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The Meaning of UN General Assembly Resolution 194(III), 11 December 1948 (The Right of Return)

This Bulletin aims to provide a brief overview of issues related to Palestinian Refugee Rights

Over the past several years as an increasing amount of attention has been focused on a durable solution for Palestinian refugees in the context of final status negotiations between Israel and the PLO, various political figures, analysts, researchers and journalists have proffered numerous interpretations of UN General Resolution 194(III), 11 December 1948, the pre-eminent UN resolution relating to Palestinian refugees. In some cases, the interpretations proffered are incorrect due to the lack of accurate information. In other cases, incorrect interpretation of the resolution may stem from attempts to minimize or limit the implementation of Palestinian refugee rights.

This Bulletin provides an overview of the meaning of UN Resolution 194(III) based on a review of the drafting history of the resolution and various working papers prepared by the Secretariat of the UN Conciliation Commission for Palestine.

The Framework for a Durable Solution for Palestinian Refugees Displaced in 1948

The framework for durable solutions for refugees displaced in 1948, including internally displaced persons inside Israel, is set forth in paragraph 11 of UN General Assembly Resolution 194(III), 11 December 1948. The term refugees “referred to all refugees, irrespective of race or nationality, provided they had been displaced from their homes in Palestine. Resolution 194 affirms three separate rights – i.e., right of return, right to real property restitution, and the right to compensation – and two distinct solutions (i.e., return, restitution and compensation or resettlement, restitution and compensation) governed by the principle of individual refugee choice.

UNGA Resolution 194(III), paragraph 11

Resolves 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 in equity, should be made good by the Governments or authorities responsible;

Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation...

This framework is essentially consistent with that set forth in international refugee law – i.e., voluntary repatriation, voluntary host country integration, and voluntary resettlement, in addition to real property restitution. Under international refugee law, voluntary repatriation is considered to be the primary solution to refugee flows. Voluntariness, or refugee choice, “constitutes a pragmatic and sensible approach towards finding a truly durable solution.”

The Primary Durable Solution for Palestinian Refugees

General Assembly Resolution 194, paragraph 11, sets forth a clear hierarchy of solutions for Palestinian refugees. Paragraph 11(a) delineates the specific rights and the primary durable solution. The General Assembly, “[r]esolves 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 loss of or damage to property...” In other words, the primary durable solution for Palestinian refugees is return, real property restitution, and compensation for loss of or damage to property. Resolution 194 does not “resolve” that Palestinian refugees should be resettled.

Refugees who choose not to exercise the rights set forth in paragraph 11(a), however, may opt for resettlement in host states or in third countries, as well as real property restitution, and compensation. Paragraph 11(b) thus “instructs” the UN Conciliation Commission for Palestine (UNCCP), the body mandated to facilitate implementation of durable solutions for Palestinian refugees, to facilitate the resettlement of those refugees choosing not to return and the payment of compensation. In other words, the sole trigger for the resettlement of Palestinian refugees displaced in 1948 is the voluntary choice of the refugee not to return to his or her place of origin.

The Right of Return

General Assembly Resolution 194 affirms the right of Palestinian refugees to return to their homes of origin. Paragraph 11(a) states: “refugees wishing to return to their homes ... should be permitted to do so.” By 1948, the right of refugees and displaced persons to return to their places of origin had already assumed customary status in international law. Arbitrary denationalization and mass expulsion were prohibited under international law.

The UN Mediator in Palestine, whose recommendations formed the basis of Resolution 194, explicitly noted that the right of return should be affirmed (rather than recognized) by the United Nations. Correspondence and reports of the UN Mediator repeatedly affirm the right of Palestinian refugees to return to their homes as a remedy to the involuntary character of their displacement. That the right of return had already assumed the status of customary law is also reflected in comments made by the US representative at the UN concerning the original draft resolution submitted by Great Britain. Paragraph

11, stated the US representative, “endorsed a generally recognized principle and provided a means for implementing that principle...”

The resolution also affirms the right of refugees to return to their homes of origin. The General Assembly clearly meant the return of each refugee to “his[her] house or lodging and not to his[her] homeland.” The Assembly rejected two separate amendments that referred in more general terms to the return of refugees to “the areas from which they have come.”

The Right to Real Property Restitution

General Assembly Resolution 194 affirms the right of Palestinian refugees to real property restitution. The “underlying principle of paragraph 11, sub-paragraph 1, ... is that the Palestine refugees shall be permitted ... to return to their homes and be reinstated in the possession of the property which they previously held.” [Emphasis added] The right to real property restitution for refugee property “wrongfully seized, sequestered, requisitioned, confiscated, or detained by the Israeli government”, as delineated in Resolution 194, reflected general principles of international law.

The right to real property restitution in Resolution 194 should also be read in light of the UN Mediator’s earlier communiqués to the UN Security Council. In June 1948, for example, the Mediator wrote that the residents of Palestine should be permitted both to return to their homes without restriction, and to regain possession of their property. The aim of the Mediator’s recommendations was to provide legal remedy for widespread violations of Palestinian property rights. “There have been numerous reports from reliable sources of large-scale pillaging and plundering, and of instances of destruction of villages without apparent necessity,” wrote the UN Mediator. “It would be an offence against the principles of elemental justice if these innocent victims of the conflict were denied the right to return to their homes....” [Emphasis added]

It is clear from the phrasing “to their homes” that the United Nations General Assembly intended to affirm the right of Palestinian refugees to real property restitution. If the General Assembly had not intended to affirm the right of Palestinian refugees to real property restitution, it is likely that the broader language referring to the places from which they came (See The Right to Return, above) would have remained. During debate in the General Assembly First Committee, for example, the British delegate specifically stated that the terms set forth in paragraph 11 applied to all refugees, including the restitution of Palestinian property “in the New City of Jerusalem [west Jerusalem].”

The Right to Compensation

General Assembly Resolution 194 affirms the right of Palestinian refugees to compensation. Paragraph 11 affirms at least two types of compensation: (1) payment to refugees not choosing to return to their homes; and, (2) payment for the loss of or damage to (movable and immovable) property. The General Assembly rejected draft resolutions and amendments that did not include

provisions for (2) payment for the loss of or damage to property. The right to compensation, therefore, applies to all refugees, irrespective of whether they choose to exercise their right of return.

The right to compensation for those choosing not to return and for loss of or damage to property in violation of established rules of warfare reflected recognized principles of international law. The Hague Convention of October 1907 concerning the laws and customs of war on land prohibits "looting, pillaging, and plundering of private property and destruction of property and villages without military necessity." Moreover, international law and practice at the time upheld the right to individual claims, irrespective of lump sum or collective payments. Under the Final Act of the Paris Conference on Reparations of 21 December 1945, and the Agreement of 14 June 1946, the Allied Governments agreed to allocate a lump-sum payment for the rehabilitation and resettlement of the victims of Nazi persecution. It was further provided that the method of collective reparations would not prejudice individual claims by refugees against a future German government.

In addition, the substitution of the phrase "loss of or damage to property which under principles of international law or in equity should be made good" during the drafting process indicates that the General Assembly did not wish to arbitrarily limit claims to compensation for losses and damages as mentioned above. A broader set of claims may include compensation for human capital losses and psychological suffering as applied in the case of German reparations examined by the UNCCP Secretariat. The reference to international law was also included specifically to refer to those refugees choosing to exercise their right of return in the event that domestic law in the new state of Israel would not provide equal protection for the right to compensation for Palestinian refugees choosing to return to their homes.

Paragraph 11 reflected the recommendations of the UN Mediator in Palestine who called upon the United Nations to affirm the "payment of adequate compensation for the property of those choosing not to return." Compensation also aimed to provide a remedy to "large-scale looting, pillaging and plundering, and of instances of destruction of villages without apparent military necessity." "The liability of the Government of Israel ... to indemnify those owners for property wantonly destroyed," stated the Mediator, "is clear, irrespective of any indemnities which the Provisional Government may claim from the Arab States."

The Principle of Refugee Choice

General Assembly Resolution 194(III) affirms the principle of individual refugee choice. The UN General Assembly intended to confer upon individual refugees the "right of exercising a free choice as to their future." By 1948, the principle of refugee choice or voluntariness had already become an established principle of refugee law and practice.

The principle of individual refugee choice is repeatedly emphasized in documents prepared by the UN Mediator in Palestine, whose recommendations formed the basis for Resolution 194. According to the Mediator, the "unconditional right [of the refugees] to make a free choice should be fully respected." "The verb 'choose' indicates that the General

Assembly assumed that [...] all the refugees would be given a free choice as to whether or not they wished to return home.”

In order to make a free choice, the United Nations recognized that refugees should be “fully informed of the conditions under which they would return.” Moreover, the individual choice of the refugee was not to be influenced or hindered in any way by the relevant governments. Finally, as noted by the representative of the United Arab Republic, “the choice could only be offered when repatriation faces the refugees as a reality. When the possibility of repatriation does not exist, the choice equally does not exist. To choose, you must have two alternatives to implement. If the choice of repatriation cannot be implemented, then you are forcing the refugees to choose compensation.”

Safe Return

General Assembly Resolution 194 affirms the principle of safe return. Resolution 194 not only imposes an obligation upon refugees choosing to return “to live at peace with their neighbors”, but also imposes an obligation upon Israel “to ensure the peace of the returning refugees and protect them from any elements seeking to disturb that peace.”

Implementation of Resolution 194

General Assembly Resolution 194 provides a timetable for the implementation of the return of the refugees. The debate during the drafting process indicates that the “[General] Assembly agreed that the refugees should be allowed to return when stable conditions were established. It would appear indisputable that such conditions were established by the signing of the four Armistice Agreements.” The General Assembly rejected an amendment that included the phrase, “after the proclamation of peace between the contending parties in Palestine, including the Arab States....” The representative of the United States, for example, stated that his delegation “could not accept the proclamation of peace as a prerequisite for the return of refugees and hoped that the Assembly would not make this a condition. It was recognized that the bulk of the refugees could only return in peaceful circumstances. However, they need not wait for the proclamation of peace before beginning. These unfortunate people should not be made pawns in the negotiations for a final settlement.”

Sources: Executive Committee Conclusions of the UN High Commissioner for Refugees. Office of the United Nations High Commissioner for Refugees (UNHCR) Inter-Office Memorandum No. 104/2001, Field Office Memorandum No. 104/2001, "Voluntary Repatriation and the Right to Adequate Housing," 28 November 2001; and, Office of the United Nations High Commissioner for Refugees (UNHCR), "Checklist on the Restitution of Housing and Property." Luke T. Lee, "The Right to Compensation: Refugees and Countries of Asylum," 80 American Journal of International Law 3 (July 1986). Handbook, Voluntary Repatriation: International Protection, UNHCR, Geneva (1996). Susan M. Akram and Terry Rempel, "Recommendations for Durable Solutions for Palestinian Refugees: A Challenge to the Oslo Framework," forthcoming in Palestine Yearbook of International Law (2000-2001). Compensation to Refugees for Loss of or Damage to Property to be Made Good under Principles of International Law or in Equity. Working Paper Prepared by the UN Secretariat, U.N., Doc. W/30 (Restricted) (Original: English), 31 October 1949. Analysis of Paragraph 11 of the General Assembly Resolution of 11 December 1948, UNCCP, Working Paper Prepared by the UN Secretariat, U.N. Doc. A/AC.25/W.45 (Restricted) (Original: English), 15 May 1950. Historical Precedents for Restitution of Property or Payment of Compensation to Refugees, Working Paper of the UN Secretariat, March 1950, U.N. Doc. A/AC.25/W.81/Rev. 2 (Annex 1), 1950. Paolo Contini, Legal Aspects of the Problem of Compensation to Palestine Refugees, Beirut, 22 November 1949, appended to UN Doc. W/32, Letter and Memorandum dated 22 November 1949. Concerning Compensation, received by the Chairman of the Conciliation Commission from Mr. Gordon R. Clapp, United Nations Economic-Survey Mission for the Middle East, 19 January 1950. UN Doc. S/863, 3 July 1948. Text of Suggestions Presented by the United Nations Mediator on Palestine to the Two Parties on 28 June 1948. UN Doc. W/30, Compensation to Refugees for Loss of or Damage to Property to be Made Good Under Principles of International Law or in Equity, Working paper prepared by the Secretariat, 31 October 1949. UN Doc. A/648, Progress report of the UN Mediator on Palestine, Part II (k), 16 September 1948.