<sup>37</sup> UNRWA's figures give its registered refugee populations as of December, 2008 as 1,951,603 in Jordan, 422,188 in Lebanon; 461,897 in Syria; 762,820 in the West Bank, 1,073,303 in Gaza. See Badil, *Survey of Palestinian Refugees and Internally Displaced Persons 2008- 2009*, supra, note 7, p. 59. UNRWA statistics reflect only those Palestinians defined as 'refugees' who voluntarily register with the agency in order to obtain need-based relief assistance. The majority of Palestinian refugees, as the numbers reflect, do not live in camps. See *id.*, p. 65.

<sup>38</sup> *Id.*, p. 64.

<sup>39</sup> See Oroub El-Abed, *Unprotected: Palestinians in Egypt since 1948* (Institute for Palestinian Studies / International Development Research Centre, 2009); *The League of Arab States and Palestinian Refugees' Residency Rights* (Abbas Shibliak, ed.), SHAML-Palestinian Diaspora and Refugee Centre, Monograph no.11 (1998); Maher Bitar, "Unprotected Among Brothers: Palestinians in the Arab World," Refugee Studies Center Working paper No. 44 (Univ. of Oxford, Jan. 2008); Susan M. Akram and Terry Rempel, "Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees," 22 Boston Univ. Int'l L.J. 1 (2004).

*refugees, internally displaced, and stateless persons.*<sup>40</sup> For several years, the Palestinian refugee population has equaled about 67% of the worldwide total of refugees and persons of concern documented by the international refugee agency, UNHCR.<sup>41</sup>

Yet, surprisingly, for over six decades Palestinian refugees have been denied critical aspects of international protection, and remain today without a durable solution to their condition. Certain elements of the refugee problem are not unique to the Palestinian refugee case, of course. Similar situations of conflict-induced mass exodus, widespread violations of human rights, institutionalized discrimination concerning nationality and property rights, are experienced by many refugees around the world and contribute to protracted refugee situations. Elements of the Palestinian refugee problem can be found in numerous mass refugee situations in Africa, Central America, Asia and Europe. What remains unique about the Palestinian refugee problem is the persistent and severe denial of international protection, the lack of access both to a durable solution and to the mechanisms for implementing a durable solution—minimum protection guarantees that are available over time to other refugee populations in the world. Contributing to the denial of protection to Palestinian refugees is a severe gap in understanding and implementing the key provisions of law applicable to the Palestinian case, the most important of which relate to three key rights: the refugee right of return; the right to property restitution; and to compensation or reparations. We will look at these rights as principles, and then in practice, both in broader comparison, and then through our lens of equivalence for Palestinians and Jews.

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<sup>40</sup> See *Id.* p. 56. For Badil's explanation of its refugee calculations, see <http://www.badil.org/Refugees/facts&figures.htm> (accessed December 10, 2006). See also, Susan Akram and Terry Rempel, "Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees," *Boston University International Law Journal*, 22, no. 1, (Spring 2004) p. 7.

<sup>41</sup> "At the beginning of 2009, there were more than 36 million people of concern to UNHCR (the highest figure on record), including some 10.4 million refugees." UNHCR, *The Year in Review: Global Mega-trends*, p. 17 (2009), available at: <http://www.unhcr.org/4c08f2ee9.html>; A total of 4,766,670 Palestinian refugees are registered with UNRWA. UNRWA, *In Figures*, (1 Jan. 2010), available at: <http://www.unrwa.org/etemplate.php?id=253>. "At the end of 2008, there were least 7.1 million displaced Palestinians, representing 67 percent of the entire Palestinian population (10.6 million) worldwide. Among them were at least 6.6 million refugees and 427,000 [internally displaced persons]."

The legal arguments about the right of return focus on interpreting provisions in the International Convention on Civil and Political Rights [Article 12(4)]<sup>42</sup>; the Universal Declaration of Human Rights (Art. 13),<sup>43</sup> and in other international and regional human rights instruments such as the European Convention on Human Rights (Prot. 4, Art. 3),<sup>44</sup> the American Convention on Human Rights (Art. 22),<sup>45</sup> and the African Charter on Human and Peoples' Rights (Art. 12).<sup>46</sup> Without going into a detailed analysis about these provisions, it is safe to say that the weight of authority is that the rights in the universal instruments grant a habitual resident of territory the right to return to his/her precise place of origin, his *home*, regardless of current nationality or citizenship status.<sup>47</sup> Moreover, these instruments make no distinction between individual or mass return.<sup>48</sup>

Another important area of law, the law of state succession, has something to say about the right of return. Under state succession principles, a new state must grant nationality to all of the original inhabitants of the territory. Successor states are required to comply with certain recognized principles of international law, such as not arbitrarily excluding the original inhabitants of the territory it acquires, or defining its citizens/ nationals on a discriminatory basis.<sup>49</sup> Non-discrimination is itself a fundamental principle throughout

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<sup>42</sup> ICCPR 12(4) states: "No one shall be arbitrarily deprived of the right to enter his own country." International Convention on Civil and Political Rights, 999 U.N.T.S. 171, 205, Art. 12(4) (16 Dec. 1966).

<sup>43</sup> UDHR, Art. 13(2) states: "Everyone has the right to leave any country, including his own, and to return to his country". Universal Declaration of Human Rights, G.A. Res. 217A, Art. 13, U.N. GAOR, 3d Sess., 1st plen. mtg., UN Doc. A/810 (Dec. 12, 1948).

<sup>44</sup> ECHR, Art. 3(2), of Protocol 4 states: "No one shall be deprived of the right to enter the territory of the State of which he is a national." European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 221, Prot. 4, Art. 3 (Nov. 4, 1950).

<sup>45</sup> ACHR, Art. 22(5), states: "No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it." American Convention on Human Rights, 1144 U.N.T.S. 123, Art. 22 (Nov. 22 1969).

<sup>46</sup> African Charter, Art. 12(2), states: "Every individual shall have the right to leave any country including his own, and to return to his country." African Charter on Human and Peoples' Rights, 1520 U.N.T.S. 217, Art. 12 (1981).

<sup>47</sup> See John Quigley, "Displaced Palestinians and a Right of Return"; see also Gail J. Boling, *The 1948 Palestinians and the Individual Right of Return*, *supra*, note 15.

<sup>48</sup> Eric Rosand, "The Right to Return under International Law Following Mass Dislocation: The Bosnia Precedent?" *supra*, note 15, p.1091.

<sup>49</sup> See L. OPPENHEIM, *I INTERNATIONAL LAW* 598 (7th ed., 1948); see also Ian Brownlie, *The Relations of Nationality in Public International Law*, 39 BRIT. Y.B. INT'L L. 284, 320

international law, including in the UN Charter. Article 5(d) of the International Convention on the Elimination of Racial Discrimination (ICERD) specifically requires states “to prohibit... discrimination in all its forms and guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin...the enjoyment of rights [including] the right to leave any country, including one’s own and to return to one’s country.”<sup>50</sup>

Israel is a party to all the major treaties that ground the right of return: the Fourth Geneva Convention, the ICCPR and ICERD.<sup>51</sup> Israel’s massive denationalization of Palestinian Arabs on the basis of their national/ ethnic origin was a violation of law in 1948, and Israel remains bound today, despite the long passage of time, to remedy the denationalization and expulsion by implementing the right of return.

These are the universal principles; but over the last sixty years, additional law has developed that specifically relates to the Palestinians, with UNGA Res. 194 of 11 Dec. 1948 at the center.<sup>52</sup> It is commonly claimed that: *Palestinians cannot ground a right of return on non-binding UNGA Resolutions such as 194; even if they could, Resolution 194 implies only a conditional right to return, and those conditions have not been fulfilled.* It is often argued that UN General Assembly Resolutions, unlike SC Resolutions, are nonbinding, and there is no SC Resolution calling for Palestinian right of return.<sup>53</sup> This misconstrues the scope and status of UN resolutions; those

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(1963); Guy Goodwin-Gill, *Voluntary Repatriation: Legal and Policy Issues in REFUGEES AND INTERNATIONAL RELATIONS* 255, 260 (G. Loescher & L. Monahan eds., 1989).

<sup>50</sup> Convention on the Elimination of All Forms of Discrimination, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46 article 5(d).

<sup>51</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *supra*, note 14; International Convention on Civil and Political Rights, *supra* note 41, at 205; International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195 (4 January 1969), see *Status of Ratification of Human Rights Instruments* (25 January 2011), available at:

<http://www2.ohchr.org/english/bodies/treaty/docs/HRChart.xls>.

<sup>52</sup> G.A. Res. 194 (III), U.N. Doc. A/RES/194 (III) (Dec. 11, 1948).

<sup>53</sup> See Yoav Tadmor, “The Palestinian Refugees of 1948: the Right to Compensation and Return,” *Temple International and Comparative Law Journal* 8, no. 2, (Fall 1994); see also, Lewis Saidman, “Do Palestinian Refugees Have a Right to Return to Israel? An Examination of the Scope of and Limitations on the Right of Return,” *Virginia Journal of International Law* 44 (Spring 2004).

Resolutions that confirm existing law, are law, whether GA or SC. UN General Assembly and UN Security Council Resolutions over decades affirm and re-affirm the *right of return for refugees* to their homes in every part of the world. In every part of the globe, the right of refugees to return to their homes and lands of origin is incorporated in peace treaties, implemented individually or through mass repatriation, and recognized by all states. In fact, the right of refugees to return is one of the most, if not the most, widely-implemented and recognized right that exists in human rights law.<sup>54</sup> Taking only one decade as an example, the 1990's, an estimated 12 million refugees repatriated to every region in the world.<sup>55</sup> In contrast, only approximately 1.3 million refugees were resettled during that decade. UNHCR itself calculates that today less than 1% of the world's refugees are resettled, the overwhelming majority is repatriated or return post-conflict.<sup>56</sup> From state and international practice alone, it is evident that under international law refugee return is the rule, and non-recognition of Palestinian refugees' right to return is the aberration.

General Assembly Resolution 194 is the earliest resolution insisting on Palestinian refugee return, but its language is firmly grounded in international law. Resolution 194 embodies a three-pronged solution: return, restitution of properties, and compensation.<sup>57</sup> Paragraph 11 of that Resolution states 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...compensation should be paid for the property of those

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<sup>54</sup> UNHCR, *The State of the World's Refugees 2006 - Human Displacement in the New Millennium*, p. 9, 18-19 (Oxford: Oxford University Press, 2006), available at: <http://www.unhcr.org/4a4dc1a89.html>; UNHCR, *The Year in Review: Global Mega-trends*, supra, note 40, p. 19.

<sup>55</sup> Khalid Koser & Richard Black, *The End of the Refugee Cycle?*, 2, 3, in *THE END OF THE REFUGEE CYCLE* (Richard Black & Khalid Koser eds., 1999); Oliver Bakewell, *Returning Refugees or Migrating Villagers? Voluntary Repatriation Programmes in Africa Reconsidered* 1 (U.N. High Comm'r for Refugees, Working Paper No. 15, 1999), available at: <http://www.unhcr.org/3ae6a0c40.pdf>, while Refugees International estimates 2.5 million returns were involuntary over the 14 year period of 1989-2002, M. LYNCH, *REFUGEES INT'L, FORCED BACK* 26 (2004) available at [http://www.reliefweb.int/rw/lib.nsf/db900SID/LHON622KA4/\\$FILE/refintl\\_forced\\_back\\_may2004.pdf](http://www.reliefweb.int/rw/lib.nsf/db900SID/LHON622KA4/$FILE/refintl_forced_back_may2004.pdf).

<sup>56</sup> Between 1997 and 2007, an estimated 11.4 million refugees have returned home, 7.3 million with the help of the UNHCR. U.N. HIGH COMM'R FOR REFUGEES, 2007 UNHCR STATISTICAL YEARBOOK, p. 37 (2008), available at: <http://www.unhcr.org/statistics>.

<sup>57</sup> G.A. Res. 194 (III), ¶ 11, U.N. Doc. A/RES/194 (III) (Dec. 11, 1948).

choosing not to return and for loss or damage to property which, under the principles of international law or in equity, should be made good by the Governments or authorities responsible... [The UN] instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation...”<sup>58</sup>

The principles of restitution and compensation of property were already grounded in customary law, treaties, and a seminal decision of the Permanent Court of International Justice, the *Chorzow Factory (Indemnity) Case* of 1928.<sup>59</sup> In this case, the PCIJ established the principle that restitution was the required remedy for unlawful property taking, and compensation for property loss should be paid only if restitution were impossible.<sup>60</sup> The *Chorzow Factory* principles remain binding today, and have been reiterated as recently as the 2004 Advisory Opinion on the Wall, in which the ICJ required those principles to apply to Palestinians displaced from their property as a result of Israel’s expropriations to construct its separation Wall.<sup>61</sup>

Resolution 194 is completely consistent with fundamental refugee law principles. UNHCR implements three forms of durable solution for refugees: return to place of origin, host country absorption and third-state resettlement.<sup>62</sup> Return is the preferred solution for the overwhelming majority of refugees. At the same time, only return, of the three solutions, is an absolute obligation on states since no state is required to absorb or resettle

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<sup>58</sup> G.A. Res. 194 (III), ¶ 11, U.N. Doc. A/RES/194 (III) (Dec. 11, 1948).

<sup>59</sup> *Factory at Chorzow (F.R.G. v. Pol.)* 1928 P.C.I.J. (ser. A) No. 13 (Sept. 13, 1928).

<sup>60</sup> *Factory at Chorzow (F.R.G. v. Pol.)* 1928 P.C.I.J. (ser. A) No. 13, at 47 (Sept. 13, 1928). (“[R]eparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish [sic] the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it – such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.”)

<sup>61</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 136 (July 9).

<sup>62</sup> *See also* UNHCR, *Refugee Protection: A Guide to International Refugee Law* (Geneva, Dec. 2001), p. 8- 9.

a refugee but every state is obliged to permit its refugees to return home.<sup>63</sup> State practice on refugee return and repatriation, moreover, shows that states cannot use general security considerations, conflict situations, or ethnic tensions, as a reason to prevent the right of refugees or returnees to repatriate should they so choose.<sup>64</sup> Ethnic differences as a reason to prevent return are particularly proscribed under the human rights treaties.<sup>65</sup> Both state practice and codification in treaties are conclusive that 194 has become binding as a matter of customary international law.<sup>66</sup>

Returning, Hilda, to the issue of equivalence: two general points can be made about the objections that have been raised to the right of Palestinian refugees to return to their places of origin. First, that the main objections that have been raised are not principled: either they are not grounded in international law, or they are hypocritically raised by Israel because Israel uses the same legal principles to claim those rights on behalf of Israel or Israeli Jews.

Would you agree that denying Palestinian refugees a right of return to their homes and lands in Palestine after a 60-year exile is not easily reconciled with a claim that Jews possess a right to ‘return’ to Palestine after a 2,000-year exile? Yet Zionists claim an individual and a collective right to return for the ‘Jewish people.’ The Jewish *Law of Return* is grounded on the very

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<sup>63</sup> See Goodwin-Gill, *supra*, note 25, p. 202-04 UNHCR, *Conclusion on Voluntary Repatriation*, No. 40 (XXIX) (1985); UNHCR, *Handbook on Voluntary Repatriation: International Protection* (Geneva, 1996). UNHCR, *The State of the world’s Refugees 1993: The Challenge of Protection* (1993), 169; *see also*, UNHCR, *Legal Safety Issues in the Context of Voluntary Repatriation of Refugees*, EXCOM Conclusion No. 101, (e) (2004).

<sup>64</sup> *See, e.g.*, International Convention on Civil and Political Rights, *supra*, note 41, at Art. 12(4) (“no one shall be arbitrarily deprived of the right to enter his own country”); Convention on the Elimination of All Forms of Discrimination, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46 Art. 5(d)(i) & (ii) (requiring that all states “prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race,....or national or ethnic origin, to equality before the law” [and] “in the enjoyment of the right to leave one’s country and to return to it”); *see also* Principles on Housing and Property Restitution for Refugees and Displaced Persons (The Pinheiro Principles 2005), U.N. Doc. E/CN.4/Sub.2/2005/17.

<sup>65</sup> *See, e.g.*, UNGA Res. 3236 (XXIX), 22 Nov. 1974; UNGA Res. 36/146, 16 Dec. 1981; UNGA Res. 61/115, 15 Jan. 2007; UNGA Res. 62/105, 10 Jan. 2008. *See also*, Scott Leckie (ed.) *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*.

assumption that such a right exists for Jews from everywhere in the world who claim ancient religious connection to the land but no recognized legal territorial claim.<sup>67</sup> As a legal matter, such a religious- historical claim cannot trump the uninterrupted actual territorial connection of indigenous Palestinians to their land, particularly for the hundreds of thousands of Palestinians holding deeded legal title to their properties.<sup>68</sup> Outside of Israel, Jews individually and collectively have also heavily relied on law to claim the rights of return, restitution and compensation after dispossession for themselves.<sup>69</sup> Hundreds of thousands of displaced German and other European Jews exercised their rights to return to their homes following the end of World War II, even though many thousands also sought asylum and resettlement elsewhere.<sup>70</sup> No state claimed they did not have a right to return, whether individually or *en masse*.

As for return, the strongest precedents for Palestinian legal claims to regain their actual properties expropriated by Israel and to be compensated for losses, are Jewish property claims—not only against countries benefiting from seizure of Jewish property during World War II, but against Arab states that have expropriated property of Arab Jews following their exodus to Israel. The Israeli government, as well as organizations such as World Organization of Jews from Arab Countries (WOJAC), has consistently demanded restitution of Jewish properties left behind, as well as compensation for property that can no longer be restituted, and claims for

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<sup>67</sup> Law of the State of Israel: Law of Return, *supra* note 24; *see also*, Declaration of the Establishment of the State of Israel, ISR-001 (14 May 1948), *available at*: <http://www.unhcr.org/refworld/docid/3ae6b51910.html> (“The State of Israel will be open for Jewish immigration and for the Ingathering of the Exiles”)

<sup>68</sup> *See* Mallison and Mallison, *The Zionist-Israel Juridical Claims*, *supra* note 13.

<sup>69</sup> *See* Nehemiah Robinson, War Damage Compensation and Restitution in Foreign Countries, 16 *Law & Contemp. Probs.* 347 (1951); Steven A. Denburg, Reclaiming Their Past: A Survey of Jewish Efforts to Restitute European Property, 18 *B.C. Third World L. J.* 233 (1998); Andrew Woolford & Stefan Wolejszo, *Collecting on Moral Debts: Reparations for the Holocaust and Porajmos* (“Western Jewish organizations continued to press for a reparations agreement that would provide compensation for general harms, such as those to health and well-being, as well as to cover the growing expenses incurred from the resettlement of the “displaced persons” who had fled Nazi Europe.”) 40 *Law & Soc'y Rev.* 871, 878 (2006).

<sup>70</sup> *See Post-War Europe: Refugees, Exile and Resettlement, 1945-1950*, (primary source materials on Jewish refugee and displaced persons issues, from the archives of the Wiener Library, Henriques Collection, the National Archives of the UK and the US Holocaust Memorial Museum), *available at*: <http://gdc.gale.com/products/post-war-europe-refugees-exile-and-resettlement-1945-1950/>.

damages.<sup>71</sup> Israel and Israeli representatives use such claims, in fact, as ‘counterclaims’ to Palestinian refugee property claims, implicitly recognizing the legitimacy of the latter.<sup>72</sup>

Which brings us now to your meta-question: What would Palestinian right of return mean for Jews?

For Hilda, this would be the hardest conversation. My response is that if a ‘right to exist’ is understood to mean that Israel has a right to maintain a state with a Jewish majority, and that it is entitled to institutionalize discrimination towards one ethno-national group over any other, it has no support in international law. Israel has never been authorized to create or maintain an exclusively ‘Jewish’ state that discriminates against the rights of non- Jews. Resolution 181 gave no such authorization. The United Nations and treaty bodies have repeatedly decried Israel’s institutionalized discrimination, belligerent occupation of Palestinian territories, expansion of settlements, lack of equal rights afforded to Jews and Arabs within the Israeli state and in the occupied territories, and denial of the rights of Palestinian refugees to return, restitution and compensation.<sup>73</sup> Today, Israel fits the Rome Statute’s definition of an apartheid state: “an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime--” acts defined as a crime against humanity.<sup>74</sup>

I think, Hilda, what was left was for you to see and speak with the refugees. Had you gone on that trip to meet Palestinian refugees in Lebanon and Syria, this is what you may have heard and seen.

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<sup>71</sup> Sidney Clearfield, *The Role of the World Jewish Restitution Organization and Others in Returning Stolen Assets*, 14 Am. U. Int’l L. Rev. 225 (1998-1999); Yehouda Shenhav, *Jews from Arab Countries and the Palestinian Right of Return: an Ethnic Community in Realms of National Memory*, 29 British J. of Middle Eastern Stud. 1 (2002).

<sup>72</sup> Michael Fischbach, *Jewish Property Claims against Arab Countries*, (Columbia Univ. Press, 2008).

<sup>73</sup> International Convention on Economic, Social and Cultural Rights, 993 U.N.T.S. 3 (3 January 1976); International Convention on Civil and Political Rights, *supra* note 41; International Convention on the Elimination of All Forms of Racial Discrimination, *supra*, note 50.

<sup>74</sup> Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9\*, Art. 7, para. 2(h) & para. 1(d) (17 July 1998) (defining “crimes against humanity” as including “[d]eportation or forcible transfer of populations”).

*Most of the 394,532 registered Palestinian refugees in Lebanon live in 12 official camps (approximately 6,000 families, representing about 10% of Lebanon's population). Five of the largest registered camps are Shatila, Mar Elias, Bourj al Barajneh, Bourj al Shamali and Ein el Hilweh.*

*In Lebanon, the Palestinian refugees are considered a threat to the country's sectarian balance. Since the vast majority of the Palestinians in the camps are Sunni Muslim, the Lebanese claim that giving them citizenship will destabilize the government which has an established balance of Christian, Sunni and Shia representation.*

*Lebanon's position is that Israel should allow the Palestinians to return. In Lebanon, Palestinian refugees are denied both citizenship and civil rights. Their IDs indicate that they are Palestinian refugees. They are discriminated against both by state law and by Lebanese attitudes. They are not permitted to buy or inherit property. They are not permitted to build within the refugee camps. Palestinian refugees have been banned from more than 70 professions, including medicine and law, as well as professions that can be unionized—though there has been recent proposed legislation to liberalize these rules. Palestinians are banned from studying for those professions in Lebanese universities.*

*Unemployment among Palestinians is very high. Many work in a black market. 'Adel'<sup>75</sup> has found work on the back of his bicycle. He rides through Shatila camp selling coffee on his bike. Palestinian refugees would like the right to work in Lebanon. Zeina is training to be a hair stylist in one of the many hair salons found in Shatila camp. Because of the Lebanese emphasis on fashion and beauty, many Palestinian women have been able to find work as hairdressers. They work on the black market and are paid well below the prevailing wage for Lebanese hair and beauty stylists. Many Palestinian refugee women in Lebanon also work as housecleaners. Unfortunately, a more recent influx of immigrants, particularly Filipinos, is displacing*

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<sup>75</sup> All names in these descriptions are fictitious, but are based on real encounters documented by Janice Hayden on her visits to the Palestinian refugee communities in Syria and Lebanon in a tour led by Dr. Elaine Hagopian in June, 2004. Hilda expressed interest in going on a Sabra and Shatila commemoration tour of the camps in Lebanon and Syria in 2007, but could not. The author is indebted to Janice Hayden for her notes and slides from that trip, reproduced here and in the lecture, with permission from Ms. Hayden. All information is accurate as of 2004.

*Palestinian housecleaners. Lebanese prefer domestics who live in their homes, and Palestinian domestics have families to go home to in the camps.*

*UNRWA estimates that 18% of street children in Lebanon are Palestinian refugees. There are over 40 children to a class in the Lebanese UNRWA schools, which cannot accommodate children with special needs. The schools are on 'double shift'—girls in one, boys in another. There is no hope for children to study for a profession. UNRWA schools have not updated their curricula to incorporate Lebanese curricula in their schools, so Palestinian children cannot compete in the Lebanese matriculation exams. Palestinian children are increasingly dropping out and higher numbers remain illiterate.*

*Social organizations try to fill the unmet needs: Hala, who has physical disabilities, takes part in a program run by the Palestinian Women's Humanitarian Organization at Bourj el Barajneh camp. Because she has small motor skill problems, she is learning to write letters with clay. On the wall behind her is a huge key, symbol of the keys Palestinians took with them when they were forced out in 1948. On the key are the words, "Right of Return." Rima studies at the Najdeh Center in Shatila Camp. The Center provides literacy courses for children with special needs. In Mar Elias, the Kanafani Cultural Foundation runs a center for the disabled. It also provides support to kindergartens in many of the camps. Sixty children attend the Kanafani kindergarten at Mar Elias camp. Anni Kanafani runs the Foundation—she is the widow of Ghassan Kanafani, a famous Palestinian writer assassinated in 1972. In the schools and centers, the children all wear smiles, appreciating and welcoming their visitors.*

*Housing conditions in the camps range from difficult to deplorable. All camps lack adequate drinking water. Some have water for only a few hours each day. Drainage and plumbing is primitive, with open sewers and a jumble of dangerous, hanging electrical wires in the camp streets. In Bourj el Shemali, zinc housing is common shelter for the refugees. Because the Lebanese government does not want the Palestinian camps to become permanent, they refuse to let Palestinians bring cement into the camps to build homes. As a result, some families have built zinc houses which are noisy when it rains. They heat up to unsafe levels in the summer, forcing families to live outside in streets in the summer months.*

*There is no play space in the refugee camps. Because of the narrow alleys, boys play in dangerous areas, including in and around shelled-out buildings. Omar, Ziad and Haitham, three Palestinian boys of 6 and 7 years, climb a fence on the periphery of Shatila camp. Behind them is a building that was destroyed in the War of the Camps. UNRWA is mandated with supplying services to Palestinian refugees. Prior to the recent intifada, UNRWA was able to provide \$200 per year per refugee for basic assistance. This has now been reduced to \$70 per year per refugee.*

*Graffiti is everywhere in the camps. Palestinian factions in the camps in Lebanon paint their slogans: PFLP, Fatah, and expressions of negative feelings towards the US and Israel greet passersby on the walls in Shatila, Mar Elias and Bourj al Barajneh. The refugees claim there is no Hamas presence in the Lebanese camps. However, after the assassination of Sheikh Yassin in Gaza, martyr posters commemorating him appeared in the camps. Symbols of the Palestinian struggle and their insistence on returning home also proliferate in the camps. In Bourj el Shemali, a large replica of Palestinian artist Sleiman Mansour painting 'Carry On' appears on a wall. It depicts a Palestinian farmer with a huge burden on his back-- the Dome of the Rock and the old city of Jerusalem.*

*On September 16, 1982 approximately 3,000 unarmed Palestinian refugees—men, women and children—were massacred at the Sabra and Shatila camps by the Phalangist militia, Israel's Lebanese ally. Ariel Sharon, then-Israeli Minister of Defense, was found personally responsible for this massacre by a Knesset-appointed commission of inquiry, since he had allowed the Phalangists to enter the camps. At the site, there is now a commemoration to the victims of the massacre. The atrocities of Sabra and Shatila are burned into collective Palestinian memory.*

*There are 401,185 registered Palestinian refugees living in Syria, both in the 10 official Palestinian refugee camps and elsewhere. Although the Palestinian refugee population is significant for Syria--which has a population of 18 million--the refugees enjoy essentially the same social and civil rights as Syrian citizens. They can buy property, work in any profession, and live in or outside the camps. About 50% of registered Palestinian refugees in Syria live outside the camps. Conditions in the camps themselves are far better than those in Lebanon. Projects such as sewage and drainage problems are often tackled through collaborative*

*projects with UNRWA, the Syrian government and the EU of other governments.*

*Despite the good conditions of Palestinian refugees in Syria, Palestinian nationalism is evident in all the camps. Young Haitham, a teenager with a winning smile, wears the map of Palestine around his neck in Jeramana Camp. In his family's home, where visitors are offered tea, a jigsaw puzzle hangs on the wall, showing the family's village near Nazareth in pre-48 Palestine. In the Syrian camps, too, the Palestinians are welcoming, the children curious, smiling, and always ready to flash the 'victory' symbol with their fingers, and to talk about when they will return to Palestine. In Khan Eshieh camp, 7-year-old friends Naila and 'Abir hold hands and giggle, and share their hopes and dreams for the future...while 51 and 53-year old Manal and Zainab clean and pluck mirameyya (strong Arabic thyme) in Bourj el Shemali and gossip.*

*The final farewell is given by Hassan Hassoun, the director of Homs Camp: "The right of return is sacred. It goes to our grandkids. We love our rights here, but we dream of our land in Palestine."*

Replying, then, to Hilda's meta-question: On careful examination, the nature of the challenge to the 'right of return,' is simply in its application to the Palestinian refugees. No other refugees in the world have been found to lack a right to return to their homeland. Hilda, your deeply ingrained sense of justice would accept legal equivalence for Palestinians and Jews, and our common ground would find us here.

A Palestinian right of return would mean return to the refugees' original homes and lands, the dismantling of discriminatory citizenship, nationality, land, and other laws; restitution and compensation rights and housing rights for secondary occupants for Palestinians and Jews including Arab Jews, across the region; a single multi-national, multi-ethnic state from the Jordan river to the Mediterranean Sea under a truly democratic constitution. Hilda, when you returned, you might have agreed that was an outcome we could both work towards.