

Third, feasibility studies must begin. International funds should provide the resources for this. For example, I would like to know how many sites of the 450 or so destroyed villages are still empty, like the village I mentioned. Where is it feasible for villagers to return to their homes, if not to their lands? How many refugees can be absorbed by their relatives in Israel?

Fourth, I would like to see a joint Palestinian-Israeli information centre dealing with this problem, based on the firm agreement that Israel must exist securely and that the State of Palestine must come into being. Any other political basis is, of course, possible too, but, to my mind, will do more harm than good to the refugees.

Fifth, I think that the time is ripe for appointing a joint commission of inquiry, composed of Palestinian and (the new) Israeli historians, to try to ascertain the "objective" historical truth about the events of 1948, as far as possible, so as to paint the historical picture in a way both Palestinians and Israelis will accept. I believe that that is of paramount importance for preparing the hearts for a just solution.

The aim must be to win over Israeli, as well as Palestinian and international public opinion for a practical, agreed-upon solution to this tragic and doleful problem.

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#### The return of the refugees is the realistic solution

The departing twentieth century has witnessed the downfall of Nazism and fascism, the collapse of communism, the fading away of colonialism and the dismantling of the *apartheid* system. It was a momentous century. Many millions of people in many countries have broken free of these evils. Except in Palestine. Palestine is the only country in the world which is still subject to the sustained and powerful grip of many of these evils. Almost since its foundation, the United Nations has been occupied with the task of ridding the Palestinians of these evils. Hundreds of resolutions were passed affirming their rights, offering assistance and condemning violations of human rights. Still these resolutions lacked the will and enforcement of major powers, as was done in many other cases.

The victims of these evils are 5 million refugees, 3.7 m registered with UNRWA and 1.3 million unregistered refugees. They constitute two thirds of 8 million Palestinians and represent the largest, oldest and most politically important group of refugees in the world. Here is where they come from. (Fig. 1)

The refugees come from 531 towns and villages shown here, together with existing villages today. They were 85% of the inhabitants of the land that became Israel. Their land is 92% of Israel's area. By any standards, this is the largest, most carefully planned and continuous ethnic cleansing operation in modern history.

For all Palestinians the Right of Return is sacred. This is built in their psyche. It moved an astonished Israeli writer to note: "Every people in the world lives in a place, except the Palestinians. The place lives in them."

Even figures support this contention. Today 86% of the refugees live in historical Palestine and within a 100-mile band around it. This proximity to their homes is indicative of the bond they have to their places of

origin. That is also why over three dozen schemes for their resettlement, anywhere in the world except their homes, have utterly failed.

The pattern of the refugees' movement when expelled in 1948 confirms the bond to their place of origin. When expelled, the refugees hovered around their villages, then moved to the next safe village and so on. None moved straight to their final place of refuge except those who took the sea route. All this indicates that the social fabric of Palestinian society remains largely intact after *al Nakba*. Today the children are registered in schools according to their village of origin, not according to their camp address. Here is a society that defied geographical genocide and remained intact.

The Right of Return is legal. The subject is long and well-documented by the United Nations. We just have to remember that General Assembly resolution 194 (III) is not an invention. It is the embodiment and restatement of international law. There is no equal to this resolution in United Nations history, neither in the length of upholding it, nor in its unique application to the Palestinian people. It enjoys sustained, universal and overwhelming consensus, more than 100 times in the last 50 years. Contrary to common misconceptions, it is not a single resolution. It is three in one. First, it affirms the right of refugees to return home, i.e. to their place of origin. Second, it provides welfare to the refugees until they return. Third, it creates a mechanism to effect that return: a UN organ named Conciliation Commission for Palestine.

Because resolution 194 (III) is so basic, it survived the passage of Security Council resolution 242 (1967), which is meant to eliminate the consequences of the 1967 war; it survived the ill-fated Oslo process, because it does not address the core problem of the refugees, and it shall survive the tribulations of Palestinian statehood because statehood addresses political matters of sovereignty, which does not supersede the right to return home. Much to the displeasure of the Palestinians' adversaries, resolution 194 (III) is still alive and well. If we examine United Nations records as recently as December 1999, we will find that resolution 194 (III) is still being affirmed by the international community minus Israel and lately the United States. Moreover [General Assembly resolution 54/74](#) of the same month affirms as well the entitlement of the refugees to their properties and their revenues since 1948.

Now I will come to the issue which is the subject of many myths and misinformation. It is often said by well-intentioned people that refugees have the *right* to return but it is impossible for them to do so. The country is full. There is no space left ...etc. Nothing is further from the truth. Of course, even if that were true, the right of return is not diminished. If an occupier expels an owner at gunpoint, he is not entitled to keep the house just because he filled it with his cousins and friends.

Let us examine Israel's demography. Israel divided the West Bank into areas A, B and C. Let us now divide Israel into areas A, B and C. (Fig. 2)

Area A has a population of 3,013,000 Jews (end of 1997) and its area is 1,628 sq. km, which is the same area and largely in the same location as the land which the Jews purchased or acquired in 1948. Its area is 8% of Israel. This is the total extent of Jewish ownership in Israel. Clearly 92% of Israel is Palestinian. In this 8% lives two thirds of the Jews. Here is the heaviest Jewish concentration. Most Jews still live in the same old neighbourhood of 1948.

Area B has a mixed population. Its area, which is 6% of Israel, is just less than the land of Palestinians who remained in Israel. A further 10% of the Jews live there. **Thus, in a nutshell, 78% of the Jews live in 14% of Israel.**

That leaves Area C which is 86% of Israel. This is largely the land and the home of the Palestinian refugees. Who lives there today? Apart from the remaining Palestinians, the majority of the Jews who now live there live in a few towns (shown circles according to size).

860,000 urban Jews live either in originally Palestinian towns or newly established towns. The average size of a new town in Area C is comparable to the size of a refugee camp. In fact, Jabaliya camp in Gaza is larger than two new towns in area C north or larger than three new towns in area C south. If Jabaliya camp were a town in Israel, its rank would be in the top 8% of Israeli urban centres.

Who then controls the vast Palestinian land in Area C? Only 200,000 rural Jews exploit the home and heritage of 5 million refugees packed in refugee camps and denied the right to return.

The refugees in Gaza are crammed at 4200 persons per sq. km. If you were one of those refugees, and you looked across the barbed wire to your land in Israel, and you saw it almost empty, at 5 persons/sq. km, (almost 1 thousand times less density than Gaza), what would be your feeling? Peaceful? This striking contrast is the root of all evil, which will not be eliminated without the return of the refugees. This couple of a hundred thousand rural Jews, holding 5 million refugees hostage, is obstructing all prospects of a just peace.

What do these people do? We were told they cultivate the (Palestinian) land and produce wonderful agriculture. We were not told that three quarters of the kibbutzim are economically bankrupt and that only 26% of them produce most of the agriculture. We are not told that the kibbutz is ideologically bankrupt; there is constant desertion, and not many new recruits. Irrigation takes up about 75% of the water in Israel; two thirds of it is stolen Arab water. Agriculture in the south alone uses 500 million cubic meters of water per year. This is equal to the entire water resources of the West Bank now confiscated by Israel. This is equal to the entire resources of upper Jordan, including Lake Tiberias for which Israel is obstructing the peace with Syria. This irrigation water, a very likely cause of war with the Syrians, Palestinians and Jordanians, produces agricultural products worth only 1.8% of Israel's GDP. Such waste, such extravagance and such disregard for the suffering of the refugees and denial of their rights is exercised by this small minority of kibbutzniks. Yet their small number is comparable to the Jewish settlers who drifted to the West Bank, excluding Jerusalem due to be evacuated in a new peace deal, or to about 3 of the 60 refugee camps scattered in the Middle East.

Let us consider two scenarios, which if applied are likely to diffuse much of the tension in the Middle East. Let us imagine that the registered refugees in Lebanon (362,000) are allowed to return to their homes in Galilee. Even today, Galilee is still largely Arab. Palestinians there outnumber the Jews one and a half times. If the Lebanon refugees return to their homes, the Jewish concentration in Area A will hardly feel the difference, and the Jews will remain a majority in all areas, even when they are least in number, like Area C.

Furthermore, if 760,000 registered refugees in Gaza are allowed to return to their homes in the south, now largely empty, they can return to their same original villages while the percentage of the Jewish majority in the centre (Area A) will drop by only 6%. It is a sad sign of the miscarriage of justice to note that the number of

these rural Jews who may be directly affected by the return of the suffering Gaza refugees to their homes in the south does not exceed 78,000, or the size of a single refugee camp.

One of the manifestations of such injustice is that the Russian immigrants, mostly economic and largely non-Jews, are freely admitted to live on Palestinian land because they claim to be Jews. The striking fact is that their number is almost the same as that of the Lebanon and Gaza refugees combined. In other words, if those refugees had returned in the 1990s, Israel would not be more densely populated than it is today and surely the prospects of peace would have been greatly improved.

So much for the claim of the physical “impossibility” of the return. The vacancy of Palestinian land is so problematic to Israel that it is trying to find people to live on this land. None other than Sharon and Eitan, both hard-core Zionists, started a scheme in 1997 to sell the refugees land to builders to build apartments so that an American or Australian Jew can buy an apartment without being an Israeli. A portion of the land rented by the kibbutz was sold at exorbitant prices (up to \$1000 per a square metre in the centre). Kibbutz farmers who rented this land from the Custodian of Absentee (i.e. refugee) Property received a “compensation” up to 25% of its sale value. This made the bankrupt farmers rich overnight. City dwellers who did not share this wealth went into an uproar and the Ronen Committee was formed to submit a moderating proposal to limit this sudden wealth.

This illegal activity, selling a land in custody, prompted the UN to issue resolutions affirming the entitlement of the refugees to receive any income of their property for the last 50 years and calling upon all States to present all documents and information they might have on the refugees’ property. In September 1998, the Arab League passed a resolution to call on the UN to send a fact-finding mission to report on the status of the refugees’ land and appoint a Custodian to protect their property.

While their land is being sold, we see persistent efforts to scatter the refugees around the world. Since 1948, there have been more than three dozen schemes to resettle the refugees anywhere in the world except their homes, all devised by pro-Israelis, all failed. Why? Because the refugees refuse to be treated like cattle carted away in trains or planes away from their homes. There are hideous parallels from the Second World War. These plans are nothing less than ethnic cleansing plans, punishable if effected by international law.

Consider the proposal by Donna Arzt in her book Refugees into Citizens, published by the (US) Council on Foreign Relations. (Fig. 3). Analysis of the figures shows that over 1,500,000 people have to be carted away in yet another ethnic cleansing operation and the rest have to remain in exile. Such ideas will never materialize. It is a shame that we still witness proposals of this kind.

Compensation is often mentioned as a solution, that is to say, offering paltry sums to be advanced by the US and Europe to pay the refugees off, so that Israel ends up with a legal title for a huge real estate and its water, free of charge. This is a non-starter. Compensation is not accepted for homes and land; these are not for sale but for restitution. Compensation is due for material and non-material damages and losses which the refugees have incurred for 50 years, and reparations for war crimes. It is much cheaper to pay for the rehabilitation of the refugees in their homes. It is even cheaper to pay off those Russian economic immigrants who come to occupy the refugees’ homes.

Now it is often said that Israel opposes the return of the refugees on the basis that this will change the Jewish character of the State. In the words of a noted jurist: "The Jewish character is really a euphemism for the Zionist discriminatory statutes of the State of Israel which violate the human rights provisions... The UN is under no more of a legal obligation to maintain Zionism in Israel than it is to maintain *apartheid* in the Republic of South Africa." Not only this is immoral, it is also illegal under enlightened human rights law and is abhorrent to the civilized world. Most recently, the reports of treaty-based bodies, such as Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights and the Committee against Torture, have all condemned Israeli practices and characterized for the first time so clearly the exclusive structure of the Israeli State as the root cause of all those violations of international law. How, then, can the international community accept the premise of a "Jewish character" as a basis for the denial of the right to return home?

Socially, the idea of the Jewish character is a misnomer. Would anyone believe there is much in common between a Brooklyn Jew and an Ethiopian Jew? Or between a Russian claiming to be a Jew and a Moroccan Jew? The gulf between the Ashkenazi and the Haredim will never be bridged. The Sephardim (Mizrahim) are allocated the lower rings of the social ladder. Jerusalem and Tel Aviv are being polarized on sectarian lines. Israel has long given up on the idea of a melting pot. Israel remains and will continue to be a segregated society.

In this checkered mosaic live the Palestinians who remained in their homes. They now represent 26% of all Jews. They are everywhere. (Fig. 4). In Area A (the highest concentration of the Jews), they are 11% of the Jews. In the mixed Area B, they are 21% of the Jews. In Area C they are 70% of Jews on average, but they are double the number of Jews in the Little Triangle and 1.5 times the number of the Jews in Galilee. How could Israel ignore their presence? Will Israel plan another massive ethnic cleansing operation? Very unlikely, or there will be a sea of blood. They are there to stay, and increase. In the year 2010, the number of Palestinians in Israel will be 35% that of Jews and they will be equal to the number of Jews in 2050 or much earlier when immigration dries up. So what is the value of chasing an elusive target while innocent people continue to suffer?

In Palestine today (Israel, West Bank and Gaza) – that is, from the river to the sea – Palestinians are already 47% of the whole population. They will be equal in number to Jews in four years' time.

The Israeli notion of numerical superiority is therefore impractical and short-sighted. So is the notion of an exclusive and homogeneous Jewish society. Neither has any chance of success. On the contrary, maintaining those racist policies will alienate most of the world (as it does today) and will accumulate a great deal of anger that may explode one day with disastrous results.

I tried to show that the right of return is sacred in the eyes of the Palestinians, and that they have not the slightest intention of abandoning it. A new movement among refugees in all Arab and foreign countries to reaffirm their right of return is developing rapidly. If only 1% of them assert their rights forcefully, this means 50,000 angry people, or 10,000 in each of the five UNRWA areas. It will be foolish to ignore this. The right of return is also legal, as demonstrated consistently by the international community, and it is also possible and feasible, contrary to Israeli claims. There is enough space to accommodate the returning refugees with

minimum dislocation to Jews. The oft-repeated Israeli notions of retaining an exclusive and superior Jewish society are immoral, illegal and simply untenable in the long run.

This leads us to conclude that the current Israeli policies of denying the refugees the right to return home are doomed to failure in the long run. It would be wise for the Israelis to invest in the future by building bridges of goodwill, instead of building arsenals of weapons of mass destruction.

It also leads us to conclude that the return of the refugees is the most important stabilizing factor, without which there can be no permanent peace in the Middle East. The return of the refugees to their land and to their agricultural pursuits will take up the slack in Israel's GDP and will put to proper use the wasted water in the vast unutilized, now confiscated refugees' land. If more water is needed in the future, it can be obtained by friendly regional agreements, not by new war and conquest of new land.

The Palestinians are dynamic and intelligent people. If left in peace, which they deserve, in their homes to which they are entitled, they are likely not only to support themselves but to produce a considerable surplus. Witness their contribution to the development of Jordan, Lebanon, Kuwait and the Gulf at a time when they have emerged from a harrowing experience, called *al Nakba*.

The international community supported by diplomacy the right of return in Tajikistan, Abkhazia, Namibia and Cyprus. Why not in Palestine?

The international community implemented UN resolutions by military force in Kuwait, Bosnia, Kosovo and East Timor. Why not in Palestine?

The return of the refugees is the realistic solution. It is not realistic to bury 5 million people in oblivion.

It is a dangerous illusion to think that peace can prevail in the Middle East without the implementation of the right of return to the largest, oldest and most politically important refugees in the world.

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Fig. (1)

The Distribution of Depopulated and Existing Villages in Israel

Fig. (2)

The Distribution of Jews and Palestinians in Israel

### RESETTLEMENT = ETHNIC CLEANING

Place of refuge	Arzt Estimate 1995	Arzt Final solution 2005	Transfer from	Transfer to West Bank	Transfer to Arab Countries	Transfer to the World	Resettlement in Present Exile
Israel	840,000	1,075,000	-14,087	14,087			1,075,000
Gaza Strip	880,000	450,000	-690,948	690,948			450,000
West Bank	1,200,000	2,400,000					1,555,838
Jordan	1,832,000	2,000,000	-375,246	139,128	141,671	94,447	2,000,000

Lebanon	372,000	75,000	-407,310		215,874	191,436	75,000
Syria	352,100	400,000	-56,509		28,254	28,254	400,000
Other Arab countries	446,600	965,000					579,031
Non-Arab countries	452,000	900,000					586,032
<b>TOTAL</b>	<b>6,374,700</b>	<b>8,265,000</b>	<b>-1,544,099</b>	<b>844,162</b>	<b>385,799</b>	<b>314,137</b>	<b>6,720,901</b>

<b>Transferred Population</b>						1,544,099	6,720,901
<b>Missing Population</b>							1,129,610
<b>Total Palestinians</b>							<b>9,394,610</b>

**Fig. (3) Analysis of Arzt's Transfer Plan.**

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Fig. (4)

Percentage of Urban and Rural Jews and Palestinians  
by Natural Region in Israel

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*Note: The following paper was produced for the Trans-Arab Research Institute (TARI) for the Boston conference on April 8, and will be included in a forthcoming book with the conference papers*

Reinterpreting Palestinian refugee rights under international law,  
and a framework for durable solutions

### *Introduction*

Palestinian refugees have a status that is unique under international refugee law. Unlike any other group or category of refugees in the world, Palestinians are singled out for exceptional treatment in the major international legal instruments which govern the rights and obligations of States towards refugees: the 1951 Geneva Convention Relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol (Refugee Protocol); the Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR); and, specifically with regard to the Palestinians, the Regulations governing the mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Almost all States and international entities have interpreted the relevant provisions in these instruments as severely restricting the rights of Palestinian refugees *qua* refugees in comparison to the rights guaranteed every other refugee group in the world. As a result, Palestinian refugees have been treated as ineligible for the most basic protection rights guaranteed under international law to refugees in general, further eroding the precarious international legal guarantees that international human rights and humanitarian law currently extends to this population.

There are a number of consequences flowing from this unique application of refugee law to the Palestinian refugee situation. First, it affects the question of the type of *protection* afforded Palestinians under international refugee law, as opposed to the *assistance* they receive as refugees. Second, it affects the extent to which Palestinian refugees can assert guarantees of *international human rights* and *humanitarian law* protections, and