

# Who's Afraid of 194?

**March 20, 2007**

Jerome M. Segal

One advantage of accepting the Saudi peace plan is that it places solving the refugee issue within the larger context of achieving an end to the entire Israeli-Arab conflict. This is essential because it is only with the active cooperation of the Arab states that real solutions to the refugee problem will be found.

While it is understandable that the Israeli government is cautious about accepting an initiative that would use UN Resolution 194 as a basis for negotiations on refugees, Israeli concerns are vastly out of proportion to any real problem that 194 represents. Consider the actual wording. The resolution states:

"The 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."

## **Resolution refers to 1948 refugees**

As with Resolution 242, Israelis and Palestinians will disagree about what the text implies. But one can easily imagine what an Israeli negotiator might say:

1. "First, it should be noticed that there is no mention in 194 of "a right of return." The resolution says that certain refugees "should be permitted to do so" when practicable, but it stops short of any explicit claim that refugees have a right to return."
2. "Second, the resolution, which was enacted in 1948, is clearly referring to the 1948 refugees. Though Palestinians assume that it must be taken to apply to all descendants of the 1948 refugees, there is no explicit statement of that sort. Indeed, since it was envisioned that action on the refugees would be taken promptly, there was no intended reference, one way or the other, to third and fourth generations of the 1948 refugees over a half century later.
3. "The resolution speaks of a return that would occur at the "earliest practicable date." While there may have well been many points at which a return would have been practicable in the past, after 60 years of continued conflict and with the vast growth of the refugee populations, no significant return is practicable now or in the future.
4. "Specifically, when mentioning return, the Resolution speaks of a "return to their homes." The resolution is silent about return to anyplace else, whether to lands near their homes, or more generally, to lands within the 1949 Armistice lines. Moreover, given that in almost all cases the refugees' homes no longer exist or have become the homes of successive generations of Israelis, a return to homes is not practicable at all. In short, the return provision is completely empty only compensation is relevant.

5. "The resolution also provides a vital limitation. It never speaks of the 1948 refugees as a group. Rather it speaks of "the refugees wishing to . . . live at peace with their neighbors." Thus, it proposes a criterion of applicability. The criterion is there because Israel cannot be expected to accept large numbers of refugees who would be a security threat. But under current circumstances, what is the meaningful application of this provision? Clearly, it cannot be understood as providing for unlimited numbers of returning descendants. On any interpretation, several million returning refugees would transform the security situation. But further, the security issue has to be grasped within the context of foreseeable possible political scenarios. It is one thing to live in peace with one's neighbors when there is permanent peace with the Palestinian state and the Arab world. But what if at some future point the peace breaks down? How is Israel to know which refugees would be at peace within a context of war? "

### **Arguments can go on forever**

Any one of these interpretations might be challenged by Palestinian negotiators. They might argue that each one of them violates the spirit of the resolution, and they might argue that there are yet other facets of international law to back up their claims.

Of course, this is exactly the case with arguments over Resolution 242. Such arguments can go on forever, without either side changing its viewpoint. In the end, however, a peace treaty will be very specific. There will never be agreement on what Resolution 242 really means. Rather, there will be an agreed permanent international border and an agreement "that this satisfies 242."

Similarly, there will never be agreement on what Resolution 194 requires. Rather, there will be a specific treaty that solves the refugee issue and an agreement "that this satisfies 194." If accepting 194 as a basis for negotiations can help get us to that point, it will have played a valuable role.