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The Palestinian Right of Return,
a Basic Right Still Denied

BY
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Introduction.

Foreign Office 2nd November 1917:

Dear Lord Rothschild:

I have much pleasure in conveying to you on behalf of His Majesty's Government the following declaration of our sympathy with Jewish Zionist aspirations, which has been submitted to, and approved by, the Cabinet.

"His Majesty's Government view with favor the establishment in Palestine of a National Home for the Jewish people, and will use their best endeavors to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country." I should be grateful if you would bring this declaration to the knowledge of the Zionist Federation.

Yours sincerely Arthur
James Balfour

From this point the Palestinian refugees tragedy started .In spit of Belfour declaration said that **“it being clearly understood that noting shall be done which may prejudice the civil and religious of existing non – Jewish communities in Palestine”** but to day no right for non – Jewish communities in Palestine!

The Palestinian Diaspora is the longest since the establishment of the international refugee system after World War 2.

The roots of the refugee problem go back to the formation of Israel. Leaving behind the detailed historical background as echoed in the refugee crisis, the conflict between the Palestinians -the original inhabitants of Palestine- and the Jewish settlers, was initiated during the British mandatory rule in Palestine.

Towards the end of the First World War which ended with the victory of the allies, the British government decided to mandate Palestine to facilitate the Jewish immigration and for keeping its promise (Balfour declaration). In 1917, Britain occupied Jerusalem and in 1918 Britain completed its occupation to all Palestine. And from that time it started to help the Jews by providing whatever help for settling them in Palestine.

In 1920, Sir Herbert Samuel was chosen to be the first high commissioner. In 1922, the mandation was confirmed by the Council of the League of Nations and this mandation embodies Balfour Declaration and this mandation imposes obligations on the British government to establish a homeland for the Jews in Palestine and to

facilitate the Jewish immigration and with the Jewish agency encourages the building of close settlements for the Jews in Palestine.

During the period of mandation, and because of the British siding, the Palestinians refused this policy and revolted against it, some of these revolutions were.

- Jafa revolution:

This started in 11 may 1921 when the Palestinians attacked the Zionist immigration center at jafa, Britain stand besides the Jews, the fight continued for 15 days, 60 Palestinian people were killed and 600 were injured and 40 Jews were killed.

- Al Boraq revolution:

In 22 August 1929, many of the Jews stood at the (western wall) (al bourak wall) and they started singing the Zionist anthem and they carried the Zionist flag, and they claimed that this wall is theirs and it is a part of the (temple mount).

As a result, the Muslims protested and the Palestinian revolution breaks out and spread in all Palestine. The British police killed more than 30 Palestinian martyrs. The League of Nations founded investigation commission to investigate the problem of the wall, many of documents offered to this commission and in January 1930 said that the wall is for Muslims.

- The great Palestinian revolution.

The people of Palestine noticed that the Jews immigration increased in great numbers and also noticed the increasing numbers of weapons, which entered to Palestine to the Jews. Leaders of Palestinian National Association announced Arab people in Palestine to a strike in order to force Britain to stop its support to the Jews and one of their most important request was to have their independence, but Britain refused and tried to stop this strike by force but in vain. These strike continued for 6 months and it was not only the longest strike at all Palestine history but also distinguished by the participation of all the Arab people there¹.

Britain invites the representatives of the Palestinian Arabs and of neighboring States on the one hand and the Jewish agency on the other hand to confer with them in London but the meeting failed.

After the failure of the meeting in London and the failure of the partition scheme, the British government announced its new policy in a White Paper published. The Arab demands were largely met : Jewish immigration was to continue at a maximum rate of 15000 for another five years .the Jewish reaction was bitterly hostile and also the Arab leaders rejected the white paper because they stressed that Palestine has to remain Arabian and the immigration of the Jews had to be stopped.²

¹ “ In all over than 3000 Arabs were killed and the British dead numbered about 150. 6000 Arabs were imprisoned and 110 executed. According to official Israeli government figure Jewish casualties for the same period 1936-1939 were 517 dead many of them second generation immigrants shot down in their fields by Arab neighbors with whom they had previously lived in peace “, for additional information about this period please see Lex Takkenberg “ statues of Palestinian refugees in international law , The publisher: Clarendon press oxford. The first published 1998 , Page 8-12.

² For more information please review “ <http://www.nahrelbared.org/>

The partition of Palestine:

At 28 of April 1974 in the special session of the new United Nation, the general assembly established the United Nations Special Committee On Palestine U.N.S.C.O.P “*to investigate all question relevant to the problem of Palestine and recommend solutions to be considered by the regular session in September 1947.*”

The U.N.S.C.O.P committee, went to Palestine, surrounding countries, displaced persons camps in Europe packed with Holocaust survivors.

And after three months of investigation the majority of committee recommended that Palestine be partitioned into an Arab State and Jewish state, with Jerusalem as a corpus separatum under the administrative authority of U.N.³.

In 29 November 1947 the general assembly for the united nations held and voted at scheme was presented before about the partition of Palestine in to two states , Jewish state and Arab state,33 countries agreed the partition 13 refused the partition ad 10refused to vote.

The partition scheme divides Palestine in to two states one is for Jews and consists of 56,6% of Palestine and the other state is for Arab and consist of 46,6%of Palestine land and as it is know that the Jews at that time occupied not more than 5,6% of Palestine land .the Jews accepted the and welcomed , and the Arab refused it strongly.⁴

Long historical journey was passed, from 181 resolution to Madrid conference giving us how these problems are difficult and complicated.

The Number of Palestinian Refugees and Their Geographical Distribution.

The numbers of the Palestinian refugees are the subjects of dispute between Israel and the Arab states .The Arab countries declared that they are 900000 to one million refugees⁵. Israel officials in public usually referred to about 520000.⁶

By 1995, due to natural population growth, the number of refugees registered with UNRWA had increased to nearly 3,2 millions, out of a total number of the Palestinian world- wide of approximately 6,9 millions⁷.

The actual number is not that of the refugees scattered in sixty camps mainly in four Arab states- Jordan, Lebanon, Egypt and Syria. The number of Palestinian refugees includes two hundred fifty thousands of Palestinians in the territories where the state

³The majorities were “Canada, Czechoslovakia, Guatemala, Netherlands, Peru, Sweden, and Uruguay.”

⁴It’s UN historical and famous resolution 181 that accepted in general the recommendation of U.N.S.C.O.P majorette.

⁵Cf.cattan, 1969,52;Nakhleh, 1992,vol.i, 4.

⁶See for example the sources cited by Morris , 1987 , appendix I , n.1.in 1994 the Israeli government press office referred to estimates reneging “from 540000 to 720000” ; cf. state of Israel , oct.1994 ,4.- footnote number 56 page 18 Lex Takkenberg “ statues of Palestinian refugees in international law.

⁷CAPA, Palestinian refugees: Their problems and future –A Special Report, Washington D.C, 1994 Appendix II, See also Lex Takkenberg “ statues of Palestinian refugees in international law, the table in page 21.

of Israel was established in 1948 or the internally displaced who have been watching their possessions being confiscated and unable to regain them. They are those who have been described by Israel as the 'absent-presence'⁸.

According to the map of UNRWA's Area of Operations, 30jun1996 2,170,000 Palestinian refugees based in Jordan, 1,250000 based in West Bank & Jerusalem, 880000 in Gaza strip, 810000 in Israel, 395000 in Lebanon, 360000 in Syria , 517000 in other Arab state and 500000 in the rest of world.

Even they were 520000 not 900000, the currant number of the Palestinian refugees more than 6 millions, this number is enough to give us a clear idea about the deepness of the problem.

Whose responsibility?

The Israeli leadership, especially its right hawkish wing, has been putting the blame of the Palestinian refugees' sufferings over the shoulders of the Arab leaders. Israelis claim that it was this Arab leadership that encouraged the Palestinians, before and during the 1948 war, to leave their homes and therefore they are ethically responsible and should resettle them in their own countries.

We would rather quote what is now known as the 'New Israeli historians' as a means to debate the official Israeli story of the 1948 war. The 'new historians' is an academic nucleus of history academicians, who have been trying to challenge the decayed de facto myths of former Israeli generations. They relied mainly on official Israeli documents available in its national archive and issued by its cabinet, ministry of foreign affairs, the military establishment, the Mossad⁹.

According to Israeli historian Benny Morris in his study *The Birth of the Palestinian refugee problem, 1947-1949* The exodus began in the period between December 1974 and March 1948, with the departure of many of the country's upper a middle class family, especially from Hiffa and Jaffa. This first wave numbered several tens of thousands. The satuwaion changed dramatically during the end of March-April and the first half of May following the Jewish conquest of a large number of Arab – populated areas , Morris said "Jewish pressure on the Arab villages of the coastal plain , and the Haganah conquest of parts of Arab Jerusalem and Jerusalem corridor ,Tabarias , Haifa , the Hula valley in the Galilee panhandle ,Jaffa and its environs , Beisan and Safad sent 200000-300000 urban and rural Palestinian Arab feeling to the safety of the surrounding Arab states Lebanon ,Syria ,Egypt and Transjordan and the Arab population centers of Gaza , Nablus, Ramallah and Hebron ¹⁰.

According to the Arab lawyers and historians Israel has complete responsibility, for example Henery Cattan – Palestinian lawyer- attributes the exodus of the Palestinian refugees to three causes, " Jewish terrorism, expulsion, and the breakdown of

⁸Coated from www.hrcap.org. their English book titled Zionism As Racist Movement – By El Said Awad PHD.

¹⁰ Benny Morris *The Birth of the Palestinian refugee problem, 1947-1949* Page 245.

security and government machinery for the preservation of law and order during the last few months of mandate “¹¹.

Nur Masalha , Palestinian historian has pointed to the fact that Zionism has developed various ideas aimed at transferring the original Arab population of Palestine to neighboring countries ‘ while it’s true that military history is full of scorched earth tactics and expulsions to clear the theatre of war , it is difficult- in light of the systematic nature of the “clearing out“ operations and sheer magnitude of the exodus (not to mention the careful efforts to prevent the return of the refugees) not to see a policy at work . Even as the war was underway, as operation followed and the number of refugees continued to swell, dissections relating two permanent demographic changes and the permanent acquisition of land were proceeding with no reference to the exigencies of war” .¹²

The Israel government policy towards the Palestinian refugees.

The Israel government policy towards the refugees was not to allow them to return, David Ben-Gurion laid out this policy “ When the Arab states –he said- are ready to conclude a peace treaty with Israel this question ‘of refugees will come up for constructive solution as a part of agreement settlement, and with due regard counterclaims in respect of the destruction of Jewish life and property, the long- term interest of the Jewish Arab population, the stability of the state of Israel and the durability of the basis of peace it and its neighbors , the actual position and fate of the Jewish communities in the Arab countries , the responsibilities of the Arab governments for their war of aggression and their liability for reparation , will all be relevant in the question whether, to what extent and under what conditions , the former Arab residents of the territory of Israel should be allowed to return .” ¹³

According to the ***Human Rights Center for assistant Prisoners*** the Jewish State has turned a blind eye to the political nature of the refugee crisis and looked into it as a social humanitarian issue that should be tackled within the context of the regional economic development plans. Moreover, Israel claimed that the ‘Right of Return’ is a mechanism meant to destroy its national identity and the state itself, thus putting an end to the Jews Promised Land. As ‘Jerusalem Post’ put it “ The ‘right of return’ will take away the Jewish nature and practically establish a dual nationality state where the demographic growth will be in favor of the Arabs.”

Israel has also been claiming the shortage of its financial resources to meet the needs of the Palestinian refugees. But, Israel has plans and the financial means to absorb five million new Jewish immigrants as long as the number of the Jewish entity will reach ten million.

¹¹ Cattan ,H, *Palestine , the Arab and Israeli : The search for Justice* , London ,longman,1969 .

¹² Masalha , 1992 ,N, *Expulsion of the Palestinians: the concept of “Transfer “ in the Zionist political thought ,1992-1949* , Washington D.C , IPS,1998.

¹³ State of Israel , Oct,1994,4, Quoted from Lex Takkenberg “ statues of Palestinian refugees in international law.

Israel has also been propagating for the ‘unrealistic and idealistic nature of this right which has nothing to do with practical politics’.¹⁴

Defining Palestinian refugees

Who are the Palestinian refugees?

During the first session of the Multi lateral Working Group on refugees, the chairperson of the Palestinian side of the joint Palestinian – Jordanian delegation elaborated on how is to be included in the category of refugees that are covered by the UN resolutions concerning the right to return and compensation, from our point of view this definition is an ideal one. it was “ *The Palestinian refugees are all those Palestinians (and their descendants) who were expelled or forced to leave their homes between November 1947 (partition plan) and January 1949 (Rhodes armistice agreements), from the territory controlled by Israel on that later date. This.... Coincides with the Israel definition of “absentees“, a category of Palestinian meant to be stripped of its most elementary human and civil rights. This definition dos not only apply to camp-dwellers, and certainly not only to those recognized refugees who enjoyed formal registration by UNRWA, since the later never exercised jurisdiction over more than a segment of the total refugees population.*

Such a definition dos not include emigrants who left Palestine before 1947, but it includes all those displaced, even inside the territory that became the state of Israel in 1948-1949 period. It also includes all the 1967 and post 1967 displaced persons. It also includes the residents of border villages in the West Bank, how lost their agricultural lands in the war 1948, and therefore the source of their agricultural lands in the war of 1948, and therefore the source of their livelihood, but remained in their villages.

*It includes residents of the Gaza strip refugee camps who were either relocated to the Rafah Sid of the Egyptian boundary, or ho found themselves separated from their families and kin as a result of border demarcation after the Camp David agreement between Israel and Egypt. It finally includes Palestinian Bedouins who were forcibly removed from their grazing lands within the state of Israel, as well as those who where in induced to a bandana the west bank and to relocate in Jordan. Although some of the above categories may not be regarded as refugees in the technical sense (for example deportees, or residents of ‘border villages’), they nevertheless share the hardships and fate of most refugees who fall in the first categories. At the core of their status are land alienation and the denial of return to their country.*¹⁵

According to Lex Takkenberg ”while this explanation of Palestinian refugees statues is not completely satisfactory from a legal point of view, it provides a comprehensive

¹⁴Coated from www.hrcap.org. Their English book titled Zionism As Racist Movement – By El Said Awad PHD.

¹⁵Statement of the chairperson of the Palestinian side of the joint Palestinian Jordanian delegation of the Multi –Lateral Working group on refugees , Ottawa ,13 May 1992 ; text in CPAP, *Fact and figures about the Palestinians* , Washington, D.C, 1992 Page 34-38 .

enumeration of the various categories of Palestinians that were affected by the 1948 conflict and on whose behalf the PLO is likely to claim repatriation and/or compensation during the permanent status negotiations.¹⁶

Solid legal basis for the right of return.

1. The United Nations adopted Resolution 194 on December 11, 1948. Paragraph 11 from this resolution states: "...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... compensation should be paid for the property of those choosing not to return."¹⁷
Resolution 194 was affirmed practically every year since with a universal consensus, except for Israel and the U.S. This resolution is further clarified by UN General Assembly Resolution 3236 which reaffirms in Subsection 2, "the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and calls for their return". Hindering return is an act of aggression, which deserves condemnation and/or action by the Security Council. Liability for consequences of violation remains with Israel. UN partition resolution 181 and Israel's later admission to the UN were conditional on acceptance of relevant UN resolutions including 194. The Right of Return does not derive its validity merely from UN Resolutions. The Universal Declaration of Human Rights article 13 reaffirms the right of every individual to leave and return to his country. Moreover, the Principle of Self-Determination guarantees, inter alia, the right of ownership and domicile in one's own country.
The UN adopted this principle in 1947. In 1969 and thereafter, it was explicitly applied to the Palestinian People, including "the legality of the Peoples' struggle for Self-Determination and liberation",¹⁸
2. International law demands that neither occupation nor sovereignty diminish the rights of private ownership. When the Ottomans surrendered in 1920, Palestinian ownership of the land was maintained. The land and property of "the refugees" remains their own and they are entitled to return to it. Research not only shows that the right of the refugees is sacred and legal but also possible"¹⁹
3. The Universal Declaration of Human Rights (10 December 1948)
Article 13(2) states: "Everyone has the right to leave any country, including his own, and to return to his country".
Article 17(2) states: "No one shall be arbitrarily deprived of his property."

¹⁷ Lex Takkenberg, *the status of Palestinian refugees in international law* p.85

¹⁸ The resolution was adopted with 35 votes in favour, 15 against, including Egypt, Iraq, Lebanon, Saudi Arabia, Seriya and Yaman, 10 abstention.

¹⁹ (GAOR 2535 (xxiv), 2628 (xxv), 2672 (xxv), 2792 (xxvi))

²⁰ The AI report is available at: <http://www.web.amnesty.org/ai.nsf/index/MDE150591999>

4. International Covenant on Civil and Political Rights GA Resolution 220A (XXI), 1966 Article 12 states: “ No one shall be arbitrarily deprived of the right to enter his own country.
5. International Convention on the Elimination of All Forms of Discrimination 1969. Article 5 in compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the Following rights: (d)(ii) The right to leave any country, including one's own, and to return to one's country.
6. International Covenant on Civil and Political Rights GA Resolution 220A (XXI), 1966 Article 12(4) states: No one shall be arbitrarily deprived of the right to enter his own country²⁰.
7. Convention relating to the Status of Refugees (28 July 1951).
International refugee law and international human rights law mutually reinforce each other on the right to return. International refugee law affirms the right to return through the emphasis it places on voluntary repatriation as the preferred durable solution to refugee situations.
The basis for the right to return under international refugee law can be found in the 1951 Convention Relating to the Status of Refugees (hereafter referred to as the Refugee Convention) and its 1967 Protocol. Support is also found in various regional refugee instruments, UN Resolutions, and the Conclusions of UNHCR's Executive Committee.
Article 1.C of the Refugee Convention stipulates that international protection for refugees ceases only under the following conditions:
Once a refugee has "re-availed himself of the protection of the country of his nationality", or "having lost his nationality, he has voluntarily re-acquired it", or he has "voluntarily re-established himself in the country which he left or outside which he remained", or "being a person who has no nationality he is, because of the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence .

These clauses, known as the "cessation clauses", provide for a cessation of international protection and the voluntary repatriation of refugees to their own country where they can once again avail themselves of the protection of that country. The concept of "country" in the cessation clauses is important and correlates closely with the concept of "own country" in Article 12 (4) of the ICCPR, as articulated in the General Comment on this article by the Human Rights Committee. First, it is significant that the Refugee Convention uses the term "country" rather than state.

²⁰ The following sections are extracted from <http://www.hrw.org>, the website of Human Rights Watch:

The notion "country" is broader and more inclusive than that of state of nationality; it is not restricted to de jure nationality and takes into account the ties and connections that an individual may have with a certain territory. Second, the Refugee Convention explicitly recognizes that return is not restricted to a refugee's country of nationality, but also to the country that the refugee "left or outside which he remained." By recognizing the term "country" to mean actual land or territory with which an individual has special ties, the Refugee Convention specifically makes provision for refugees to return to the territory that they left, regardless of whether they possess citizenship of that territory or it is located in a different political entity from the one they left. Finally, the Refugee Convention recognizes the right of stateless persons to return to their country of "former habitual residence", again an affirmation that formal nationality is not necessarily a criterion to enable refugees to return. Laws dealing with freedom of movement, as defined in human rights and refugee law, determine the right of return. While it encompasses the right to enter, to settle and to leave, it does not include a clear state obligation to bestow nationality. It is possible to hold a different nationality from that of the country to which the person is returning and settling as a resident, although the granting of citizenship to returnees should be encouraged.

7. International Covenant on Civil and Political Rights (16 December 1966).

The right to return is most clearly enshrined in the 1966 International Covenant on Civil and Political Rights (ICCPR)²¹ under its provisions on the right to freedom of movement (Article 12). Freedom of movement has two main components: an internal aspect, relating to freedom of movement within a country (Article 12 (1)); and an external aspect comprising freedom of movement between States. The latter includes the right to leave one's country (Article 12 (2)), and the right to enter one's "own country" (Article 12 (4)).

Article 12 of the ICCPR states: Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

Everyone shall be free to leave any country, including his own.

The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (order public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

No one shall be arbitrarily deprived of the right to enter his own country.

It should be noted that the right to return under Article 12 (4) of the ICCPR is not subject to the same restrictions as paragraphs 1 and 2 of the same Article, which permit restrictions to protect national security, public order, public health or morals, or the rights and freedoms of others. The Human Rights Committee, the authoritative U.N. body for interpreting the ICCPR, has ruled, "there are few, if any,

²¹ As of June 30, 2000, 143 countries were states parties to the ICCPR, including Israel and all the bordering Arab states (Egypt, Syria, Jordan, and Lebanon).

circumstances in which deprivation of the right to enter one's own country could be reasonable."

The only way in which countries can derogate from their responsibilities under Article 12 (4) would be during the extreme circumstances described in Article 4 of the Covenant: "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed".

Even in these situations, however, states should ensure that their actions are "not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin."²²

It is also important to note that under the ICCPR the right to return does not depend on a person's status as a refugee. Every individual who has maintained "genuine and effective links" with the territories in question should enjoy the right to return, regardless of whether he or she is a refugee, that is, someone who fled persecution.

8. The Human Rights Committee General Comment on Article 12 of the international Covenant on civil and Political Rights (November 1999).

In November 1999 the Human Rights Committee, the authoritative UN body for interpreting the ICCPR, produced a thorough and comprehensive commentary on Article 12.

General Comments of the Human Rights Committee represent the most authoritative interpretation of the Covenant available to State Parties. They are produced by the Committee as authoritative guidance in order to assist States in fulfilling their reporting requirements²³.

The General Comment concluded: The wording of article 12, paragraph 4, does not distinguish between nationals and aliens ("no one"). Thus, only interpreting the meaning of the phrase "his own country" can identify the persons entitled to exercise this right.

The scope of "his own country" is broader than the concept "country of his nationality".

It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, for nationals of a country who have been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them. The language of

²² Article 4 (1), ICCPR.

²³ Part IV of the ICCPR (Articles 28 - 45) provides for the establishment of a Human Rights Committee to oversee the implementation of the Covenant. Article 40 stipulates that State Parties are obliged to submit reports to the Committee on measures they have taken to implement the Covenant. The Committee can also submit its own reports and "such general comments as it may consider appropriate, to the States Parties" (Article 40 (4)). The General Comment may also be submitted to the Economic and Social Council.

article 12, paragraph 4, moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence"

In summary, the General Comment adopts an inclusive interpretation of "own country" to protect all those with "special ties" or connections with a country -- those who can not be considered "mere aliens." In the view of Human Rights Watch, the clearest guidance in international law for defining the basis on which an individual can exercise a claim to return to his or her "own country" is provided by the convergence of the wording of the General Comments of the Human Rights Committee -- "an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien"-- and the concept of a "genuine and effective link," which arose out of the International Court of Justice's *Nottebohm* case²⁴.

While the *Nottebohm* case addressed the issue of nationality, the criteria that it sets forth are the most comprehensive. For determining the existence of the right to return: "Different factors are taken into consideration, and their importance will vary from one case to the next: there is the habitual residence of the individual concerned but also the center of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children, etc." Thus a "genuine and effective link" to one's "own country" can be composed of various elements, including language, long-term residence, cultural identity, family ties, etc. The right of return is not restricted to nationality in the formal, or *de jure*, sense. Nor can it be restricted to permanent or habitual residence. One's "own country" implies a broader set of ties and connections that together make up "a genuine and effective link" as defined in the *Nottebohm* case. It allows for those outside their own country to return for the first time, even if they were born elsewhere and would be entering for the first time, so long as they have maintained a "genuine and effective link" to the country.

A genuine and effective link that is the basis for the right to return could conceivably fade over time. However, this would be rare in the case of those who personally fled.

²⁴ (2) *Nottebohm Case, (Liechtenstein v. Guatemala) Second Phase, Judgment, I.C.J. reports 1955, Rep 4*. The *Nottebohm* case dealt with the ability of one State (Liechtenstein) to initiate proceedings against another State (Guatemala) before the ICJ on behalf of one of its citizens. What was at stake was Liechtenstein's ability to extend international protection to *Nottebohm*, and in order to do that the "genuine and effective" link between Liechtenstein and *Nottebohm* needed to be established and specified. The case, and in particular the elements that comprise the "link", have been cited innumerable times by scholars, national and international courts - including the World Court - and institutions dealing with the nationality questions.

Such a determination should not be made for these individuals before they have had the opportunity to exercise the right to return over a reasonable period of time have chosen not to exercise the right, or have taken steps to cut the link (for example, by renouncing their nationality).

The question of whether the refugees left voluntarily or were expelled does not affect the right to return under the ICCPR.

Is the right of return realistic?

The right of the refugees is sacred and legal but also possible (i.e. it is a myth that Israelis would have to be displaced to allow for the return of the refugees). A study on the demography of Israel shows that 78% of Israelis are living in 14 percent of Israel and that the remaining 86% of the land in Israel is mostly land that belongs to the refugees on which 22% of the Israelis live. However, 20% live in city centers, which are mostly Palestinian such as, Beer Al Saba', Ashdod, Majdal, Asqalan, Nazareth, Haifa, Acre, Tiberias and Safad. As for the remaining 20%, they live in kibbutzes and moshavs. They control the legacy and heritage of five million Palestinian refugees. Is there any logic to having 2,400 refugees on one square kilometer in the Gaza Strip while any one of them could look over the barbed wire and see his land practically empty? If Gaza refugees returned to their homes in southern Palestine, no more than five percent of Jews in the center would be affected. If the refugees of Lebanon returned to their homes in the Galilee no more than one percent of Jews in the center would be affected. The total number of refugees from Gaza and Lebanon equals the number of Russian immigrants who came to Israel in the '90s to live in the homes of these refugees. What right brings in Russian Jews and what kind of peace deprives Palestinian refugees the right to return home? According to a report by Amnesty International last December, 2650 Palestinian houses have been destroyed since 1987 by Israel in the West Bank, including east Jerusalem, on the pretext of not having building permission. Further thousands of acres owned by Palestinians have been confiscated to build settlements in the occupied territories in contravention's to the 4th Geneva convention Article 49 stating that the "Occupying Power shall not transfer parts of its own civilian population into the territory it occupies."²⁵.

According to Suliman Abu Seta's study,²⁶ the right of return is possible and realistic. Israel's 41 areas, according to Setta, could be divided into three sections A, B and C. Section A would have 8 areas of 1386 Km., which forms 8 per cent of Israel and inhabited by 68 per cent of the Jewish population. This is nearly the very same area where Jews used to live in Palestine before 1948. Section B, includes five areas totaling 1318Km, that forms 7 per cent of the land and inhabited by 10 per cent of

²⁵ The AI report is available at: <http://www.web.amnesty.org/ai.nsf/index/MDE150591999>

²⁶ Coated from www.hrcap.org. Their English book titled *Zionism as Racist Movement* – By El Said Awad PHD.

Israel's Jews and 20 per cent Palestinians. This section is of mixed population where Palestinians used to live, which practically means that 78 per cent of the Israelis live on 15 per cent of section A and B. Section C, which constitutes the rest of the land (1735Km) is basically the refugees areas except for scattered urban centers that used to be inhabited by Palestinian inhabitants and now has 145.0000 rural Jews who dominate the Palestinian properties there.

Contrary to what Israel claims, the return of the Palestinian refugees will not cause a collective displacement of Jews, though they do not have the right, in the first place, to possess the Palestinians properties. The return of Palestinians may lead to a willful resettling of 145.000 Jewish rural.

There are two scenarios presented by Setta's study to check the impact of the refugee's return to their homeland. First: the return of the Palestinian refugees in Lebanon (350.000-to-400.000), who should have a priority due to the difficult life they are leading there. Second: the return of the refugees placed in Gaza Strip, where one million Palestinians are sandwiched in 360Km and described as the political dynamite of the Middle East.

In the case of the Palestinian refugees in Lebanon, the density of the population both in Israel or the occupied territories would not be affected. It is worth noting that except for the 145.000 Jews in section C, the density of Israel's population remained the same since 1948.

Although Israeli residents form in section A, almost 90 per cent, Israelis in section B and C represent one third of the total population. If the Palestinian refugees in Lebanon decided to go back, neither the Palestinians nor the Israelis currently residing in section B and C would feel the difference. The population will show an increase by 1 per cent in section A, 6 per cent in section B and 17 per cent in section C. Meantime, the majority of the population will remain Jewish in the three sections as they will represent 50 per cent. It is only for the 67.000 Jews in the rural areas to feel the difference. Yet, for Jews in the urban areas who represent 71 per cent of the total population, nine per cent of them live in nine cities three of them are Palestinians, and can easily pursue their life style.

As for the refugees in Gaza, they will return to a completely empty area. The density of the population in the rural areas is almost 6 individuals for each kilometer that is one to a thousand of the densities in Gaza. Furthermore, there are hardly 79.000 rural Jews in the southern half of Israel, in addition to two thirds of the 55.000 urban Jews who live in three Palestinian municipalities (Ashdoud, Beir Saba, Majd and Asqalan) and three newly established municipalities.

According to statistics, the return of the refugees from Gaza will affect population density in Israel by 6 per cent in section A, 5 per cent in section B and in section C by 32 per cent. In that case, the Israelis would form the majority even after the return of the refugees in Lebanon. It is worth noting that the Jewish residents are concentrated in six municipalities, half of them in Bier Saba, which practically means that 32.000 Jews are dominating 14.320.000 acres.

Home for the homeless.

Count Folke Bernadotte ²⁷, the UN Mediator stated “It would be an offence against the principles of elemental justice if these innocent victims of the conflict were denied the right to return to their homes, while Jewish immigrants flow into Palestine”.

This remains true today as any person with a Jewish religion can gain automatic citizenship while Palestinians born in Palestine/Israel cannot return to their homeland.

The idea that says Palestine is a land without people is one of the Israeli fables, in addition to the legend of the Promised Land enabling one people to uproot the other from their land based on race or religion. Palestine has always been the land of their grandfathers, which possesses a grand civilization and history.

²⁷Count Folke Bernadotte died in an accident and Israel- from my point of view – was the main suspect.