



Haqq al-Awda: An Analysis of the Legal and Historical Perspectives on the Palestinian Right of Return



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Introduction

The culmination of the British mandate for Palestine in 1948 and the subsequent formulation of the state of Israel has spawned one of the largest and most enduring refugee crises in the world. The 1948 war resulted in the exodus of over 700,000 Palestinians. The 1967 Six-Day War led to a second mass exodus of more than 250,000 Palestinians. As of today, there are approximately 7 million Palestinian refugees dispersed around the globe. For decades, Palestinian refugees and their descendants have called for the state of Israel to grant them the right to return to their former homes.

Although the right of return is a central principle in international law, the right has not been extended to Palestinian refugees. The state of Israel has both denied its role in generating the Palestinian refugee crises and has refused to recognize the legal validity of the right of return as it pertains to Palestinians.



Research Questions

1. Why has the Israeli government refused to recognize the Palestinian right of return?
2. To what extent do Palestinian refugees have a right to return to their former homes?

Methodology

Textual Analysis of International Legal Doctrines on the Right of Return

- UN Resolution 194
- UN Resolution 3236
- International Covenant on Civil and Political Rights (ICCPR)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

Analysis of Historical Narratives Regarding the 1948 and 1967 Exodus

- Allowed me to determine factual validity of Israeli and Palestinian claims regarding the Palestinian exodus
- Helped me to address the question of the extent to which Palestinian refugees have a right to return to their homes

Literature Review: The Israeli Perspective

- **Ruth Lapidoth: “Do Palestinian Refugees Have a Right to Return to Israel?”**
 - Palestinian refugees assert their right to return as a group
 - The right of return is an individual right, not a collective right
 - Therefore, Palestinians as a group do not have a legal right to return to Israel
- **Yaffa Zilbershats: “International Law and the Palestinian Right of Return to the State of Israel”**
 - In order to be legally binding, the right of return must reach customary status
 - The right of return is not a customary law
 - Therefore, the right of return is not legally binding upon the state of Israel

Key Findings and Arguments

- The Palestinian exodus of 1948 was the result of ethnic cleansing
 - The ‘village files’ and ‘Plan Dalet’ provide evidence of this claim
 - The village files: documents assembled by the Shai, the intelligence unit of the Haganah, that detailed the name, place of residence, and political involvement of individuals within every Palestinian village. Later helped the Zionist forces identify individuals and villages that were to be displaced
 - Plan Dalet: Military operation implemented during the 1948 war. Resulted in the destruction and displacement of several Palestinian villages some of which include the cities of Jaffa, Haifa, Safa, and Acre.
- The Palestinian exodus of 1967 was the result of forced displacement
 - Villages that had not been previously destroyed or annexed during the 1948 war were targeted
 - Resulted in destruction of Qalqiya and Latrun area in Palestine
- Legal Validity of the Right of Return
 - Due to the consistency with which the right of return has been vindicated by both international and regional legal institutions, the right has received customary status
 - Although Israel has repeatedly refused to recognize the right, it still maintains its customary status under international law
 - Due to the ambiguity in language, the right of return can be viewed as both an individual and a group right
 - Due to the modern proliferation of ethnic conflict which results in mass displacement, it is necessary to view the right of return as a group right

Conclusions

As I have shown, the state of Israel played a key role in the forced displacement of the Palestinian people in both the 1948 and 1967 wars, a fact the Israeli government has yet to acknowledge. Moreover, the right of return, specifically as it applies to Palestinian refugees, can be legally justified due to its status as a customary law and its broad applicability on both an individual and collective basis.

Still, the practicalities of the return of Palestinian refugees must be considered. Although there is no one clear solution at hand, several steps can be taken in order to come closer to a resolution to the refugee crisis. While it may be a controversial stance, it is essential that the Israeli government alter its position on the historical and legal realities related to the right of return. Moreover, it may be essential for Palestinians themselves to begin to re-conceptualize the right of return, with the present realities in mind. Even in the face of these difficulties, the recognition of the right of return and a resolution to the Palestinian refugee crisis are not outside of the bounds of reality.

Literature Review: The Israeli Perspective

- **Eric Rosand: “The Right to Return Under International Law Following Mass Dislocation: The Bosnia Precedent?”**
 - Ethnic cleansing and mass dislocation require a collective approach to the right of return
 - The language in the right of return doctrines does not limit the right to individuals
- **Gail Boling: “Palestinian Refugees and the Right of Return: An International Law Analysis”**
 - The right of return reached customary status in 1948
 - Therefore, the right of return is legally binding upon the state of Israel

References:

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- Pappé, Ilan. *The Ethnic Cleansing of Palestine*. Paperback ed. London: Oneworld, 2007. UNRWA. “Resolution 194.” Accessed December 7, 2020. <https://www.unrwa.org/content/resolution-194>
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