

THE PALESTINIAN REFUGEES' RIGHT OF RETURN AS A CONDITIO SINE QUA NON FOR ISRAEL'S UNITED NATIONS MEMBERSHIP: A LEGAL ANALYSIS*

*Filistinli Mültecilerin Geri Dönüş Hakkı, İsrail'in Birleşmiş Milletler Üyeliği
için Conditio sine qua non Olarak: Hukuki Bir Analiz*

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Abstract

The Palestinian Right of Return is a fundamental human right that affirms the entitlement of Palestinian refugees and their descendants—estimated at over seven million people—to return to their original homes and properties from which they were expelled by Zionist militias that later formed the state of Israel. This paper explores the legal foundations of this right, which was first articulated by United Nations mediator Count Folke Bernadotte in June 1948. It is widely recognized as a human right protected under international law and embedded in customary international law. The study also examines Israel's admission to the United Nations, which was pursued shortly after its declaration of independence in May 1948. Following initial rejections, Israel's membership was recommended by the Security Council through Resolution 69 and was explicitly conditioned on its “unreserved acceptance” of the obligations of the UN Charter. General Assembly Resolution 273, which granted Israel membership, specifically referenced Resolutions 181 (the Partition Plan) and 194 (concerning the return of Palestinian refugees). The paper further highlights Israel's ongoing non-compliance with these resolutions and its obligations under the UN Charter. Although Israel formally accepted these obligations during its admission process, its subsequent actions have consistently demonstrated a denial of the Palestinian Right of Return. Finally, the paper analyzes the legal implications of Israel's non-compliance with UN resolutions and considers its impact on the legitimacy of Israel's continued membership in the United Nations.

Keywords: Right of return, Palestinian refugees, Israel UN membership, conditio sine qua non, UN resolution 194, international law

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Özet

Filistinlilerin Geri Dönüş Hakkı, Filistinli mülteciler ve onların yedi milyonu aşkın torunlarının, Siyonist milisler tarafından zorla çıkarıldıkları ve daha sonra İsrail devletini oluşturan topraklara geri dönme hakkını savunan temel bir insan hakkıdır. Bu çalışma, Haziran 1948'de Birleşmiş Milletler arabolucusu Kont Folke Bernadotte tarafından ilk kez dile getirilen bu hakkın hukuki temellerini incelemektedir. Bu hak, uluslararası hukuk tarafından korunan ve örfi hukukta yer alan bir insan hakkı olarak geniş çapta kabul görmektedir. Çalışma ayrıca, İsrail'in Mayıs 1948'teki bağımsızlık ilanından kısa bir süre sonra başvurduğu Birleşmiş Milletler üyeliğini ele almaktadır. İlk reddedilmelerin ardından, İsrail'in üyeliği Güvenlik Konseyi'nin 69 No'lu Kararı ile tavsiye edilmiş ve BM Şartı'ndaki yükümlülükleri "kayıtsız şartsız kabul etmesi" şartına bağlanmıştır. İsrail'in üyeliğini kabul eden Genel Kurul'un 273 No'lu Kararı, özellikle 181 No'lu (Bölünme Planı) ve 194 No'lu (Filistinli mültecilerin geri dönüşü) kararları hatırlatmıştır. Bu çalışma, İsrail'in söz konusu kararlar ve BM Şartı kapsamındaki yükümlülüklerine uymadığını ve bu yükümlülükleri yerine getirmeye istekli olmadığını ortaya koymaktadır. İsrail, üyelik sürecinde bu yükümlülükleri resmi olarak kabul etmiş olsa da, sonraki eylemleri Filistinlilerin geri dönüş hakkını sürekli olarak inkâr ettiğini göstermektedir. Son olarak, çalışmada İsrail'in BM kararlarına uymamasının hukuki sonuçları ve bu durumun İsrail'in BM üyeliğinin meşruiyeti üzerindeki etkisi analiz edilmektedir.

Anahtar Kelimeler: Geri dönüş hakkı, Filistinli mülteciler, conditio sine qua non, İsrail'in BM üyeliği, BM kararı 194, uluslararası hukuk

INTRODUCTION

The issue of whether the Israeli membership in the United Nations was, or continues to be, subject to conditions under international law remains a persistent topic of legal and political discussion. This examination touches on core elements of international legal frameworks, such as the criteria for admitting states into global organizations, the interpretive scope of the UN Charter, and the binding nature of General Assembly decisions. The importance of studying the legality of Israel's membership in the UN comes from its direct connection to the adherence of the UN resolutions, especially UNGA 194 resolution, and the lack of implementation through the historical and ongoing Israeli denial of the Palestinian refugees' right of return. The main objectives of the paper are to understand the legal analysis and background of the conditional membership of Israel in the UN through exploring the legal standards highlighted in the UN Charter for the states' admission to the organization. Moreover, to examine the historical context of the Israeli admission to the UN in 1949 and its linkage to the implementation of the UN resolutions concerning the Palestinian refugees' right of return and study the related legal aspects. The paper aims to distinguish

the formal prerequisites for joining the UN from the continuing responsibilities that apply to all member states within the framework of international law¹.

The UN was Founded in 1945 as the successor to the League of Nations, as highlighted in article 1 of the UN Charter², the United Nations was created with a broader mission to uphold global peace and security, encourage cooperation among countries, and build friendly international relations. The UN's membership principles, highlighted in the UN Charter, reflect a balance between the aim to encourage more states to join the organization and the prerequisites that states should uphold to be accepted as members. In its early years, and due to geopolitical developments after World War II, the admission process to the UN was subject to a more selective approach. This approach changed and shifted to a more flexible and less selective one during the period between 1955 and 1966, reflecting the organization's universal outlook by including more states and involving them in implementing the joint goals of maintaining global peace and security.³ A fundamental tenet of Palestinian identity is the Palestinian Right of Return (PROR), which upholds the right of refugees and their descendants to reclaim their ancestral homes and properties in what is now called Israel and the Palestinian territories. Following the occupation of Palestine in 1947 (Nakba Day)⁴, 78% of historic Palestine was occupied by Zionist militias, and as a result, 750,000 Palestinians became refugees in the neighboring countries, and until today, most of them and their descendants live in the host countries (mainly Syria, Jordan, and Lebanon) in which their ancestors sought asylum in 1948.⁵ Currently, among the 13 million Palestinians worldwide, approximately 8 million are displaced, and around 5.5 million are officially registered as refugees with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) across Syria, Lebanon, and Jordan, as well as the West Bank and Gaza Strip.⁶

Between 1949 and 1956, approximately 3,000 Palestinian refugees were killed while attempting to cross into Palestine from neighboring countries. These fatal incidents were carried out by Unit 101, a specialized Israeli military

¹ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI <<https://www.un.org/en/about-us/un-charter>> accessed 8 October 2025.

² United Nations, Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 1 <<https://www.un.org/en/about-us/un-charter/chapter-1>> accessed 23 September 2025.

³ Thomas Grant, 'Admission to the United Nations, Charter Article 4 and the Rise of Universal Organization' (2010) 21 EJIL 791.

⁴ 'Nakba' (Arabic term meaning 'the catastrophe').

⁵ Francesca P Albanese and Lex Takkenberg, *Palestinian Refugees in International Law* (OUP 2020) 56.

⁶ Ibid.

force commanded by Ariel Sharon.⁷ Over decades, Palestinian refugees have been impacted by a series of political events and developments, beginning with the Oslo Accords (1993–1995), followed by the Arab Spring, the subsequent counterrevolutions across the region, and culminating in the unfavorable policies of the administration of U.S. President Donald Trump. These included cutting financial support to UNRWA⁸, officially recognizing Jerusalem as Israel's capital, and relocating the U.S. embassy from Tel Aviv to Jerusalem.⁹ In recent years, Palestinians have made repeated efforts to draw international attention to the unresolved refugee issue. Notably, in 2011, they organized demonstrations near the borders of Syria and Lebanon with occupied Palestine, demanding their right of return¹⁰. Another major mobilization occurred during the Great March of Return (GMR) in Gaza, where hundreds of thousands peacefully protested near the border fence, calling for their right to return. Throughout the March, which lasted for one year, approximately 30,000 Palestinians were injured, and around 266 were killed by Israeli forces¹¹.

The 1967 Six-Day War, referred to in Arabic as *the Naksa*¹², resulted in the forced displacement of approximately 325,000 Palestinians from the West Bank and Gaza Strip.¹³ Following that, Israel implemented Military Order 58, which bans the return of displaced Palestinians and authorizes the confiscation of their properties.¹⁴ The forcible displacement of Palestinians has increased dramatically, particularly following Israel's aggression on Gaza on October 8, 2023. This resulted in the forcible displacement and transfer of over two million

⁷ 'Majzurat Kafr Qasim, Sittat 'Uqud min al-Faji'a' (Al Jazeera, 29 October 2016) <<https://www.aljazeera.net/encyclopedia/2016/10/29/مجزرة-كفر-قاسم-ستة-عقود-من-الفجيعة>> accessed 23 September 2025.

⁸ The White House, 'Withdrawing the United States from and Ending Funding to Certain United Nations Organizations and Reviewing United States Support to All International Organizations' (4 February 2025) <<https://www.whitehouse.gov/presidential-actions/2025/02/withdrawing-the-united-states-from-and-ending-funding-to-certain-united-nations-organizations-and-reviewing-united-states-support-to-all-international-organizations/>> accessed 23 September 2025.

⁹ US Department of State, 'President Trump's Decision to Recognize Jerusalem as Israel's Capital' (6 December 2017) <<https://2017-2021.state.gov/president-trumps-decision-to-recognize-jerusalem-as-israels-capital/>> accessed 23 September 2025.

¹⁰ Ethan Bronner, 'Israeli Troops Fire as Marchers Breach Borders' *The New York Times* (New York, 15 May 2011) <<https://www.nytimes.com/2011/05/16/world/middleeast/16mideast.html>> accessed 23 September 2025.

¹¹ Hala Fayyad, 'Gaza's Great March of Return Protests Explained' (Al Jazeera, 2024) <<https://aje.io/x8chq>> accessed 23 September 2025.

¹² 'Naksa' (Arabic term meaning 'setback').

¹³ Robert Bowker, *Palestinian Refugees: Mythology, Identity, and the Search for Peace* (Lynne Rienner Publishers 2003) 81.

¹⁴ Francesca P Albanese and Lex Takkenberg, *Palestinian Refugees in International Law* (OUP 2020) 88.

Palestinians, equal to the 90% of Gaza's population.¹⁵ Amnesty, in its report “*you fell like you are subhuman: Israel's genocide against Palestinians in Gaza*”, indicated that 90% of the population of Gaza have been forcibly displaced more than ten times within a year by the Israeli forces.¹⁶

The continuous forcible displacement of Palestinians and the ongoing denial of their right of return by Israel highlight the international community's failure to resolve what has become the longest-standing refugee crisis in modern history. It's necessary from an international law perspective to shed light on Israel's UN membership, which is conditional upon its commitment to uphold UN General Assembly Resolutions 181 and 194. This is essential for achieving a just and lasting resolution to the suffering endured by Palestinian refugees and their descendants over the past 76 years.

I. The Palestinians' right of return in international law

The Palestinian refugee issue is one of the longest-standing and most significant problems on a global scale. As a result of the mass forcible displacement of Palestinians during the year of the Nakba in 1948, hundreds of thousands of them had sought asylum and protection in the neighboring countries, and a major part of them became refugees. This year marks the 77th anniversary of Nakba, with millions of Palestinians and their descendants continuing to be refugees in the host countries. Here, the term “Palestinian refugee” refers to the indigenous people of historic Palestine who were forcibly displaced by Zionist militias between 1947 and the 1948 Nakba, as well as their descendants.¹⁷ It also includes Palestinians displaced during and after the 1967 Six-Day War (Naksa) and those forcibly displaced individually or collectively in the following incident to the present due to Israeli crimes, policies, regulations, or attacks on them and their lands. Since the occupation of Palestine in 1948 until today, Israel has denied Palestinian refugees their right of return, justifying this with reasons such as the small space of the historic Palestine's territories, maintaining the national security, which can only be achieved through a community with a Jewish majority, and challenging the applicability of the international law over the Palestinian refugees and the occupied Palestinian territories.¹⁸ The right of

¹⁵ Al Jazeera Staff, 'Israel Has Turned 70% of Gaza into No-Go Zones, in Maps' (Al Jazeera, 6 May 2025) <<https://www.aljazeera.com/news/2025/5/6/israel-has-turned-70-of-gaza-into-no-go-zones-in-maps>> accessed 23 September 2025.

¹⁶ Amnesty International, “You Feel Like You Are Subhuman”: Israel's Genocide against Palestinians in Gaza' (Report, MDE 15/8668/2024, 5 December 2024) 25 <<https://www.amnesty.org/en/documents/mde15/8668/2024/en/>> accessed 23 September 2025.

¹⁷ Tania Kramer, 'The Controversy of a Palestinian Right of Return to Israel' (2001) 18 Ariz J Int'l & Comp L 979.

¹⁸ Gail J Boling, 'Palestinian Refugees and the Right of Return: An International Law Analysis' (BADIL Resource Center 2001) 1–21.

return has strong foundations and is deeply rooted in customary international law; as a customary rule, it applies to Palestinians and their descendants, who were forcibly displaced during the Nakba in 1948 and subsequent events. The political developments, negotiations, agreements, or the conflicts and their consequences can't affect the Palestinians' inalienable right of return to their homes of origin.¹⁹

The Universal Declaration of Human Rights (UDHR), along with the International Covenant on Civil and Political Rights (ICCPR), together forms the cornerstone of the legal framework supporting the right of return as a codification of customary international law. Article 13(2) of the UDHR states, "*Everyone has the right to leave any country, including his own, and to return to his country*"²⁰. While article 12(4) of ICCPR indicates that: "*No one shall be arbitrarily deprived of the right to enter his own country*".²¹ Palestinians have witnessed shifts in sovereignty over Palestine after the Israeli occupation. Israel has stripped Palestinian refugees of their nationality, making them stateless. Four million of the Palestinian refugees are *de jure* stateless persons.²² However, being stateless doesn't change anything when it comes to the right of return. The ICJ, in its ruling in 1955 in the *Nottebohm* case, stated that a "genuine link", which reflects one's personal and cultural connection to the homeland, is enough to establish the connection between a person and his/her homeland.²³ Obtaining new citizenship after the shift in sovereignty or maintaining the nationality of the country of origin is not required to claim the right of return. Amnesty International supports this interpretation, stating that Palestinians who have a strong connection to their homeland should be allowed to practice their right of return. It states in its policy statement on the Palestinians' right of return the following: "*Palestinians who have genuine links to "Israel" the West Bank, or Gaza Strip, but who are currently living in other host states, may also have genuine links to their host state. This should not diminish or reduce their right*

¹⁹ UNGA Res 3236 (XXIX) (22 November 1974) UN Doc A/RES/3236. <<https://www.un.org/en/ga/documents/resolutions.shtml>> accessed 23 September 2025.

²⁰ United Nations, Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), art 13 <<https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>> accessed 23 September 2025.

²¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 12 <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>> accessed 23 September 2025.

²² Abbas Shibliak, 'Stateless Palestinians' (2009) 32 Forced Migration Review 24 <<https://www.fmreview.org/shibliak-2>> accessed 23 September 2025.

²³ *Nottebohm Case (Liechtenstein v Guatemala) [1955] ICJ Rep 4* <<https://www.icj-cij.org/sites/default/files/case-related/18/018-19550406-JUD-01-00-EN.pdf>> accessed 23 September 2025.

*to return to Israel, the West Bank or Gaza Strip”*²⁴

The Palestinian refugees’ right of return encompasses their descendants who maintain cultural and personal connections to their homelands as highlighted in paragraph 19 from the general comment 27 of the human rights committee, it states: “*the right of a person to enter his or her own country recognizes the existing strong affiliation of a person with that State. The right to enter not only entitles him to return, but to come to his own country for the first time, if he has been born or lived outside his State of nationality. The right to enter their country is of the utmost importance for refugees seeking voluntary repatriation*”.²⁵ This position is supported by Amnesty in the context of displacement, highlighting the right of return for descendants who preserve “*close and enduring connections*” as mentioned by the Human rights committee.²⁶ Although the right of return is often classified as an individual right, it also carries a collective aspect, particularly in the situation of widespread displacement. The forced displacement of Palestinians can be examined individually or collectively.²⁷ Denying a large population the right to exercise this right not only infringes upon individual freedoms but also undermines their shared right to self-determination.²⁸

The right of return has strong foundations in international humanitarian law (IHL). The core instruments of IHL, customary international humanitarian rules, the Hague Regulations of 1907, and the 1949 Geneva Conventions affirm the right of return for displaced individuals once hostilities cease, particularly in the context of protecting civilians during armed conflict. Rule 132 of the customary international humanitarian rules²⁹, and Article 49 of the Fourth Geneva Convention³⁰ emphasize the right of displaced individuals to return. While Article

²⁴ Amnesty International, ‘Israel and the Occupied Territories/Palestinian Authority: The Right to Return: The Case of the Palestinians’ (Report, MDE 15/013/2001, 2001) para 16 <<https://www.amnesty.org/en/wp-content/uploads/2021/06/mde150132001en.pdf>> accessed 23 September 2025.

²⁵ UN Human Rights Committee, ‘Human Rights Committee Begins Discussion of Draft General Comment on Freedom of Movement’ (Press Release, 23 March 1999) <<https://press.un.org/en/1999/19990323.hrct525.html>> accessed 23 September 2025.

²⁶ Amnesty International, ‘Israel and the Occupied Territories/Palestinian Authority: The Right to Return: The Case of the Palestinians’ (Report, MDE 15/013/2001, 2001) para 6 <<https://www.amnesty.org/en/wp-content/uploads/2021/06/mde150132001en.pdf>> accessed 23 September 2025.

²⁷ Susan M Akram, ‘Palestinian Refugee Rights under International Law’ (2002) 31(2) *J Palestine Stud* 36.

²⁸ UNSC Res 237 (14 June 1967) UN Doc S/RES/237 <[https://undocs.org/S/RES/237\(1967\)](https://undocs.org/S/RES/237(1967))> accessed 23 September 2025.

²⁹ International Committee of the Red Cross, *Customary International Humanitarian Law Database, Rule 132: Return of Displaced Persons* <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule132>> accessed 6 October 2025.

³⁰ International Committee of the Red Cross, *Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, art 49* <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-49>> accessed 6 October 2025.

43 of the Hague Regulations (part of the 1907 Hague Convention on the Laws and Customs of War on Land) obligates the occupying power to respect the laws in force in the occupied territory, this obligation includes recognition of the right of return as a fundamental human right³¹. Although Israel is not a state party to the 1907 Hague Regulations, it is a state party to the Fourth Geneva Convention, having ratified it on 6 July 1951³². Israel is obligated to adhere to the Hague Regulations and the Fourth Geneva Convention, as they are part of customary international law³³. The Supreme Court of Israel, represented by Judge J.A. Vitkon in his judgment on the case *HCJ 606/78, HCJ 610/78 – Ayub et al. v. Minister of Defense et al.*, concluded that the 1907 Hague Regulations are customary rules. Therefore, they are applicable to all states, including Israel, regardless of whether they have signed or ratified them. He stated that: “*I am now satisfied that the Hague Convention constitutes part of international customary law based on which claims may submitted to a municipal court.*”³⁴ In its 2004 advisory opinion on the legal implications of the construction of a wall in the occupied Palestinian territories, the ICJ concluded in paragraph 89 that the Hague Regulations are part of customary international law³⁵. Successive Israeli governments have refused to apply the Fourth Geneva Convention to the Occupied Palestinian Territories, arguing that Israel does not consider itself an occupying power. This position is based on the claim that these territories were not under the sovereignty of any state prior to Israeli control and, therefore, cannot be classified as occupied territories. This position was addressed by Israel's representative to the UN during the General Assembly meeting on 26 October 1977³⁶. Israel's narrow interpretation of the Fourth Geneva Convention's applicability to the Occupied Palestinian Territories (OPT) has been disputed by various international organizations. The International Committee of the Red

³¹ International Committee of the Red Cross, *Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907, art 43* <<https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907-regulations-art-43>> accessed 6 October 2025.

³² Human Rights Watch, ‘Israel ratified the Geneva Conventions on July 6, 1951’ (13 April 2001) <<https://www.hrw.org/reports/2001/israel/hebron6-04.htm>> accessed 6 October 2025.

³³ International Committee of the Red Cross, ‘Who is bound by IHL?’ (ICRC, 13 August 2017) <<https://blogs.icrc.org/ilot/2017/08/13/who-is-bound-by-ihl/>> accessed 6 October 2025.

³⁴ *HCJ 606/78, HCJ 610/78 Ayub et al v Minister of Defense et al (15 March 1979) judgment, Supreme Court (sitting as High Court of Justice)* <<https://hamoked.org/Document.aspx?dID=3860>> accessed 6 October 2025.

³⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136* <<https://www.icj-cij.org/sites/default/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>> accessed 6 October 2025.

³⁶ United Nations, *Question of the Observance of the Fourth Geneva Convention of 1949 in Gaza and the West Bank, including Jerusalem, occupied by Israel in June 1967 (UNISPAL)* <<https://www.un.org/unispal/document/auto-insert-200116/>> accessed 6 October 2025.

Cross (ICRC), in its 1973 report³⁷, the International Commission of Jurists on the application of the Fourth Geneva Convention in 1977³⁸, the UN General Assembly in its December 1978 resolution³⁹, the UN Security Council in a consensus statement in 1976⁴⁰, the Commission on Human Rights in its 1979 resolution⁴¹, and the 2023 report of the UN Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories⁴² have all rejected Israel's non-adherence to the Fourth Geneva Convention. This means that the Fourth Geneva Convention is binding on Israel regardless of its position on it or its interpretation of it, which obligates Israel, as an occupying power, to allow Palestinians to exercise their right of return.

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) emphasizes the right of return in Article 5(d)(ii)⁴³. Israel has signed and ratified CERD without making any reservations or conditions on any of its articles, including Article 5(d)(ii)⁴⁴. Moreover, in the opening paragraph of Article 5, CERD calls on State Parties to eliminate racial discrimination in all its forms and to ensure equality before the law for everyone, regardless of race, color, or national or ethnic origin.

³⁷ International Committee of the Red Cross, *Annual Report 1973 (International Review of the Red Cross, September 1974)* 6 <<https://international-review.icrc.org/articles/annual-report-1973>> accessed 6 October 2025.

³⁸ International Commission of Jurists, 'Israeli Settlements in Occupied Territories' (1977) 19 *The Review of the International Commission of Jurists* <<https://www.icj.org/wp-content/uploads/2013/07/ICJ-Review-19-1977-eng.pdf>> accessed 6 October 2025.

³⁹ United Nations General Assembly, *Resolution 33/112: Applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including Jerusalem, and other Arab territories occupied by Israel since 1967* (19 December 1978) UN Doc A/RES/33/112 <<https://docs.un.org/en/A/RES/33/112>> accessed 6 October 2025.

⁴⁰ United Nations Security Council, *Statement by the President of the Security Council* (11 November 1976) UN Doc S/12218 <<https://www.un.org/unispal/document/auto-insert-184855/>> accessed 6 October 2025.

⁴¹ United Nations, *Report of the 35th Session of the Commission on Human Rights*, 12 February–16 March 1979 (1979) UN Doc E/CN.4/1295 <<https://digitallibrary.un.org/record/220210>> accessed 6 October 2025.

⁴² United Nations General Assembly, *Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories* (2023) UN Doc A/78/553 <<https://docs.un.org/en/A/78/553>> accessed 6 October 2025.

⁴³ *International Convention on the Elimination of All Forms of Racial Discrimination* (opened for signature 7 March 1966, entered into force 4 January 1969) 660 UNTS 195, art 5 <<https://treaties.un.org/doc/Publication/UNTS/Volume%20660/volume-660-I-9464-English.pdf>> accessed 7 October 2025.

⁴⁴ Adalah, 'International Convention on the Elimination of All Forms of Racial Discrimination (CERD)' <<https://www.adalah.org/en/content/view/7515>> accessed 7 October 2025.

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In its report from March 1998, CERD highlighted Israel's denial of the Palestinians' right of return, calling on Israel to give high priority to this issue and to compensate those who cannot repossess their homes, stating the following: "*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 repossess their homes should be entitled to compensation.*"⁴⁵

The Convention on the Rights of the Child (CRC), adopted by the United Nations General Assembly on 20 November 1989, in Article 10 supports the right of children and their parents to enter or leave a country for family reunification, which may include returning to their own country⁴⁶. Article 8 of The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) highlights the right of migrant workers and their families to return and remain at their country of origins at any time⁴⁷. The right of return has been emphasized by various UN bodies. The UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities⁴⁸, as well as the UN Commission on Human Rights⁴⁹, have addressed and reaffirmed the right of return and the prohibition of the forcible transfer of populations. In its Resolution 1982/18, the Economic and Social Council raised serious concerns regarding Israel's denial of the Palestinians' right of return, calling upon states and international organizations to support Palestinian refugees in reclaiming this right.⁵⁰ Refugee law gives significant importance to the right of return for all refugees, displaced individuals and stateless persons to their habitual places of residence its core legal instruments: the 1951 Geneva Convention and the 1967 New York Protocol⁵¹. The United Nations High Commissioner for

⁴⁵ UN Committee on the Elimination of Racial Discrimination, *Concluding Observations: Israel, CERD/C/304/Add.45 (30 March 1998)* <<https://www.refworld.org/policy/polrec/cerd/1998/en/11465>> accessed 7 October 2025.

⁴⁶ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>> accessed 8 October 2025.

⁴⁷ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3 <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers>> accessed 8 October 2025.

⁴⁸ United Nations, *Report of the Special Rapporteur on the right to freedom of movement, UN Doc E/CN.4/Sub.2/1997/23 (1997)* para 17 <<https://digitallibrary.un.org/record/190726?ln=en&v=pdf>> accessed 7 October 2025.

⁴⁹ UN Commission on Human Rights, Res 1 A (XXXVI) (13 February 1980); Res 1983/1 (15 February 1983); Res 1984/1 A (20 February 1984) <<https://digitallibrary.un.org>> accessed 7 October 2025.

⁵⁰ United Nations, *Situation of and assistance to Palestinian women and children: Report of the Secretary-General (1982)* <<https://www.un.org/unispal/document/auto-insert-188264/>> accessed 7 October 2025.

⁵¹ UNHCR, *Convention Relating to the Status of Refugees and Protocol Relating to the Status of Refugees (1951 and 1967)* <<https://www.unhcr.org/sites/default/files/2025-02/1951-refugee-convention-1967-protocol.pdf>> accessed 7 October 2025.



Refugees (UNHCR) recognizes the right of return—i.e., voluntary repatriation (VolRep)—as one of the main durable solutions within the framework of the 1951 Convention and the 1967 Protocol. Article 1 of the 1950 UNHCR Statute calls on governments and organizations to cooperate with UNHCR to facilitate the voluntary repatriation of refugees, stating that: “*within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.*”⁵²

The Executive Committee of the High Commissioner’s Programme (ExCom)⁵³, and UNHCR’s former High Commissioner *Sadako Ogata* view voluntary repatriation as the most suitable solution, one that should allow refugees and displaced persons to return to their places of origin in safety and dignity. Israel bears an international legal obligation to implement the provisions of the following conventions by facilitating the exercise of the right of return for Palestinian individuals. This obligation arises from its accession to and ratification of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, as well as the 1954 Convention Relating to the Status of Stateless Persons, which it ratified in 1958.⁵⁴

State practice (*opinio juris*) shows that states consider themselves obligated under customary international law to allow displaced individuals and refugees to exercise their right of return to their habitual place of residence⁵⁵.

The UN Human Rights Committee (HRC) as a body overseeing the implementation of the ICCPR, has dealt in its jurisprudence with cases involving violations of the right to return under ICCPR Article 12(4), prohibiting arbitrary denials of entry to one’s “own country.” Key cases include *Nabil Sayadi and Patricia Vinck v. Belgium* (2008), finding arbitrary travel bans violated Article 12(4)⁵⁶; *Mahmoud Abdul Majid Karaji v. Sweden* (2004), protecting permanent residents’ return rights⁵⁷; and *Bachir El Bouaradi v. Bahrain* (2008), ruling against

⁵² UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, UNGA Res 428(V) (14 December 1950) <<https://www.refworld.org/legal/constinstr/unga/1950/en/72586>> accessed 7 October 2025.

⁵³ Executive Committee of the High Commissioner’s Programme, *Conclusion No. 40 (XXXVI): Voluntary Repatriation* (18 October 1985) <<https://www.refworld.org/policy/exconc/excom/1985/en/41925>> accessed 7 October 2025.

⁵⁴ UNHCR, *Israel | Rights Mapping and Analysis Platform* <<https://rimap.unhcr.org/countries/israel>> accessed 7 October 2025.

⁵⁵ Eric Rosand, ‘The Right to Return under International Law Following Mass Dislocation: The Bosnia Precedent’ (1997) *Michigan Journal of International Law* 1091.

⁵⁶ Nabil Sayadi and Patricia Vinck v Belgium, CCPR/C/94/D/1472/2006 (22 October 2008) UN Doc CCPR/C/94/D/1472/2006 <<https://juris.ohchr.org/Search/Details/1514>> accessed 8 October 2025.

⁵⁷ Mahmoud Abdul Majid Karaji v Sweden, CCPR/C/81/D/1324/2004 (2 August 2004) UN Doc CCPR/C/81/D/1324/2004 <<https://juris.ohchr.org/Search/Details/1394>> accessed 8 October 2025.

politically motivated entry denials⁵⁸. General Comment No. 27 (1999) states that restrictions have to be lawful, proportionate, and non-discriminatory⁵⁹. The HRC jurisprudence shows that states cannot arbitrarily prevent those who have genuine links to their former places of residence from exercising their right of return. The UN Security Council, in its Resolution 1145 (1997), adopted in the context of the conflicts in Bosnia and Croatia, reaffirmed the right of all displaced persons and refugees to return to their homes of origin in the Republic of Croatia⁶⁰. UNSC Resolution 820 (1993) appears to be similar to the issue of Palestinian refugees, as it prohibits the occupation of territories through ethnic cleansing and affirms the right of displaced persons to return to their former homes⁶¹. The situation in Namibia represents a precedent that may be relevant to the case of Palestinian refugees' right of return and Israel's arguments, which link the implementation of UNGA Resolution 194(III) to political reason and peace conditions with neighboring countries. UNSC Resolution 385 (1976) calls on South Africa to allow all Namibians in exile to unconditionally exercise their right of return⁶². The same language was used by UNSC in the context of Georgia and Abkhazia Resolution 1065 (1996) reaffirms that the right of return is independent and cannot be linked to the political status of Abkhazia and Georgia⁶³. In the case of *Sargsyan v. Azerbaijan*, the European Court of Human Rights, in its decision on June 16, 2025, concluded that the denial of the applicant's right to return to his village in Gulistan constituted a breach of Article 8 of the Convention⁶⁴. The International Criminal Tribunal for the former Yugoslavia (ICTY), in the *Prlić* case, concluded that preventing displaced persons from returning to their homes and communities constitutes a crime against humanity, as it is a key factor in establishing the crimes of deportation and forcible transfer⁶⁵. The Pre-Trial Chamber I of the International Criminal Court (ICC), in its decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute," concluded that preventing Rohingya refugees from returning to

⁵⁸ Bachir El Bouaradi v Bahrain, CCPR/C/94/D/1731/2007 (29 October 2008) UN Doc CCPR/C/94/D/1731/2007 <<https://juris.ohchr.org/Search/Details/1537>> accessed 8 October 2025.

⁵⁹ UN Human Rights Committee, General Comment No 27: Article 12 (Freedom of Movement) (2 November 1999) UN Doc CCPR/C/21/Rev.1/Add.9 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev.1%2FAdd.9> accessed 8 October 2025.

⁶⁰ UNSC Res 1145 (1997), UN Doc S/RES/1145 (1997).

⁶¹ UNSC Res 820 (17 April 1993) UN Doc S/RES/820 (1993).

⁶² UNSC Res 1065 (12 July 1996) UN Doc S/RES/1065 (1996).

⁶³ UNSC Res 1065 (12 July 1996) UN Doc S/RES/1065 (1996).

⁶⁴ *Sargsyan v Azerbaijan App no 40167/06 (ECtHR, 16 June 2015)* <<https://hudoc.echr.coe.int/fre?i=001-155662>> accessed 8 October 2025.

⁶⁵ *Prosecutor v Prlić et al Case No IT-04-74-T (ICTY, Trial Chamber, 29 May 2013) vol 1* <<https://www.icty.org/x/cases/prlic/tjug/en/130529-1.pdf>> paras 49, 55 [www.icty.org].

their homes constitutes a crime against humanity⁶⁶. The UN Committee on the Exercise of the Inalienable Rights of the Palestinian People found that Israel committed crimes against humanity through the forcible transfer of Palestinians and the denial of their right of return.⁶⁷ In its 2024 advisory opinion on the legality of the Israeli occupation of the occupied Palestinian territories, the ICJ concluded that Israel is obligated to allow all displaced Palestinians to return to their homes of origin⁶⁸.

II. The UN General Assembly Resolution 194 (III) and the Palestinian refugees' right of return

UN General Assembly Resolution (UNGA) 194 (III) was adopted on December 11, 1948, following the end of the incidents of the Nakba in the same year.⁶⁹ This resolution was inspired by the proposals of UN mediator *Folke Bernadotte*. Bernadotte had first raised the concept of the right of return for Palestinian refugees on June 27, 1948.⁷⁰ In his progress report submitted on September 16, 1948, one day before his assassination⁷¹ Bernadotte explicitly stated that "*the right of Arab refugees to return to their homes in Jewish-controlled territory as soon as possible should be recognized by the United Nations.*"⁷² The UNGA 194 (III) resolution was adopted by a majority of 35 out of 58 UN member states at the time, with 15 countries voting against and 8 abstaining.⁷³ At the time the resolution was adopted, Israel was not yet a member of the United Nations and

⁶⁶ *Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute"* ICC-RoC46(3)-01/18 (ICC, Pre-Trial Chamber I, 6 September 2018) <https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2018_04203.PDF> para 77.

⁶⁷ *United Nations General Assembly Committee on the Exercise of the Inalienable Rights of the Palestinian People, Study on the Legality of the Israeli Occupation of the Occupied Palestinian Territory, Including East Jerusalem* (2023) <<https://www.un.org/unispal/document/ceirpp-legal-study2023/>> p 14.

⁶⁸ International Court of Justice, Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Advisory Opinion) [2024] ICJ Rep, para 270, accessed 8 October 2025.

⁶⁹ UNGA Res 194 (III) (11 December 1948) UN Doc A/RES/194 <<https://www.refworld.org/legal/resolution/unga/1948/en/86836>> accessed 23 September 2025.

⁷⁰ Howard Adelman and Elazar Barkan, *No Return, No Refuge: Rites and Rights in Minority Repatriation* (Columbia University Press 2011) 203.

⁷¹ Folke Bernadotte was assassinated in Jerusalem on 17 September 1948 by members of the Zionist paramilitary militant organization Lehi.

⁷² United Nations, 'The United Nations and the Question of Palestine' (UNISPAL) <<https://unispal.un.org/pdfs/AB14D4AAFC4E1BB985256204004F55FA.pdf>> accessed 23 September 2025.

⁷³ BADIL Resource Center for Palestinian Residency and Refugee Rights, 'Al-Majdal: Palestine's Ongoing Nakba' (Autumn 2008/Winter 2009) Issue 39/40 <https://www.badil.org/phocadownload/Badil_docs/publications/al-majdal-39-40.pdf> accessed 23 September 2025.

objected to some of its provisions.⁷⁴ Resolution 194 also called for the establishment of the United Nations Commission for the Conciliation in Palestine (UNCCP), tasked with facilitating a final settlement, including the resolution of Palestinian refugees' issues.⁷⁵ Article 11 of the 194 UNGA resolution is the cornerstone of the Palestinian refugees' right of return; it states: *"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"*.⁷⁶

Despite the non-binding nature of the UN General Assembly resolutions, Resolution 194 (III) UNGA resolution holds significant legal and political value as it represents the first international instrument that recognizes the right of return for Palestinian refugees.⁷⁷ UN Resolution 194 (III) may contribute to customary international law, as it represents the collective and global recognition of the Palestinian refugee issue. This position is supported by *J. Quigley*, who argues that Resolution 194 reflects customary international law.⁷⁸ The resolution is regularly reaffirmed by the United Nations, calling for Palestinians to exercise their right of return and to receive compensation for the harm and suffering they and their descendants have endured for decades.⁷⁹

The interpretation of UN Resolution 194 (III) has been a point of disagreement among different parties. Initially, Arab states rejected the resolution and voted against It, but by early 1949, they had become some of its strongest supporters⁸⁰.

⁷⁴ Center for Israel Education, 'U.N. General Assembly Resolution 194 on Palestinian Refugees, 1948' (IsraelEd) <<https://israeled.org/un-general-assembly-resolution-194-concerning-palestinian-refugees/>> accessed 23 September 2025.

⁷⁵ UNGA Res 194 (III) (11 December 1948) UN Doc A/RES/194 <<https://www.un.org/unispal/document/auto-insert-184789/>> accessed 23 September 2025.

⁷⁶ Ibid art 11.

⁷⁷ UNGA Res 194 (III) (11 December 1948) UN Doc A/RES/194, 'Establishment of a Conciliation Commission for Palestine' <<https://www.un.org/unispal/document/auto-insert-184789/>> accessed 23 September 2025.

⁷⁸ John Quigley, 'Compensation for Palestinian Refugees: Initial Comments' (Workshop on the Issue of Compensation for Palestinian Refugees, International Development Research Centre, Palestinian Refugee Research Network, Ottawa, 14–15 July 1999) <<https://prrn.mcgill.ca/research/papers/quigley.htm>> accessed 23 September 2025.

⁷⁹ UNGA Res 3236 (XXIX) (22 November 1974) UN Doc A/RES/3236 <<https://digitallibrary.un.org/record/189835>> accessed 23 September 2025.

⁸⁰ United Nations, 'Historical Background of the Question of Palestine in the United Nations: 1947–1975' (Committee on the Exercise of the Inalienable Rights of the Palestinian People, 1978) UN Doc A/AC.183/L.3 <<https://www.un.org/unispal/document/auto-insert-186560/>> accessed 23 September 2025.



Palestinian representatives also rejected it at first, believing it implicitly gives a validation of the existence of Israel, which they viewed as illegitimate⁸¹. They argued that Israel had no authority to deny the return of the native Arab population of Palestine.⁸² Over time, however, the Palestine Liberation Organization (PLO) began to embrace Resolution 194 as a key legal foundation for the right of return.⁸³ The UN, the international community, and Palestinians consider UNGA resolution 194 (III) to be the core instrument in the context of the Palestinian refugee' right of return.⁸⁴

Israel has rejected UN General Assembly Resolution 194 (III), citing reasons such as its non-binding nature, its applicability to individuals rather than groups, and the fact that Palestinian refugees do not hold Israeli nationality.⁸⁵ These claims lack support under international law. The right of refugees to return to their homeland is recognized and affirmed by different international law instruments, including customary international law, nationality law, human rights law, and refugee law⁸⁶. This right is not limited to binding UN resolutions alone. It may be exercised either individually or collectively, regardless of whether the refugees possess citizenship of the successor state.⁸⁷ Many legal scholars and United Nations bodies outlined Resolution 194 (III) as a binding norm, especially due to its repeated reaffirmation and its link to Israel's admission into the UN⁸⁸. This ongoing reaffirmation sheds light on the resolutions' legal weight and global significance within international law. Over 77 years, Israel has consistently denied Palestinian refugees the right to return. Israel's former UN ambassador Gilad Erdan stated in a UN security meeting in 2023 that: "*Let me be clear, there is no right of return. You all know this,*"⁸⁹

⁸¹ Kurt René Radley, 'The Palestinian Refugees: The Right to Return in International Law' (1978) 72 AJIL 586, 600.

⁸² Ibid.

⁸³ Jonathan D Halevi, 'The Palestinian Refugees on the Day After "Independence"' (Jerusalem Center for Public Affairs 2010) 2 <https://jcpa.org/wp-content/uploads/2012/02/palestinian_refugees_after_independence.pdf> accessed 23 September 2025.

⁸⁴ United Nations, 'The Right of Return of the Palestinian People' (UNISPAL, 2008) <<https://www.un.org/unispal/document/auto-insert-210170/>> accessed 23 September 2025.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Samer Hammouri, 'A Forgotten Detail: The Right of Return Was a Condition of the Establishment of the State of Israel' (Opinio Juris, 11 March 2024) <<https://opiniojuris.org/2024/03/11/a-forgotten-detail-the-right-of-return-was-a-condition-of-the-establishment-of-the-state-of-israel/>> accessed 23 September 2025.

⁸⁹ 'Palestinians "Have No Right of Return" Says Israel UN Envoy' (Middle East Monitor, 27 July 2023) <<https://www.middleeastmonitor.com/20230727-palestinians-have-no-right-of-return-says-israel-un-envoy/>> accessed 23 September 2025.

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This ongoing refusal of the return of Palestinians has intensified after *the Al-Aqsa Flood operation* on October 8, with increased forcible displacement of Palestinians, widespread home demolitions in Gaza⁹⁰, land confiscations, and further annexation of territories in the West Bank to be under Israeli control⁹¹. Human Rights Watch has described the current developments as a “*second Nakba*.”⁹² The violations that began with the mass displacement of Palestinians over 75 years ago continue today, as millions of Palestinians and their descendants internally and transboundary remain barred from returning to their homeland.

The Palestinian refugees’ right of return is one of the core issues that must be resolved to achieve a just solution to the Palestinian cause. Without allowing Palestinians to exercise this right, millions of them will remain refugees, stateless and deprived of their fundamental human rights. International law, as represented by the UN, international courts, scholars, NGOs, and the international community, should address the conditional nature of Israel’s UN membership in relation to its adherence to UNGA Resolution 194 (III). This should serve as a legal mechanism to exert pressure on Israel to allow Palestinian refugees to practice their inalienable right of return, in accordance with international law and relevant UN resolutions.

III. Israel’s Admission to the United Nations: Terms and Obligations

After occupying 77% of the territories of historic Palestine by Zionist military militias, Israel proclaimed its independence on May 14, 1948⁹³. The following day, May 15, it submitted its first request to join the United Nations⁹⁴. However, the UN Security Council did not act on this initial application. A second attempt was made on December 17, 1948, but it was rejected as it failed to have the majority of votes (7), 5 voted in favor, 5 abstained, and 1 country opposed

⁹⁰ Amnesty International, “You Feel Like You Are Subhuman”: Israel’s Genocide against Palestinians in Gaza’ (Report, MDE 15/8668/2024, 5 December 2024) <<https://www.amnesty.org/en/documents/mde15/8668/2024/en/>> accessed 23 September 2025.

⁹¹ ‘Israeli Parliament Approves Symbolic Motion on West Bank Annexation’ (Al Jazeera, 23 July 2025) <<https://www.aljazeera.com/news/2025/7/23/israeli-parliament-approves-symbolic-motion-on-west-bank-annexation>> accessed 23 September 2025.

⁹² Human Rights Watch, ‘Hopeless, Starving, and Besieged: Israel’s Forced Displacement of Palestinians in Gaza’ (Report, MDE 15/8668/2024, 14 November 2024) <<https://www.hrw.org/report/2024/11/14/hopeless-starving-and-besieged/israels-forced-displacement-palestinians-gaza>> accessed 23 September 2025.

⁹³ United Nations, ‘History of the United Nations and the Question of Palestine’ (UNISPAL) <<https://www.un.org/unispal/history/>> accessed 23 September 2025.

⁹⁴ UNGA Res 273 (III) (11 May 1949) UN Doc A/RES/273 <<https://www.un.org/unispal/document/auto-insert-189917/>> accessed 23 September 2025.

(Syria).⁹⁵ Israel reapplied for UN membership in 1949. On March 4 of that year, the Security Council adopted Resolution 69, recommending Israel's admission with a vote of 9 in favor, 1 against (Egypt), and 1 abstention (Great Britain). Resolution 69 affirmed that Israel was a peace-loving nation capable and willing to fulfill the responsibilities outlined in the UN Charter.⁹⁶

The final step came on May 11, 1949, when the UN General Assembly approved Israel's membership through Resolution 273, deciding that: "*Israel is a peace-loving State which accepts the obligations contained in the Charter and is able and willing to carry out those obligations*"⁹⁷. The vote was 37 in favor, 12 opposed, and 9 abstentions, meeting the two-thirds majority needed. Those voting against included six of the seven Arab League members at the time (Egypt, Iraq, Lebanon, Saudi Arabia, Syria, and Yemen), along with Afghanistan, Burma, Ethiopia, India, Iran, and Pakistan.⁹⁸ As a result, UNGA Resolution 273 officially accepted Israel as a UN member, citing Israel's clear acceptance of the Charter's obligations and its commitment to uphold them from the moment of membership. In his letter to the UN Secretary-General dated 29 November 1948, the Minister of Foreign Affairs of the Provisional Government of Israel, *Moshe Shertok*, declared the following: "*On behalf of the State of Israel, Moshe Shertok, Minister for Foreign Affairs, being duly authorized by the State Council of Israel, declare that the State of Israel hereby unreservedly accepts the obligations of the United Nations Charter and undertakes to honor them from the day when it becomes a Member of the United Nations.*"⁹⁹ Shertok used the term "*Unreservedly*" in his declaration, which means that his government is willing to comply with UN charter and adhere to the UN resolutions without any conditions or reservations.

The preamble of Resolution 273 also states: "*Recalling its resolutions of 29 November 1947 and 11 December 1948 and taking note of the declarations and explanations made by the representatives of the Government of Israel before*

⁹⁵ Associated Press, 'Council Rejects U.N. Bid by Israel; 5 Nations Abstain—France, Canada Among Them' *The New York Times* (New York, 18 December 1948) <<https://www.nytimes.com/1948/12/18/archives/council-rejects-un-bid-by-israel-5-nations-abstain-france-canada.html>> accessed 23 September 2025.

⁹⁶ UNSC Res 69 (4 March 1949) UN Doc S/RES/69 <<https://digitallibrary.un.org/record/112017>> accessed 23 September 2025.

⁹⁷ United Nations General Assembly. (1949, May 11). *Admission of Israel to membership in the United Nations: Resolution 273 (III)*. United Nations Digital Library. <[https://digitallibrary.un.org/record/210373\[1\]](https://digitallibrary.un.org/record/210373[1])> accessed 8 October 2025.

⁹⁸ United Nations General Assembly. (1949, May 11). *Admission of Israel to membership in the United Nations: Resolution 273 (III)*. United Nations Digital Library, Voting data. <<https://digitallibrary.un.org/record/671023>> accessed 8 October 2025.

⁹⁹ Israel. (1948, November 29). *Israel's application for UN membership – Declaration – Letter from Israel*. United Nations. <<https://www.un.org/unispal/document/auto-insert-211182>> accessed 8 October 2025.

the Ad Hoc Political Committee in respect of the implementation of the said resolutions.”¹⁰⁰ Studying the official records of the forty-seventh meeting of the UN’s Ad Hoc Political Committee on Israel’s admission to the UN on 6 May 1949 shows that allowing Palestinian refugees to exercise their right of return, through the implementation of paragraph 11 of UNGA Resolution 194 (III), was considered a *conditio sine qua non* for granting Israel membership in the United Nations. Several arguments and statements concerning Israel’s admission to the UN were made during the meeting, such as Israel’s adherence to UN resolutions, especially 181 and 194 (III), the criterion of a peace-loving state, and other technical aspects. The answers of the Israeli representative seemed legally inconsistent, ambiguous, and out of context regarding Israel’s commitment to comply with UNGA resolutions on the right of return for Palestinian refugees. Israel’s position on UNGA Resolution 194 (III), concerning the repatriation of Palestinian refugees, was questioned by El Salvador’s representative. The representative of “Israel” responded to the question as follows:

“I can give an unqualified affirmative answer to the second question is whether we shall cooperate with the organs of the United Nations with all the means at our disposal in fulfilling the part of the resolution concerning refugees.”¹⁰¹

The Israeli representative, Mr. Eban, gave an inconsistent statement in his reply to the question of the representative of Denmark on the implementation of Article 11 of the UNGA 194 resolution. He argued that the repatriation of the Palestinian refugees wouldn’t be implementable, as they won’t be able to integrate in the “Israeli community”, stating that : *“The question will always arise will be that of finding work, accommodation and a community in which the refugee can be integrated ... it perhaps even more difficult to resettle the refugee in Israel because it would be more difficult to integrate them into the economic, social and cultural life of the country.”*¹⁰² The representative of Denmark stated that he would understand the statement of the Israeli representative as a refusal to paragraph 11 of the UNGA resolution of 11 December 1948, which says that *“Refugee who might desire to return to their home and live at peace with their neighbors should be permitted to do so.”*¹⁰³ The answer of Mr. Eban (Israel) was legally out of context and in contrast to paragraph 11 of the UNGA resolution 194, he stated that : *“it seems that another method of settling the question would be*

¹⁰⁰ UNGA Resolution 273 (III).

¹⁰¹ United Nations General Assembly. (1949). *Israel’s membership in the UN – Ad Hoc Political Committee – Summary record (A/AC.24/SR.47)*. United Nations. <<https://www.un.org/unispal/document/auto-insert-185978>>. P.276.> accessed 8 October 2025.

¹⁰² Ibid. P.281.

¹⁰³ Ibid. P.282.

*resettlement of the refugees in the neighboring countries.”*¹⁰⁴ The representative of Denmark considered this statement a denial of the individual right (right of return) of the Arab refugees.¹⁰⁵ The response from the Israeli representative was that he was not legally qualified enough to discuss this matter.¹⁰⁶ Ambiguous answers were given by the Israeli representative to the question of the representative of Belgium when he asked: “*if “Israel” were admitted to membership in the UN, it would agree to co-operate subsequently with the General Assembly in settling the question of Jerusalem and the refugee problem*”¹⁰⁷. The response was that his government would cooperate to find a solution to this problem, without clearly referring to allowing Palestinian refugees to exercise their right of return.¹⁰⁸ He elaborated by declaring that his government would contribute to finding a solution to the refugee problem, considering it a moral obligation rather than a legal one.¹⁰⁹ This statement contrasts with the language used by the UNGA in paragraph 11 of Resolution 194, which stated that “*the refugee wishing to return home should be permitted to do so...*”. Even though UNGA resolutions are not legally binding, they have a legal nature that goes beyond being merely moral. Moreover, UNGA Resolution 194 (III) has specifically gained a customary status, as it contains a fundamental human right, there is global consensus on it, and it is annually reaffirmed in UNGA meetings and resolutions.¹¹⁰ Technical aspects and prerequisite terms were raised by the Iraqi representative to the UN, Mr. Al-Swaidy, concerning the question of Israel’s admission to the UN. He argued that the UN’s First Committee should have dealt with the admission instead of the Ad Hoc Political Committee, and he was surprised at how short the timeframe for the admission procedure was, stating that : “*The time to consider the admission of Israel to the United Nations was not yet at hand, indeed many other problems of far greater importance were demanding the attention of the United Nations, a fact for which the state requesting admission to membership was mainly responsible.*”¹¹¹

Mr. Al-Swaidy further argued that Israel’s application for UN membership does not comply with Article 4 of the UN Charter, which requires applicants to be peace-loving states. He elaborated that Israel had done nothing to promote international peace and security; instead, he claimed, it had spread terrorism, committed massacres against Palestinians, and even assassinated the UN

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid. P.283.

¹⁰⁷ Ibid. p.286.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid. P.287.

¹¹⁰ Boling, Palestinian refugees and the right of return, p. 85.

¹¹¹ Israel’s membership in the UN – Ad Hoc Political Committee – Summary record. P.289.

mediator himself. He stated: “*These practices prevented the inhabitants of Palestine from returning to their homes. The representative of Israel himself had admitted that political terrorism in Palestine had appeared several years prior to the establishment of Israe land had recognize the fact that it was an extremely difficult disease to eradicate.*”¹¹²

The representative of Saudi Arabia to the UN, during the meeting of the Ad Hoc Political Committee, urged the UN General Assembly to reject Israel's membership request until a final settlement was reached on the Palestine question, including the issue of refugees. He believed that the UN should have prioritized addressing the question of Palestinian refugees over considering Israel's admission to the organization.¹¹³ The Committee on the Exercise of the Inalienable Rights of the Palestinian People concluded in its May 1976 report that Israel is obligated to comply with UNGA Resolution 194 (III) and to allow Palestinian refugees to return to their homes, stating the following: “*in this respect, it was pointed out that Israel was under binding obligation to permit the return of all the Palestinian refugees displaced as a result of the hostilities of 1948 and 1967. This obligation flowed from the unreserved agreement by Israel to honor its commitments under the Charter of the United Nations, and from its specific undertaking, when applying for membership of the United Nations, to implement General Assembly resolutions 181 (II) of 29 November 1947, safeguarding the rights of the Palestinian Arabs inside Israel, and 194 (III) of 11 December 1948, concerning the right of Palestinian refugees to return to their homes or to choose compensation for their property. This undertaking was also clearly reflected in General Assembly resolution 273 (III). The Universal Declaration of Human Rights, as well as the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, also contained relevant provisions concerning these rights. The States directly involved were parties to this Convention.*”¹¹⁴ This obligation stemmed from Israel's acceptance of the UN Charter and its commitment, during its UN membership application, to uphold General Assembly Resolutions 181 and 194(III), which addressed the rights of Palestinian Arabs and refugees. The committee also highlighted that this obligation was reflected in Resolution 273, which formalized Israel's admission. Despite the centrality of the right of return in Israel's membership conditions, Israel has consistently refused to recognize it.

¹¹² Ibid.

¹¹³ Ibid. P.296.

¹¹⁴ United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People, ‘The Right of Return of the Palestinian People’ (Report, 1978) <<https://www.un.org/unispal/document/auto-insert-210170/>> accessed 23 September 2025.

IV. Israel's UN Membership Criteria in the Framework of the ICJ Advisory Opinion of 1948

In its advisory opinion of 28 May 1948 on the Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), the International Court of Justice analyzed the requirements set out in Article 4 as follows: “*The conditions therein enumerated are five: a candidate must be (1) a State; (2) peace-loving; (3) must accept the obligations of the Charter; (4) must be able to carry out these obligations; (5) must be willing to do so.*”¹¹⁵

A. The statehood of Israel

According to the Article 1 of the Montevideo Convention on the Rights and Duties of States 1933, “*The state as a person of international law should possess the following qualifications: a. a permanent population; b. a defined territory; c. government; and d. capacity to enter into relations with the other states.*”¹¹⁶ Israel does not have a constitution; instead, it has a set of Basic Laws¹¹⁷, which do not specify the country’s defined borders.¹¹⁸ The lack of clearly defined borders¹¹⁹ raises questions about Israel’s statehood. These concerns were raised by the representatives of Iraq and Saudi Arabia to the UN during the meeting of the Ad Hoc Political Committee regarding Israel’s membership application to the United Nations. Mr. Al-Swaidy the representative of Iraq stated: “*the so-called State of Israel had no boundaries. How, therefore, in those circumstances could the Conciliation Committee determine whether or not it exercised effective jurisdictions? In the Commission’s last report (A/838) it was stated that it was of the opinion that the refugee problem could not be permanently solved unless other political questions, notably the question of the boundaries, were not solved.*”¹²⁰

Commenting on the undefined borders of Israel, Mr. Hussein Dahir, the Saudi Arabia representative to the UN, during the same meeting, stated that:

¹¹⁵ *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion [1948]* ICJ Rep 57.

¹¹⁶ Montevideo Convention on the Rights and Duties of States (adopted 26 December 1933, entered into force 26 December 1934) 165 LNTS 19 <<https://www.ilsa.org/Jessup/Jessup15/MontevideoConvention.pdf>> accessed 23 September 2025.

¹¹⁷ Basic Laws of Israel 2013 <https://www.constituteproject.org/constitution/Israel_2013> accessed 23 September 2025.

¹¹⁸ Steven Rosen, ‘Forget about Jewish or Democratic. Is Israel Even an Actual Country?’ (Haaretz, 12 October 2020) <<https://www.haaretz.com/israel-news/2020-10-12/ty-article-opinion/.highlight/forget-about-jewish-or-democratic-is-israel-even-an-actual-country/0000017f-ef12-d3be-ad7f-ff3b5d930000>> accessed 23 September 2025.

¹¹⁹ Association for Civil Rights in Israel, ‘50 Years A State without Borders’ <<https://campaigns.acri.org.il/50yearsen/>> accessed 23 September 2025.

¹²⁰ UN Ad Hoc Political Committee, ‘Israel’s Membership in the UN’ (Summary Record, 1949) 289–90.

“That state, which was not a state in the right and true sense of the term, had no defined and final boundaries of its own and seemed to recognize none; by its aggressive actions, it had expanded beyond the limits laid down by the General Assembly resolution.”¹²¹

Israel did not comply with UNGA Resolution 181, the partition plan; instead, it occupied territories beyond those allocated to it by the resolution¹²². Furthermore, Israel has continued to violate the Oslo Accords signed with the Palestinian Authority by expanding illegal settlement construction in the West Bank and East Jerusalem¹²³. The concept of Israel as “a state without defined borders” has become more evident, especially following its policies of occupation and expansion after October 8, 2023¹²⁴. The Israel’s security cabinet has approved a plan to occupy Gaza¹²⁵, and the Israeli government is reportedly working on similar legislation to annex the West Bank¹²⁶ in response to the growing global recognition of Palestine, led by France, the UK, Canada, and Australia¹²⁷. Additionally, Israel has expanded its occupation in southern Syria, seizing new territories following the collapse of the Assad regime on¹²⁸ December 8, 2024.

B. Israel’s unwillingness to fulfill its obligations under the UN Charter

Israel, both before and after its admission to UN membership, has always been unwilling to allow Palestinian refugees to exercise their right of return. This breaches its obligations as a UN member state and violates UNGA Resolutions 181 and 194, as well as the right of return, which is a fundamental human right

¹²¹ Ibid. P.296.

¹²² MIFTAH, ‘United Nations Resolutions’ (23 May 2018). <<https://miftah.org/Display.cfm?DocId=26482&CategoryId=4>> accessed 23 September 2025.

¹²³ Peace Now, ‘30 Years After Oslo – The Data That Shows How the Settlements Proliferated Following the Oslo Accords’ (11 September 2023) <<https://peacenow.org.il/en/30-years-after-oslo-the-data-that-shows-how-the-settlements-proliferated-following-the-oslo-accords>> accessed 23 September 2025.

¹²⁴ ‘UN Report: Israel Escalates West Bank Settlements in Violation of International Law’ (Middle East Monitor, 19 March 2025) <<https://www.middleeastmonitor.com/20250319-un-report-israel-escalates-west-bank-settlements-in-violation-of-international-law>> accessed 23 September 2025.

¹²⁵ ‘Israel’s Security Cabinet: What Is It and What Does It Do?’ (BBC News, 21 September 2025) <<https://www.bbc.com/news/articles/c8ryekj1m1do>> accessed 23 September 2025.

¹²⁶ ‘Israeli Parliament Approves Symbolic Motion on West Bank Annexation’ (Al Jazeera, 23 July 2025) <<https://www.aljazeera.com/news/2025/7/23/israeli-parliament-approves-symbolic-motion-on-west-bank-annexation>> accessed 23 September 2025.

¹²⁷ ‘Israel’s Security Cabinet: What Is It and What Does It Do?’ *The Jerusalem Post* (Jerusalem, 21 September 2025) <<https://www.jpost.com/israel-news/article-868283>> accessed 23 September 2025.

¹²⁸ Human Rights Watch, ‘Syria: Israel Forcibly Displaces Villagers in Occupied South’ (17 September 2025) <<https://www.hrw.org/news/2025/09/17/syria-israel-forcibly-displaces-villagers-in-occupied-south>> accessed 23 September 2025.

embodied in customary international law. Israel's unwillingness to fulfill its obligations as a UN member state is evident in Part II of the UNCCP's second progress report on April 19, 1949. The report cited Ben Gurion's statement regarding the question of the repatriation of the Palestinian refugees as follows: "*Mr. Ben Gurion did not exclude the possibility of acceptance for repatriation of a limited number of Arab refugees, but he made it clear that the Government of Israel considered that a real solution of the major part of the refugee question lay in the resettlement of the refugees in Arab States.*"¹²⁹

According to Ben Gurion, "*the real solution*" to the Palestinian refugee question is to resettle them in Arab countries, thereby denying their fundamental human right to return to their homes of origin and acting in violation of UNGA Resolution 194. In the same report, paragraph 4, sub-paragraph (b), the UNCCP reaffirmed the Palestinian refugees' right of return and emphasized Israel's obligation to comply with paragraph 11 of UNGA Resolution 194 (III), stating that: "*the necessity that any solution of the problem must be contingent upon the acceptance by the Government of Israel of the principle established in General Assembly resolution 194 (III) of 11 December 1948, paragraph 11, to the effect that "the 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"*"¹³⁰

Mr. Al-Swaidy highlighted Israel's non-compliance and violations of UN resolutions, referencing the obligations of member states as outlined in Article 5 of the UN Charter. He emphasized that:

*"Was Israel capable of fulfilling its obligations as a member of the United Nations? While it might be willing to assert its good intentions and assure the Committee of its ability to carry out its obligations, a review of events from the past few months reveals that Israel has repeatedly flouted decisions of both the General Assembly and the Security Council."*¹³¹

*"Article 5 of the Charter provided that a Member of the United Nations against which the Security Council has undertaken preventive or enforcement action can be suspended from exercising the rights and privileges of membership, if that was for the members already admitted, should not the United Nations reflect before admitting to membership a group that has repeatedly violated decisions of the Council?"*¹³²

¹²⁹ United Nations Conciliation Commission for Palestine, 'Second Progress Report' (19 April 1949) UN Doc A/838 <<https://www.un.org/unispal/document/auto-insert-211334/>> accessed 23 September 2025.

¹³⁰ Ibid.

¹³¹ UN Ad Hoc Political Committee, 'Israel's Membership in the UN' (Summary Record, 1949) 290.

¹³² Ibid.

At the Lausanne Conference, Israel unequivocally rejected the principle of “repatriation of the refugees and payment of due compensation” as articulated in Resolution 194.¹³³

To date, Israel refuses to implement UNGA Resolution 194(III) and continues to deny Palestinians' right of return, which amounts to crimes against humanity according to Human Rights Watch¹³⁴, and the international law scholar *J. Quigley*.¹³⁵

C. Israel as a Peace-Loving state

Israel's behavior before and after admission to the UN has no indications that Israel would fulfill the criterion of being a peace-loving state. Right before submitting its membership application to the UN, Israel continued to forcibly displace Palestinians from their homes, spread terrorism, act in violation of UNGA 181 and 194 resolutions, and assassinate the UN mediator Count Bernadotte.

Mr. Hussein Dahir, the Saudi Arabia representative to the UN, during the meeting of the Ad Hoc Political Committee, had questioned the fulfillment of the peace-loving criterion of Israel, stating that: *“Once they had obtained the recommendation of the General Assembly, the Zionists went ahead with the execution of a long-planned aggression. Count Bernadotte had said that “the Jewish State was not born in peace, as was hoped for in the resolution of 29 November, but rather, like many another State in history, in violence and bloodshed.” Its establishment constituted the only implementation of the resolution, and even that had been accomplished by means which were contrary to the procedure intended. Employing tens of thousands of well-trained and well-equipped men from eastern European countries, the Zionists had invaded the Holy Land and embarked upon a campaign of savagery and terrorism which had driven hundreds of thousands of peaceful and innocent Arabs from their homes. Contrary to the provisions of the resolution of 29 November 1947, and in defiance of the orders issued later, the Zionists had occupied practically the whole of Galilee together with the major portion of central and southern Palestine which had been allotted to the Arabs. They had invaded hundreds of Arab towns and villages, such as Jaffa, Acre, Lydda, Ramleh, Beersheba, Nazareth, and Jerusalem.”*¹³⁶

¹³³ United Nations Conciliation Commission for Palestine, ‘Summary Record of a Meeting between the Conciliation Commission and the Delegations of Israel’ (Meeting Record, Hotel de Carillon, Paris, 26 October 1951) <<https://www.un.org/unispal/document/auto-insert-210634/>> accessed 23 September 2025.

¹³⁴ Human Rights Watch, ‘Israel’s Crimes against Humanity in Gaza’ (14 November 2024) <<https://www.hrw.org/news/2024/11/14/israels-crimes-against-humanity-gaza>> accessed 23 September 2025.

¹³⁵ John Quigley, ‘Prohibition of Palestine Arab Return to Israel as a Crime against Humanity’ (2023) 34 Crim L Forum 1.

¹³⁶ UN Ad Hoc Political Committee, ‘Israel’s Membership in the UN’ (Summary Record, 1949) 294.

“Nothing of what the applicant had done so far could lead to the belief that it was, as the Charter stated, a peace-loving state worthy of admission into the United Nations. Far from being a peace-loving state showing its willingness to accept the obligations of the Charter and to carry out the decisions of the United Nations, it had repeatedly, deliberately, and flagrantly violated such obligations and decisions”¹³⁷

Based on the facts that show Israel's lack of being a peace-loving state, Mr. Dahir called on the UNGA to reject Israel's request for admission to the UN until a final solution to the Palestinians' question is reached.¹³⁸ Today's Israel continues its long history of crimes and violations by committing genocide in Gaza¹³⁹, forcibly displacing millions of Palestinians¹⁴⁰, occupying more territories¹⁴¹, preventing Palestinians from exercising their right of return¹⁴², and using starvation as a weapon¹⁴³, which counts as war crime according to the UN and International Criminal Court¹⁴⁴. Threatening international peace and security through violating the sovereignty and territorial integrity of other countries by targeting civil facilities and civilians via lethal airstrikes in Palestine, Syria¹⁴⁵,

¹³⁷ Ibid. P.295.

¹³⁸ Ibid. P.296.

¹³⁹ Office of the United Nations High Commissioner for Human Rights, 'Israel Has Committed Genocide in the Gaza Strip, UN Commission Finds' (Press Release, 16 September 2025) <<https://www.ohchr.org/en/press-releases/2025/09/israel-has-committed-genocide-gaza-strip-un-commission-finds>> accessed 23 September 2025.

¹⁴⁰ Amnesty International, 'Israel/OPT: Israel's Mass Displacement Order for the Entirety of Gaza City Is Unlawful and Inhumane' (Press Release, 10 September 2025) <<https://www.amnesty.org/en/latest/news/2025/09/israel-opt-israels-mass-displacement-order-for-the-entirety-of-gaza-city-is-unlawful-and-inhumane/>> accessed 23 September 2025.

¹⁴¹ Al Jazeera Staff, 'Israel Pushes for More Illegal Settlements in Occupied West Bank amid Raids' (Al Jazeera, 6 August 2025) <<https://www.aljazeera.com/news/2025/8/6/israel-pushes-for-more-illegal-settlements-in-occupied-west-bank-amid-raids>> accessed 23 September 2025.

¹⁴² Human Rights Watch, '75 Years Later, Israel Blocking Palestinian Refugees' Return' (15 May 2023) <<https://www.hrw.org/news/2023/05/15/75-years-later-israel-blocking-palestinian-refugees-return>> accessed 23 September 2025.

¹⁴³ United Nations, 'UN Special Committee Press Release' (Press Release, 14 November 2024) <<https://www.un.org/unispal/document/un-special-committee-press-release-14nov24/>> accessed 23 September 2025.

¹⁴⁴ Karim A A Khan, 'Statement of ICC Prosecutor Karim A. A. Khan KC: Applications for Arrest Warrants in the Situation in the State of Palestine' (International Criminal Court, 20 May 2024) <<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>> accessed 23 September 2025.

¹⁴⁵ Syrian Network for Human Rights, 'Three Civilians Killed and 34 Others Wounded in Israeli Bombing Targeting the Ministry of Defense Headquarters in Damascus on July 16, 2025' (19 July 2025) <<https://snhr.org/blog/2025/07/19/three-civilians-killed-and-34-others-wounded-in-israeli-bombing-targeting-the-ministry-of-defense-headquarters-in-damascus-on-july-16-2025/>> accessed 23 September 2025.

Lebanon¹⁴⁶, Yemen¹⁴⁷, Iran¹⁴⁸, Qatar¹⁴⁹, and Tunisia¹⁵⁰. This shows in practice and evidence that Israel has never been a peace-loving state; thus, its membership in the UN should be at least either reconsidered or suspended.

V. The Legal Character of the Admission Requirements under Article 4 of the UN Charter

There was a debate about the nature of the assessment of the admission requirements to the UN, since the UN member states that cast their votes have a political character. In its 1948 advisory opinion, the ICJ concluded that having a political character does not release member states from addressing admission issues within the framework of the UN Charter. ICJ states:

*"The conditions in Article 4 are exhaustive, and no argument to the contrary can be drawn from paragraph 2 of the Article, which is only concerned with the procedure for admission. Nor can an argument be drawn from the political character of the United Nations organs dealing with admission. For this character cannot release them from observance the treaty provisions by which they are governed when these provisions constitute limitations on their power. This shows that there is no conflict between the functions of the political organs and the exhaustive character of the prescribed conditions."*¹⁵¹

The decision to admit Israel to the UN appears to have been more political than legal for many reasons. Statements made by various UN representatives during the Ad Hoc Political Committee meetings indicate that the procedures were carried out within a short timeframe (Iraq), while a more important issue, the plight of Palestinian refugees, which required the UN's attention, remained unresolved. Additionally, the recommendations of the UN mediator were ignored.

¹⁴⁶ United Nations, 'Israeli Strikes in Lebanon Continue to Kill Civilians, UN Rights Office Warns' (UN News, April 2025) <<https://news.un.org/en/story/2025/04/1162266>> accessed 23 September 2025.

¹⁴⁷ Human Rights Watch, 'Israeli Forces' Attack on Sanaa Kills Journalists' (15 September 2025) <<https://www.hrw.org/news/2025/09/15/israeli-forces-attack-on-sanaa-kills-journalists>> accessed 23 September 2025.

¹⁴⁸ 'Iran Civilian Deaths Rise in Israel Strikes, Officials Say' *The New York Times* (New York, 18 June 2025) <<https://www.nytimes.com/2025/06/18/world/middleeast/iran-civilian-deaths-israel-strikes.html>> accessed 23 September 2025.

¹⁴⁹ Tom Bennett, 'US Joins UN Security Council Condemnation of Israeli Strikes on Qatar' (BBC News, 2025) <<https://www.bbc.com/news/articles/c740kk7vxkdo>> accessed 23 September 2025.

¹⁵⁰ 'Israel Targets Gaza Aid Flotilla in Drone Attack off Tunisia' (Daily Sabah, 2025) <<https://www.dailysabah.com/world/mid-east/israel-targets-gaza-aid-flotilla-in-drone-attack-off-tunisia>> accessed 23 September 2025.

¹⁵¹ *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion [1948]* ICJ Rep 57. Summaries of Judgments, Advisory Opinions and Orders of the International Court of Justice, 1948-1991.

In his progress report to the UN on 14 May 1948, the UN mediator *Count Bernadotte* highlighted the problem of Palestinian refugees and called on the UN to link the recognition of Israel to the right of return for Arab refugees in Palestine. In his report, he stated the following: “*No settlement can be just and complete if recognition is not accorded to the right of the Arab refugee to return to the home from which he has been dislodged by the hazards and strategy of the armed conflict between Arabs and Jews in Palestine (..) It would be an offence against the principles of elemental justice if these innocent victims of the conflict were denied the right to return to their homes while Jewish immigrants flow into Palestine, and, indeed, at least offer the threat of permanent replacement of the Arab refugees who have been rooted in the land for centuries.*”¹⁵²

The Israeli representative to the UN, Mr. Eban, stated during the Ad Hoc Political Committee meeting that his government’s contribution to finding a solution for the Palestinian refugees is “*a moral obligation*” rather than a legal one.¹⁵³

The U.S. support for Israel’s admission to the United Nations was driven by political considerations. The U.S. representative to the UN during the Ad Hoc Political Committee meeting ignored the crimes and massacres committed by Zionist militias, the assassination of the UN mediator, Israel’s non-compliance with UNGA Resolutions 181 and 194(III), and the tragic situation of the Palestinian refugees, claiming that Israel met the Charter requirements as a peace-loving state.¹⁵⁴ President Truman’s administration recognized Israel right after it declared independence, mainly because of political reasons. The U.S. wanted to enhance its presence in the Middle East and prevent the Soviet Union from expanding there. Political interests were the main reason behind the U.S. support for Israel’s admission to the UN.¹⁵⁵

VI. Israel’s Stance and Record of Non-Compliance

From the very beginning, the official policy of Israel has consistently rejected the Palestinian Right of Return. David Ben-Gurion articulated this position in June 1948, stating that “*the return of Palestinians “must now be prevented.... And I will oppose their return also after the war”*”.¹⁵⁶ The Israeli representative during

¹⁵² United Nations Mediator on Palestine, ‘Progress Report of the United Nations Mediator on Palestine Submitted to the Secretary-General for Transmission to the Members of the United Nations’ (1948) UN Doc A/648, 17 <<https://digitallibrary.un.org/record/703168?ln=en&v=pdf>> accessed 23 September 2025.

¹⁵³ See above n 68.

¹⁵⁴ UN Ad Hoc Political Committee, ‘Israel’s Membership in the UN’ (Summary Record, 1949) 293.

¹⁵⁵ US Department of State Office of the Historian, ‘The Creation of Israel, 1948’ <<https://history.state.gov/milestones/1945-1952/creation-israel>> accessed 23 September 2025.

¹⁵⁶ Jean Shaoul, ‘Zionism’s Legacy of Ethnic Cleansing’ (World Socialist Web Site, 22 January 2001) <<https://www.wsws.org/en/articles/2001/01/isra-j22.html>> accessed 23 September 2025.

the Ad Hoc Political Committee meeting in 1949 advocated for the resettlement of Palestinian refugees in other countries rather than allowing them to return to their homes in historic Palestine.¹⁵⁷ The same statement has been repeated decades later by the former Israeli Prime Minister Yitzhak Shamir in 1992, declaring that: “*the return of Palestinian refugees will never happen in any way, shape or form, there is only a Jewish right of return to the land of Israel*”.¹⁵⁸ These statements were not mere words; they were implemented through laws and regulations. Israel enacted legislation such as the Law of Return (1950), which the article 1 of the law allows all Jews around the world to immigrate to Palestine and settle permanently¹⁵⁹, while simultaneously forbidding the return of Palestinian refugee through the Absentees' Property Law (1950).¹⁶⁰ Following that, Israel consistently targeted and killed Palestinians who attempted to cross the borders to return to their homes. Successive Israeli governments have continued to uphold this policy by denying Palestinian refugees their right of return. As stated by a former Israeli representative to the UN, there is no recognized right of return for Palestinians.¹⁶¹ More recently, actions such as the ban on the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)¹⁵ are interpreted by some as part of a broader “political program to extend Israel's control over all of Palestine... erasing Palestinians from the land”¹⁶². If states can selectively disregard commitments based on perceived demographic or security threats, it weakens the entire framework of international law and harms the UN's reputation. Israel's membership in the UN should be reconsidered due to its non-adherence to UNGA Resolutions 181 and 194 (III). Given the importance of the right of return as a customary norm, recognized by many international legal instruments and reaffirmed by several UN resolutions, Israel's non-compliance undermines the reputation of the UN, exposing it to a potential failure similar to that of the League of Nations and discrediting its credibility among member states and the international community. This concern was raised early on by the Iraqi representative to the UN during a meeting of the UN's Ad Hoc Political

¹⁵⁷ See above n 63.

¹⁵⁸ Donald Neff, 'The Passage of U.N. Resolution 194' (1993) Washington Report on Middle East Affairs 84.

¹⁵⁹ Law of Return 5710-1950 (Israel).

<https://main.knesset.gov.il/EN/About/History/Documents/kns1_return_eng.pdf> accessed 23 September 2025.

¹⁶⁰ Absentees' Property Law 5710-1950 (Israel) <<https://www.palquest.org/en/historictext/9607-absentees-property-law-5710-1950>> accessed 23 September 2025.

¹⁶¹ See above n 48.

¹⁶² Kjersti G Berg, Jørgen Jensehaugen and Lex Takkenberg, 'The Consequences and Prospects of Israel's Ban of UNRWA' (2025) The Cairo Review of Global Affairs <<https://www.thecairoreview.com/essays/the-consequences-and-prospects-of-israels-ban-of-unrwa/>> accessed 23 September 2025.

Committee, who emphasized that: “Informed public opinion was questioning whether the United Nations, on which depended so many hopes, would not end in the same failure as the League of Nations. The way to save the United Nations from collapsing was to free it from all taint of force and to prevent it from being a pawn in the game of political intrigue.”¹⁶³

VII. Legal and Political Implications of Israel’s Non-Adherence

The UN has the right to suspend or cancel the membership of a specific state member based on articles 5 and 6 of the charter. The suspension or expulsion of membership can be carried out under specific conditions and through a defined process, according to Article 5 of the UN Charter, “*A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.*”¹⁶⁴ This suspension can be carried out by the General Assembly based on the recommendation of the Security Council. Furthermore, a member state can be expelled from the UN by the General Assembly, but only upon the recommendation of the Security Council. This expulsion is possible if the member state has persistently violated the principles of the UN Charter, as outlined in Article 6 of the Charter, which states that : “*A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.*”¹⁶⁵

Throughout the history of the UN, no member state has ever been expelled or suspended. However, the apartheid regime that ruled South Africa in 1974 was suspended from participating in the UN General Assembly meetings, and a recommendation was submitted to the UN Security Council to expel South Africa from the organization. Nevertheless, no action was taken in this regard.¹⁶⁶ Today, calls for the expulsion of Israel from the UN¹⁶⁷ or the suspension of its membership in the UN have increased due to allegations of genocidal acts, war

¹⁶³ UN Ad Hoc Political Committee, ‘Israel’s Membership in the UN’ (Summary Record, 1949) 292.

¹⁶⁴ United Nations, Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 5 <<https://www.un.org/en/about-us/un-charter/chapter-2>> accessed 23 September 2025.

¹⁶⁵ Ibid. Art.6.

¹⁶⁶ United Nations, ‘General Assembly Decides to Suspend South Africa from Participation in Its Work’ (Photograph, United Nations, 1974) <<https://media.un.org/photo/en/asset/oun7/oun7593912>> accessed 22 September 2025.

¹⁶⁷ Sari Jaber, ‘It Is Time for Israel to Be Removed from the United Nations’ (Al Jazeera, 14 November 2024) <<https://www.aljazeera.com/opinions/2024/11/14/it-is-time-for-israel-to-be-removed-from-the-united-nations>> accessed 23 September 2025.

crimes, crimes against humanity, the forcible displacement of Palestinians, and the illegal occupation and annexation of Palestinian territories. The UN Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 Francesca Albanese called for the suspension of Israel's membership in the UN, stating the following:

*“Under the fog of war, Israel has accelerated the forced displacement of the Palestinians that began decades ago, but “what’s happening today is much more severe because of the technology, the weaponry and the impunity”, she added. It is time to consider suspending Israel’s credential as a Member State. Acknowledging that this is a sensitive topic, she said: “None of you really has clean hands when it comes to human rights,” but no other country has maintained an unlawful occupation violating decades of UN resolutions as Israel has done.”*¹⁶⁸ Following the Israeli attack on Qatar on September 9, 2025, which violated Article 2(4) of the UN Charter that prohibits the use of force against the territorial integrity or political independence of any state, the Arab-Islamic Summit called in September 2025 to suspend Israel's membership in the UN, citing its genocidal acts and behavior that threaten international security and peace.¹⁶⁹

Expelling Israel from the UN or suspending its membership in the organization is technically possible and, at the same time, necessary. Israel, with its long history of impunity and non-adherence to international law and UN resolutions, along with its aggressive and criminal behavior, threatens international peace and security. The 78-year denial of Palestinian refugees' right of return, along with that of their descendants, has been intensified and exacerbated through Israel's ongoing policy of forcible displacement and genocidal acts against Palestinians. The Palestinian refugees' right of return is a *conditio sine qua non* for Israel's admission to the UN. This means that Israel's membership in the UN is conditional upon the implementation of UNGA Resolution 194(III), which requires Israel to permit Palestinians to return to their homes. Given the ongoing denial of this right of return, Israel's membership in the UN should be at least suspended to impose legal pressure on Israel to comply with international law and UN resolutions by allowing Palestinian refugees to exercise their right of return in safety and dignity.

¹⁶⁸ United Nations, ‘It Is Important to Call a Genocide a Genocide,’ Consider Suspending Israel’s Credential as UN Member State, Experts Tell Palestinian Rights Committee’ (Press Release, GA/PAL/1473, 22 September 2024) <<https://press.un.org/en/2024/gapal1473.doc.htm>> accessed 23 September 2025.

¹⁶⁹ ‘Pakistan Urges UN to Suspend Israel, Calls for Arab-Islamic Task Force to Combat Expansionist Designs’ (Anadolu Agency, 28 May 2024) <<https://www.aa.com.tr/en/asia-pacific/pakistan-urges-un-to-suspend-israel-calls-for-arab-islamic-task-force-to-combat-expansionist-designs/3688413>> accessed 23 September 2025.

CONCLUSION

The assassination of Count Folke Bernadotte, the UN mediator, by Zionist militias (Lehi), followed by the release of the perpetrators and later the incorporation of the gang responsible for his assassination into the Israeli army, was an early and clear indication of Israel's non-compliance with international law and the UN Charter. Israel has not adhered to UN resolutions either before or after its membership. It occupied more territory than was allocated to it under Partition Resolution 181 and refused to implement Resolution 194, which calls for allowing Palestinian refugees to return to their homes. Israel justified its refusal with demographic, security, and political considerations linked to the peace process with Arab states, contradicting its statements and commitments made prior to its admission to the UN, where it pledged to implement UN resolutions without conditions.

The preamble of UN General Assembly Resolution 273, which accepted Israel's membership in the United Nations, implicitly states that Israel's admission is conditional upon its implementation of Resolution 194, which mandates the return of Palestinian refugees to the territories from which they were displaced. Israel's continued refusal to implement Resolution 194 places its UN membership under scrutiny and raises questions about its legality and compliance with the UN Charter. Articles 4 and 5 of the UN Charter allow the organization to suspend or revoke the membership of a member state if it is proven to have violated UN resolutions.

Historically, no member state has had its UN membership revoked or suspended. However, the apartheid regime in South Africa was suspended from participating in the General Assembly in 1974 due to its racist practices against the population. Today, in light of the genocide being committed by Israel in the Gaza Strip, its continued denial of the Palestinians' right of return, and its aggressive behavior that threatens international peace and security, there is an urgent need to suspend Israel's membership in the United Nations—or even revoke it—to pressure it to comply with international law and relevant UN resolutions.

Such a step could offer a glimmer of hope to Palestinian refugees and their descendants, who have been denied their right to return to their lands for decades. It may also bring an end to the long-standing suffering of Palestinian refugees in host countries, affecting all aspects of their legal, social, and psychological lives. The inability or unwillingness of the international community, particularly the UN, to suspend or revoke Israel's membership harms the reputation of the Organization, undermines the organization's authority, and creates a perception of selective application of international law. This dynamic contributes to a broader erosion of the rules-based international order. If states can disregard obligations without consequence, it sets a dangerous precedent for other international agreements and resolutions, potentially leading to a more anarchic global system where power politics supersedes legal principles.

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