Palestinian Intransigence and the “Right of Return”

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Yasser Arafat speaking at the U.N. General Assembly, 1974: The Palestinian right of return is primarily a political and ideological claim rather than a binding legal one supported by international law. In 1974, Yasser Arafat championed it at the U.N., while also declaring Zionism to be "colonialist," "imperialist," and "racist." The right of return continues to shape Palestinian politics and Western diplomacy, and remains a central factor in the persistence of the Israeli-Palestinian conflict. (Photograph by Bernard Gotfryd; Library of Congress Prints and Photographs Division, LC-DIG-ppmsca-12426)

Introduction

Since the Hamas attack of October 7, 2023, there has been renewed talk of a possible two-state solution to the Israeli-Palestinian conflict. So, it is worth asking once again: Why have decades of American efforts to mediate the conflict failed? Why have Palestinians repeatedly walked away from the chance to have their own state? What is at the root of their intransigence?

A central element is the Arab insistence that Palestinian refugees have a "right of return" to what is now the State of Israel and the Western failure to speak the legal truth that there is no such right. Year after year, the West indulges the Palestinian demand for the "right" to demographically destroy the Jewish state. As a result, Palestinians have been able to take the position that a "right of return" is the sine qua non of any resolution to the conflict. It is time to finally disabuse them of that notion.

Palestinian intransigence goes back a long way. For half a century before the founding of the State of Israel, Arabs fought Jewish immigration to Palestine, showing no willingness to peacefully share the land. As historian Benny Morris has written, Arabs displayed a "posture of antagonism and resistance," motivated by an "abhorrence of the Zionist-Jewish presence in Palestine, an abhorrence anchored in centuries of Islamic Judeophobia with deep religious and historical roots."[1]

The Arabs would allow no compromise. As Morris puts it, "from the start, the clash with the Zionists was a zero-sum game."[2] He notes that Arabs "repeatedly attacked the new settlers, initially in individual acts of banditry and terrorism and then growingly massive outbreaks, which at first resembled nothing more than European pogroms."[3] In what Morris terms their "culminating assault," immediately after rejecting the November 1947 U.N. Partition Resolution, Arabs launched a genocidal war of aggression intended to stop the establishment of a Jewish state.

The Arabs lost that war, and, as a result, approximately 700,000 Palestinians fled or were expelled from what is now the State of Israel. Those refugees were then housed in the West Bank, the Gaza Strip, and various refugee camps in neighboring Arab countries. Except for Jordan, those countries did not offer them citizenship.

Shortly after the war, the U.N. formed the United Nations Relief and Works Agency (UNRWA) to manage the welfare of the refugees. UNRWA's original mandate was to resettle the refugees in their host countries. Under international law, that was the established practice for refugee populations at the time. However, Arab states and Palestinian leaders immediately called for the recognition of a right for the refugees to return to their homes. At the same time, they made it clear that this would mean the destruction of the Jewish state.[4] As the Palestinian-American historian Rashid Khalidi has noted, "The concept of a right of return was thus fostered by the early Palestinian organizations and later by the PLO as a central mobilizational slogan."[5] The "right of return" and the goal of eliminating the Jewish state have been linked ever since.

In the face of Arab opposition to any resettlement of the refugees, UNRWA abandoned that goal and, instead, began advocating for the return of the refugees to their former homes. To complicate matters, UNRWA has taken the unprecedented position that the original 1948 refugees and all their descendants are entitled to refugee status. That now amounts to about five million people who, UNRWA maintains, have a "right of return" to what is now the State of Israel. It is important to be clear on this point: the "right of return" is not actually about return; it is about mass immigration into Israel by millions of people who have never lived there. Today, there is nothing more central to Palestinian identity than this supposed right. It has come to dominate Palestinian nationalism and politics.[6] It has also come to dominate the thinking of Western pro-Palestinian activists.

The claim that Palestinian refugees have a right of return is a legal fallacy. Unfortunately, it is a fallacy the West has indulged and failed to debunk. As a result, for decades, this supposed right has been the major stumbling block—the root of Palestinian intransigence—in peace negotiations.[7] Proponents of the "right of return" frequently try to find support in U.N. General Assembly (UNGA) resolutions. However, UNGA can only make nonbinding recommendations and lacks the power to legislate. Thus, its resolutions do not have the force of law. Other advocates argue that a Palestinian right of return is embodied in various treaties. But in so doing, they make the mistake of trying "to hold Israel to legal standards developed decades after the relevant events."[8] And those standards are not retroactive: "Non-retroactivity is a foundational principle in both domestic and international law. It is a default rule of treaty interpretation and a core component of the customary rules regarding the responsibility of states for international wrongs: 'An act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs.'"[9] In the case of the Palestinian refugees, relevant treaties enacted after "1947–49 do not contain language indicating that they apply retroactively."[10]

Some proponents invoke customary international law (CIL), which is derived from settled state practices, motivated by a sense of legal obligation. But "CIL by definition does not apply retroactively."[11] And there was no CIL in effect in 1947–49 that could have supported a right of return. Indeed, at that time, the settled state practice was to resettle refugees in their host countries, not to repatriate them. Nor can proponents of a right of return get around the non-retroactivity problem by invoking the "continuing violations" doctrine, which originated in domestic law and is therefore inapplicable.[12]

In the end, the claimed right of return is not a matter of law. It is a matter of politics, nationalist ideology, and the goal of destroying the Jewish state. Actual law does not support it. Nevertheless, proponents try to cloak it in legal argument. Let us examine their claims in more detail.

U.N. General Assembly Resolution 194

Proponents of the right of return most often cite paragraph 11 of UNGA Resolution 194 (III) of 1948, which "resolve[d] [that] 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."[13] But their reliance on that provision does not withstand scrutiny.

At the outset, it is important to note that Palestinians and the Arab states initially rejected Resolution 194 as invalid because it implied that Israel had a right to exist. Indeed, as Professor Andrew Kent has observed, "After repeated failure to solve the refugee problem by destroying Israel with military force, it seems a bit too bold (an example of profoundly 'unclean hands') to claim the benefit of the Resolution that the Palestinians and Arab states rejected."[14] "Moreover," Kent continued, "the Palestinians and Arab states clearly did not consider the General Assembly competent to make binding law—and they were right."[15] This is clear from their rejection of the 1947 Partition Resolution. There they correctly argued that under the U.N. Charter, UNGA lacked the power to legislate and could only make nonbinding recommendations.[16]The only exception is the General Assembly's power to make binding resolutions regarding budgetary and internal affairs.[17]

In the articles of the U.N. Charter establishing the powers of UNGA, the words "may make recommendations" appear repeatedly. The words "may order" appear nowhere. Specifically, under Article 11(2), UNGA "may make recommendations" on questions of international peace and security. But the Charter then provides: "Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion." Accordingly, the Palestinians and Arab states correctly argued that the 1947 Partition Resolution—UNGA Resolution 181—could only become binding if it were enforced by the Security Council after the finding of a threat to international peace and security. And that did not happen.[18]

This analysis of Resolution 181 applies with equal force to Resolution 194. Since the Security Council has never enforced Resolution 194, it lacks the force of law and cannot be relied upon to establish a right of return. To put it another way, having vehemently rejected the Partition Resolution as beyond the powers of the General Assembly, Palestinians cannot be heard to invoke Resolution 194.

Moreover, to read Resolution 194 as establishing a right of return would, in effect, promote a binational state. And that is exactly the result that Resolution 181, which recommended partition, was intended to avoid. Therefore, reading the two resolutions together, Resolution 194 must be only hortatory, not mandatory.[19] At the same time, Resolution 194 must be read so as to be consistent with the U.N. Charter, which preserves the sovereignty of the member states. Specifically, to force Israel to absorb millions of Palestinian immigrants would violate Article 2(1) of the Charter by making its guarantee of "sovereign equality" meaningless.[20]

Israel asserts that as a sovereign nation under international law it has complete discretion to deny admission to non-citizens, including Palestinian refugees.[21] That position is correct. An overwhelming majority of those who call themselves Palestinian refugees have never lived in what is now the State of Israel. Legally, they are aliens and can be excluded by the Israeli government: "The right of a State to determine who are, and who are not, its nationals is an essential element of its sovereignty." [22]

It has long been a fundamental principle of international law that a sovereign state has the sole authority to control immigration across its borders.[23] As the U.S. Supreme Court noted 133 years ago, "every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners

within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe."[24] (The Court reaffirmed this principle as recently as 2020.) Similarly, in a well-known 2004 case, the British Supreme Court has noted: "The power to admit, exclude and expel aliens was among the earliest and most widely recognized powers of the sovereign state."[25] Other common law courts—those of New Zealand and Australia, for example—have reached the same conclusion.[26] Thus, there is no right to violate a state's territorial sovereignty—to reside within its borders without permission. As Professor Kent has concluded, "Since international law did not require that Israel treat the Palestinians expelled during the 1947–49 conflict as Israeli citizens, Israel was within its rights to consider them aliens under domestic law. As non-citizens, Israel could refuse them admittance to its territory under its sovereign power over immigration."[27]

Finally, even putting all this aside and assuming Resolution 194 does have the force of law, it does not create a right of return. As the international law scholar Kurt René Radley has argued, "There is no suggestion in [paragraph 11] that the principle of 'return' is a right under international law. The text simply states that they, the refugees, 'should be permitted' to return. It would seem clear enough that the phraseology 'should be permitted' does not amount to 'must be permitted.' Moreover, if paragraph 11 intended to establish a 'right of return,' would such a 'right' be a matter of permission?"[28]

U.N. General Assembly Resolution 3236

On November 22, 1974, UNGA adopted UNGA Resolution 3236 (XXIX), "Question of Palestine," in which it "reaffirmed" the so-called "inalienable right of the Palestinians to return to their homes and property from which they [had] been displaced and uprooted, and call[ed] for their return." (UNGA gave no indication where or when such a right might have been previously "affirmed.") That right, the resolution provided, would go hand in hand with the Palestinian "right to self-determination" and "right to national independence and sovereignty." [29]

The first thing to know about Resolution 3236 is that it is the product of the same anti-Israel cabal that produced the "Zionism is racism" resolution—UNGA Resolution 3379 (XXX): "Elimination of All Forms of Racial Discrimination (November 10, 1975)." [30] During the sixties, as the Non-Aligned Movement (NAM) grew, U.S. influence at the U.N. declined. In September 1973, Fidel Castro and Muammar Qaddafi, having competed for leadership of NAM, agreed to work together to take control of the U.N., further weaken the role of the United States, and end the existence of the State of Israel. To help achieve that goal, Qaddafi enlisted the Organization of the Islamic Conference, while Castro enlisted the Soviet bloc. They also gathered support from sub-Saharan African states.

In line with that approach, UNGA granted observer status to the Palestine Liberation Organization (PLO) and invited Yasser Arafat to address the 1974 session of the Assembly. There, he declared that "Zionism is an ideology that is imperialist, colonialist [and] racist." Indeed, referring to Israel, Arafat used the words "racist" or "racism" more than a dozen times. Most importantly, he asked UNGA to aid the Palestinian "people's return to its homeland." [31] Nine days later, UNGA did exactly that, adopting Resolution 3236, which purported to recognize a Palestinian right of

return. A year later, continuing their mission, the proponents of Resolution 3236 convinced UNGA to adopt UNGA Resolution 3379 (XXX), titled the "Elimination of All Forms of Racial Discrimination (November 10, 1975)," in which it purported to determine "that zionism [*sic*] is a form of racism and racial discrimination." That resolution was not revoked until 1991.[32]

Resolution 3236 does not establish a right of return any more than Resolution 194. Once again, proponents of the "right" cannot avoid the fact that the General Assembly has no power to make binding international law. It can only make nonbinding recommendations. And without enforcement by the Security Council—which has not happened with regard to either Resolution 194 or Resolution 3236—those recommendations do not amount to a legal mandate. Even Palestinian and other Arab authorities have agreed on this point.

Moreover, as with Resolution 194, any argument under Resolution 3236 must contend with the issue of Israeli sovereignty. As Radley has written:

In fact, that destruction is exactly what the proponents of Resolution 3236 had in mind.

U.N. Security Council Resolutions

During the 1947–49 war, the Security Council issued several orders regarding, for example, a ceasefire, truce negotiations, and the demilitarization of Jerusalem. But, as we have seen, it did not order the return of Palestinian refugees. After the Six-Day War of 1967, the Security Council did call upon Israel "to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities."[34] Later, it called upon the parties to reach "a just settlement of the refugee problem."[35] But it made no mention of what such a settlement might look like. Much less did it mandate an unqualified right of return for all Palestinian refugees. Indeed, the Security Council made no mention of the 1947–49 refugees. Thus, given two opportunities to do so, the Security Council has never required Israel to allow those refugees to be repatriated.[36]

In any event, as Professor Kent has written, "viewing Security Council resolutions as declarations of the requirements of international law can be a mistake. The U.N. Charter does not empower the Security Council to legislate as such, but rather to solve disputes and deal with threats to international peace and security. Thus, when the Council urges or demands the repatriation of refugees, it is not thereby stating that repatriation is required by international law but rather that repatriation is conducive to solving the dispute and resolving the threat to international peace and security."[37]

The Fourth Geneva Convention of 1949

Advocates of a right of return have sometimes cited Article 49 of the Fourth Geneva Convention of 1949, which bars "individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country."[38] However, the Fourth Geneva Convention did not come into force until October 1950, and Israel did not become a party to it until June 1951, well after the events of 1947–48.[39] Therefore, the Convention does not apply to Palestinian refugees. As we have seen, treaties cannot

be retroactively applied to prior conduct.[40] In any event, the Convention is aimed mostly at protecting the rights of refugees *during* warfare and does not require repatriation afterwards.

Moreover, as a practical matter, the fact that Israel ratified Article 49 shows that the parties did not understand it as establishing a Palestinian right of return. At the time the treaty was ratified, Israel had just fought a war to establish its state and ensure the security of its population. It was clearly Israel's position that due to security considerations, the refugees would not be admitted into the new state. No country would knowingly enter into a treaty that directly contradicted its own foreign policy and compromised its own sovereignty.

The Hague Conventions of 1899 and 1907

Similarly, the Hague Conventions of 1899 and 1907 regarding the "Laws and Customs of War on Land" do not provide for a Palestinian right of return. Neither Israel nor the Arab states that attacked it in 1948 were parties to those treaties.[41] In any event, the "provisions of the Hague Conventions do not expressly prohibit the expulsion of enemy civilian populations from occupied territory. And no right of return is mentioned in either Convention for expellees."[42]Moreover, "the Hague Conventions were not applicable to civil wars or to non-state actors like the Yishuv."[43]

The Refugee Convention of 1951

Proponents of the "right of return" cannot rely on the Refugee Convention of 1951. That convention is the main source of international law regarding refugees. However, it does not establish a Palestinian right of return. In fact, when the Convention was drafted, Arab states and Palestinian representatives insisted that most Palestinians be exempt from its coverage.[44] Thus, Palestinian leaders are hardly in a position to invoke it now. Moreover, even if Palestinian refugees were covered by the Convention, it would not give them a right of return. Indeed, the Convention does not grant such a right to any refugees at all. It simply fails to address the issue.[45] If such a right had been recognized at the time the Convention was drafted—immediately after the Israeli War of Independence— one would expect it to have been included. The fact that it was not is powerful evidence that no such right existed. "The Convention is primarily concerned with *preventing the return* of refugees to their state of origin and guaranteeing their rights in the state to which they fled."[46] It "focuses upon duties and obligations of the host country and, in so doing, enumerates a program of resettlement."[47] (Unfortunately, those duties and obligations do not seem to matter to the Arab host countries in which Palestinian refugees currently reside.) Thus, the Convention is consistent with the common practice of the postwar years, which emphasized resettling refugees in the lands to which they fled. Moreover, the Convention guarantees each state the widely recognized sovereign right to decide which, if any, refugees may be allowed to permanently resettle within its borders.

The Universal Declaration of Human Rights

Proponents of the Palestinian "right of return" also commonly invoke the Universal Declaration of Human Rights (UDHR), adopted by UNGA in 1948. Specifically, they

cite Article 13 of the Declaration, which provides that "everyone has the right to leave any country, including his own, and to return to his country." However, as Professor Kent has explained, "by the terms of the U.N. Charter, General Assembly resolutions like the UDHR are not legally binding. In fact, the nonbinding, non-legal nature of the UDHR was stressed repeatedly in the U.N. debates prior to voting."[48]

Even if Article 13 were binding, it would not establish a Palestinian right of return. Under that article, as Radley has noted, the right to return includes only "the right of *nationals* (italics in the original) to return to their country. In other words, Article 13, paragraph 2, 'obliges' states to permit the return of their citizens or nationals only." Palestinian refugees are not Israeli nationals and make no claim that they are. The right enumerated in Article 13 "is, therefore, irrelevant to the question whether a right exists on the part of the Palestinian refugees to return to Israel."[49]

It is also important to note that Article 13 does not purport to ensure the kind of collective right claimed by Palestinian refugees. As former U.S. state department official Eric Rosand has noted, "Since the right to return was first enunciated in the Universal Declaration of Human Rights in 1948, scholars generally have viewed it to apply only to an individual but not to individuals belonging to a mass group."[50] Thus, "The dominant view maintains that, rather than falling under international human rights law, the issue of returns of masses of dislocated people is either a political problem or one of self-determination."[51] Nor does the UDHR ban mass expulsions of the type alleged by Palestinian advocates. This "is explained by the fact that the Allied powers at the time thought that mass expulsion of German minorities from Eastern Europe was necessary to achieve lasting peace and hence had to be considered legal."[52] The U.N. employed a similar rationale when it adopted the 1947 Partition Resolution; separation of the two populations was necessary to achieve peace.

The International Covenant on Civil and Political Rights

Article 12 (4) of the International Covenant on Civil and Political Rights (ICCPR) provides that "No one shall be arbitrarily deprived of the right to enter his own country." Furthermore, "Proponents of a Palestinian right of return frequently assert that Article 12(4) gives refugees from the 1947–49 conflict the right to return to their homes in what is now Israel, because they were citizens of the Palestine Mandate and thus the territory that became Israel was their 'own country.'"[53] Alternatively, those proponents maintain that, even if Palestinian refugees are not de facto citizens of Israel, they still have a right of return pursuant to Article 13 of the ICCPR, which provides that lawful aliens may not be expelled without due process.

These arguments are without merit: "The ICCPR entered into force in March 1976, after it had been ratified by enough states. Israel became a party in 1991. It would be extraordinary if, by Israel's 1991 ratification, the words of Articles 12(4) or 13 reached back retroactively more than forty years and implicitly overturned Israel's consistently maintained legal position that it had no obligation to allow the return of refugees from the 1947–49 conflict."[54] There is nothing in the ICCPR to indicate that it was intended to apply retroactively. Therefore, here again, the default rule of non-retroactivity governs any interpretation of the ICCPR and renders it inapplicable in the case of the Palestinian refugees.[55]

Finally, international law scholar Jeremie Maurice Bracka has written that one must consider human rights as "instruments [that] are conditioned by language recognizing the potential for exigencies that may neutralize the right's invocation. Article 29(2) of the UDHR speaks of the right being qualified by the "freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society."[56] Accordingly, Bracka has argued, "no state should be required to take affirmative steps to undermine either its demographic character or its hitherto dominant cultural and ethnic identity, both of which constitute as valid a threat to 'general welfare' as there is likely to exist."[57]

Customary International Law

Looking to the issue of customary international law (CIL), we find no settled state practice—no internationally agreed legal obligation—that might support a Palestinian right of return. First, it is important to note again that CIL is not retroactive. Thus, Palestinian refugees can only rely on CIL that was in effect before the 1947–49 conflict. But at that time, "there was no established CIL requiring that a state in Israel's position allow refugees, situated as the Palestinian refugees were—that is, refugees from an unsettled ethnic conflict, who lacked the nationality of the state to which they sought to return—to return to their homes."[58] To the contrary, "From World War I through the aftermath of World War II, repatriation was not a significant part of the international regime for handling refugees."[59] Rather, resettlement was the established practice, as shown by the original mandate of UNRWA, whose mission was to be the resettlement of the Palestinian refugees in their host countries.

At the time of the 1947–49 war and its aftermath, the international community was sanctioning compulsory, large-scale population transfers. Take, for example, the millions of ethnic Germans (*Volksdeutsche*) and German citizens living in Eastern Europe who fled or were expelled at the end of the war. For hundreds of years, their families had lived in places such as Czechoslovakia and the former German provinces of Silesia, Pomerania, and East Prussia. Some had assisted the Nazis and some had not. About ten million demanded the right to return to their homes. But the international community never recognized such a right, and the refugees were forced to be resettled. Indeed, the Allies expressly agreed to their transfer at the Potsdam Conference of 1945.

There were no international norms that might have rendered these transfers—or similar postwar transfers of Italians, Japanese and others—illegal. To the contrary, as Professor Kent has noted, at that time "compulsory transfer of populations in order to solve longstanding ethnic disputes was generally recognized as legal."[60] The transfer of German refugees "was considered a legal and rational way to align ethnic nations with territorial boundaries and, it was hoped, to thereby resolve one of the causes of the conflicts that had so badly scarred Europe."[61] There was no "requirement of a 'right of return' for the expelled or transferred authoritatively enunciated with regard to these actions."[62] Reasoning from this precedent, Kent concludes: "At the time of the Israeli-Arab conflict of 1947–49, far from being illegal, large-scale involuntary population transfers were an accepted feature of international statecraft."[63]Therefore, since there was no recognized right of return that resulted from such mass transfers, there was no customary norm that could have allowed Palestinian refugees to take up residence in the State of Israel.[64]

The Arab-Zionist conflict was exactly the sort of "longstanding ethnic dispute" that lent itself to the separation of competing populations. That was the judgment of UNGA in November 1947. But the Arabs rejected partition and went to war. They have tried to evade the consequences of that fateful choice ever since.

Conclusion

As Adi Schwartz and Einat Wilf have argued, "Those who wage war to eliminate another people, and to prevent their achieving independence, cannot legitimately complain that 'they suffered an exceptional injustice' when they lose and flee the land."[65] Much less can they, along with millions of their descendants, legitimately demand a right to "return" to that land against the wishes of the sovereign nation that now rules it. There is simply no legal basis for such a claim.[66] As Professor Donna Arzt has concluded, "In its most widely accepted meaning, international law can be said to provide only a right to enter a preexisting country on the part of an individual whose country it always was. This is a far cry from authorizing a collective return to specific homes or land in the State of Israel on the part of non-Israelis."[67]In sum, Arzt has said, "If Palestinians have the *right* to return to anywhere, it would only be to a sovereign state of Palestine, wherever that will someday be established."[68]

The conflict will not end until Western leaders speak that truth and Palestinian leaders acknowledge it.

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Endnotes

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[2] Morris, *1948*, 408.

[3] Ibid., 392.

[4] Andrew Kent, "Evaluating the Palestinians' Claimed Right of Return," *University of Pennsylvania Journal of International Law* 34, no. 1 (2012): 169–70.

[5] Rashid Khalidi, *Palestinian Identity: The Construction of Modern National Consciousness* (Columbia University Press, 1997), 208.

[6] Robert Bowker, *Palestinian Refugees: Mythology, Identity, and the Search for Peace* (Lynne Rienner, 2003), 96.

[7] Kent, "Evaluating the Palestinians' Claimed Right of Return," 152.

[8] Ibid., 150.

[9] Ibid., 175 (quoting International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, art. 13, U.N. Doc 10 A/56/10 (2001)).

[10] Ibid., 177.

[11] Ibid.

[12] Ibid., 176.

[13] Ibid., 205.

[14] Ibid., 205–206.

[15] Ibid., 206.

[16] Ibid.

[17] *See* Jeremie Maurice Bracka, "Past the Point of No Return?: The Palestinian Right of Return in International Human Rights Law," *Melbourne Journal in International Law* 6 (2005): 292.

[18] Kent, "Evaluating the Palestinians' Claimed Right of Return," 206.

[19] Howard Adelman and Elazar Barkan, *No Return, No Refuge: Rites and Rights in Minority Repatriation* (Columbia University Press, 2011), 203.

[20] Bracka, "Past the Point of No Return?," 292.

[21] Kent, "Evaluating the Palestinians' Claimed Right of Return," 199–200.

[22] Bracka, "Past the Point of No Return?," 306; quoted in Paul Weis; for original quote, see Paul Weis, *Nationality and Statelessness in International Law*, 2nd rev. ed. (Martinus Nijhoff, 1979), 65.

[23] See generally Vincent Chetail, "Sovereignty and Migration in the Doctrine of the Law of Nations: An Intellectual History of Hospitality from Vitoria to Vattel," *European Journal of International Law* 27, no. 4 (2016): 901–922.

[24] *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892).

[25] *European Roma Rights Centre and Others v. Immigration Officer at Prague Airport*, [2004] *UKHL* 55, para 11, Lord Bingham.

[26] Chetail, "Sovereignty and Migration," 902 n. 4.

[27] Kent, "Evaluating the Palestinians' Claimed Right of Return," 204.

[28] Kurt René Radley, "The Palestinian Refugees: The Right to Return in International Law," *American Journal of International Law* 72 no. 3 (1978): 601. See

also Donna E. Arzt, *Refugees into Citizens: Palestinians and the End of the Arab-Israeli Conflict* (New York: Council on Foreign Relations, 1997), 65–66; Bowker, *Palestinian Refugees*, 98; Kent, "Evaluating the Palestinians' Claimed Right of Return," 171.

[29] UNGA, Res. 3236 (XXIX), "Question of Palestine," adopted Nov. 22, 1974, A/RES/3236 (XXIX), https://www.un.org/unispal/document/auto-insert-177305/.

[30] UNGA, Res. 3379 (XXX), "Elimination of All Forms of Racial Discrimination," November 10, 1975, A/RES/3379 (XXX), accessed Feb. 7, 2026, https://www.un.org/unispal/document/auto-insert-181963/.

[31] Yasser Arafat, Speech to UNGA, 29th Sess., 2282nd Plenary Meeting, New York, Nov. 13, 1974, in UNGA Official Records (UN A/PV.2282), para. 80, https://www.un.org/unispal/document/auto-insert-187769/.

[32] See UNGA, Res. 3379 (XXX), https://www.un.org/unispal/document/auto-insert-181963/. Repealed by UNGA, Res. 46/86, Dec. 16, 1991, A/RES/46/86, accessed February 7, 2026, https://docs.un.org/en/A/RES/46/86/.

[33] Radley, "The Palestinian Refugees," 607.

[34] S.C. Res. 237, ¶ 1, U.N. SCOR, 22nd Year, U.N. Doc. S/INF/22/Rev. 2 (June 14, 1967).

[35] S.C. Res. 242, ¶ 2(b), U.N. SCOR, 22nd Year, U.N. Doc. S/RES/242 (Nov. 22, 1967).

[36] Kent, "Evaluating the Palestinians' Claimed Right of Return," 212.

[37] Ibid., 214.

[38] Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 49, August 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

[39] Radley, "The Palestinian Refugees," 595.

[40] Kent, "Evaluating the Palestinians' Claimed Right of Return," 179.

[41] Ibid., 180.

[42] Ibid., 182.

[43] Ibid.,185.

[44] Ibid., 194.

[45] Ibid., 193.

[46] Ibid., 195 (italics in original).

[47] Radley, “The Palestinian Refugees,” 611.

[48] Kent, “Evaluating the Palestinians’ Claimed Right of Return,” 196.

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[50] Eric Rosand, “The Right to Return Under International Law Following Mass Dislocation: The Bosnia Precedent?,” *Michigan Journal of Internation Law* 19, no. 4 (1998): 1095.

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[52] Kent, “Evaluating the Palestinians’ Claimed Right of Return,” 196–97.

[53] Ibid., 197.

[54] Ibid., 198.

[55] Ibid.

[56] Bracka, “Past the Point of No Return?,” 303.

[57] Ibid., 305.

[58] Kent, “Evaluating the Palestinians’ Claimed Right of Return,” 215.

[59] Ibid., 224.

[60] Ibid., 216.

[61] Ibid., 219.

[62] Ibid., 221.

[63] Ibid., 220.

[64] Bracka, “Past the Point of No Return?,” 293.

[65] Adi Schwartz and Einat Wilf, *The War of Return: How Western Indulgence of the Palestinian Dream Has Obstructed the Path to Peace* (All Points Books, 2020), 18.

[66] Kent, “Evaluating the Palestinians’ Claimed Right of Return,” 234.

[67] Arzt, *Refugees into Citizens*, 65.

[68] Ibid., 67.