

Opening the Debate on the Refugee Issue

Even if a territorial formula acceptable to Israel and the Palestinians can be found, the question of the refugees and their right to return is increasingly becoming the main obstacle to an agreement.

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Even if a territorial formula acceptable to Israel and the Palestinians can be found, the question of the refugees and their right to return is increasingly becoming the main obstacle to an agreement. For the Palestinians, the memory of the Nakba (catastrophe) that accompanied the establishment of the Jewish state and the tragedy of the refugees form a central existential foundation. It is the "ostinato," a leading note that obstinately repeats itself throughout a musical work, defining its core.

The years of exile turn the memories into rage and create enduring political cliches. No one has yet prepared Palestinian hearts and minds in Gaza, Beirut, Irbid, Kuwait or Ohio for saying goodbye to this music, which defines their identity and delineates the framework for the collective struggle.

On the Israeli side, on the other hand, the Palestinian destruction and the refugee question have remained beyond awareness all these years. The Israeli narrative clings obstinately to the motif of Jewish suffering, blurring the manner in which the Zionist narrative was built on the ruins of another people. Take an upstanding Israeli from the peace camp, say "refugee problem" or "right of return" to him, and you'll get emotional and intellectual silence of the type that overcomes someone standing on the edge of an abyss in darkness and trying to imagine the nothingness.

The Israeli public has reached the moment of truth in the historic conflict bereft of any tools for rational thought on the question of the refugees and possible solutions. This is bad, because the refugee question is not about to disappear. If no agreement is

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reached, we will find ourselves discussing it as the factor that ended the peace process and which could drag the region into war. If an agreement is reached, it will be due to Palestinian concessions with regard to the refugees, a concession that could affect the legitimacy of the agreement in the eyes of many Palestinians. This dynamic is liable to weaken or even bring down Palestinian Authority Chairman Yasser Arafat and his regime, to stop the peace process, to hurt Israel and to undermine regimes in Arab states.

The public debate in Israel over the refugee problem and the right of return tends to shut down before it even opens. This must change. The topic is too important for us to give up on examining the options and clarifying their significance.

The first step in such a discussion must be a halt to the use of the term "the right of return" with the definite article. This use of the word "the" is problematic, because it implies that right of return is a clear and accepted concept, with agreed-upon and accepted interpretations of the meaning, extent and ways of implementation. That is not the case. The very existence of a natural right to the overall return of war refugees to the areas from which they were driven out, fled or were removed, is controversial in international law and it is hard to find consistent support for it even in international treaties. Imbedded in some of them, for example, is the assumption that the mass return of refugees to their homes in areas conquered by another group could actually undermine stability instead of restoring the old order.

Therefore, in international law there is a consistent tendency to prefer compensation arrangements to the return of refugees and to the restoration of their property. For this reason, it is more appropriate to discuss "right of return," without the definite article, as a reminder that this issue has a variety of interpretations and room for negotiation.

The maximalist version of right to return that the Palestinians are

pushing sees Paragraph 3 of United Nations Resolution 194 from December 1948 as granting the eternal right to every refugee of that war (some 200,000 to 300,000 of whom are estimated to still be alive) and to all their descendants (between 3 million to 4 million) to return to their original locations and property and to receive compensation for lost property. Such an all-out, rigid interpretation will lead to a dead end.

The second step in the discussion requires replacing this monolithic approach with a few fundamental distinctions that will enable a more practical approach. A distinction must be made between Palestinian refugees who lack citizenship and those who have received citizenship from any country since 1948. A distinction must be made between refugees in accordance to their living conditions and their chances for rehabilitation in their current homes and to see first to those whose situation is more difficult. When the criteria for right to return are deliberated, a distinction must be made between those who were exiled in 1948 and family members who were born in exile, between the right to citizenship and the right to residence, and to link all of these distinctions to the matter of monetary compensation. Here it can be determined that even those who do not receive the right to return to Israeli territory - in other words, the vast majority of refugee families - will be eligible for fair monetary compensation for their lost property. Those who do receive the right to return should be allowed to receive stipends and compensation even if they remain outside of Israel, and enhanced monetary compensation should be granted to those who forgo realizing the right to return.

In cases where clear and certain identification of ownership over properties can be made, it might be possible to give the Palestinian owners formal right of possession in return for delaying the exercise of these rights for a generation or two, to create a link between the exercise of these rights and conceding rights to citizenship and residence, among other possibilities. The debate over the refugee question is not of concern only for the Palestinians. It is part of the soul of Israel. Now, more than ever, it must not be neglected

