

# REFUGEES FIRST: A NEW APPROACH TO MIDDLE EAST PEACE

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Cover photo: Salim Abu Amra, 80, displays a large key to mark Palestinian Land Day at the Rafah refugee camp in southern Gaza on March 29, 2022. [Photo by Khaled Omar/Xinhua via Getty Images.](#)



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# EXECUTIVE SUMMARY

## Executive Summary

- The Palestinian refugee issue has not been treated with the urgency it deserves in past negotiations.
- Palestinian refugees are actively involved in the conflict and can no longer be ignored or negotiated away.
- Assessing past negotiations and proposals reveals a tendency by all stakeholders to sideline the Palestinian refugee question.
- A refugees-first framework could produce tangible solutions for Palestinian refugees and for the conflict at large.

## Policy Recommendations

- Flip the traditional peace process on its head and start with the most difficult issues first, including the Palestinian refugee issue.
- Implementation of solutions for Palestinian refugees is just as important as approaching the issue from the refugees-first framework.

# Introduction

According to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), there are approximately 6.3 million registered Palestinian refugees<sup>1</sup> across the Arab world. The majority of these refugees<sup>2</sup> are the descendants of the 750,000 Palestinians who were displaced between 1947 and 1949 over the course of Israel's creation, an event known among Palestinians as the *Nakba* or "catastrophe."<sup>3</sup> According to United Nations General Assembly Resolution (UNGAR) 194, adopted in December 1948, "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 equity, should be made good by the Governments or authorities responsible." Early attempts to find a solution to the refugee problem at the Lausanne Conference of 1949 ended in failure, largely due to Israel's refusal to consider any meaningful repatriation of Palestinian refugees.<sup>4</sup> In December 1949, the U.N. General Assembly established UNRWA to provide relief for Palestinian refugees resulting from the 1948 conflict until a political settlement could be reached.<sup>5</sup> The June 1967 Arab-Israeli war subsequently resulted in the displacement of an additional 300,000 Palestinians, who also became refugees.

The Palestinian refugee question is ongoing and continues to be relevant to current events in the Arab world, such as the humanitarian catastrophe of Palestinian refugees displaced from Iraq in the aftermath of 2003<sup>6</sup> and Palestinian refugees displaced from Syria in 2011.<sup>7</sup> The refugee question also

remains central to Palestinian national identity and grievances, evidenced by the fact that even today, Palestinian refugee communities continue to be at the forefront of resistance to Israeli occupation. This is most notably the case in the Gaza Strip, where the majority of the population are refugees, and resistance includes armed confrontation of Israel by groups such as Hamas and Islamic Jihad as well as non-violent movements such as the 2018 Great March of Return. In the Jerusalem neighborhood of Sheikh Jarrah, the Palestinian families who drew global attention to Israeli settlement plans for their neighborhood are descendants of Palestinian refugees of the 1948 war. Even the Boycott, Divestment, and Sanctions Movement launched by Palestinian civil society in 2005 explicitly calls for "respecting, protecting and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN resolution 194."

Despite the continued presence of Palestinian refugees as stakeholders actively partaking in the Palestinian struggle for self-determination, the refugee issue has been seriously underappreciated by American and Israeli policymakers since the introduction of the issue in negotiations beginning in 1991. Even the Palestine Liberation Organization (PLO), the sole official representative of the refugees in the political arena, has, to varying degrees, tended to deprioritize the refugee issue in the negotiating process in its bid to secure an independent Palestinian state in the West Bank and Gaza Strip.

This paper aims to evaluate past proposals on the refugee question and promote a new *refugee-first* framework, based on three major principles. The first principle is an Israeli acknowledgement of responsibility for its role in creating the Palestinian refugee issue. The second principle is an acknowledgement by relevant parties (Israel, the United States, and the PLO) of Palestinian refugee rights in accordance with international law. The third principle is to prioritize the refugee issue in negotiations, tackling it before all other final status issues, not because it is more important, but because it has been delayed for long enough and these delays have had material humanitarian impacts on the growing Palestinian refugee population. The introduction of these principles as a framework for future negotiations could produce elements for a negotiating process that will remedy the failures of past proposals.

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1. *UNRWA In Figures* (Amman: UNRWA, 2020).

2. Palestine refugees are defined as "persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict." (Amman: UNRWA, 2022).

3. Walid Khalidi, *All That Remains: The Palestinian Villages Occupied and Depopulated by Israel in 1948* (Beirut: Institute for Palestine Studies, 1992); Ilan Pappé, *The Ethnic Cleansing of Palestine* (London: OneWorld Publications, 2006).

4. Khaled Elgindy, *Blind Spot: America and the Palestinians, from Balfour to Trump* (Washington, DC: Brookings Institution Press, 2019), p. 55.

5. In May 1950 UNRWA began its operations, providing direct relief and aid to Palestinian Arab and Jewish refugees.

6. Human Rights Watch, *Palestinian Refugees From Iraq* (New York: Human Rights Watch, 2007).

7. Anne Irfan, *The Exclusion of Palestinian Refugees from Syria* (Oakland: Institute for Palestine Studies, 2021).



Photo above: Palestinians driven from their homes by Israeli forces and fleeing via the sea at Acre, 1948. [Photo by Pictures From History/Universal Images Group via Getty Images.](#)

## Legal Status of Palestinian Refugees

Under international law, Palestinian refugees — like other refugee populations — have a right to return to their homeland, to restitution, and to compensation for damages. The bases for Palestinian refugee rights are found in several legal outlets, including the law of state succession, human rights law, humanitarian law, the law of state responsibility, refugee law, United Nations law, and natural/customary law.<sup>8</sup> Resolution 194 is binding in international law, and along with the Fourth Geneva Convention and Hague Conventions<sup>9</sup> maintains Palestinian refugees' legal right to return to their homeland. According to international refugee law, Palestinian refugees are legally considered refugees

8. Mutaz M. Qafisheh, *Bases for the Palestinian Refugees' Right of Return Under International Law: Beyond General Assembly Resolution 194* (Cambridge; Cambridge International Law Journal, 2012).

9. *Hague Convention (IV) on War on Land and its Annexed Regulations* (Paris; The Hague 1907).

per the 1951 Convention on the Status of Refugees. Article 13(2) of the Universal Declaration of Human Rights and Article 12(4) of the International Covenant on Civil and Political Rights also strengthen the legal basis for Palestinian refugees' right to return and to restitution.<sup>10</sup> Moreover, the right of Palestinian refugees to restitution holds regardless of whether or not they return.<sup>11</sup>

Some critics of Palestinian refugee rights argue that the majority of Palestinian refugees do not have these rights, or that they cannot be applied to the descendants of the 1948 refugees.<sup>12</sup> However, this is based on a misreading

10. Legal definition of restitution is "returning to the proper owner property or the monetary value of loss."

11. *Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the Pinheiro Principles* (Geneva: Office of the High Commissioner on Human Rights, 2007).

12. Nooran Alhamdan, *Palestinian Refugees: Myth Versus Reality* (Washington DC: Middle East Institute, 2021).



of international law and how refugee status is passed on intergenerationally. Under international law, the descendants of refugees hold the same legal rights as the original generation of refugees according to derivative refugee status as practiced by the United Nations High Commissioner on Refugees (UNHCR).<sup>13</sup> In fact, it is standard practice for UNHCR, and international law generally, to classify the descendants of refugees as refugees themselves, as in the cases of refugees from Afghanistan, Burundi, Eritrea, Syria, and others.<sup>14</sup>

## Overview of Policies Toward Palestinian Refugees

### A. Israel

Since 1948, successive Israeli governments have refused to comply with or even acknowledge the legal rights of Palestinian refugees, largely for demographic reasons, insisting instead on their resettlement in neighboring Arab states or elsewhere. As Palestinian historian Nur Masalha writes, “Policies adopted by the Jewish state — land, ethnic and demographic, legal and political, military and diplomatic — have been aimed at reinforcing the power and domination of Israel’s ruling Jewish majority.”<sup>15</sup> During previous negotiating rounds between Israelis and Palestinians, Israel repeatedly rejected UNGAR 194 as a basis for resolving the Palestinian refugee issue. Moreover, Israel has never accepted responsibility for the Palestinian refugee crisis and has been willing to consider compensation claims only in the context of an international fund. To the extent that Israeli negotiators have been willing to consider some form of repatriation, it was limited to a future Palestinian state, with only a minimal number of people returning to Israel proper, if at all. While certain Israeli governments, most notably on the left, have shown some willingness to acknowledge aspects of the Palestinian refugee narrative, such recognition lacked the key element of Israeli responsibility. Israel’s primary motivation in engaging on the refugee issue has been its overall desire to reach an end to claims, including Palestinian refugee claims, but without

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13. Francesca Albanese, *UNRWA and Palestine Refugee Rights: New Assaults, New Challenges* (Beirut: Institute for Palestine Studies, 2018).

14. Ibid.

15. Nur Masalha, “Israeli Refugee Policies During Negotiations: From Madrid to Taba,” in *The Politics of Denial: Israel and the Palestinian Refugee Problem* (London: Pluto Press, 2003), pp. 218.

addressing the legal rights of Palestinian refugees, in exchange for other Palestinian demands regarding statehood.

### B. Palestinians

Palestinian refugees and their rights have been at the forefront of the Palestinian Liberation Movement since its founding in the 1950s and 1960s. Historically, the PLO position has adhered to UNGAR 194, including upholding the refugees’ right of return. The right of Palestinian refugees to return to the whole of historic Palestine was part and parcel of the Palestinian Liberation Movement. However, since joining the peace process, the PLO has been willing to compromise on key elements of the Palestinian refugee question. In signing the 1993 Oslo Declaration of Principles, the PLO agreed to put off discussions on the fate of Palestinian refugees and other highly contentious issues such as the status of Jerusalem, settlements, and borders. In doing so, the PLO agreed to discuss Palestinian refugees in the context of United Nations Security Council Resolutions 242/338 (UNSCR 242/338), which in contrast to the explicit affirmation of the right of return contained in UNGAR 194, called only for a “just settlement of the refugee problem.” Moreover, since the launching of permanent status negotiations in 2000, the PLO has been willing to scale back its demands vis-à-vis refugees in return for meaningful Israeli concessions on Palestinian sovereignty, particularly in Jerusalem.

### C. The United States

The U.S. position on Palestinian refugees has evolved considerably since 1948. From 1948 to 1967, the American position was broadly sympathetic to the plight of Palestinians refugees in humanitarian terms, though not necessarily in political terms. Officially, the U.S. supported UNGAR 194 as well as UNRWA, to which the U.S. became the largest single donor. Yet while the Truman, Eisenhower, and Kennedy administrations each pressed Israel — unsuccessfully — to allow some form of limited repatriation of Palestinian refugees, this advocacy ended with the Johnson administration, whose positions more or less mirrored those of Israel.<sup>16</sup> After 1967, the focus shifted away from the plight of the refugees toward the status of the territories newly occupied by Israel. Despite

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16. Khaled Elgindy, *Blind Spot: America and the Palestinians, from Balfour to Trump* (Washington, DC: Brookings Institution Press, 2019).

rhetorical differences among successive administrations, the official U.S. position on Palestinian refugees remained largely unchanged until 1993, when President Bill Clinton became the first U.S. president to stop affirming UNGAR 194. While the United States remained the largest single donor to UNRWA, the Clinton, Bush II, and Obama administrations focused their energy on attempting to negotiate a two-state solution, while pursuing mostly symbolic formulas for Palestinian refugees. U.S. policy on refugees underwent another major shift following the 2016 presidential election of Donald Trump, who effectively sought to take the refugee issue permanently off the table by eliminating funding to UNRWA and even attempting to define the refugees out of existence.

## Palestinian Refugee Question in Previous Proposals

### Madrid (1991)

The Madrid Conference of 1991 launched a bilateral and multilateral process that brought Israel and the Palestinians (under the rubric of a joint Palestinian-Jordanian delegation) into direct negotiations for the first time. In Madrid, the two sides agreed to postpone negotiations on the final fate of Palestinian refugees, along with other permanent status issues, for at least five years and that negotiations would proceed on the basis of UNSCR 242/338. As a result, little political progress was made on the refugee issue in Madrid; Israel agreed to discuss the refugee issue provided the right of return was not raised. Israel rejected any form of refugee repatriation for Palestinian refugees displaced in 1948 and 1967, instead focusing on limited family reunification for 1967 refugees and the creation of an international fund to compensate and rehabilitate 1948 refugees. In parallel with the bilateral track, Madrid created several multilateral working groups, including the Refugee Working Group (RWG), chaired by Canada. The focus of RWG was to improve daily conditions for Palestinian refugees in camps without prejudice to their rights and future status, to solve the question of family reunification for refugees separated by the events of 1967, and to support the overall process of achieving a viable and comprehensive solution for the refugee issue.<sup>17</sup> While the Palestinians pushed the RWG

to uphold UNGAR 194 and the right of return for Palestinian refugees, Israel's position was for the Palestinian refugee issue to be resolved through the rehabilitation of the refugee camps and projects that improved living conditions of the refugees, while avoiding references to United Nations resolutions.<sup>18</sup> The Israelis became even more averse to the RWG following its eighth and final plenary session, when the Canadian gavel put forward a "vision paper" that explored possible future solutions for Palestinian refugees, including the right of return and settlement in place.

### Oslo (1993-2000)

Like the Madrid process, the Oslo Declaration of Principles (DoP), signed in September 1993, postponed discussions of Palestinian refugees and other contentious permanent status issues until the end of the five-year interim period and adopted UNSCR 242/338 as the basis for negotiations, including regarding refugees. Instead, the Oslo Accords dealt only with "displaced persons" resulting from the 1967 war in the context of family reunification and established a multilateral committee to address the issue. However, unable to agree on a definition of displaced persons, the number of refugees, and other modalities, the committee halted its work in 1997.<sup>19</sup>

The first attempt to deal with the permanent status of refugees took place in Stockholm in May 2000, where negotiations focused on reaching a framework agreement on the core issues of the conflict. Apart from agreeing on the need for a just and humanitarian solution based on international law and the creation of an international committee (made up of Israel, the PLO, Jordan, Syria, Lebanon, Egypt, the United States, Canada, Japan, Russia, Norway, the European Union, and the United Nations) to study the issue, little progress was made. Instead of accepting responsibility for its role in creating the refugee problem, Israel agreed only to recognize the suffering caused by the 1948 war. According to former PLO negotiator Ahmed Qurei (Abu Alaa), the Palestinians had sought agreement on broad principles on the fate of the refugees whereas the Israelis were focused on mechanisms of implementation and procedural details.<sup>20</sup>

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18. Andrew Robinson, *Canada's Credibility as an Actor in the Middle East Peace Process* (Thousand Oaks: SAGE Publications, 2011).

19. Nur Masalha, "Israeli Refugee Policies During Negotiations: From Madrid to Taba" in *The Politics of Denial: Israel and the Palestinian Refugee Problem* (London: Pluto Press, 2003) p. 229.

20. Ahmed Qurei. *Beyond Oslo, the Struggle for Palestine Inside the Middle East Peace Process from Rabin's Death to Camp David* (New York, NY: I.B. Tauris,

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17. Nur Masalha, "Israeli Refugee Policies During Negotiations: From Madrid to Taba" in *The Politics of Denial: Israel and the Palestinian Refugee Problem* (London: Pluto Press, 2003) p. 221.



## Camp David and the Clinton Parameters (2000)

During the two-week summit convened by President Clinton in July 2000, the Palestinian team was able to assert key points regarding the refugee issue to President Clinton, such as the right of return, a timetable for returning refugees, and the need for a compensation mechanism.<sup>21</sup> The Israeli position was far less comprehensive, with former Israeli Prime Minister Ehud Barak asserting (in his peace package to the Palestinians) the option of return for refugees to a State of Palestine (but not to Israel) and a massive international aid program that Israel would contribute to in order to facilitate the rehabilitation of Palestinian refugees.<sup>22</sup> While Israeli negotiators refused to recognize Israel's part in creating the Palestinian refugee problem, the Israelis agreed to accept 100,000 Palestinian refugees in the context of family reunification.<sup>23</sup> <sup>24</sup> The Camp David talks ultimately fell apart on the broader issues of Jerusalem and sovereignty.<sup>25</sup>

Talks continued, on and off, over the next several months, even as the violence of the Second Intifada raged on the ground. In December 2000, Clinton attempted to engage both sides again by putting forward a bridging proposal that outlined solutions for each of the permanent status issues. The proposal, known as the Clinton Parameters, sidestepped the questions of recognition and responsibility while stipulating a right of return only to a future Palestinian state with a limited number of refugees returning to Israel, along with rehabilitation (i.e., resettlement) in host countries or other third-party countries.<sup>26</sup> The proposal also mentioned the creation of an international commission to implement compensation and resettlement, and concluded that the parties would agree that

the implementation of one of the two alternatives outlined by Clinton would be an implementation of UNGAR 194.<sup>27</sup> Both the Israelis and the Palestinians accepted the Clinton Parameters with reservations.

## Taba (2001)

Negotiations continued following Clinton's departure from office in late January 2002, but this time without American participation. Although ultimately unsuccessful, these negotiations produced a minor breakthrough on the question of Palestinian refugees. Israeli Minister of Justice Yossi Beilin presented a non-paper that became the basis of negotiations at Taba. The non-paper retained some former Israeli positions from past negotiations, such as limited repatriation of refugees to Israel along with rehabilitation in host countries and voluntary relocation to third-party countries, though it also broke with previous Israeli precedent, for example, by recognizing the suffering of Palestinian refugees. Though it stopped short of accepting Israeli responsibility, the Israeli proposal stipulated that, the "State of Israel solemnly expresses its sorrow for the tragedy of the Palestinian refugees, their suffering and losses, and will be an active partner in ending this terrible chapter that was opened 53 years ago, [and] contributing its part to the attainment of a comprehensive and fair solution to the Palestinian refugee problem."<sup>28</sup> In addition, the Israeli delegation, for the first time, agreed to take UNGAR 194 as a basis for negotiations on the refugee issue. The Israeli non-paper also supported the creation of an international fund that would compensate Palestinian refugees, to be funded by the international community and Israel, and called for the creation of an international commission to oversee its implementation.

## Geneva Accord (2003)

The Geneva talks were unofficial "track II" negotiations involving mostly left-leaning former Israeli politicians, at the time part of the opposition following the victory of Israeli Prime Minister Ariel Sharon and his Likud party in 2001, and a group of Palestinian negotiators who were sanctioned by the PLO.<sup>29</sup> Although the talks, headed by PLO Executive Committee

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2008), pp. 120-21.

21. Nur Masalha, "Israeli Refugee Policies During Negotiations: From Madrid to Taba" in *The Politics of Denial: Israel and the Palestinian Refugee Problem* (London: Pluto Press, 2003) p. 236.

22. Raphael Cohen-Almagor, *The Failed Israeli-Palestinian Peace Process: An Israeli Perspective* (Oxfordshire: Israel Affairs, 2012).

23. Akram Hanieh, *The Camp David Papers* (Oakland: University of California Press, 2001) p. 75-97.

24. Jane Perlez, *Clinton Delays Trip to Remain at Peace Talks* (New York: New York Times, 2000).

25. Hussien Agha and Robert Malley, *Camp David: A Tragedy of Errors* (London: The Guardian, 2001).

26. International Crisis Group, "Appendix C: The Clinton Parameters" in *Bringing Back the Palestinian Refugee Question* (Brussels: International Crisis Group, 2014) p.36-38.

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27. Ibid.

28. *The Beilin 'non-Paper' on Palestinian Refugees* (Taba: Haaretz, 2002).

29. Rex Brynen, *The Geneva Accord and the Refugee Issue* (Montreal: McGill

member Yasser Abed Rabbo and former Israeli Justice Minister Beilin, were not reflective of the Israeli government at the time, they did provide an accurate measure of where the Palestinian leadership stood on permanent status issues.<sup>30</sup> On the issue of refugees, the two sides agreed to the following:

1. The basis of refugee discussions being UNGAR 194, UNSCR 242, and the Arab Peace Initiative of April 2002.<sup>31</sup>
2. The creation of an international compensation fund for Palestinian refugees.
3. The phasing out of UNRWA and an end of Palestinian refugee claims.
4. The option for Palestinian refugees to be repatriated to a future State of Palestine, the State of Israel, Israeli-swapped territories, or resettlement in third-party countries and absorption within host countries. Specific numbers were not discussed.

While Palestinian leaders welcomed the Geneva Accord, the agreement was heavily criticized by Israeli Prime Minister Sharon, with particular criticism directed at the perceived concessions the accord offered on the Palestinian right of return.<sup>32</sup>

## Annapolis Negotiations (2007-08)

Official negotiations resumed in November 2007 at the Annapolis conference, convened by President George W. Bush, and continued until December 2008. Prior to the conference, conflict between Israelis and Palestinians had raged, culminating in the Second Intifada, which lasted until 2005. During the Annapolis negotiations, Israeli Prime Minister Ehud Olmert and Palestinian President Mahmoud Abbas came to partial agreement on several points related to Palestinian refugees, although rifts between both parties on the refugee issue and other permanent status issues remained deep. While Palestinians continued to insist that Israel accept ultimate responsibility for the Palestinian refugee question, the Israeli

side maintained that the suffering of both peoples should be discussed and that Arab countries played a role in perpetuating the refugee problem.<sup>33</sup> U.S. Secretary of State Condoleezza Rice largely agreed with the Israeli stance, putting the responsibility for the refugees on the international community because, as she put it, “they created Israel.”<sup>34</sup> The Israelis also insisted on a reciprocal approach whereby Palestinians had to recognize the suffering of Jews forced out of Arab countries after 1948, which the Palestinians flatly rejected.

As part of his peace proposal to President Abbas, Prime Minister Olmert offered to absorb 1,000 refugees per year over five years (5,000 refugees total) on a humanitarian and individual basis in return for a Palestinian commitment to end all refugee claims and an end to the conflict. Olmert rejected UNGAR 194 and the right of return as a basis for negotiation, insisting instead on the Arab Peace Initiative of 2002 and the international roadmap, developed by the United States, Russia, the European Union, and the United Nations, which called for convening an international conference leading to a final peace deal.<sup>35</sup> The Palestinians countered with their own set of demands, including recognition of the right of return in accordance with UNGAR 194, the return to Israel of 15,000 Palestinian refugees a year over a period of 10 years (150,000 total), granting refugees citizenship in the State of Palestine, retaining the right to choose both return and compensation, and compensation for third-party host countries.<sup>36</sup> Statements made by the Palestinian leadership throughout the Annapolis process showed that they were prepared to compromise on the right of return for what they deemed to be more realistic and limited approaches. For example, in a meeting with a group of advisors, President Abbas observed that, “It doesn’t make sense to demand that Israel take in five million or even one million refugees — that would mean the end of Israel.”<sup>37</sup> Nevertheless, by the end of the process, both sides agreed on little more than the fact that a solution for the refugee issue would end the conflict and refugee claims, and would result in the dismantling of UNRWA.

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University, 2004).

30. *The Geneva Accord* (Tel Aviv: Economic Cooperation Foundation, 2003).

31. The Saudi-proposed peace plan called for a resolution of the Arab-Israeli and Palestinian-Israeli conflict, normalization of relations between Israel and Arab countries, in exchange for the full Israeli withdrawal of the Golan Heights, West Bank, and the Gaza Strip, along with “just solution to the Palestinian refugee problem to be agreed upon in accordance with U.N. General Assembly Resolution 194.” (<https://ecf.org.il/issues/issue/167>).

32. Rex Brynen, *The Geneva Accord and the Refugee Issue* (Montreal: McGill University, 2004).

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33. Omer Zenany, *The Annapolis Process: Negotiations and its Discontents* (Jerusalem: Molad, 2015) p. 148-155.

34. Ibid.

35. Ibid.

36. Omer Zenany, *The Annapolis Process: Negotiations and its Discontents* (Jerusalem: Molad, 2015) p. 148-155.

37. Ibid.



Photo above: U.S. President George W. Bush (C) speaks during a press conference with Israeli Prime Minister Ehud Olmert (L) and Palestinian President Mahmud Abbas on November 28, 2007 at the White House in Washington, D.C. Photo by MANDEL NGAN/AFP via Getty Images.

## Kerry Negotiations (2013-14)

In July 2013, U.S. Secretary of State John Kerry convinced Israeli and Palestinian leaders to relaunch negotiations. This marked the first time a Likud prime minister, Benjamin Netanyahu, participated in final status negotiations. During the negotiations Israel had insisted on a new demand requiring the Palestinian leadership to formally recognize Israel as a Jewish State, which the Palestinians refused on the grounds that it would seriously compromise refugee rights, as well as the rights of Palestinian citizens of Israel. Although U.S. officials had initially adopted the Israeli demand, Kerry later called the insistence a “mistake.”<sup>38</sup> By early 2014, as it became clear the parties would not reach a comprehensive agreement by the April deadline, the focus shifted to reaching a framework agreement laying out general parameters on the

core permanent status issues, with the Americans taking a more active role in the creation of that framework.<sup>39</sup> Moreover, the talks mostly centered on issues of territory and security, though the process collapsed before taking up the more contentious issues of Jerusalem and refugees.

Despite the lack of movement on the substance of the refugee issue in the negotiations themselves, Kerry laid out the administration’s vision for resolving the refugee question and other core issues of the conflict in a major speech before leaving office. While avoiding mention of Israeli responsibility, Kerry spoke of the “heartbreaking” reality of the refugees whose “suffering must be acknowledged.” “As part of a comprehensive resolution,” Kerry went on, the refugees “must be provided with compensation, their suffering must be acknowledged, and there will be a need to have options and assistance in finding permanent homes,” to which he pledged

38. Gavriel Fiske, *Kerry: ‘Jewish State’ Demand ‘A Mistake’* (Jerusalem: The Times of Israel, 2014).

39. Ilan Goldenberg, *Lessons from the 2013-2014 Israeli-Palestinian Final Status Negotiations*. (Washington DC: Center for a New American Security, 2015).

U.S. and international support. Any solution to the refugee problem, Kerry explained, “must be consistent with two states for two peoples, and cannot affect the fundamental character of Israel,” thereby taking any meaningful return of refugees to Israel off the table.<sup>40</sup>

## Trump Administration (2017-21)

The Trump administration broke with previous American policy and longstanding international consensus on the peace process in several ways. In 2018, the Trump administration cut all U.S. funding to UNRWA, which had averaged over \$300 million annually, as part of its efforts to “disrupt UNRWA” and effectively define Palestinian refugees out of existence.<sup>41</sup> Whereas UNRWA, in keeping with international law and practice,<sup>42</sup> classified Palestinians who fled in 1948 and 1967 and their descendants as refugees, the Trump administration sought to redefine Palestinian refugees as only those who physically fled in 1948 while excluding their descendants, which would reduce the number of refugees from 5 million to fewer than 500,000.<sup>43</sup> Trump’s ambassador to the United Nations, Nikki Haley, declared that the U.S. would only resume support for UNRWA “if it reforms what it does ... if they actually change the number of refugees to an accurate count,” while making clear that the right of return should be “off the table.”<sup>44</sup> By cutting aid to UNRWA, the Trump administration also made clear that it sought to pressure Palestinian leadership to return to the negotiating table, thus breaking with decades of bipartisan consensus that humanitarian aid be based on needs rather than explicit political aims.<sup>45</sup> A spokesman for Palestinian President Abbas called the decision to cut all aid to UNRWA an assault against the Palestinian people.<sup>46</sup>

Trump’s official peace plan of January 2020 continued the assault on Palestinian refugee rights. While it retained some elements of past American positions on refugees, the plan also

marked a significant shift in the American understanding of the Palestinian refugee issue, particularly in its wholesale adoption of the Israeli narrative. For example, the section on refugees opens by equating the Palestinian refugee crisis with that of Jewish refugees from the Arab world, claiming that while Jewish refugees were integrated into Israel, Arab states kept Palestinian refugees in limbo to perpetuate the conflict.<sup>47</sup> The plan proposed three options for a permanent resolution of the Palestinian refugee issue:

1. Absorption into the State of Palestine;
2. Local integration in current host countries (subject to those countries’ consent); or
3. The acceptance of 5,000 refugees each year, for up to 10 years (50,000 total refugees), in individual Organization of Islamic Cooperation member countries that agree to participate in Palestinian refugee resettlement (subject to those individual countries’ agreement).<sup>48</sup>

The plan also calls for the creation of a Palestinian Refugee Trust to deal with refugee compensation claims, with funds raised by the United States,<sup>49</sup> and with its trustees being the United States and the future State of Palestine. Jordan and other unnamed host countries would receive economic benefits for hosting and granting citizenship to Palestinian refugees.<sup>50</sup> The proposal rejects the multi-generational definition of a Palestinian refugee,<sup>51</sup> which is consistent with international legal standards, and states that Palestinian refugees who are already settled in a permanent location would not be eligible for resettlement, only compensation.<sup>52</sup> While the plan was rejected in its entirety by the Palestinians, who dismissed it as “the slap of the century,”<sup>53</sup> it was

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47. *Peace to Prosperity: A Vision to Improve the Lives of the Palestinian and Israeli People* (Washington DC: The White House, 2020), p. 31-33.

48. Ibid.

49. As in the United States will raise funds, presumably from other countries.

50. Ibid.

51. “The reference to the UNRWA definition of refugees is being used solely to define the universe of claimants and to provide the Trustees (as defined below) of the Palestinian Refugee Trust (as defined below) the widest flexibility to determine the appropriate distribution methodology, but should not be construed as acceptance by the United States that, in the absence of the Israeli-Palestinian Peace Agreement, refugee status should be determined by this definition, including on a multi-generational, perpetual manner. UNRWA’s mandate, and its multi-generational definition of who constitutes a refugee, has exacerbated the refugee crisis.” P. 32.

52. Ibid.

53. Nidal al-Mughrabi and Ali Sawafta, *Slap of the Century: Palestinians Reject Trump Mideast Plan* (London: Reuters, 2020). See also Tom O’Connor, *Palestinian President Announces Exit from All Agreements with U.S. and Israel Over ‘Deal of the Century’* (New York City: Newsweek, 2020).

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40. *Remarks on Middle East Peace* (Washington DC: U.S Department of State, 2016).

41. Nooran Alhamdan, *Palestinian Refugees: Myth vs Reality* (Washington DC: Middle East Institute, 2021).

42. See UNHCR’s Derivative Refugee Status and General Principles.

43. Krishnadev Calamur, *The US Is Sidelining Itself in the Middle East* (Washington DC: The Atlantic, 2018).

44. *U.S. Envoy Haley Questions Palestinian Refugee Numbers* (London: Reuters, 2018).

45. Daryl Grisgraber, *The Thousandth Cut: Eliminating US Humanitarian Assistance to Gaza* (Washington DC: Refugees International, 2018).

46. *US Ends Aid to Palestinian Refugee Agency UNRWA* (London: BBC, 2018).



embraced by Israel, with its launch attended by Israeli Prime Minister Netanyahu.

## Assessing Past Proposals

While there were some important moments of progress on the refugee issue throughout past negotiations, there were also moments when the proposals fell short. In terms of progress, the proposals did consistently seek to offer Palestinian refugees a menu of options when it came to solutions. This is important because refugee choice is part and parcel of Palestinian refugee rights. That one of these options was sometimes limited return for a small number of Palestinian refugees is also positive because it acknowledges that return, even if only symbolic, is a key right and can be a solution for Palestinian refugees. The fact that a fund for refugees to seek compensation was also consistent in most proposals is a positive. While it was not being offered in a way that recognized Palestinian refugee rights to reparations, to some degree it was acknowledging that Palestinian refugees have legitimate grievances and that certain cases warranted monetary compensation. The fact that modalities for solutions for refugees were discussed to varying degrees throughout the proposals signified at the bare minimum that implementing solutions for Palestinian refugees rather than just discussing them was important for resolving the conflict. Despite these positive glimmers, however, past proposals still suffered from deficiencies. While a menu of options was offered to Palestinian refugees, often the options were limited in that they excluded full repatriation to large swaths of historic Palestine in what is now considered Israel proper. And while modalities of implementing solutions for Palestinian refugees are important to outline in proposals, all of the past proposals hyper-focused on these modalities while ignoring the bigger picture of Palestinian refugee rights, which are objectively more important for resolving the Palestinian refugee issue. These deficiencies could be remedied easily since the broader elements of refugee choice, compensation, and modes of implementation have already been included in past proposals.

Past proposals were missing more major elements that contributed greatly to their marginalization of the Palestinian refugee issue. The first way the past proposals failed is that they did not acknowledge Israel's responsibility for creating the Palestinian refugee issue and instead skirted

around the issue. Although Palestinian negotiators, to their credit, generally insisted on recognition of the Nakba, the United States and Israel consistently resisted such efforts. Recognizing Israel's role in creating the refugee issue is essential given the centrality of the Palestinian refugee experience to Palestinian national identity and grievances. Finding durable solutions for Palestinian refugees without acknowledging Israel's role in creating them made past proposals come across as insincere and did not tackle the root of the problem. Recognition of Israel's responsibility for creating the refugee issue was also a minimal demand of the Palestinian negotiating team that they were denied by their American and Israeli counterparts, even when they were willing to compromise on Palestinian refugee rights per international law and other key final status issues. This deficiency also translated in negotiators finding third parties to bear the brunt of responsibility in finding humanitarian and political solutions for Palestinian refugees, when that responsibility should be borne by the parties responsible for the refugee crisis: Israel and, to an extent, the United States. This gets at the heart of this deficiency most poignantly and demonstrates why Israel taking responsibility for the Palestinian refugee issue is critical for fairer proposals.

In a similar vein, past proposals tended to sideline international refugee law and the legal rights of Palestinian refugees. All stakeholders, the United States, Israel, and the PLO, are guilty of partaking in this willingness to exclude Palestinian refugee rights from proposals, to varying degrees.<sup>54</sup> The lack of willingness to operate on the basis of the rights of Palestinian refugees to return, to repatriation, and to reparations, essentially made these proposals toothless. In order for durable solutions for Palestinian refugees to materialize and be implemented, they must be grounded in the legal reality that will deliver them their long-awaited rights. This deficiency, along with the final deficiency discussed below, has prolonged the continued displacement of Palestinian refugees, worsening their humanitarian conditions and delaying their ability to live dignified lives.

Finally, one of the most critical failures of past proposals is that a resolution of the Palestinian refugee issue was put off until the very end of the peace process, along with other key Palestinian final status issues such as Jerusalem,

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54. The PLO did consistently emphasize UNGAR 194 but oftentimes nullified this by willing to compromise on the Palestinian right of return.



Photo above: A demonstrator raises a Palestinian flag during a demonstration by Palestinian, Israeli, and foreign activists against Israeli occupation and settlement activity in the Palestinian Territories and east Jerusalem in the Palestinian neighborhood of Sheikh Jarrah on July 30, 2021. [Photo by AHMAD GHARABLI/AFP via Getty Images.](#)

settlements, and borders. What is especially concerning about this deficiency is that the delaying of final status issues has been built into the peace process since Madrid and Oslo; this deficiency is a structural one that has inhibited the ability of stakeholders to find and implement solutions more immediately. Delaying a resolution of the refugee issue indefinitely in this way has both prolonged the suffering of Palestinian refugees and made a comprehensive resolution more difficult to achieve. As mentioned before, Palestinian refugees are active participants in the conflict and will continue to be so as long as their grievances remain unaddressed.

## Refugees First

The deficiencies of past proposals and the repeated failures of the Oslo process make it necessary to pursue an entirely different approach to the conflict. Instead of putting off the

most difficult issues until the end of a seemingly endless negotiating process, the old peace process framework should be flipped on its head by tackling the most difficult issues first, starting with the issue of Palestinian refugees. This “refugees-first” approach operates on three important principles that were actively sidelined in past negotiations. The first principle is Israel accepting responsibility for creating the refugee issue. This principle should be built into a future peace process by means of an official Israeli recognition of the Palestinian Nakba and an apology to the Palestinian people. Skirting responsibility for the refugee issue has enabled Israel to avoid accountability and avoid resolving the conflict. The acceptance of this principle for future proposals is necessary for solutions that are rooted in reality and for meeting a key Palestinian demand that is shared by both Palestinian political leaders and by the refugee constituencies themselves. The acceptance of this principle would also open the door to more meaningful and intentional dialogue between the parties.



The second principle is an acknowledgement of Palestinian refugee rights per UNGAR 194, the 1951 Refugee Convention, the Hague Convention, and other relevant articles such as the law of state succession, human rights law, humanitarian law, the law of state responsibility, refugee law, United Nations law, and natural/customary law.<sup>55</sup> Palestinian refugees' legal rights have been historically sidelined, which has delegitimized past negotiations. Including Palestinian refugee rights in future negotiations will ensure that proposals are based on the objective criteria of international law, rather than arbitrary limits set by Israel and the United States. Acceptance of this principle will have meaningful impacts on the aforementioned deficiencies; the elements of refugee choice as it relates to return and repatriation, refugee compensation, and implementation of durable solutions will be grounded in legal principles that all parties agree to, rather than fluid ideas and assumptions. The acceptance of this principle will also increase the credibility of future proposals and of the peace process more generally. Finally, the acceptance of this principle will ensure the implementation of durable solutions, as the international bodies that have created these legal rights can be involved in the process of implementation. This will be possible by utilizing international law as a foundation in proposals and building in the involvement of international organizations such as the United Nations, the World Bank, and governments into an agreement on modalities of implementation.

The refugees-first framework will not only address deficiencies of past proposals but will introduce new creativity as to how the United States in particular deals with the peace process. For one, tackling the oldest issue in the conflict first could potentially make resolving other final status issues easier. The refugees-first framework could open the eyes of American policymakers to viewing the conflict as one that is not only about land, but about people and their rights, regardless of their geographic location or political status. Indeed, a rights-based approach<sup>56</sup> may be more effective than an insistence on the elusive goal of Palestinian statehood.

The initial displacement of hundreds of thousands of Palestinian refugees from their towns and villages in 1948 is the “original sin” of the Israeli-Palestinian conflict. But

the secondary sin is that a political solution for Palestinian refugees has yet to be found. Durable solutions for refugees require that the Palestinian refugee question be addressed with urgency and honesty. The refugees-first framework will ensure that the Palestinian refugee issue is given attention on the basis of historical reality and international law, and it has the potential to create durable solutions for the refugees themselves and a lasting and just peace.

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55. Francesca Albanese, *UNRWA and Palestinian Refugee Rights: New Assaults, New Challenges* (Washington D.C: Institute for Palestine Studies, 2018).

56. Zaha Hassan et al, *Breaking the Israel-Palestine Status Quo: A Rights-Based Approach* (Washington D.C: Carnegie Endowment for International Peace, 2021).



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