

## **BADIL Occasional Bulletin No. 09**

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### **A Two-State Solution and Palestinian Refugee Rights – Clarifying Principles**

*This Bulletin aims to provide a brief overview of issues related to Palestinian Refugee Rights*

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In late September 2001 US officials confirmed that a new diplomatic initiative was being prepared by the Bush administration to nudge Israel and the PLO back to the negotiating table. The details of the initiative have yet to be released, however, information in various press reports provides a sketch of the broad outlines for a final status agreement. While available information on the initiative excludes reference to the refugee issue, other aspects of the initiative give rise to concerns, which require further clarification regarding Palestinian refugee rights. This bulletin provides a short overview of information published in the press about the Bush initiative and examines, in particular, the potential impact for Palestinian refugees.

#### **Background**

Unlike ideas and proposals presented by former President Clinton, the Bush administration appears to be staying away from details, focusing rather on a broad framework for a final status agreement between Israel and the PLO. According to various press reports, the initiative is based on principles set forth in UN Security Council Resolutions 242 and 338 (often referred to as the “land for peace” formula), and consists of two main objectives: 1) two states for two peoples; and, 2) Jerusalem as the capital of both states. The initiative includes the standard reassurances concerning Israeli “security” (there is no mention of Palestinian security) and is linked to the implementation of the Mitchell Committee recommendations of May 2001.

If the press reports are accurate, the framework is essentially consistent with the foundations of the Oslo process. The only thing new about the initiative, revealed on the heels of US-led efforts to bring Arab and Muslim states into the “coalition against terrorism,” is that it represented the first time that a Republican president had endorsed the creation of a Palestinian state. International support for the creation of a Palestinian state was subsequently echoed by British Prime Minister Tony Blair who endorsed the creation of a “viable” Palestinian state.

While it remains to be seen whether the delayed Mitchell Committee recommendations, which contain the same fundamental flaws as the Oslo process (i.e., lack of reference to international law and no implementing mechanism), will provide a path back to political negotiations, the real question is whether this “new” initiative provides a formula for a just and durable solution to the Palestinian-Israeli conflict. More specifically, does the initiative address the root causes of the conflict, namely, the denial of the right to self-determination, and the mass expulsion/exodus and dispossession of the Palestinian people from their homes of origin?

#### **The “Bush Initiative” and Root Causes of the Conflict**

To date, there are no indications that the Bush initiative represents a major shift in US policy regarding the right to self-determination of the Palestinian people and the right of return and restitution of property for Palestinian refugees. While the real meaning of the initiative will only become apparent with a formal announcement by administration officials, press reports indicate that the initiative only provides for negotiations based upon UN Security Council Resolutions 242 and 338, rather than the implementation of these resolutions.

The ambiguity of this formula provides a basis for Israeli claims to retain control over key areas of the occupied territories, rendering Palestinian sovereignty in these areas bereft of any substance. Reflecting on the impact of Israel's Camp David II proposal with regard to the right to self-determination, the Palestinian negotiating team noted that, "In a prison [...] 95% of the prison compound is ostensibly for the prisoners – cells, cafeterias, gyms and medical facilities – but the remaining 5% is all that is needed for the prison guards to maintain control over the prisoner population." ("Palestinians Answer Frequently Asked Questions About Camp David" 12 July 2001) It was precisely this formula that led, in part, to the collapse of the final status negotiations at Camp David II over one year ago.

As regards Palestinian refugees, the details of the initiative are troublesome not only because of what is so studiously avoided – i.e., reference to UN General Assembly Resolution 194 and the right of Palestinian refugees to return, restitution, and compensation – but also because of what the absence of any reference to Palestinian refugees appears to imply within the context of a two-state solution.

First, the absence implies that the place of return for Palestinian refugees is the proposed state of Palestine rather than their villages and cities of origin that are located inside Israel. This formula contradicts the principle of the right of return in international law, the provisions of UN Resolution 194, which specifically affirm the return of refugees to their homes, and the concluding observations of UN human rights committees, which have noted that Israel "discriminates against Palestinians in the diaspora [due to] restrictive requirements that make it almost impossible to return to their land of birth." (1998 Concluding Observations of the Committee on Economic, Social and Cultural Rights)

Secondly, if press reports are accurate in suggesting that the initiative will recognize the national character of each state, the formula will potentially support the discriminatory practices applied by the Israeli state against its non-Jewish, i.e. mainly Palestinian, citizens and residents since 1948. The formula "a Palestinian state for Palestinians and Israel for Israelis" is misleading, because it suggests that there is an Israeli nationality, while in fact Israel continues to define its national character as Jewish and not Israeli. In practice, this formula effectively excludes all Palestinians and other "non-Jews" living in Israel, and, as noted by the UN Committee on Social, Economic and Cultural Rights, "encourages discrimination and accords a second class status to [Israel's] non-Jewish citizens." (1998 Concluding Observations of the Committee on Economic, Social and Cultural Rights).

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

In other words, the Bush initiative appears to incorrectly perceive the Palestinian refugee issue as an "explosive" political issue, rather than as a legal issue with clearly defined parameters for a durable solution. In this respect the initiative is not so different from efforts by the Clinton administration in 1994, through then ambassador to the UN Madeline Albright, to cancel all UN resolutions affirming international law, including Resolution 194, that relate to final status issues. The lack of reference to international law sets up the Bush initiative for the same kinds of problems and failures as the Oslo process.

### **Root Causes, US Policy and the Historical Record**

While the Bush initiative does not appear to represent any great shift in US policy towards addressing the fundamental root causes of the Palestinian-Israeli conflict, the historical record indicates that the lack of a shift continues to stem from a lack of political will and geopolitical interests that override concern for the basic human rights of the Palestinian people, rather than a lack of understanding of the root causes of the conflict and the required remedies. In this context, the initiative also raises questions about the seriousness of the Bush

administration in treating the conditions that give rise to frustration and anger with US policy across the Middle East and Islamic world.

Writing in early 1948, as the UN General Assembly's recommendation to partition Palestine into two states against the wishes of the majority of the inhabitants of the country began to unravel, George Kenan, then director of Policy Planning at the State Department stated: "Any assistance the U.S. might give to the enforcement of partition [i.e., denial of the right to self-determination] would result in deep-seated antagonism for the US in many sections of the Moslem world over a period of many years...As a result of US sponsorship of UN action leading to the recommendation to partition Palestine, US prestige in the Moslem world has suffered a severe blow and US strategic interests in the Mediterranean and Near East have been seriously prejudiced." (Cited in Donald Neff, *Fallen Pillars, US Policy towards Palestine and Israel Since 1945* [Italics added]) The study was seconded by the CIA and the Pentagon. By the spring of 1948, the US government attempted to back-pedal from the partition plan, but by then it was too late; military operations by Zionist/Israeli forces had resulted in the expulsion and dispossession of more than half of the Palestinian Arab population of Palestine, some 750,000 refugees.

Similarly, in the following year, the United States recognized that unless principles of international law as affirmed in UN resolutions were applied to resolve the refugee issue it would be a source of instability in the region and further cause for antagonism towards the United States. A Policy Paper prepared by the State Department in March 1949 outlined US efforts to resolve the refugee problem. "With respect to the attitude of the Israeli government towards the question of repatriation, we have undertaken and are undertaking action on the diplomatic level in two respects: (1) with the underlying purpose of safeguarding Arab absentee property interests in Israel against application of the Israeli ordinance of December 12, 1948 authorizing sale of such property, we are urging Israel not to take unilateral action which would prejudice achievement of an agreed settlement on the return of refugees to their homes and return of property to refugee owners; (2) we are urging Israel to implement the purposes of the December 11 resolution [i.e., right of return, restitution, and compensation], as a means of facilitating political settlement of the Palestine problem and preparing the way for a modus vivendi with the Arab states." (Cited in Neff, *Fallen Pillars*)

The Policy Paper concludes: "We should use our best efforts, through the Conciliation Commission and through diplomatic channels, to insure the implementation of the General Assembly resolution of December 11, 1948; We should endeavor to persuade Israel to accept the return of those refugees who so desire, in the interests of justice and as an evidence of its desire to establish amicable relations with the Arab world; We should furnish advice and guidance to the governments of the Arab states in the task of absorbing into their economic and social structures those refugees who do not wish to return to Israel." Faced with Israel's refusal to recognize the right of return and facilitate the repatriation of Palestinian refugees, as required under international law, however, the US redirected its efforts towards economic rehabilitation (i.e., resettlement) of refugees in exile.

### **Conclusion**

While further details about the Bush initiative may offer alternative conclusions, at present there is no indication that the Bush administration has learned from the failures of the Oslo process, or from the historical record. The Bush initiative does not provide an adequate framework consistent with international law nor does it provide mechanisms to ensure consistent and efficient implementation. Moreover, unlike early efforts by the US in the immediate aftermath of the failed partition plan and the 1948 war in Palestine, the initiative fails to recognize the fundamental root causes of the Palestinian-Israeli conflict – i.e., the denial of the right of self-determination and the right of refugees to return to their homes.

The establishment of a Palestinian state as now endorsed by the Bush administration and Blair's 10 Downing Street, cannot alone provide for a durable solution to the conflict or for Palestinian refugees. The foundation of both states must be consistent with international law. As regards Israel, this means that refugees and internally displaced Palestinians must be permitted to exercise their right to return to their places of origin inside Israel, be restituted of their properties, and receive compensation for losses and damages. A Palestinian state must be based on Israel's full withdrawal from the territories it occupied in 1967 with minor modifications of the border based on mutual agreement between the parties. Moreover, a shared capital in Jerusalem does not negate the right of Palestinian refugees to return to their

places of origin in the western areas of the city (just as Israel recognized the right of Jews to return to places of origin in eastern Jerusalem after 1967) and be restituted of their properties, nor does it negate the right of Palestinians to be restituted of properties confiscated in the eastern areas of the city after 1967.

While the Bush administration has yet to make an official announcement about this initiative, policy statements by leading human rights organizations like Human Rights Watch and Amnesty International provide a basis for acceptable language on Palestinian refugees to be included in such an announcement.

“[Any viable final] agreement should recognize [the right of return] for Palestinian refugees and exiles from territory located in what is now Israel or in what is likely to be a future state of Palestine. [...] Like all rights, the right to return binds governments. No government can violate this right. Only individuals may elect not to exercise it. [...] The international community has a duty to ensure that claims of a right to return are resolved fairly, that individual holders of the right are permitted freely and in an informed manner to choose whether to exercise it, and that returns proceed in a gradual and orderly manner.” (Human Rights Watch, December 2000)

“With regard to the specific issue of Palestinian exiles [...] durable solutions respectful of their human rights must be made available to them in any final peace agreement. Their right to return has been recognized by the United Nations since UN General Assembly Resolution 194 (III) of 11 December 1948 [...] and] continues to be recognised by authoritative bodies within the UN system for the protection of human rights. Any peace agreement reached should resolve the issue of the Palestinian diaspora through means that respect and protect individual human rights. [...] There are other considerations that must be addressed in the negotiations -- the security concerns of both sides, for instance -- but these issues must be resolved within a framework that does not sacrifice individual human rights to political expediency. [...]” (Amnesty International, March 2001)

Moreover, the US would find a framework for resolving the root causes of the conflict - self-determination and the right of return - in a 1976 plan (A/31/35-21 July 1976) prepared by the United Nations. During the first phase of the plan, Palestinians displaced in 1967 would be allowed to return immediately to the occupied West Bank (including eastern Jerusalem) and the Gaza Strip. At the same time, preparations would be made for the return of Palestinians displaced in 1948 to their places of origin inside Israel. These would include designation or creation of a competent agency to be entrusted with the organizational and logistical aspects of the mass return of displaced Palestinians; creation and financing of a fund for that purpose; and registration of displaced Palestinians other than those already registered with UNRWA. Following the completion of these preparations the second phase of the plan would facilitate the return of refugees choosing to go back to their places of origin now inside Israel. Palestinians not choosing to return to their homes would be paid just and equitable compensation as provided for in UN Resolution 194.