

# Book Review

## *Palestinian Refugee Property and the Arab-Israeli Conflict*



Michael R. Fischbach

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and Institute for Palestinian Studies, forthcoming, 2003).

Loss is an inherent feature of the refugee experience. Oftentimes, the problem of refugees is discussed in terms of a loss (or denial) of legal protection by the home country of the individual asylum seeker. But invariably a refugee also has lost his or her place, and frequently the accoutrements of a place, namely, land, housing, and/or personal property. Frequently, such losses by exiles remain unremedied even as they begin new lives elsewhere.

Human displacement, moreover, has been a chronic feature of our world, and it is likely to remain prevalent for the foreseeable future. History shows that among the variety of causes of displacement is conflict associated with state creation. A paradigmatic example is the communal violence that resulted in partition and the creation of two separate states, India and Pakistan, in 1947, which displaced an estimated 14 million people as Muslims in India fled to Pakistan, and Hindus in Pakistan fled to India. More recently, over the past decade, forced migration accompanied the violent breakup of the Socialist Federal Republic of Yugoslavia and conflicts that followed the dramatic implosion of the Soviet Union, as well as the emergence of new states in these regions.

Michael Fischbach in his forthcoming book, *Palestinian Refugee Property and the Arab-Israeli Conflict*, examines a complicated place-based refugee problem in a particular situation of political volatility, the Arab-Israeli conflict. Fischbach begins with a detailed examination of the evolution of legal and administrative measures relating to property issues occasioned by the partition of Palestine in 1947, and the more or less coerced migration of 726,000 Palestinians, about one-half of the entire population. Over the ensuing years, this population of exiles has grown to approximately six million, nearly four million of whom are registered as refugees under the mandate of the United Nations Relief and Works Administration (UNRWA). As this exile community has grown over the course of this protracted conflict, the debates and policy framework concerning the refugee property issue have evolved as well. Positions and policies have mutated as has the underlying conflict.

The starting point for analysis on the refugee property question is United Nations General Assembly Resolution 194 (III), issued on December 11, 1948. This resolution, which established the United Nations Conciliation Commission for Palestine (UNCCP), provides at paragraph 11:

Resolves that the refugees wishing to return to their home 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; Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation....

The ensuing political history of the Arab-Israeli conflict has served to deconstruct this language and exposed a variety of ambiguities. This includes such fundamental questions as: who are the refugees, what is their property, and how should it be valued? There are also a variety of important subsidiary issues, such as: Should payment be made, or accepted, in the nature of "compensation" for property? Should there instead be an international fund to defray the costs of integrating refugees in the states where they are now found, or resettling them elsewhere? Who would pay into this fund? Apart from those who do not return, should payment be made as well to those who do return, including for property loss or damage? Does this include fixtures and movable property in addition to land? Should payment be made to individual claimants or collectively to governments? Should compensation for Jewish land in Arab countries be deducted from compensation for Palestinian refugees, and, if so, what is the value of those "counterclaims"?

All these issues, and others, have been raised at times by one or another of the parties in negotiations over the question, including the United Nations. Fischbach examines these complicated bundles of questions, and places them usefully in the context of the development of Israeli and Arab policies, as well as the policies of other governments and UN activities relating to refugee property. He does this in a highly readable way, giving a sense of person to many of the key policy figures as well as a realistic sense of context to the policy process.

One of the most instructive contributions of the book is an examination of the UNCCP technical program, which began its work in 1952 and reported initially in 1964. The technical program produced the most authoritative statistics to date on the scope and value of Arab property, including as amended by the computerization of the underlying data in 2000. Under this project, the scope of Arab land is calculated at 4,851,613.98 dunums (one dunum equals 1,000 square meters), with a value of 224,815,931 Palestinian pounds (one Palestinian pound in 1948 was the equivalent of U.S. \$4.03). Nevertheless, the fact that the exact scope and value of Palestinian refugee land continues to be debated by both scholars and governments prompted Fischbach to include abstracts of sixteen different studies of the questions in a very useful appendix.

The discussion of the efforts of the UNCCP program is a particularly insightful examination of the limits of taking a technical approach to resolving a broader conflict. Indeed, this is a central conclusion Fischbach draws from his study – that piecemeal approaches will not work in solving this conflict. But advocates for peace should always be mindful of how technical initiatives can sometimes bridge what seems to be an unmanageable chasm of mistrust and hostility. What may not work at one particular time in the history of a conflict, moreover, may work at another point in its life cycle.

The refugee property question was profiled recently in efforts by U.S. President Bill Clinton, who convened an early 2000 summit meeting in Camp David, Maryland, in an audacious bid to resolve the underlying Arab-Israeli conflict. The refugee issue emerged centrally in the course of this latest settlement gambit, and follow-on exchanges in 2001 at Taba in Egypt, and became a deal-breaking question, with Israeli negotiators insisting firmly on alternatives to an unfettered right of return. Palestinian negotiators have long insisted on a categorical right of return, arguing that refugees should be given the maximum feasible choice in terms of where to live in the future.

In an attempt to finesse the issue in these 2000 discussions, a proposal was tabled for the relocation of Palestinians to Israeli territory, which would then be transferred to Palestinian jurisdiction. In addition, the U.S. proposed a financial package in an attempt to break the impasse and help buttress a peace agreement. About \$10 billion of the overall package was to be compensation for Palestinian refugees, an amount considered

by many analysts both unrealistic and, at the same time, too low. The U.S. was also prepared to solicit donations from other countries for refugee compensation in lieu of return to their homes in what is now Israel. Whether these parameters will remain in place or waver over time in the course of subsequent negotiations, as Fischbach recounts has happened in the past, cannot be foretold.

Clearly, the Palestinian refugee issue will be a key aspect of any settlement of the Arab-Israeli conflict. Understanding the technical aspects of refugee arrangements, moreover, will be crucial to the successful implementation of any peace accord. Needless to say, addressing technical implementation issues in detail could provide useful comfort to negotiators during ongoing political discussions.

Michael Fischbach's *Palestinian Refugee Property and the Arab-Israeli Conflict* will be an invaluable resource for those in charge of conducting the predictable tutorial after any settlement of the underlying conflict. Examining implementation options drawn from a variety of other comparative experiences will surely be useful as well. For example, the simplified and quicker procedures for payment of smaller compensation amounts used by the United Nations Compensation Commission to address claims against Iraq for the invasion of Kuwait, and techniques developed to identify property ownership by the Commission for Real Property Claims in Bosnia and Herzegovina, are among recent innovations in international operations which could inform an implementation scheme relating to Palestinian refugee property. Fischbach notes, in fact, that Palestinian representatives visited the Bosnian property commission recently to gain just such comparative insights.

Nor is it too early to begin the inquiry. In a world in which we increasingly have to be prepared to be surprised, we should prepare not only for the worst case scenario, we should be prepared to seize upon unexpected opportunities as well. Yet, as a senior UNWRA official recently told this reviewer in relation to modeling a settlement of the refugee issue, including compensation criteria and mechanisms, "No one is working on this." Fischbach's book will be a helpful resource in the implementation of any settlement of the conflict.

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