

Initial Remarks Concerning Comments by Sari Nusseibeh on Palestinian Refugee Rights

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BADIL Resource Center
for Palestinian Residency and Refugee Rights

Over the past week, Sari Nusseibeh, president of al-Quds University and recently appointed as Palestinian representative for Jerusalem affairs has made several comments published in the international press regarding Palestinian refugees. The comments are inconsistent with international law, including principles of non-discrimination, and do not reflect the Palestinian national consensus. Below is a brief analysis of these comments. The quoted excerpts are lettered (i.e., “a”, “b”) for quick reference.

Excerpts from the Press (17-23 October 2001)

1. Excerpts from a speech delivered at Hebrew University, 15 October 2001, Quoted in Joel Greenberg, “Palestinian Offers Idea: Get Israelis on Our Side,” *New York Times* (17 October 2001)

(a) “[Nusseibeh] criticized the Palestinian uprising as hopelessly mired in bloodshed and argued that a peace agreement incorporating a Palestinian state could only be reached if the Palestinians abandoned a longstanding demand for the return of refugees dislocated in war more than 50 years ago to their former homes in Israel.”

(b) “‘The Palestinians have to realize that if we are to reach an agreement on two states, then those two states will have to be one for the Israelis and one for the Palestinians, not one for the Palestinians and the other also for the Palestinians,’ he said.”

2. Excerpts from an interview with Dan Perry, “Palestinians' Jerusalem envoy: insisting on right of return was a key error,” *Associated Press* (23 October 2001)

(c) “Yasser Arafat's new point man in Jerusalem says the Palestinians erred in appearing to insist on the right of millions of refugees to return to Israel - a demand that was a key reason peace talks fell apart.

(d) In an interview with The Associated Press in his commodious, cluttered office, philosophy professor Sari Nusseibeh said Monday the refugees should be resettled in a future Palestinian state, ‘not in a way that would undermine the existence of the state of Israel as a predominantly Jewish state.’

(e) ‘Otherwise what does a two-state solution mean?’ he asked. ‘Maybe there wasn't enough work done at the level of public opinion ... with the Palestinian community, to try to articulate exactly what this really means.’

(f) Nusseibeh's formula seems very close to what President Clinton proposed in the last weeks of his administration - a Palestine on virtually all the lands Israel seized in 1967, including east Jerusalem, and the Palestinians largely forgoing the 'right of return' for almost 4 million refugees and descendants."

Excerpts from *No Trumpets, No Drums. A Two-State Settlement of the Israeli-Palestinian Conflict*, a book co-written by Nusseibeh together with Israeli academic Mark Heller in 1991

(g) "From [the Palestinian] perspective, the issue does not concern just the 1.5 million Palestinians scattered in refugee camps throughout the West Bank, Gaza, and the Arab world; nor even the 2 to 3 million other Palestinians who, while not living in refugee camps still *feel* that they are forcefully being prevented from returning to their homeland." (page 86) [Italics added]

(h) It is "inconceivable that Israel will agree to the return of Palestinians to their original homes or those of their parents, even in the context of a peaceful settlement. To do so would be to undermine the Jewish character of the state – i.e., to contradict Israel's very *raison d'être*."

(i) "A settlement is therefore possible only if the Palestinians can somehow transcend almost completely the central reference point in their national memory and instead focus on replacing a tragic past with a hopeful future." (pages 86-87)

(j) "The Palestinian state must at all times be to Palestinians what Israel is to the Jewish people – namely, a state for them all, wherever they may be." (page 88)

(k) "Most of the 1948 refugees have since died, but if the provisions of the resolution were extended to their descendants as well as to the survivors and their descendants, then its application would automatically mean the de-Judaization of Israel." (page 95)

(l) "It is therefore impossible to implement Resolution 194 *en masse*, and this reality was implicitly recognized by the PNC when it approved the Palestinian Declaration of Independence on November 15, 1988. That declaration is predicated on UN Security Council [the author's incorrectly refer to this as a Security Council resolution, in fact, it is a General Assembly resolution] 181 of 1947, which called for the partition of Palestine into a *Jewish* [sic] and an Arab state, and the acceptance of the former logically precludes the implementation of the 'return' component of Resolution 194." (page 95)

(m) "An international body of assessors can be set up to evaluate private Palestinian properties, as well as public lands and properties that were utilized by Palestinians [...] A possible next step is to balance this value against the cost of resettlement of Palestinians in the new state or elsewhere, and perhaps even the value of Jewish properties in Arab countries which were illegally confiscated by the governments in those countries." (pages 95-96)

Initial Remarks Concerning Nusseibeh's Comments on Palestinian Refugees

1. Nusseibeh's conception of a two-state solution – i.e., a Palestinian state and a Jewish state – violates the basic international norm governing the relations between states, and the relations between a state and its inhabitants – i.e., equality or non-discrimination. This norm is affirmed in the Charter of the United Nations, the Universal Declaration of

Human Rights, and subsequent human rights conventions, including the Covenant on Social, Economic, and Cultural Rights, the Convention on Civil and Political Rights, and the Convention on the Elimination of All Forms of Discrimination.

Nusseibeh's formula for two states effectively advocates a "solution" that is based on systematic state-sanctioned discrimination. The formula discriminates against individual Palestinian refugees who are prevented from exercising their right of return and restitution of property; internally displaced Palestinians who are citizens of Israel but also barred from exercising their right of return and restitution of property; Palestinian citizens of Israel in general who are excluded by virtue of Israel's definition of itself as a "Jewish state"; and, all other "non-Jewish" citizens and residents.

The formula "a Palestinian state for Palestinians and Israel for Israelis" is misleading, because it suggests that there is an Israeli nationality, while in fact Israel continues to define its national character as Jewish and not Israeli. In practice, this formula effectively excludes all Palestinians and other "non-Jews" living in Israel. As noted by the UN Committee on Social, Economic and Cultural Rights, Israel's "excessive emphasis upon the States as a 'Jewish State' encourages discrimination and accords a second class status to [Israel's] non-Jewish citizens." (1998 Concluding Observations of the Committee on Economic, Social and Cultural Rights).

The transformation of Israel into a state of its citizens has been a long-standing demand of the Palestinian anti-discrimination movement in Israel. Until this goal is achieved, support for "Israel as Israeli" will mean support for Israel's ethnically-based displacement, dispossession, discrimination and rights violations. These violations affect some one million Palestinian citizens, including some 250,000 internally displaced, as well as the 1948 externally displaced refugees, who are entitled to return, restitution and Israeli citizenship under international law.

2. Nusseibeh's comments also reflect inaccurate analysis of UN General Assembly resolution 181, commonly referred to as the "Partition Plan." Resolution 181 *recommended* the partition of Palestine into two states, one Jewish and the other Arab. A careful analysis of the resolution reveals that the General Assembly did not intend to create two states based on the Jewish or Arab ethno-national-religious character of each state. Key provisions of Resolution 181 clearly outline the international norm of equality or non-discrimination that was to govern the relation between each state and its citizens or residents.

Part I, Section B (Steps Preparatory to Independence), Article 10(d) states that:

"The Constituent Assembly of each State shall draft a democratic constitution for its State and choose a provisional government to succeed the Provisional Council of Government appointed by the Commission. The constitutions of the States shall embody chapters 1 and 2 of the Declaration provided for in section C below and include *inter alia* provisions for:

(d) Guaranteeing to all persons equal and non-discriminatory rights in civil, political, economic and religious matters and the enjoyment of human rights and fundamental freedoms, including freedom of religion, language, speech and publication, education, assembly and association;”

Part I, Section C (Declaration), Chapter 2 (Religious and Minority Rights) further states:

“1. Freedom of conscience and the free exercise of all forms of worship, subject only to the maintenance of public order and morals, shall be ensured to all.

2. No discrimination of any kind shall be made between the inhabitants on the ground of race, religion, language or sex.

3. All persons within the jurisdiction of the State shall be entitled to equal protection of the laws.

4. The family law and personal status of the various minorities and their religious interests, including endowments, shall be respected.

5. Except as may be required for the maintenance of public order and good government, no measure shall be taken to obstruct or interfere with the enterprise of religious or charitable bodies of all faiths or to discriminate against any representative or member of these bodies on the ground of his religion or nationality.

6. The State shall ensure adequate primary and secondary education for the Arab and Jewish minority, respectively, in its own language and its cultural traditions.

The right of each community to maintain its own schools for the education of its own members in its own language, while conforming to such educational requirements of a general nature as the State may impose, shall not be denied or impaired. Foreign educational establishments shall continue their activity on the basis of their existing rights.

7. No restriction shall be imposed on the free use by any citizen of the State of any language in private intercourse, in commerce, in religion, in the Press or in publications of any kind, or at public meetings.

8. No expropriation of land owned by an Arab in the Jewish State (by a Jew in the Arab State) shall be allowed except for public purposes. In all cases of expropriation full compensation as fixed by the Supreme Court shall be paid previous to dispossession.”

Israel, as a “Jewish state” lacks a formal written constitution and there is no law which protections the right of equality for all of its citizens. The Basic Law: Human Dignity and Freedom (1992) does not enumerate a right of equality; rather, it emphasizes the character of Israel as a Jewish state. The systematic discrimination faced by Palestinians living in Israel (i.e., the “non-Jewish” citizens) in the area of civil, political, economic, social and cultural rights has been duly documented by the UN Committees reviewing Israel’s implementation of the Covenant on Social, Economic, and Cultural Rights, and the Convention on Civil and Political Rights.

Moreover, if one examines the population of the proposed states, particularly the Jewish state, it is clear that the General Assembly did not support the notion of a Jewish state characterized by a clear Jewish demographic majority. Within the proposed Jewish state there would have been basic demographic parity between the Jewish and Palestinian Arab

populations in that territory. If this demographic parity were to be implemented today, it would allow for the return of the 3.8 million refugees registered with UNRWA.

The fact that the PNC recognized a two-state solution in 1988 does not negate the right of return, which is both a collective rights *and* an individual right. As noted by leading human rights organizations such as Amnesty International and Human Rights, state parties cannot extinguish the right of return; it is up to individual refugees to choose whether or not to exercise this right.

3. Nusseibeh's formula is also inconsistent with the rights of Palestinian refugees and internally displaced Palestinians as reaffirmed by various UN human rights committees.

In 1998, the UN Committee on Social, Economic, and Cultural Rights stated:

“11. The Committee notes with grave concern that the Status Law of 1952 authorizes the World Zionist Organization/ Jewish Agency and its subsidiaries including the Jewish National Fund to control most of the land in Israel, since these institutions are chartered to benefit Jews exclusively. Despite the fact that the institutions are chartered under private law, the State of Israel nevertheless has a decisive influence on their policies and thus remains responsible for their activities. A State Party cannot divest itself of its obligations under the Covenant by privatizing governmental functions. The Committee takes the view that large-scale and systematic confiscation of Palestinian land and property by the State and the transfer of that property to these agencies, constitute an institutionalized form of discrimination because these agencies by definition would deny the use of these properties by non-Jews. Thus, these practices constitute a breach of Israel's obligations under the Covenant.

13. The Committee notes with concern that the Law of Return, which permits any Jew from anywhere in the World to immigrate and thereby virtually automatically enjoy residence and obtain citizenship in Israel, discriminates against Palestinians in the diaspora upon whom the Government of Israel has imposed restrictive requirements that make it almost impossible to return to their land of birth.

25. The Committee expresses its concern over the plight of an estimated 200,000 uprooted "present absentees" who are Palestinian Arab citizens of Israel, most of whom were forced to leave their villages during the 1948 war on the understanding that they would be allowed to return after the war by the Government of Israel. Although a few have been given back their property, the vast majority continue to be displaced and dispossessed within the State because their lands were confiscated and not returned to them.

35. The Committee urges the State Party to review the status of its relationship with the World Zionist Organization/ Jewish Agency and its subsidiaries including the Jewish National Fund with a view to remedy problems identified in para 11 above.

36. In order to ensure the respect for article 1(2) of the Covenant and to ensure the equality of treatment and non-discrimination, the Committee strongly recommends a review of re-entry policies for Palestinians who wish to re-establish domicile in their homeland, with a view to bring such policies to a level comparable to the Law of Return as applied to Jews.”

In the same year, the UN Committee on Civil and Political Rights stated:

22. While acknowledging the security concerns that have led to restrictions on movement, the Committee notes with regret the continued impediments posed on movements, which affects mostly Palestinians travelling in and between East Jerusalem, the Gaza Strip and the West Bank,

and which have grave consequences affecting nearly all areas of Palestinian life. The Committee considers this to raise serious issues under article 12. In regard to persons in these areas, the Committee urges Israel to respect the right to freedom of movement provided for under article 12, including the right to return to one's country.

25. The Committee is also concerned that the Israel Lands Administration (ILA), responsible for the management of 93% of land in Israel, includes no Arab members and that while the ILA has leased or transferred land for the development of Jewish towns and settlements, few Arab localities have been established in this way until recent years. The Committee recommends that urgent steps be taken to overcome the considerable inequality and discrimination which remains in regard to land and housing.

Finally, the UN Committee on the Elimination of All Forms of Discrimination stated in 1998:

18. The right of many Palestinians to return and possess their homes in Israel is currently denied. The State Party should give high priority to remedying this situation. Those who cannot re-possess their homes should be entitled to compensation.

In addition, General Recommendation XXII to Article 5 of the Convention on the Elimination of All Forms of Discrimination unambiguously states:

The Committee on the Elimination of Racial Discrimination,

Conscious of the fact that foreign military, non-military and/or ethnic conflicts have resulted in massive flows of refugees and the displacement of persons on the basis of ethnic criteria in many parts of the world,

Considering that the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Racial Discrimination proclaim that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour, descent or national or ethnic origin,

Recalling the 1951 Convention and the 1967 Protocol relating to the status of refugees as the main source of the international system for the protection of refugees in general,

1. Draws the attention of States parties to article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination as well as Committee's General Recommendation XX (48) on article 5, and reiterates that the Convention obliges States parties to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights and freedoms;

2. Emphasizes in this respect that:

(a) All such refugees and displaced persons have the right freely to return to their homes of origin under conditions of safety;

(b) States parties are obliged to ensure that the return of such refugees and displaced persons is voluntary and to observe the principle of non-refoulement and non-expulsion of refugees;

(c) All such refugees and displaced persons have, after their return to their homes of origin, the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void;

(d) All such refugees and displaced persons have, after their return to their homes of origin, the right to participate fully and equally in public affairs at all levels and to have equal access to public services and to receive rehabilitation assistance.

Nusseibeh's comments are also contrary to policy statements by prominent international human rights organizations such as Human Rights Watch and Amnesty International which have all clearly reaffirmed the right of return for Palestinian refugees in the context of international law and based on refugee choice.

4. Finally, Nusseibeh's comments are inconsistent and contrary to the Palestinian national consensus and the Palestinian negotiating team. According to the Palestinian proposal for resolving the refugee issue presented at talks in Taba, Egypt in January 2001:

The Significance of Resolving the Resolving Problem.

1. The Parties recognize that a just resolution of the refugee problem is necessary for achieving a just, comprehensive and lasting peace.

Moral Responsibility.

2. Israel recognizes its moral and legal responsibility for the forced displacement and dispossession of the Palestinian civilian population during the 1948 war and for preventing the refugees from returning to their homes in accordance with United Nations General Assembly Resolution 194.

3. Israel shall bear responsibility for the resolution of the refugee problem.

The Basis for a Settlement of the Refugee Problem.

4. A just settlement of the refugee problem, in accordance with United Nations Security Council Resolution 242, must lead to the implementation of United Nations General Assembly Resolution 194.

Right of Return.

5. a. In accordance with United Nations General Assembly Resolution 194 (III), all refugees who wish to return to their homes in Israel and live at peace with their neighbors have the right to do so. The right of every refugee to return shall be exercised in accordance with the modalities set out in the Agreement.

6. a. A Palestinian refugee is any Palestinian who was prevented from returning to his or her home after November 29, 1947.

b. Without limiting the generality of the term "refugee", a "refugee" in this Agreement shall include a refugee's descendants and spouse.

c. Without limiting the generality of the term "refugee", all registered persons with UNRWA shall be considered refugees in accordance with this Article.

The proposal then proceeds to outline a set of mechanisms to implement the right of return, restitution of property and compensation based on the choice of each individual refugee.

Concluding Remarks

Sari Nusseibeh's formula for a two-state solution, which recognizes a Palestinian state and a Jewish state (i.e., Israel) is inconsistent with international law, reflects an inaccurate interpretation of historical documents, and is contrary to the Palestinian national consensus and the Palestinian negotiating position. The formula advocates two ethno-national-religious states constructed on systematic state-sanctioned discrimination. Nusseibeh's comments beg the questions: 1) Is this formula the basis for a just and durable solution to the Palestinian-Israeli conflict; 2) Would this formula stand up in a court of law; 3) Who does Nusseibeh represent when he advocates this formula; and, 4) Why would an intelligent individual educated at some of most elite institutions of higher education in the world advocate a formula that is so clearly at odds with basic principles of equality and non-discrimination?

Moreover, one must ask why Palestinian refugees and internally displaced persons must "transcend" (i.e., forego), in Nusseibeh's words, their rights in favor of systematic discrimination in the form of two ethno-national-religious states? Should it not be those Jewish Israelis and their supporters who support the idea of a "Jewish state" who must transcend discrimination based on Jewish/Arab identity? As Danny Rabinowitz, an Israeli academic recently wrote in the Israeli daily *Ha'aretz*, "The real danger lies in Israel's obstinate adherence to its ethno-national self-definition as a 'Jewish state.' This spirit is carrying Israeli society and the state as a whole toward a slippery slope at the bottom of which there is an intensification of ethnic oppression - a violent, dark syndrome that has already been termed the 'dark side of democracy.'" (22 October 2001)

Yes, Nusseibeh is correct to state that Palestinians should view Israelis as their allies in the future, but in working towards a just and durable solution to the conflict and explaining the Palestinian position to the Israeli public, this must be done within the context of international law, including the principle of equality and non-discrimination.