

## THE RIGHT OF RETURN OF PALESTINIAN REFUGEES OF 1948 UNDER THE INTERNATIONAL LAW

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### Abstract

More than seventy years have passed since the Palestinian catastrophe (Nakba), which resulted in the problem of Palestinian refugees through the forced displacement of the majority of the population that used to live in Palestine on where Israel later was established. The Palestinian refugee issue is the most difficult of the outstanding problems in the conflict between Israel and the Palestinians.

The objective of this paper is to define the Palestinian refugee who was displaced in 1948. In addition, addresses the right of return under international law, demonstrating where right was enshrined in international covenants and the resolutions of the United Nations. This paper examines the UN General Resolution 194(III), 11 December 1948. and what rights it explicitly stipulates. the right of return within Resolution 194, and all these international legal bases indicate that the right of return for refugees is a customary law. Such a right has long been deemed to constitute a natural entitlement for any citizen.

This paper goes to examine the extent of legitimacy of the displacement committed by Israel under international law, which later became clear that these were war crimes and crimes against humanity committed against Palestinian refugees. In addition, Israel's denial to the right to return for Palestinians is a flagrant violation of international law and UN resolutions that has fuelled decades of suffering on a mass scale for Palestinian refugees across the world.

At the same time, referring to the right of return in international law in general, and the right of return of Palestinian refugees in particular, in accordance with the decision of the United Nations body.

**Key words:** Palestinian refugees, right of return, resolution 194, international law, force displacement.

## Introduction

Under international law, everyone has the right to return. Whenever someone is displaced from their home due to circumstances beyond their control, the right of return ensures that they have a basic right to return. All individuals have the intrinsic right to return, despite the fact that governments occasionally consciously restrict that right from being exercised. However, because the right of return is one that is recognized by international law, any intentional hindrance of it by the government would be illegal and would never be permitted. Therefore, whether a particular government chooses to allow the free exercise of that right or not does not affect the existence of the right of return.

The right of return is rooted in different separate branches of international law for all factual cases of forcible displacement, and regardless of the reasons and circumstances of displacement<sup>1</sup>. Accordingly, the right of Return forbids any kind of deliberate governmental policy Intended to hinder a person`s voluntary return to their place of origin, including "peaceful" barriers that purposefully prevent person from returning after a brief absence. Moreover, the right of return was enshrined in the resolutions of the United Nations<sup>2</sup>.

The obligation of states to respect the right of return is a type of rule known as a "customary norm" of international law. All states are legally obligated to follow the customary law. Moreover, prior to 1948,

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<sup>1</sup> Gail Boling, *The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis* (1<sup>st</sup> edn, Badil, 2001) p5-10.

<sup>2</sup> *Ibid.*

the right of return had already attained customary status in international law<sup>3</sup>.

During the 1948 wars, Israel purposefully uprooted hundreds of thousands of Palestinians and prevented them from returning to their homes. In order to ensure a continuous exile for the displaced people, this was accomplished by using techniques that combine physical military force and regulatory engineering to regulate citizenship, residence, and mobility<sup>4</sup>.

A conflict broke out in Palestine as a result of UN General Assembly resolution 181, which called for the division of Palestine into two states, one Arab and one Jewish<sup>5</sup>. The war continued until 1949, when Israel signed four different armistice agreements with Jordan, Egypt, Syria, and Lebanon<sup>6</sup>.

There were two narratives of how this enormous number of refugees was displaced after the war. The Israeli narrative blamed Arab leaders and the refugees for the exodus, contending that they either

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<sup>3</sup> Najwa Hassawi, *The Rights of Palestinian Refugees: Between International Legitimacy and the Palestinian-Israeli Negotiations*, (1st edition, Al-Zaytouna Centre for Studies and Consultations, 2008) 25

<sup>4</sup> Nur Masalha, *A Land Without a People: Israel, Transfer, and the Palestinians, 1949-96* (Faber and Faber, 1997), 25

<sup>5</sup> UN General Assembly, "Resolution 181 (II) Future Government of Palestine," November 21, 1947 <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/038/88/PDF/NR003888.pdf?OpenElement> Accessed 15 November 2022.

<sup>6</sup> Israel and Jordan, "Hashemite Jordan Kingdom-Israel: General Armistice Agreement" (Rhodes, April 3, 1949); Israel and Syria, "Israeli-Syrian General Armistice Agreement" (Rhodes, July 20, 1949); Israel and Egypt, "Egyptian-Israeli General Armistice Agreement" (Rhodes, February 23, 1949); Israel and Lebanon, "Lebanese-Israeli General Armistice Agreement" (Rhodes, March 23, 1949).

departed because they did not want to live with Jews or because their leaders had instructed them to do so via radio broadcasts or other media<sup>7</sup>. In contrast, the Palestinians and the other Arabs claimed that the enormous number of refugees was the result of a Zionist leadership-led, deliberate expulsion campaign intended to tip the demographic balance of the lands on which Israel was founded in favor of the Jews<sup>8</sup>.

### **Who are the Palestinian Refugees?**

There are many definitions of the concept of refugee in international law in general, but here the definitions which related to the Palestinian refugee in particular will be clarified.

According to the definition of The United Nations Relief and Works Agency (UNRWA), Palestine refugees are "persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict. all include not does definition this ."<sup>9</sup> Palestinian refugees, because it is confined to the areas in which UNRWA operates, i.e. Jordan, Syria, Lebanon, the West Bank and Gaza, and therefore excluded from these; Refugees who migrated outside UNRWA's area of operation, such as the Arab Gulf states, and those who were internally displaced and remained within the areas of

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<sup>7</sup> Nur Masalha, *The Politics of Denial: Israel and the Palestinian Refugee Problem* (London: Pluto Press, 2003), 2

<sup>8</sup> Ilan Pappé, *The Ethnic Cleansing of Palestine* (1<sup>st</sup> edn, Oxford One world, 2007), 10-30

<sup>9</sup> *The United Nations Relief and Works Agency for Palestine Refugees in the Near east*, "PALESTINE REFUGEES", <https://www.unrwa.org/palestine-refugees> Accessed 20 November 2022

Israeli control<sup>10</sup>. This definition also ignored those who were outside the country for treatment or education during that period. Obviously, this definition has been phrased for functional purposes rather than as a legal basis, only, for humanitarian assistance and purpose of relief<sup>11</sup>.

The definition enumerated in Resolution 194, which was issued by the General Assembly in 1948, was broader than the UNRWA definition. It defines a Palestinian refugee: "A person who had lived in Palestine for at least two years before the outbreak of the Arab-Israeli conflict in (1948), who has lost his home and means of earning his livelihood as a result of the conflict. The definition would have<sup>12</sup> covered all persons displaced in Palestine during the 1948 war irrespective of ethnic, national or religious origins<sup>13</sup>.

Therefore, the definition of Palestinian refugees that will be adopted here for the purposes of research, are those Palestinians, whether Arabs or others, and their descendants who were expelled from their homes or forced to leave them as a result of the events of the Palestinian Nakba, i.e. between the period from November 1947 (the Partition Resolution 181) to January 1949 Armistice Agreement in Rhodes, whether they were registered in the UNRWA records or

<sup>10</sup> Elia Zureik, *Palestinian Refugees and the Peace Process*, (1st edn, Institute for Palestine Studies, 1996) 10-15

<sup>11</sup> Mutaz M Qafisheh, "An Ongoing Anomaly: Pre- and Post-Second World War Palestinian Refugees" (2015) 27 (1), *International Journal of Refugee Law*, P 52-74.

<sup>12</sup> United Nations, "Definition of the term 'refugee' under GA resolution 194 – UNCCP – Working paper", <https://www.un.org/unispal/document/auto-insert-210500>, Accessed 15 November 2022

<sup>13</sup> Terry M Rempel, "Who are Palestinian refugees?" (Forced Migration Review 26, August 2006) <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/palestine/remple.pdf>. Accessed 11 November 2022

not, and whether they were displaced outside Palestine or were internally displaced.

The right of return under the international law

International humanitarian law

The right of return has been addressed in international humanitarian law, which is defined as a set of rules that seek to limit the effects of armed conflict. It protects people who are not or are no longer participating in hostilities and restricts the means and methods of warfare<sup>14</sup>. According to humanitarian law, there are two types of right of return. The first is the general right of return, which applies to all displaced people, regardless of how they become displaced during the time of conflict. In addition, the second type is applicable where people have been "forcibly expelled" (e.g., under duress, under threat of fire or through the deliberate military "stamping" of a population out of its place of habitual residence)<sup>15</sup>.

The general right of return was codified in Article 43 of the Hague Regulations and has been incorporated into all subsequent customary humanitarian law, including the Geneva Conventions and their related Protocols. Article 43 states "The authority of the legitimate power having actually passed into the hands of the

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<sup>14</sup> *International committee of the Red Cross, "what is international humanitarian law", <https://www.icrc.org> Accessed 11 November 2022.*

<sup>15</sup> Gail Boling, *The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis*, p47-49.

occupant, the latter shall take all steps in his power to re-establish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country. Thus,<sup>16</sup> " this article serves as the cornerstone of the general right of return .And, the Hague Regulations serve as the fundamental basis for general right of return in customary humanitarian law following the cessation of hostilities<sup>17</sup>.

The Fourth Geneva Convention and its related Protocols later included this general right of return of all displaced individuals in order to return to their homes of origin following the cessation hostilities<sup>18</sup>. It is clear that Fourth Geneva Convention incorporated the general customary humanitarian law right of return, which it inherited from the Hague Regulations.

As mentioned before, there is a second type of right of return "forcible (mass) expulsion" under the humanitarian law. According to the Fourth Geneva Convention, the Article 49 states the forcible (mass) expulsion humanitarian law right of return – which it inherited from the customary humanitarian law norms of the Hague Regulations– in express terms: "Individual or mass forcible transfers, as well as

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<sup>16</sup> Article 43, Hague Convention (IV) Respecting the Laws and Customs of War on Land, and Annex: Regulations Respecting the Laws and Customs of War on Land, T.S. No. 539, 1 Bevans 631, signed at The Hague, 18 October 1907, entry into force 26 January 1910 [hereinafter "Hague Convention].

<sup>17</sup> Gail Boling, *The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis*, p47-49.

<sup>18</sup> See the Article 4, Article 6(4), and Article 158 of the [Fourth Geneva](#) Convention, Geneva Convention (IV) Relative to the protection of Civilian Persons in Time of War, 12 August 1949, 75 UN Treaty Series 287 (entered into force 21 October 1950) [hereinafter "Fourth Geneva Convention"]

deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.”<sup>19</sup> Like Article 45, Article 49 stipulates that the deportation of protected persons must be temporary, provide that their return to their places of residence from which they left immediately after the cessation of hostilities<sup>20</sup>. Furthermore, By Article 147 of the same Convention, depuration is considered as one of the grave breaches or war crime and the denial of the right of return, in effect, deportation<sup>21</sup>.

Israel is binding by customary international law to which every other state is bound. Moreover, it is legally obliged to implement the provisions of any treaty it signed and ratified<sup>22</sup>. The Vienna Convention on the Law of Treaties stresses on this obligation, and clarifies that every state must perform treaties it ratifies “in good faith,”<sup>23</sup> Although Israel has ratified the Fourth Geneva Convention, it still denies the applicability of it<sup>24</sup>, the implementation of which would have prevented displacement that is referred to in the Convention as a “gross violation.”

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<sup>19</sup> See, fourth Geneva convention, art 147

<sup>20</sup> See, Fourth Geneva convention, art 45,49,139

<sup>21</sup> See, Fourth Geneva Convention, art. 147

<sup>22</sup> Munir Nuseibh “Forced Displacement in the Palestinian-Israeli Conflict, International Law and Transitional Justice”, ( PhD dissertation, University of Westminster, 2013) 125.

<sup>23</sup> United Nations, “Vienna Convention on the Law of Treaties” (Vienna, May 23, 1969), United Nations, Treaty Series, vol. 1155, p. 331, Article 26. Ibid. Article 29.

<sup>24</sup> International committee of the red cross, “List of State Parties of the Fourth Geneva Convention,” ICRC Website, [https://ihl.databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp\\_viewStates=XPages\\_NORMStatesParties&xp\\_treatySelected=380](https://ihl.databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=380) accessed 22 November 2022

## The right of return in international human rights law

Human Rights law is a set of international rules, established by treaty or custom, on the basis of which individuals and groups can expect and / or claim certain rights that must be respected and protected by their states. Moreover, human right law bestows rights directly to individuals and not through the state<sup>25</sup>. The right of return can be found in many different international and regional human rights treaties. The right of return is a customary norm<sup>1</sup> of international human rights law, which means that because it is a right of such importance, there is a corresponding binding obligation upon all states to ensure its full implementation<sup>26</sup>.

International human rights law is based on a set of international covenants that affirm the right of return for refugees as follows:

First: the right of return in the Universal Declaration of Human Rights.

The Universal Declaration of Human Rights was issued by the United Nations General Assembly in 1948, and it is the first document aimed at respecting and promoting human rights, and it affirmed the

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<sup>25</sup> International committee of the red cross, WHAT IS INTERNATIONAL HUMAN RIGHTS LAW? <https://www.icrc.org/en/document/what-difference-between-ihl-and-human-rights-law> accessed 23November 2022

<sup>26</sup> Gail Boling, The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis, p60

right of return in Article 13 of it, which explicitly states that “ 1. Everyone has the right to freedom of movement and residence within the borders of each State. 2. Everyone has the right to leave any country, including his own, and to return to his country.”<sup>27</sup> .Therefore, every person has the right to return to his homeland, but the Israeli side argues that this declaration is of a non-binding nature and that Article 13 is vague and does not refer to Palestinian refugees<sup>28</sup>.

## **Second: The International Covenant on Civil and Political Rights**

The right of return is found in The International Covenant on Civil and Political Rights of 1966, and the Protocol there to<sup>29</sup>, Article 12(4) of the Covenant states that “No person shall be arbitrarily deprived of the right to enter his country”<sup>30</sup>. Here, it should be noted that this right has mentioned in the universal declaration of human rights as a “right of return” and as a right to enter “ in the covenant . The reason for the use of the wording “enter” rather that “return” in the ICCPR was to include those who might have never been in their country but were still entitled to be admitted therein, such as the situation of second, third, fourth generation of Palestinian refugees who were born

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<sup>27</sup>Universal Declaration of Human Rights, adopted December 10, 1948, GA Res. 217A, UN Doc. A/810, at p. 71 (1948) [hereinafter the “Universal Declaration of Human Rights”]

<sup>28</sup> Eyal Benvenisti, “The Applicability of Human Rights Conventions to Israel and to the Occupied Territories”,(1992)26(1) Israel Law Review, p 24 – 35

<sup>29</sup> International Covenant on Civil and Political Rights, adopted 16 December 1966, entered into force 23 March 1976, G.A. Res. 2200A, U.N. Doc. A/6316 (1966), 999 UN Treaty Series 171 [hereinafter “International Covenant on Civil and Political Rights”]

<sup>30</sup> See, International Covenant on Civil and Political Rights, art. 12, para. 4.

abroad<sup>31</sup>. In addition, the ICCPR uses the phrase “his own country” in order to cover a much broader group than just “nationals” of a state. The term “his own country” according to General Comment No. 27 issued by the UN Human Rights committee country a of “nationals”<sup>32</sup> who have been stripped of their nationality in violation of international law, individuals whose country of nationality has been incorporated in or transferred to another entity whose nationality is being denied them another entity whose nationality is being denied them and stateless persons arbitrarily deprived of the right to acquire the nationality of the country of \_their long-term\_ residence.”<sup>33</sup>

Israel has signed and ratified the ICCPR on October 3, 1991, and it has not made any reservations to Article 12(4)<sup>34</sup>, which contains the right of return. Hence, ICCPR absolutely binding upon Israel. Moreover, even if Israel had not ratified the covenant, it will remain obligated to implement the right of return because it is considered customary international law, which is binding on states<sup>35</sup>

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<sup>31</sup> Munir Nuseibh “Forced Displacement in the Palestinian-Israeli Conflict, International Law and Transitional Justice”, p74

<sup>32</sup> UN Human Rights Committee is the official body established under the ICCPR charged with interpreting the ICCPR

<sup>33</sup> UN Human Rights Committee, “ICCPR General Comment No. 27: Article 12(Freedom of Movement),” para. 20. <https://digitallibrary.un.org/record/221930?ln=ar> accessed 26 November 2022

<sup>34</sup> United nations human rights treaty bodies, View the ratification status by country or by treaty [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=84&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=84&Lang=EN) Accessed 22 November 2022

<sup>35</sup> Gail Boling, The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis, 63

## The Convention on the Elimination of All Forms of Racial Discrimination

The right of return also exists in another major international human rights convention, the Convention on the Elimination of All Forms of Racial Discrimination “CERD”, which contains this right in its ARTICLE5(d), “...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, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights, The right to leave any country, including one’s own, and to return to one’s country”<sup>36</sup>. This convention has been ratified by Israel on 3 October 1991, at the same time Israel has not made any reservations to the article5.

### The different regional human rights

Furthermore, the three regional human rights treaties contain the right of return. The African [Banjul] Charter on Human and Peoples’ Rights contains the right of return in article 12(2): “Every individual shall have the right to leave any country including his own and to return to his country Human on Convention American The .”<sup>37</sup>

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<sup>36</sup> Convention on the Elimination of All Forms of Racial Discrimination, adopted 21 December 1965, entered into force 4 January 1969, 660 UN Treaty Series 195 [hereinafter the Convention on the Elimination of All Forms of Racial Discrimination”]

<sup>37</sup> African [Banjul] Charter on Human and Peoples’ Rights, adopted 27 June 1981, entered into force 21 October 1986, O.A.U. Doc. CAB/LEG/67/3 Rev. 5.

Rights contains the right of return in article 22(5) "No one can be expelled from the territory of the State of which he is a national or be deprived of the right to enter it. Human of Protection the for Convention European the And, .<sup>38</sup>" Rights and Fundamental Freedoms contains the right of return in Article 3(2) of Protocol No. 4:" No one shall be deprived of the right to enter the territory of the State of which he is a national"<sup>39</sup>.

### Resolution 194

In 1948, the U.N. General Assembly passed Resolution 194 which established a separate international agency known as United Nations Conciliation Commission ["UNCCP"], comprised of the United States, France, and Turkey, to provide Protection and promote a durable solution for Palestine refugees<sup>40</sup>. The Resolution 194 was based on recommendations of the UN appointed Mediator for Palestine, Count Folke Bernadotte<sup>41</sup>. In his final report, Bernadotte emphasized the importance of providing reparations to the victims of displacement in order to settlement the conflict in Palestine<sup>42</sup>.

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<sup>38</sup> The American Convention on Human Rights, signed 22 November 1969, entered into force 18 July 1978, OEA/SER.L/V/II.23, doc. 21, rev. 6 (1979).

<sup>39</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 *UN Treaty Series* 221, signed 4 November 1950, entered into force 3 February 1953.

<sup>40</sup> United Nations, United Nations Conciliation Commission for Palestine, <https://archive.unescwa.org/united-nations-conciliation-commission-palestine> Accessed 26 November 2022

<sup>41</sup> The digital library of the united nation, Palestine-Progress Report of the United Nations Mediator, <https://digitallibrary.un.org/record/210025> Accessed 29 November 2022

<sup>42</sup> Ibid

The infamous resolution 194 stressed on the right of return for Palestinian refugee – based upon then-existing principles of customary international law – and stated that Israel was obliged immediately to allow all Palestinian refugees displaced during the 1948 conflict to exercise their right of return

Paragraph 11 of Resolution 194 resolving 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, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or equity, should be made good by the Governments or authorities responsible.affirms three rights that This resolution <sup>43</sup>" all Palestinian refugees are entitled to exercise under international law return, restitution, and compensation. This Resolution does not "resolve "that Palestinian refugees should be resettled<sup>44</sup>.

The second right mentioned in Resolution is the right of real property restitution, the returning 1948 Palestinian refugees have right to reclaim their possession of their private property .Moreover, it is important to note that the General Assembly repeated the right to restitution in the Palestinian context in resolution 3236 by stating "inalienable rights of the Palestinians to return to their homes and

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<sup>43</sup> The United Nations Relief and Works Agency for Palestine Refugees (UNRWA), RESOLUTION 194, para 11 <https://www.unrwa.org/content/resolution-194> Accessed 29 November 2022

<sup>44</sup> BADIL Resource Center for Palestinian Residency and Refugee Rights, The Meaning of UN General Assembly Resolution 194(III), 11 December 1948 (The Right of Return) [https://www.badil.org/phocadownloadpap/Badil\\_docs/bulletins-and-briefs/Bulletin-11.pdf](https://www.badil.org/phocadownloadpap/Badil_docs/bulletins-and-briefs/Bulletin-11.pdf) Accessed 24 November 2022

property

from which they have been displaced and uprooted..<sup>45</sup>"

Finally, third right mentioned in Resolution is the right of compensation .According to this resolution, two groups of Palestinian refugees are entitled to receive full monetary compensation. The first group consists those who choose to exercise their right of return, returning refugees must be compensated for the damage or destroyed caused to their private property. The second group includes those who not want to exercise their right of return voluntarily .This group entitled to receive full compensation of all their property irrespective of whether it had been damaged or destroyed.

It's important to note that the resolution 194 affirms many important principles related to the implementation of the right of return of the Palestinian refugees under international law. First, the resolution affirms the principle of individual refugee choice. Second, the resolution clearly delineates timetable for the return of Palestinian refugees "at the earliest practicable date. Third, Resolution 194 defines the place to which refugees have the right to return to "to their homes", and finally, the resolution imposes on Israel allow the refugees a safe return<sup>46</sup>.

Should not forget that the Israel's accession to the United Nations was conditional upon the implementation of Resolution 194

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<sup>45</sup> Digital library of the united nation, UN General Assembly resolution 3263 on th Establishment of a nuclear-weapon-free zone in the region of the Middle East <https://www.un.org/unispal/wp-content/uploads/2016/05/ARES3236XXIX.pdf> . Accessed 30November 2022

<sup>46</sup> United Nations, Analysis of paragraph 11 of GA resolution 194 (III) – UNCCP working paper – Corrigendum 1, [https://www.un.org/unispal/document/auto-insert\\_211616/](https://www.un.org/unispal/document/auto-insert_211616/) Accessed 30 November 2022

by the Resolution 273. This resolution contains in its fourth preambular paragraph, the General Assembly expressly " the declaration by the State of Israel that it 'unreservedly accepts the obligations of the United Nations Charter and undertakes to honour them from the day when it becomes a Member of the United Nations". Noting furthermore, in the fifth preambular paragraph, the General Assembly expressly "Recalled general assembly resolution...of 11 December 1948, i.e. Resolution 194. Thus, Israel is totally obligated to implement the right of return of the refugees<sup>47</sup>.

Despite the very clarity of the Resolution 194 Israel has fully ignored and denied its obligations. however, The problem was not limited to denial only, but extended to Israel deliberately adopting several measures to prevent the return of refugees, whether on the military or legal level .For example, Israel legislated a prevention of Infiltration law in 1948 and issued military orders to block refugee`s return<sup>48</sup> .

It will come no surprise to know that Israel has worked arduously to challenge the Resolution's validity by invoking some arguments. First, it is argued that because General Assembly decisions are solely "recommendatory" in nature, Resolution 194 could not be binding .So this argument disregards the fact that the right of return had already gained customary status in international law by 1948.

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<sup>47</sup> Digital library of the united nation, UN General Assembly resolution 273 on the Admission of Israel to membership in the United Nations. <https://digitallibrary.un.org/record/210373> Accessed 30 November 2022

<sup>48</sup> Munir Nuseibh "Forced Displacement in the Palestinian-Israeli Conflict, International Law and Transitional Justice,p61-65

Therefore, the right of return's adoption in 1948 was in any event required of all states<sup>49</sup>. Second, it is argued that because Resolution 194 states that returning refugees "want to... live at peace with their neighbors," it suggests that Israel has the authority to "select out" returning refugees based on its own internal standards and filters. Finally, the argument is raised that as Israel is not specifically referred to by name in Resolution 194, Israel is not necessarily bound by the request for the return of the 1948 Palestinian refugees. This argument fails to take into consideration that Israel was the sole origin nation whose policies contributed to the creation of the Palestinian refugee crisis<sup>50</sup>.

## Conclusion

In conclusion, Since the Nakba in 1948, Israel has persistently denied the right of the refugees and internally displaced individuals to return to their homes. Furthermore, Israel also continuing to take different measures that cause displacement.

Both historically and legally, Palestinian refugees have the right to go back to their homeland. Since 1948, a number of UN resolutions have acknowledged the nationhood, sovereignty, and right of return of the Palestinian people. It is abundantly clear that Resolution

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<sup>49</sup>Najwa Hassawi, *The Rights of Palestinian Refugees: Between International Legitimacy and the Palestinian-Israeli Negotiations*,53.

Ibid

194's right of return provision continues to be in accordance with binding international law customary norms that have been enshrined in the various branches of international law, thereby enhancing its applicability as a framework for formulating a long-lasting solution to the plight of the 1948 Palestinian refugees. According to international law, the only available legal remedy is the full exercise of the right of return. However, Israel has still not implemented the UN resolutions relating to Palestinian refugees, resolution 194. Israel is still obligated to allow Palestinian refugees to return to their homes, and compensate those who will not return.

The Palestinian people must be given the fullest protection of their human rights feasible in light of the current situation, which is directly related to the United Nations' failure to uphold its commitments to the Palestinian people. The right of the 1948 Palestinian refugees in this case to return to their original homes and to have all of their private property, the vast majority of which has been illegally taken by the government of Israel, is at the very least a prerequisite for some measure of remedial justice to be accorded to these refugees, who have been living in exile for more than seven decades. Because of this, the United Nations collectively together with Security Council, are under an extremely moral duty to act to guarantee that the Without further delay, the 1948 Palestinian Refugees' Right of Return is put into effect fully compliant with international law, without delay.

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