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Why Palestinians have a right to return home

Mark LeVine
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Mark LeVine asked three leading scholars of the "refugee problem" - Karma Nabulsi (lecturer in international relations, Oxford University), Susan Akram (Boston University Law School and founder of the Asylum and Human Rights Clinic at Greater Boston Legal Services) and Ingrid Jaradat Gassner (Director of BADIL, Resource Centre for Palestinian Residency and Refugee Rights) - to address some of the key arguments surrounding the right of return. Some of the answers are quite detailed and technical, but given the importance of this debate, we have not edited them, so as to offer the most complete information possible on this issue.

ML: Can you explain at its base what "right of return" means? Is it merely a political concept or is it an accepted legal concept as well? Is there one definition accepted by all Palestinians or is the term contested within Palestinian society?

"Everyone has the right to leave any country, including his own, and to return to his country."

- Article 13(b) UDHR

KN: The right of return is a universal right that is binding under international law, enjoyed by every people regardless of where they come from. The idea of universal rights is an ancient one, but one of its first international expressions is found in the Universal Declaration of Human Rights (UDHR), which was proclaimed by the United Nations in 1948 "as a common standard of

achievement for all peoples and all nations". One of the core rights set out in the UDHR is the right of return. Article 13(b) of the UDHR states: "Everyone has the right to leave any country, including his own, and to return to his country." Palestinian refugees are entitled to this binding universal right, in the same way that all other refugees are, whether they come from Bosnia, Rwanda, South Africa or anywhere else.

In spite of ill-founded - and quite frankly racist - arguments concerned with denying this universal right to them, the United Nations has frequently insisted on its particular applicability to Palestinian refugees, who constitute the world's largest refugee population. For instance, General Assembly (UNGA) Resolution 2535, passed in 1969, recognises "that the problem of 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". In the same vein, UNGA resolution 3236 reaffirms "the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and calls for their return."

UNGA Resolution 194

What is particular to the Palestinian case is the exceptional frequency with which the right of return was insisted upon, time and again, by the United Nations and the international community. UNGA Resolution 194 clearly 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 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". Israel's admission as a member of the UN was made conditional on its acceptance and implementation of resolutions including UN Resolution 194; this demonstrates that without question, the UN and the international community saw Israel as fully responsible for the complete implementation of this right. This right was further reaffirmed by the UNGA on more than 135 occasions, clearly reflecting the consistent will of the international community on this matter.

"The majority of the Palestinian people were forcibly displaced and uprooted from their homes and lands in 1948."

- Karma Nabulsi

Of course, as well as being a universal right that is clearly applicable to Palestinian refugees on an individual basis, the right of return is conceptualised and understood by most contemporary international jurists as a collective right. The most recent expression of this can be found in Professor Guy Goodwin Gill's recent [opinion piece](#) and further note of August and September 2011, on the issue of refugees' representation at the UN. As one of the world's leading international lawyer for refugee rights, he emphasised the commonly understood legal position that the Palestinians' inalienable right of self determination and their right of return are both collective rights.

Broad consensus

Of course, the right of return is also a political and moral concept holding enormous importance for the Palestinian people. There is broad consensus that the right of return, along with the right of self-determination, is the foundation of the 63-year-old struggle of the Palestinian people. The majority of the Palestinian people were forcibly displaced and uprooted from their homes and lands in 1948 and modern Palestinian politics begins with the establishment of popular movements, parties, and associations concerned with claiming and struggling for the right of return. Dozens of these groupings, voluntarily founded and supported by thousands of refugees, had the term *Al-Awda* ["return"] in their name. The foundation document of every major Palestinian party, regardless of its ideology - ranging from Fatah's *Bayan Harakatuna* (1958) and the Declaration of the Foundation of the PFLP (1967) to the Hamas Charter (1988) - enshrines return as its first and foremost principle. Above all, the PLO's Palestine National Covenant, the basis of all Palestinian law, defines the Palestinian people's struggle as striving for the following objectives: "to retrieve its homeland, liberate and return to it and exercise the right to self-determination in it..." (Article 26).

The principle of return goes well beyond politics and extends to the realm of culture. The Palestinian artistic canon - comprising countless works, from the novels of Ghassan Kanafani to the paintings of Ismail Shamout - created and shaped what is commonly known as *Thaqafat al-Awda* [the "culture of return"]. In this cultural realm, as with the political one, the right of return is understood as return to the original homes, lands, cities and villages found in the entirety of historic, mandate Palestine.

"The national Palestinian consensus on this matter cannot be doubted."

- Karma Nabulsi

Finally, Palestinians throughout the world have responded to the perceived threat to the right of return posed by the Oslo process by founding hundreds of civic associations concerned with defending this right wherever Palestinian refugees now live across the world, as well as active legal committees and resource centres, such as [Badil](#). The unwavering commitment of refugees to this simple right has been illustrated time and again, most comprehensively in the [Civitas Register of 2006](#)- which engaged the mobilisation of thousands of Palestinian refugees in 26 countries, all reaffirming their unwavering commitment to this right. In short, the national Palestinian consensus on this matter cannot be doubted.

Contextualising

ML: Can you put the right of return into the context of the expected UN vote to recognise Palestine as a state?

KN: Palestinian legal advisors, associations, and movements have highlighted various concerns pertaining to the right of return that arise out of the September initiative at the UN as it is currently formulated. In particular, they have asserted the need for maintaining the PLO's status

as the sole legitimate representative of the Palestinian people at the UN, and have warned of the dangers of replacing it with the state of Palestine as its representative in the seat. As I noted above, the legal aspects of these concerns have been discussed in detail in a significant [opinion](#) by Professor Guy Goodwin-Gill in his recent briefs on the subject.

The right of return *per se* is not threatened by the current initiative. It is, as highlighted earlier, an inalienable universal right enshrined in international law and held fast to by the Palestinian people. The concern is that changing the representative at the UN from the PLO to the State of Palestine would adversely affect the ability of Palestinian representatives at the UN to claim and advocate that right, and that all Palestinians [should] have their representation at the UN. The PLO is the national representative of the Palestinian people as a whole, representing those inside and outside the 1967 occupied Palestinian territories. Being confined to the 1967 boundaries, the State of Palestine (which is yet to attain actual sovereignty on the ground), cannot claim to represent the refugees, unlike the PLO.

"Since the Oslo process began, the PLO has been consistently undermined."

- Karma Nabulsi

This is not a question of names nor of titles. Indeed, the designation "Palestine" is currently used by our representatives at the UN. In its resolution 43/177, the UNGA acknowledged "the proclamation of the State of Palestine by the Palestine National Council on 15 November 1988" and it decided that, "effective as of 15 December 1988, the designation 'Palestine' should be used in place of the designation 'Palestine Liberation Organisation' in the United Nations system, without prejudice to the observer status and functions of the Palestine Liberation Organisation within the United Nations system..." Significantly, this wording ensured that the status of the PLO as the sole legitimate representative of the Palestinian people was preserved and reaffirmed by the UN. This formulation can be preserved by the leadership, whether or not it chooses to seek an upgrade to our representative status at the UN.

In any case, recent events, including the September initiative, have raised the vital question of representation and democracy. Since the Oslo process began, the PLO has been consistently undermined, and political fragmentation has been imposed upon the Palestinian people through the establishment of the Palestinian Authority (PA). In theory and on paper, the Palestinian Authority is a subsidiary body of the PLO - and the West Bank and Gaza's Legislative Council is incorporated into the Palestinian National Council (PNC) so there is one legislative body for all Palestinians, and all are equal politically under the law. In practice however, the PA is emerging as a parallel structure which excludes the refugees who constitute the majority of the Palestinian people. It is essential that this parallel structure not take the PLO seat at the UN, as the Palestinian refugees would be politically disenfranchised and legally and institutionally disempowered from making their claims to their rights at the only place that matters, the United Nations.

The PLO and the PNC

Furthermore, it is essential that the PLO and the PNC recover their legitimate role in Palestinian politics. Article 7(a) of the Fundamental Law of the PLO states: "The Palestine National Council is the highest authority of the Palestinian Liberation Organisation, and it is the body that draws the policy of the PLO and its plans and programs." Moreover, Article 5 of the Fundamental Law states that the PNC is to be directly elected by the Palestinian people. The electoral system, issued on 17 July 1965, states: "Every Palestinian has the right to vote in PNC elections if he/she is 18 years old, if his/her name has been recorded in the final electoral registers, if he/she is of sound mind, and has not been convicted of a crime against national honour."

In line with these fundamental laws of the Palestinian people, there has been broad **Palestinian mobilisation** in recent months, and especially in the wake of the Arab Spring and in response to the **September initiative**, to reclaim and democratise the **PLO and the PNC**. In particular, there is a growing movement for holding direct elections to the Palestine National Council, which is the highest Palestinian legislative body, and which represents all Palestinians, whether they are refugees or not. The PNC is the body that creates the national strategies, platforms and policies of the Palestinian people, which the PLO executive committee should implement. Only a rejuvenated, democratically elected PNC can lay the foundation for effective representation of Palestinian rights, including the right of return.



A young demonstrator bears the Arabic numerals '194' on his forehead, referring both to Palestine becoming the 194th UN member and UNGA resolution 194 [EPA]

***ML:** When Palestinians demand that Israelis recognise the right of return it is not always clear whether what is being demanded of Israel is that it merely "recognise" that Palestinians have this right, without committing to actually letting hundreds of thousands - or millions - of Palestinians move into Israel, or whether Palestinians are demanding the actual implementation of this right? Is there agreement among Palestinians on this issue and if not, what are the main areas of debate?*

KN: Palestinians do not simply demand the recognition of their right to return, but also its implementation, its exercise, and its translation into reality. This is not merely a moral theoretical stance, but a lived and concrete one, agreed upon by both the Palestinian people and the many host countries in the Arab world which they currently live, including Jordan, Syria, and Lebanon and the Gulf. In accordance with international law, all refugees must be allowed to return. Whether they choose to exercise that right or not is a matter for each individual refugee to decide for themselves.

***ML:** If the broad consensus is to demand an implementation of the right, is there a general understanding of which and how many Palestinians would be expected to move within Israel's 1967 border? Which groups would be prioritised?*

IJG: The right to return is a right held by all Palestinians who were forced to leave their homes and properties, as well as their descendants. Two groups of Palestinians would exercise their right of return in what is today Israel: the so-called 1948 refugees who live outside Israel's pre-June 1967 borders (approximately 6 million persons today), and Palestinians who have become internally displaced persons (IDP) since 1948 (approximately 300,000 persons today).

There is no understanding of how many Palestinian refugees and IDPs would actually decide to return to their homes and properties in Israel, because such understanding would require that these refugees and IDPs are offered an opportunity to make a free choice about whether or not they want to return, based on detailed information about the conditions of return, including the procedure for reclaiming their property and available support, and other options available for them. No such opportunity has ever been offered to Palestinian refugees or IDPs since 1948.

The question of whether certain groups would be prioritised during return is part of the numerous technical matters that could be agreed upon by the PLO and Israel in conjunction with the international agencies responsible, with the aim of ensuring a smooth and sustainable process of return and absorption.

***ML:** Would Palestinian returnees who became Israeli citizens also have Palestinian citizenship?*

IJG: In a scenario where the right of return is implemented, all 1948 Palestinian refugees who decide exercise their right to return are entitled to Israeli citizenship. The question whether they should also be offered Palestinian citizenship is outside of the scope of the right to return. It is a sovereign matter of the state of Palestine, and its practical legal implications for Palestinians who opt for such dual citizenship would be subject to bilateral diplomatic agreements with Israel.

SA: Although it is true that citizenship is an internal matter for the Palestinian state, it does have ramifications for Palestinian refugees, Palestinians in the diaspora, and those who are Israeli citizens. There are many options for defining who is entitled to citizenship, each with its own set of ramifications. The main criteria for determining nationality are set out in the *Nottebohm (Guatemala v Lichtenstein)* case, which focuses on a "genuine link" between the individual and the territory. Palestine would have great latitude under international law in defining the scope of the link for its nationals, and what the criteria would be for obtaining or claiming citizenship.

Defining nationals

Consider some of the ramifications, however, of the state defining its "nationals" in one of the two main ways that states grant citizenship: by *jus sanguinis*, blood relationship, or by *jus soli*, birth on the territory. As to the first, Palestine might define as its nationals anyone whose parent, grandparent or great-grandparent was born on the territory of historic Palestine, or whose ethnic origin was Palestinian during any (defined) period. If these were the criteria, without more, the risk is that states in which Palestinians fitting that criteria reside could determine that they are Palestinian citizens, remove whatever temporary status they have in that state, and deport them to the Palestinian territory. In the worst-case scenario, if Palestinians who are citizens of other states are subject to laws disallowing dual citizenship, or disallowing dual citizenship with states that have a conscription law, they could also be deprived of their second-state citizenship and removed to Palestine. As a matter of international law, this would be legal, as no individual has a "right" to more than one citizenship.

"The citizenship/nationality question also has a significant bearing on the refugee issue."

- Susan Akram

Consider some of the ramifications of the state defining its "nationals" as including those born in the territory of Palestine. Under international law, a successor state (or a new state) must grant citizenship to all habitual residents of the territory, and it cannot arbitrarily withhold citizenship or denationalise any segment of the population habitually residing on the territory ("arbitrary" is defined on the basis of race, sex, ethnicity or religion). If Palestine were to be consistent with international law, it may be required to confer citizenship on Israeli settlers, if they are considered "habitual residents of the territory" - this, however, is highly ambiguous when settlers already have Israeli citizenship, and the uncertainty of whether prolonged occupation and settler implantation can "ripen" into habitual residence.

The citizenship/nationality question also has a significant bearing on the refugee issue, as I will discuss further.

***ML:** Let's look at some of the key Israeli objections to the right of return. First, Israelis argue that there is in fact no "right" of return because: 1) UN General Assembly Resolution 194 is non-binding since it's only a GA and not a Security Council Resolution, and 2), the language of the resolution itself merely states that Palestinians "should be" allowed to return, rather than what they argue is the more forcible and legally binding "shall be" allowed to return. Indeed, the phrase "right of return" was, according to the documentary record, removed from an earlier draft of 194 - precisely because the GA would not pass a resolution with that language. In trying to counteract this claim, an article by Salman Abu Sitta argues that UNGAR 194 "has been affirmed by the international community 135 times in the period 1948-2000. There is nothing like it in UN history. This universal consensus elevates the weight of this resolution from a 'recommendation' to an expression of the determined will of the international community". But*

this language doesn't actually challenge the argument that it's non-binding. "Determined will" is not the same thing as international law, is it?

IJG: Israeli arguments of the above kind are flawed mainly because the right of return is not some "special right" claimed by Palestinians, but rather a universally recognised human right of all persons, irrespective of the reason why they have left their country. The right of return is not created by this or that UN resolution, but enshrined in numerous bodies of international law, including customary and treaty law. For refugees, who are persons who left their country involuntarily, this right is so widely respected and recognised as key to resolving refugee situations, that it is hardly ever questioned. Israeli efforts to argue that Palestinians are different have, therefore, no basis in international law. The language of UN General Assembly Resolution 194 and the more than 100 UN resolutions which affirm the right to return of Palestinian refugees, including UN Security Council Resolution 237 of 1967 which affirms this right for the 1967 Palestinian refugees, must be understood in this context. The real problem is the lack of political will of powerful UN member states to enforce Israel's respect of the right of return of Palestinians. Israel has used this kind of flawed argument in order to deflect debate about its own legal responsibility towards the Palestinian refugees.

SA: Argument one misconstrues the significance of General Assembly versus Security Council resolutions. The binding nature of any resolution from the UN depends, not on whether it is issued by the GA or the SC, but whether it rests on existing international law. The difference between GA and SC resolutions is a matter of the way powers are allocated within the UN organs. Only the SC can "enforce" a resolution through the use of armed intervention - the GA has no such power. That has nothing to do with the binding nature of international law, however, and if a GA resolution rests on binding principles of law, then whether those are enforced or not through the UN is a political, not a legal, issue.

Customary law

"Palestinian refugees have an absolute right to return to their original places of origin and obtain full restitution."

- Susan Akram

Resolution 194 incorporated what was already customary international law in 1948, and has become an even stronger set of principles through widespread state practice to the present. Paragraph 11 of UNGA resolution 194 means that Palestinian refugees must be permitted to return to their precise homes and lands if they so choose. This is obligatory because only the return to one's place of origin is required of a state, since no state is obliged to absorb or resettle a refugee in a place not of his origin. That was law in 1948, and remains the state of the law today. Paragraph 11's requirements that Palestinian refugees have an absolute right to return to their original places of origin and obtain full restitution and compensation for properties taken or destroyed, were all binding legal principles at the time the resolution was drafted, and were

meant to preclude political solutions that did not meet these legally required criteria for Palestinian refugees.

It is curious that states such as the United States now challenge the 'legality' of resolution 194. When the original draft of paragraph 11 was submitted to the General Assembly, the United States delegate confirmed that no new rights were being created. He commented that 194, paragraph 11, "endorsed a generally recognised principle and provided a means for implementing that principle".

Quite aside from 194 being a specific source of the right of return for Palestinian refugees, the right of return in general represents a complex interrelated set of rights grounded in distinct bodies of treaty and customary international law. The right of return is found in the major treaties and rules protecting individuals and groups in times of armed conflict under humanitarian law and the laws of war; it is found in treaties and principles governing issues of nationality and state succession; and it is found in the core human rights conventions governing state obligations in both war and peacetime, particularly in refugee provisions.

State practice

Since 1948, the evidence is overwhelming that the right of return for refugees - as an aspect of nationality, humanitarian, human rights and, specifically, refugee law - has become one of the strongest of existing state obligations. The widespread incorporation of the principle in international treaties and regional instruments has been reinforced by incorporation in peace agreements and state practice in virtually every part of the globe. State practice reflects this in the millions of refugees that have returned to their countries and homes of origin on the basis of bilateral and tripartite agreements involving both states and specialised agencies such the Office of the UN High Commissioner for Refugees, without states questioning their right to do so.

As for Argument two, this is inaccurate. Resolution 194 requires that refugees be allowed to return immediately as a matter of right, and without preconditioning such return on a general peace agreement or other criteria. Earlier proposed language intended to weaken, rather than strengthen, the notion of absolute right to return, was rejected by the drafters. This is apparent in the drafting history, in which amendments to make return contingent, for example, on the signing of a comprehensive peace agreement, were rejected.

The UN Secretariat, answering the question: "What is the meaning of the term 'at the earliest practicable date?'" reviewed the record of UN proceedings. The proceedings reflect that the UK draft resolution included the word "possible" rather than "practicable". The Guatemalan delegation proposed the phrase "after the proclamation of peace between the contending parties in Palestine, including the Arab States..." In opposing this amendment, the UK delegate and the US delegates stated that proclamation of peace should not be prerequisites to the refugees' right to return, as their return must be immediate and obligatory. As the US delegate stated: "these unfortunate people should not be made pawns in the negotiations for a final settlement". The word, "practicable" was substituted for "possible", and the Guatemalan amendment watering down the absolute and immediate right to return was rejected by 37 votes to 7. The UN

Secretariat concluded that there could be no doubt that once the Armistice agreements were signed, the conditions of stability required the return of the refugees.



Population transfer has happened before, but almost all such forced migrations have been regarded as illegal [EPA]

***ML:** Another objection is that the international humanitarian law, such as the fourth Geneva Convention or the Universal Declaration of Human Rights, which recognise the right of people fleeing war to return to their homes after cessation of hostilities, were enacted after 1948 and referred to "international conflict" rather than intercommunal/civil war, and therefore do not cover Palestinian refugees from that war. Can a Palestinian be considered "denationalised" or possessing the right to return to "his own country" when he or she was not living in a recognised state in 1948?*

IJG: Palestinian refugees can be considered to be "denationalised" and possessing the right to return to their "own country" because they held the citizenship of Palestine under the British Mandate. They were citizens of their country, and their country was to be led to independence by the British, in line with the mandate of the League of Nations. Israel is the "successor state" in part of British Mandate Palestine, and under international law governing state succession, Israel is obliged to permit return and grant citizenship to all Palestinians who had lived there previously and to respect their right to their property.

'Israel's ethnic cleansing'

Moreover, although drafting and enacting the fourth Geneva Convention and the Universal Declaration of Human Rights coincided with Israel's ethnic cleansing of Palestine, a strong legal argument can be made for the applicability of their provisions, due to Israel's continuing policy of forcible displacement of Palestinians, and because all wars in Palestine since 1948, including Israel's occupation since 1967, are recognised as international armed conflicts by the United Nations. The drafting history of the Universal Declaration of Human Rights, moreover, indicates that the language on "the right to leave and to return to one's country" was adopted because the drafters were conscious of the coinciding tragedy in Palestine.

SA: These are actually separate arguments: 1) whether the Fourth Geneva Convention (GC IV) applies to Israel's occupation of Palestinian territory (on several grounds); 2) whether Palestinians were ever "nationals" of "Palestine" for purposes of their citizenship/nationality status for application of the right of return. As to the first, Israel and a few Israeli academics have argued that GCIV is not applicable to the West Bank, East Jerusalem or Gaza because these were not territories under the sovereignty of any state, hence when they were captured by Israel, they were not captured from a recognised sovereign. They thus did not fall under GC IV provisions and should not be considered occupied territories.

This view has never been accepted by legal consensus and was firmly rejected by the International Court of Justice in its 2004 Advisory Opinion on the Wall. The High Contracting Parties to GC IV in December 2001 reaffirmed their position on this, stating that they "have always affirmed the ... applicability of the Fourth Geneva Convention to the territories occupied since 1967 by the state of Israel, including East Jerusalem".

"The law of state succession required that all persons who are habitual residents of a territory be granted citizenship/nationality in a successor state."

- Susan Akram

As to the second, this relates to the interpretation of two provisions, Art. 13(2) of the UDHR and Art. 12(4) of the International Convention on Civil and Political Rights (ICCPR), which states that everyone has the right to return to "his own country". But the drafting history of these provisions shows that the phrase "one's country" was chosen precisely to include those persons who are not nationals of that country *de jure* but fit the established criteria of the "genuine link" that, by that time, was the criteria for determining "nationality" under the *Nottebohm* case. The phrase "the country of which one is a national" was specifically rejected in favour of the phrase "one's own country" for that very reason.

As noted above, the law of state succession required that all persons who are habitual residents of a territory be granted citizenship/nationality in a successor state, and that such successor state could not legally "denationalise" such habitual residents on arbitrary grounds. These principles have been incorporated into treaties to which Israel is a party, including the ICCPR and the Convention on the Elimination of Racial Discrimination (CERD).

***ML:** Israelis also argue, based on the 1952-67 UN Convention on Refugees, that the internationally accepted definition of a refugee does not include their descendents - or to refugees who have taken on another nationality (eg, Jordanian, British, or Canadian). Is this true?*

IJG: The notion that the 1951 Refugee Convention and its 1967 Protocol do not cover the descendants of refugees has no basis in these instruments and international law in general. In fact, UNHCR as the responsible agency, treats all descendants of refugees as refugees, until they

have obtained voluntary durable solutions, including revolutionary repatriation (return), integration in host countries and resettlement in third countries.

Different refugees

SA: In addition to this, Palestinian refugees have a different status under international law than other refugees, by reason of their distinct definitions in the relevant treaties, resolutions and agency mandates. The first definition is that incorporated into UNGA resolution 194, which defines the population for whom the UNCCP was given responsibility and the obligation to find durable solutions. This is the definition incorporated into the "Palestinian clause" of the Refugee Convention, Article 1D, and which applies to the global population of Palestinian refugees, no matter where they were located. This definition is linked to paragraph 11 of resolution 194, which requires the durable solution of return, restitution and compensation, and maintains refugee status (regardless of generation) until that solution is accomplished. This definition is also incorporated into the second definition, meeting UNRWA's eligibility guidelines.

UNRWA's definitions of "refugee" and "displaced persons", but with the additional criteria of "need", that applies to the approximately 5 million UNRWA-registered refugees. This needs-based definition is also not generationally linked, but continues as long as the person remains a 194-defined refugee, who is in need of assistance. Because of the unique character of Palestinian refugees under international law, there is no generation-limitation to the status.

***ML:** They also argue, variously, that the right of refugees to return to their homes is an individual right, not a collective right. Moreover, the example of large scale population exchanges - Poland and the Soviet Union after World War II, India and Pakistan after Partition, Greece and Turkey after World War I - point to the international legitimacy of forcibly transferring people outside a new state, in order to ensure demographic coherence of that new state.*

SA: As to your first point, in all of the provisions in which aspects of the right of return are found, no distinction is made between its applicability to individuals or groups.

As to your second point, although transfers of populations have taken place historically, they have been almost universally considered illegal under modern principles of international law. A concise statement of the state of the law on this issue is that of the UN Special Rapporteur on the Prevention of Discrimination and Protection of Minorities: "International law prohibits the transfer of persons, including the implantation of settlers, as a general principle."

The governing principle is that the transfer of populations must be done with the consent of the population involved - because [these transfers are] subject to consent, this principle reinforces the prohibition against such transfer. Aside from the historical-factual question of whether there ever was a "population exchange", any prior justification for population exchanges involving coerced movement of peoples was put to rest by the entry into force of the International Military Tribunal which established the Nuremberg Tribunal, and the Fourth Geneva Convention. These established forced movement of populations as a "grave breach" [of law]. Since then, the International Criminal Court has classified forced population transfers as a war crime.

