

## SPECIAL FEATURE

# The Right of Return

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[EDITOR'S NOTE: This is a legal analysis of the right to return of Palestinian refugees, extracted from United Nations publication ST/SG/SER.F/4 entitled *An International Law Analysis of the Major United Nations Resolutions Concerning the Palestine Question* (New York, 1979).]

### III. THE RIGHT OF RETURN

#### A. *The Background of the Right of Return in Practice and Law*

For most individuals the actual practice of returning to one's home or country is so commonplace a part of everyday living that the right of return as a legal concept is given little attention. The great majority of people in the world are able to exercise the customary right of return based upon state practice.<sup>1</sup> The Palestinians, however, are in an unusual situation because their right of return has been systematically denied to them ever since the events of 1947 and 1948.<sup>2</sup>

Historically, the right of return was so universally accepted and practiced that it was not deemed necessary to prescribe or codify it in a formal manner. In 1215, at a time when rights were being questioned in England, the Magna Carta was agreed to by King John. It provided that: "It shall be lawful in the future for anyone... to leave our kingdom and to return, safe

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<sup>1</sup> This usual state practice is apparently uncontroversial and, therefore, not the subject of diplomatic and juridical contention.

<sup>2</sup> In contrast to the usual or normal situation referred to in note 1, the denial of the right of return to the Palestinians has resulted in controversy. See e.g. note 12.

and secure by land and water...."<sup>3</sup>

Particular provisions have been made to protect the right of return, termed "repatriation," in armed conflict and belligerent occupation situations. The four Geneva Conventions of 1949 concerning the protection of war victims<sup>4</sup> contain many provisions relating to the repatriation of such victims.<sup>5</sup>

These Geneva Conventions have been ratified by almost as many states as have ratified the United Nations Charter, including all of the states which have been involved in the recurring hostilities in the Middle East. Among the most important common provisions which appear in each of the four Conventions is one which limits the effect of a denunciation of the Convention by a state party during a conflict or a belligerent occupation. It provides that such a denunciation:

...Shall not take effect until peace has been concluded, and until after operations connected with the release, repatriation and re-establishment of the persons protected by the present Convention have been terminated.<sup>6</sup>

This provision is a recognition in multilateral treaty law of the importance of the right of return or repatriation. Its broad ambit applies to protected civilian persons<sup>7</sup> as well as to prisoners of war<sup>8</sup> and disabled military personnel.<sup>9</sup>

The Geneva Civilians Convention of 1949 also contains a significant law-making provision designed to prevent the removal of protected civilian persons so that they will not be in a position where they need to claim their right of return. The relevant article states:

Individual or mass forcible transfers as well as 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>10</sup>

<sup>3</sup> Magna Carta, Ch. 42. The translation quoted is from S.E. Thorne *et al.*, *The Great Charter: Four Essays on Magna Carta and the History of Our Liberty* (New York: Pantheon Books, 1965) p. 133.

<sup>4</sup> The following are the four Conventions of 1949: I. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 75 *U.N.T.S.*, p. 31; II. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 75 *U.N.T.S.*, p. 85; III. Geneva Convention Relative to the Treatment of Prisoners of War, 75 *U.N.T.S.*, p. 135; IV. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 75 *U.N.T.S.*, p. 287.

<sup>5</sup> Conv. I: arts. 5, 63; Conv. II: arts. 6, 62; Conv. III: *inter alia*, arts. 5, 46-48, 109-119, 142; Conv. IV: *inter alia*, arts. 6, 36, 45 (2), 134, 158.

<sup>6</sup> Conv. I: art. 63 (3); Conv. II: art. 63 (3); Conv. III: art. 142 (3); Conv. IV: art. 158 (3).

<sup>7</sup> Defined in Conv. IV, art. 4.

<sup>8</sup> Defined in Conv. III, art. 4.

<sup>9</sup> Defined in Conv. I, art. 13 and in Conv. II, art. 13.

<sup>10</sup> Art. 49 (1).

This provision of the Convention is important for present purposes because it indicates that the state parties, including the State of Israel, were willing to go beyond the requirement of the right of return by prohibiting expulsions. Such a preventive approach can only be adopted by those who consider the less comprehensive right of return as being inadequate in belligerent occupation situations. The human values protected by the right of return and the prohibition of transfers and deportations are the same, although the advantage of effective prohibition is that it would make it unnecessary to exercise the right.

The Universal Declaration of Human Rights provides in relevant part: "Everyone has the right to leave any country, including his own, and to return to his country."<sup>11</sup> The broad ambit of the quoted language, including the terms "everyone" and "country" requires some emphasis. Unless the right of return is interpreted with appropriate breadth, it would require no more than a legalistic trick to expel certain inhabitants and then to deny them return on the false grounds that they are not nationals of the expelling state. There has been an attempt to justify the denial of the right of return of the Palestinians by arguing that the quoted provision of the Universal Declaration obligates states "to permit the return of their citizens or nationals only."<sup>12</sup> This argument would merely require discriminatory municipal statutes to bar the return of inhabitants to their country.

The International Covenant on Civil and Political Rights contains a similar provision which states: "No one shall be arbitrarily deprived of the right to enter his own country."<sup>13</sup> Like the Universal Declaration, it avoids the use of narrow terms such as "nationals" and "state."

Count Folke Bernadotte, the United Nations mediator for Palestine, in his Progress Report of September 16, 1948,<sup>14</sup> set forth "seven basic premises" concerning the situation in Palestine. One of them, under the heading of the "Right of Repatriation," stated that:

The right of innocent people, uprooted from their homes by the present terror and ravages of war, to return to their homes, should be affirmed and made effective, with assurance of adequate compensation for the property of those who may choose not to return.<sup>15</sup>

<sup>11</sup> Art. 13 (2). The Universal Declaration was approved by G.A. Res. 217 A(III), (December 10, 1948), 3 U.N. GAOR, Resolutions, pp. 71-77, U.N. Doc. A/810, (Sept. 21 - Dec. 12, 1948).

<sup>12</sup> K.N. Radley, "The Palestinian Refugees: The Right to Return in International Law," 72 *American Journal of International Law*, p. 586 at 613 (1978).

<sup>13</sup> Art. 12 (4). This International Covenant has been approved by G.A. Res. 2200 (XI) (December 16, 1966), 21 U.N. GAOR, Supp. 16, pp. 49-60.

<sup>14</sup> 3 U.N. GAOR, Supp. 11, pp. 1-19; U.N. Doc. A/648, (Sept. 21 - Dec. 12, 1948).

<sup>15</sup> *Ibid.* at VIII 3 (e), p. 17.

This basic premise was restated in the same Progress Report as a specific recommendation to the United Nations:

The right of the Arab refugees to return to their homes in Jewish-controlled territory at the earliest possible date should be affirmed by the United Nations, and their repatriation, resettlement and economic and social rehabilitation, and payment of adequate compensation for the property of those choosing not to return, should be supervised and assisted by the United Nations Conciliation Commission....<sup>16</sup>

It is significant that Count Bernadotte did not recommend the creation of a new right, but instead recommended that the right to return "be affirmed by the United Nations." Consistent with this recommendation, subsequent resolutions of the General Assembly have sought to affirm and make effective an existing right. The right of return, based on state practice, was apparently regarded as an established part of customary international law as well as one of "the general principles of law recognized by civilized nations."

#### B. *General Assembly Resolutions Applying the Right of Return*

##### 1. Resolutions 194 (III) and 513 (VI) Concerning the 1947-1948 Refugees

Count Bernadotte's mediation mission was ended on September 17, 1948 when he was assassinated by Israeli terrorists. On December 11, 1948, the General Assembly adopted resolution 194 (III)<sup>17</sup> entitled "Palestine – Progress Report of the United Nations Mediator." This resolution was a comprehensive effort to deal with the ongoing conflict situation in Palestine and consisted of fifteen paragraphs. It established a Conciliation Commission for Palestine composed of three member states of the United Nations (France, Turkey and the United States). The Commission was given broad authority to carry out the functions previously entrusted to the United Nations mediator for Palestine and was instructed to assist the governments and authorities involved in the Palestine conflict with the purpose of achieving "a final settlement of all questions outstanding between them."<sup>18</sup> In the context of this major diplomatic and negotiating role assigned to the Conciliation Commission, paragraph 11 deals with the refugees by stating that the General Assembly:

*Resolves* that the refugees wishing to return to their homes and live at peace with their neighbours 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 the loss of or damage to property which, under principles of international

<sup>16</sup> *Ibid.* at VIII 4 (i), p. 18.

<sup>17</sup> 3 U.N. GAOR, Resolutions, pp. 21-25, U.N. Doc. A/810, (Sept. 21 – Dec. 12, 1948).

<sup>18</sup> *Ibid.*, para. 5.

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, and to maintain close relations with the director of the United Nations Relief and Works Agency for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations.

The text of paragraph 11 appears to have been written on the assumption that the principle or right of return was not in issue and that the central task was achieving practical implementation of repatriation. Therefore, it authorized the Conciliation Commission to deal with the government of Israel on the subject. The conciliatory wording of the entire resolution was apparently based on the assumption that the government of Israel would cooperate in good faith with the Conciliation Commission and "take all possible steps to assist in the implementation of the present resolution."<sup>19</sup> It was realized later that the efforts of the Conciliation Commission, like those of the United Nations mediator before it, were a failure and did not effectuate the right of return of the Palestinian Arab refugees.

Paragraph 11 provides for two specifics concerning the implementation of the right of return. First, the refugees themselves are entitled to choose whether or not they wish to return to their homes within the *de facto* boundaries of the State of Israel. Second, the refugees are to be compensated for the loss of or damage to their property whether or not they choose to return. The specification that the refugees wishing to return should also wish to "live at peace with their neighbours" should be interpreted as a reassurance to the State of Israel that it would not be faced with an internal security problem following the return of the refugees. The additional provision that return should be carried out at the "earliest practicable date" is consistent with the approach that the Conciliation Commission was to use diplomatic and mediation efforts to have the State of Israel comply with the terms of the resolution.

The Conciliation Commission for Palestine has given a careful interpretation to paragraph 11:

The General Assembly had laid down the principle of the right of the refugees to exercise a free choice between returning to their homes and being compensated for the loss of or damage to their property on the one hand, or, on the other, of not returning to their homes and being adequately compensated for the value of the property abandoned by them.<sup>20</sup>

<sup>19</sup> *Ibid.*, para. 14.

<sup>20</sup> *Historical Survey of Efforts of the U.N. Conciliation Commission for Palestine to Secure the Implementation of Paragraph 11 of G.A. Resolution 194 (III)*, para. 38.; U.N. Doc. A/AC.25/W.81/Rev.2, pp. 20-21.

This interpretation is consistent with General Assembly resolution 194 (III) as well as subsequent resolutions.

The General Assembly again confronted the situation caused by the failure of repatriation on January 26, 1952 when it adopted resolution 513 (VI)<sup>21</sup> which provided in paragraph 2 that its provisions were without prejudice to the repatriation provisions of resolution 194, paragraph 11. Paragraph 2 continued by endorsing a programme proposed by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) designed to expedite the reintegration of the displaced Arabs into the economic life of the area. It provides that this is to be accomplished either by repatriation, as enunciated in resolution 194, or through resettlement elsewhere. Resettlement was apparently offered as a practical alternative to the principle of repatriation which had thus far not been practically obtainable.

2. Resolutions 2452 (XXIII), 2535 (XXIV) and 2963 (XXVII) Concerning the 1947-1948 and 1967 Refugees

In the years following the intense hostilities of June 1967, the General Assembly adopted a series of resolutions which treat separately the right of return of the group of Palestinians displaced as a result of the 1947-1948 conflict and of the group displaced as a result of the 1967 conflict. The dichotomy first appears in General Assembly resolution 2452 of December 19, 1968<sup>22</sup> which serves as the functional paradigm for the significant substantive resolutions that followed, specifically resolutions 2535 and 2963.

The prefatory language of General Assembly resolution 2452 B, dealing with the 1947-1948 refugees, after recalling both resolutions 194 and 513, further recalls those resolutions which affirm the principles of repatriation and resettlement stated in 194 and 513. Consistent with the tenor of the preceding resolutions, operative paragraph 1 of resolution 2452 B provides that the General Assembly:

*Notes with deep regret* that repatriation or compensation of the refugees as provided for in paragraph 11 of General Assembly resolution 194 (III) has not been effected, that no substantial progress has been made in the programme endorsed in paragraph 2 of resolution 513 (VI) for the reintegration of refugees either by repatriation or resettlement and that, therefore, the situation of the refugees continues to be a matter of serious concern.

Operative paragraph 4 of the same resolution states that the General Assembly:

*Notes with regret* that the United Nations Conciliation Commission for Palestine

<sup>21</sup> 6 U.N. GAOR, Supp. 20, pp. 12-13, (Nov. 6, 1951 - Feb. 5, 1952).

<sup>22</sup> 23 U.N. GAOR, Supp. 18, pp. 21-22.

was unable to find a means of achieving progress in the implementation of paragraph 11 of General Assembly resolution 194 (III), and requests the Commission to exert continued efforts towards the implementation thereof.

In summary, in spite of past failure the General Assembly continued to rely upon diplomatic methods by the Conciliation Commission to obtain implementation of the right of return of the 1947-1948 refugees.

Resolution 2452 A, dealing with the 1967 refugees, recalls Security Council resolution 237 of June 14, 1967 which calls upon the government of Israel "to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities." The prefatory wording of 2452 A, emphasizes the "requirement" of the refugees' "speedy return to their homes and to the camps which they formerly occupied." This wording indicates accurately that some of the 1947-1948 refugees who had fled to camps on the West Bank of the Jordan were again made refugees in 1967.

In resolution 2452 A, the General Assembly bypasses the Conciliation Commission for Palestine, addresses the government of Israel directly concerning the 1967 refugees, and asks the secretary-general to follow and report upon "the effective implementation of the resolution."<sup>23</sup> Unlike resolution 194, there is no reassurance to the State of Israel that those returning desire to "live at peace with their neighbours." Israel is directly called upon to take "effective and immediate steps for the return without delay"<sup>24</sup> of the inhabitants who fled the area since the outbreak of hostilities. Like resolution 194 (III), it appears to be written upon the assumption that the right of return is established and that the central task is to obtain its implementation.

On December 10, 1969, almost one year after the adoption of resolution 2452, the General Assembly adopted resolution 2535.<sup>25</sup> Resolution 2535 A concerning the 1947-1948 refugees recalls, *inter alia*, resolutions 194, 513 and 2452. Like 2452 B, resolution 2535 A expresses regret over the fact that the refugees of the 1947-1948 conflict have not been repatriated or resettled pursuant to resolutions 194 and 513. As with earlier resolutions, it requests the Conciliation Commission to continue efforts towards implementation of the right of return of the 1947-1948 refugees.

Resolution 2535 B deals with the 1967 refugees. Its first preambular paragraph states:

*Recognizing* that the problem of the Palestine Arab refugees has arisen from the denial of their inalienable rights under the Charter of the United Nations and the Universal Declaration of Human Rights.

<sup>23</sup> Operative para. 2.

<sup>24</sup> Operative para. 1.

<sup>25</sup> 24 U.N. GAOR, Supp. 30, pp. 25-26.

The resolution recalls Security Council resolution 237 (1967) and General Assembly resolutions 2252 and 2452 A, all of which deal with the 1967 refugees. The operative paragraphs of resolution 2535 B reaffirm "the inalienable rights of the people of Palestine,"<sup>26</sup> draw attention to the State of Israel's refusal to implement the resolutions concerning the 1967 refugees<sup>27</sup> and request the Security Council to take effective measures to ensure their implementation.<sup>28</sup>

General Assembly resolution 2963 of December 13, 1972<sup>29</sup> deals with several important matters including the national rights of the people of Palestine. It follows the general pattern of the resolutions just considered concerning the return of the refugees. Resolution 2963 A recalls the relevant resolutions and notes with deep regret that resolution 194, paragraph 11 concerning the 1947-1948 refugees, remains unimplemented. It requests the Conciliation Commission to continue efforts towards its implementation.

Resolution 2963 D, in contrast, recalls the relevant resolutions dealing particularly with the 1967 refugees and in operative paragraph 1 affirms "the right of the displaced inhabitants to return to their homes and camps." Operative paragraph 4 states that the General Assembly "*Calls once more upon* Israel immediately to take steps for the return of the displaced inhabitants." Operative paragraph 6 requests the secretary-general to report upon implementation. Resolution 2963 C concerns the refugees expelled from the Gaza Strip, and operative paragraph 4 calls upon Israel "to take immediate and effective steps for the return of the refugees concerned to the camps from which they were removed...."

### 3. Resolutions 3089 (XXVIII), 3236 (XXIX) and Subsequent Resolutions Concerning the Inalienable Right to Return to the Area of Palestine

Resolution 3089 of December 7, 1973<sup>30</sup> follows a somewhat similar pattern to resolution 2963 which has just been considered. The 1947-1948 refugees are dealt with in resolution 3089 B in a manner like that employed in earlier resolutions requesting the Conciliation Commission "to exert continued efforts" to effectuate the right of return provided for in resolution 194. Resolution 3089 C concerns the 1967 refugees and those expelled from the Gaza Strip and elsewhere during and after the intense hostilities of October 1973. It provides recognition and reaffirmation of their right of return in operative paragraph 1 which explicitly reaffirms "the

<sup>26</sup> Para. 1.

<sup>27</sup> Para. 2.

<sup>28</sup> Para. 3.

<sup>29</sup> 27 U.N. GAOR, Supp. 30, pp. 27-29.

<sup>30</sup> 28 U.N. GAOR, Supp. 30, pp. 26-28.

right of the displaced inhabitants, including those displaced as a result of recent hostilities, to return to their homes and camps."

Operative paragraph 3 of resolution 3089 D refers to "the inalienable rights of the people of Palestine" and states that "the enjoyment by the Palestine Arab refugees of their right to return to their homes and property, recognized by the General Assembly in resolution 194 (III) of December 11, 1948, which has been repeatedly reaffirmed by the Assembly since that date" is indispensable for "a just settlement of the refugee problem." The broad reference to the right of the refugees "to return to their homes and property" should be interpreted as including return to the State of Israel as it existed with pre-June 1967 *de facto* boundaries as well as to the Israeli-occupied Arab territories. It is clear that the right of return, as a right of individual Palestinians, may be exercised throughout Palestine including the State of Israel within whatever *de facto* boundaries it may have now or *de jure* boundaries that may be ultimately determined for that state.

Resolution 3236 of November 22, 1974<sup>31</sup> is one of the most fundamental actions of the General Assembly concerning the right of return and is notable in that it does not contain the dichotomy of separate provisions previously utilized for the 1947-1948 refugees and those of 1967 and 1973. After referring in operative paragraph 1 to the national inalienable rights of "the Palestinian people,"<sup>32</sup> this resolution provides in operative paragraph 2 that the General Assembly:

*Reaffirms* also the inalienable rights of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and calls for their return.

This paragraph emphasizes the significance of the right of return of the Palestinians by describing it as "inalienable." The characterization of rights as "inalienable" should be interpreted as meaning that they cannot be surrendered or otherwise terminated. Such fundamental rights may consequently be regarded as having unusual strength and permanence of a kind not associated with less important rights.

It should be mentioned that the right specified here, as in resolution 3089 D, is of individual Palestinians to return, as distinguished from Palestinian national rights. The geographical reference of paragraph 2 is a comprehensive one. The term "their homes and property" covers areas of the State of Israel, whether as defined by the Palestine Partition Resolution or as it existed *de facto* prior to June 1967, and it also includes homes and property which are located in the territories occupied by Israel since 1967.

<sup>31</sup> 29 U.N. GAOR, Supp. 31, p. 4.

<sup>32</sup> Such national rights are considered in Section IV [of the study, not reprinted here - Ed.]

The present interpretation of resolution 3236 is not only required by the different wording of operative paragraph 1 dealing with national rights and operative paragraph 2 dealing with individual rights, but it is also required by the previous resolutions of the General Assembly including the Palestine Partition Resolution 181. There is nothing in resolution 3236 which derogates from resolution 181. Resolution 3236 is entirely consistent with the basic principle of two national states in Palestine which is embodied in resolution 181. It should also be mentioned that resolution 3236 is fully consistent with the provisions of the United Nations Charter including the principle of the sovereign equality of member states. The sovereign equality of the State of Israel is not in question but, like other states, it must have its boundaries established in a lawful manner and honour the right of return as established in law and recognized by the world community through the General Assembly.

It may be suggested in opposition to the Palestinian right of return to the area within the lawful authority of the State of Israel that this would change "the Jewish character" of the State of Israel. It must be recognized that the term, "the Jewish character," is really a euphemism for the Zionist discriminatory statutes of the State of Israel which violate the human rights provisions of the Partition Resolution. The matter was put directly by then Israeli Defence Minister Dayan shortly after the intense hostilities of June 1967. He gave the following response to a reporter's question about Israel's ability to absorb the Arab population in the then recently occupied territories:

Economically we can; but I think that is not in accord with our aims in the future. It would turn Israel into either a binational or poly-Arab-Jewish state instead of the Jewish State, and we want to have a Jewish state. We can absorb them, but then it won't be the same country.<sup>33</sup>

The United Nations 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.

Some subsequent resolutions concerning the right of return have reflected the earlier distinction between the 1947-1948 refugees and the 1967 and subsequent ones. For example, resolution 31/15 A of November 23, 1976<sup>34</sup> dealing with the 1947-1948 refugees notes with deep regret that repatriation or compensation as provided for in paragraph 11 of General Assembly resolution 194 has not been achieved. Resolution 31/15 D dealing with the

<sup>33</sup> Quoted by I.F. Stone, "For a New Approach to the Israeli-Arab Conflict" in Gary V. Smith (ed.) *Zionism - The Dream and the Reality: A Jewish Critique* (New York: Barnes and Noble, 1974) p. 197 at 209-210.

<sup>34</sup> 31 U.N. GAOR, Supp. 39, p. 48.

refugees displaced since 1967 reaffirms their right "to return to their homes and camps in the territory occupied by Israel since 1967." The same resolution calls upon Israel again to take "immediate steps" for the return of the displaced inhabitants and to desist from all measures obstructing their return.

Other subsequent resolutions, such as 3376 (XXX) of November 10, 1975<sup>35</sup> have followed the pattern of resolution 3236 by referring to the exercise by the Palestinians of "their inalienable right to return to their homes and property from which they have been uprooted." Resolution 33/28 A<sup>36</sup> of December 7, 1978 reaffirms that a just and lasting peace in the Middle East cannot be achieved without, *inter alia*, the attainment of "the inalienable rights of the Palestinian people, including the right of return...."

### C. Security Council Resolutions

The Security Council has had, at the most, a minor role in dealing with the Palestinian refugees. Its resolution 73 of August 11, 1949<sup>37</sup> expressed the hope that the "governments and authorities concerned" in the 1947-1948 conflict would undertake to seek agreement "by negotiations conducted either with the Conciliation Commission or directly" to achieve agreement on "all questions outstanding between them"<sup>38</sup> including necessarily the refugee question, although it was not specifically mentioned. The parties did not achieve any agreement in spite of the efforts of the Conciliation Commission. The Palestinians were, of course, concerned with the crucial issues at stake in Palestine, but they had at that time neither a government nor a public body which could effectively represent their interests.

Following the intense hostilities of June 1967, the Security Council adopted resolution 237 of June 14, 1967.<sup>39</sup> The first operative paragraph of the resolution calls upon the government of Israel "to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities." In view of the time of the resolution and of the conflict situation, this should be taken to refer to the 1967 refugees. Other provisions of the resolution seek to obtain adherence to the obligations of the Geneva Prisoners of War and Civilians Conventions of 1949.

Security Council resolution 242 of November 22, 1967<sup>40</sup> attempts to

<sup>35</sup> 30 U.N. GAOR, Supp. 34, pp. 3-4.

<sup>36</sup> U.N. Press Release, p.11, U.N. Doc. GA/5942, 33rd Sess., (Feb. 5, 1979).

<sup>37</sup> U.N. SCOR, Fourth Year, pp. 8-9.

<sup>38</sup> Operative para. 1.

<sup>39</sup> U.N. SCOR, Twenty-second Year, pp. 5-6.

<sup>40</sup> U.N. SCOR, Twenty-second Year, pp. 8-9.

establish a framework for “a just and lasting peace in the Middle East”<sup>41</sup> by enunciating certain principles. Among these, “the necessity” for “achieving a just settlement of the refugee problem”<sup>42</sup> is set forth. There are no elements of such a just settlement stated in the resolution and the only authoritative principles adopted by the United Nations on this subject remain the General Assembly resolutions which have been considered above.

Security Council resolution 338 of October 22, 1973<sup>43</sup> calls for a ceasefire in the then intense hostilities in the Middle East. It may also have some connection with the Palestinian refugees since operative paragraph 2 calls upon the parties concerned to start implementing all of the parts of Security Council resolution 242 immediately following the ceasefire. To the present time resolution 242, including the reference to the refugees, has not been implemented although it has been consistently referred to as the basis upon which peace must be established.

<sup>41</sup> Preambular para. 2.

<sup>42</sup> Operative para. 2(b).

<sup>43</sup> *U.N. SCOR, Twenty-eighth Year*, p. 10.