

BADIL Occasional Bulletin No. 10 Annex

November 2001

Annex to Bulletin No. 10: Principles and Mechanisms for a Durable Solution for Palestinian Refugees

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

In late summer 2001 the Paris-based daily *Le Monde Diplomatique* published two draft proposals for a durable solution for Palestinian refugees. The proposals, one Palestinian and the other Israeli, were apparently presented during the last official round of final status negotiations between the PLO and Israel at Taba, Egypt in January 2001. The proposals are reprinted below. For analysis of these proposals see [Bulletin No. 10](#).

1. Palestinian Proposal on Palestinian Refugees, January 22, 2001, Taba

ARTICLE XX: REFUGEES

The Significance of Resolving the Resolving Problem

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

Moral Responsibility

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

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

The Basis for a Settlement of the Refugee Problem

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

Right of Return

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

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

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

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

Repatriation Commission

7. A Repatriation Commission shall be established in order to guarantee and manage the implementation of the right to return in accordance with this Article.

8. The Commission, *inter alia*, shall:

a. Verify refugee status as defined in this Article.

b. Determine priorities for certain categories of refugees and certain areas.

c. Determine procedures for repatriation.

d. Process applications.

e. Repatriate the refugees.

f. Provide assistance to returning refugees.

g. Ensure the protection of returning refugees.

9. The Commission shall be composed of representatives from the United Nations, the United States, the Parties, UNRWA, the Arab host countries, the EU, and Canada. The Commission shall consult the governments of the Arab host countries as it may deem it necessary.

10. The Parties should implement the decisions of the Commission and should take appropriate actions to facilitate the execution of the Commission's decisions.

11. The Commission shall define its structure and work procedures.

12. The Commission shall have its headquarters in ____ and may have offices at other locations, as it deems appropriate.

13. The Commission shall establish a mechanism for resolution of disputes arising from the interpretation, application or performance of this Article.

14. Refugees shall have the right to appeal decisions rendered by the Commission pursuant to this Article. The Commission shall establish a mechanism for appeals.

Modalities of Return

15. All refugees who currently reside in Lebanon and choose to exercise the right of return in accordance with this Article shall be enabled to return to Israel within two years of the signing of this Agreement.

16. Without prejudice to the right of every refugee to return to Israel, and in addition to refugees returning pursuant to Paragraph 15 above, a minimum of XX refugees will be allowed to return to Israel annually.

17. The refugees who wish to return should declare their intention to the Commission, in accordance with procedures to be set out by the Commission, within 5 years of the date the Commission starts receiving these declarations. The exercise of the right of return subsequent to such declaration shall not be limited in time.

18. The Commission shall determine, according to transparent criteria, who will be allowed to return in any given year in accordance with Paragraph 16 of this Article.

19. Repatriation should be based on an individual voluntary decision, and should be carried out in a way that maintains the family unit.

20. The refugees should be provided with information necessary for them to make an informed decision with regard to all aspects of repatriation.

21. The refugees should not be compelled to remain in or move to situations of danger or insecurity, or to areas lacking in the basic infrastructure necessary to resume a normal life.

22. The refugees shall be permitted to return in safety, without risk of harassment, intimidation, persecution, or discrimination, particularly on account of their national origin, religious belief, or political opinion.

23. The Parties shall make such modifications to their internal laws as are necessary to facilitate the implementation of the right of return.

24. The Parties shall call upon states that currently host refugees to facilitate the early return of refugees in a manner consistent with human rights and international law.

Legal Status of Returning Refugees

25. Returning refugees should enjoy full civil and social rights and should be protected against discrimination, particularly in employment, education and the right to own property.

26. The returning refugees shall assume Israeli citizenship. This shall end his or her status as a refugee.

Restitution of refugees' Real Property

27. Real property owned by a returning refugee at the time of his or her displacement shall be restored to the refugee or his or her lawful successors.

28. In case where, according to criteria determined by the Repatriation Commission, it is impossible, impracticable or inequitable to restore the property to its refugee owner, the refugee shall be restituted in-kind with property within Israel, equal in size and/or value to the land and other property that they lost.

UNRWA

29. UNRWA should be maintained until this Article is fully implemented and UNRWA's services are no longer needed. The scope of UNRWA's services should change appropriately as the implementation of this Article proceeds.

Compensation

30. The State of Israel shall compensate refugees for the property from which they were deprived as a result of their displacement, including, but not limited to, destroyed property and property placed under the custodianship of the "Custodian for Absentees' Property".

Compensation should cover loss of property and loss of use and profit from the date of dispossession to the current day expressed in today's value.

31. The State of Israel shall also compensate refugees for suffering and losses incurred as a result of the refugee's physical displacement.

32. Refugees shall, as the case may be, receive repatriation assistance, in order to help them resettle in their places of origin, or rehabilitation assistance, in order to be rehabilitated in the place of their future residence. Funds for Repatriation Assistance and Rehabilitation Assistance should come from the International Fund described below.

33. The rights of return and compensation are independent and cumulative. A refugee's exercise of his or her right of return to Israel shall not prejudice his or her right to receive compensation pursuant to Paragraph 30, nor shall a refugee's receipt of compensation prejudice his or her right of return in accordance with this Article.

34. Unless property is collectively owned, material (and non-material) compensation should be awarded on an individual basis.

35. Pursuant to its responsibility for the compensation to the refugees, set forth in Article 30, Israel shall provide the funds needed for such compensation. These funds should be transferred to the International Funds described below and disbursed by the Fund and the Compensation Commission in accordance with this Article.

36. In particular, and without limiting in any way Israel's responsibility in accordance with Paragraph 35 above, resources available to the "Custodian for Absentees' Property" should be used to compensate the refugees for losses emanating from the dissipation of assets put under its trust. Furthermore, all the records of the "Custodian for Absentees' Property" pertaining to refugees' property shall be transferred to Compensation Commission.

37. Additional funds from the International Fund referenced below may be used to supplement Israeli funds for compensation purposes.

Compensation for Communal Property

38. The State of Israel shall pay compensation to the state of Palestine for the Palestinian communal property existing within the internationally recognized borders of the State of Israel.

39. The communal property referenced in Paragraph 36 of this Article shall include real property as well as financial and other movable property.

40. Claims for compensation under Paragraph 36 should be administrated and adjudicated by the Compensation Commission.

Compensation for Host Countries

41. The refugees host countries (i.e., Lebanon, Syria, Jordan, Egypt, Iraq and the Palestinian Authority) shall receive compensation for the significant costs they bore in hosting the refugees.

Compensation Commission

42. A Compensation Commission shall be established to evaluate the Palestinian material and non-material losses, to administer the implementation of the provisions of this Article on compensation, and to administer and adjudicate claims of real property by refugees made pursuant to Paragraphs 27-28.

43. The Commission shall set out the modalities and procedures for submission and adjudication of claims for compensation, and disbursement of payments.
44. The Commission shall be composed of representatives from the Parties, the United States, the EU, the United Nations, the World Bank and donor countries.
45. The Commission shall accept the records of the United Nations Conciliation Commission for Palestine, as well as the records of the "Custodian for Absentees Property" made available to the Commission pursuant to Paragraph 36 above, as *prima facie* evidence of the losses of the refugees. The Commission may also use UNRWA' s records and any other relevant records.
46. The Commission shall send a specialized technical team to evaluate the current value of the property for which compensation is due.
47. The parties should implement the decisions of the Commission and should take appropriate actions to facilitate the execution of the Commission's decisions. In addition, the state of Israel shall pass, within six months of the date of this Agreement, internal legislation that guarantees access by the individual compensation claimants or their authorized representative to the relevant Israeli state archives in order to facilitate the development of theirs claims.
48. The Commission shall have its headquarters in ____ and may have offices at other locations, as it deems appropriate.
49. The Commission shall establish a mechanism for resolution of disputes arising from the interpretation, application or performance of this Article.
50. Refugees shall have the right to appeal decisions rendered by the Commission pursuant to the Agreement. The Commission shall establish a mechanism for appeals.

International Fund

51. An International Fund shall be established to support and finance the implementation of the provisions in this Agreement related to the resolution of the Palestinian refugee issue.
52. The Fund shall have a Steering Committee responsible for setting priorities and policies for the use of international assistance consistent with the provisions of this Agreement on refugees.
53. The Steering Committee shall be composed of Palestine, the United States, the World Bank, EU, donor countries, _____. The Steering Committee will be supplemented by the participation of affected or interested regional parties as might be necessary. The Steering Committee will be responsible for mobilizing, coordinating and managing international financial and other assistance provided to enable implementation of the various aspects and dimensions of this Agreement related to refugees.
54. The World Bank and the United Nations shall be Joint-Secretariat for the Fund. The Secretariat shall be based at the World Bank.
55. The Steering Committee shall ask the World Bank to establish multilateral funding instruments to ensure that each aspect of this Agreement on refugees requiring financial assistance has corresponding instruments available to donors wishing to make use of multilateral mechanisms.
56. The World Bank shall have overall responsibility for ensuring that these funds are managed according to international standards of accounting and transparency. The

secretariat shall be responsible for monitoring the overall level of donor contributions and disbursements (both via multilateral and bilateral channels) to support the implementation of the refugee agreement.

57. Assistance from the Fund shall include *inter alia* support for: return, compensation, repatriation assistance, rehabilitation assistance, transitional costs and related socio-economic assistance. Assistance for compensation shall be disbursed through the Compensation Commission.

58. Recipients of funds channeled through the Fund shall include *inter alia*: refugees, relevant Palestinian Ministries and public bodies, host Government Ministries and public bodies, and international public or private bodies selected to implement project assistance or provide technical or transitional support.

General

59. The Parties should make appropriate modifications to their internal laws to facilitate the execution of this Article.

End of Claims

60. The full implementation of this Article shall constitute a complete resolution of the refugee problem and shall end all claims emanating from that problem.

61. The right of each refugee in accordance with United Nations General Assembly Resolution 194 shall not be prejudiced until the refugee has exercised his right of return and received compensation under this Article or until the refugee has, based on his voluntary choice, received compensation and settled somewhere else.

2. Israeli private response to the Palestinian refugee proposal of January 22, 2001, "Non-Paper - Draft 2," January 23, 2001, Taba

The significance of resolving the refugee problem

1. The issue of the Palestinian refugees is central to Israeli-Palestinian relations. Its comprehensive and just resolution is essential to creating a lasting and morally scrupulous peace.

Narrative

2. The State of Israel solemnly expresses its sorrow for the tragedy of the Palestinian refugees, their suffering and losses, and will be an active partner in ending this terrible chapter that was opened 53 years ago, contributing its part to the attainment of a comprehensive and fair solution to the Palestinian refugee problem.

3. For all those parties directly or indirectly responsible for the creation of the status of Palestinian refugeeism, as well as those for whom a just and stable peace in the region is an imperative, it is incumbent to take upon themselves responsibility to assist in resolving the Palestinian refugee problem of 1948.

4. Despite accepting the UNGAR 181 of November 1947, the emergent State of Israel became embroiled in the war and bloodshed of 1948-49, that led to victims and suffering on both sides, including the displacement and dispossession of the Palestinian civilian population who became refugees. These refugees spent decades without dignity, citizenship and property ever since.

5. Consequently, the solution to the refugee issue must address the needs and aspirations of the refugees, while accounting for the realities since the 1948-49 war. Thus, the wish to return shall be implemented in a manner consistent with the existence of the State of Israel as the homeland for Jewish people, and the establishment of the State of Palestine as the homeland of the Palestinian people.

6. A just settlement of the refugee problem in accordance with UNSCR 242 must lead to the implementation of UNGAR 194 (Palestinian Position).

7. Since 1948, the Palestinian yearning has been enshrined in the twin principles of the "Right of Return" and the establishment of an independent Palestinian State deriving the basis from International Law. The realization of the aspirations of the Palestinian people, as recognized in this agreement, includes the exercise of their right to self-determination and a comprehensive and just solution for the Palestinian refugees, based on UNGAR 194, providing for their return and guaranteeing the future welfare and well-being of the refugees, thereby addressing the refugee problem in all its aspects.

8. Regarding return, repatriation and relocation, each refugee may apply to one of the following programs, thus fulfilling the relevant clause of UNGAR 194:

a. To Israel - capped to an agreed limit of XX refugees, and with priority being accorded to those Palestinian refugees currently resident in Lebanon. The State of Israel notes its moral commitment to the swift resolution of the plight of the refugee population of the Sabra and Shatila camps.

b. To Israeli swapped territory. For this purpose, the infrastructure shall be prepared for the absorption of refugees in the sovereign areas of the State of Israel that shall be turned over to Palestinian sovereignty in the context of an overall development program.

c. To the State of Palestine: the Palestinian refugees may exercise their return in an unrestricted manner to the State of Palestine, as the homeland of the Palestinian people, in accordance with its sovereign laws and legislation.

d. Rehabilitation within existing Host Countries. Where this option is exercised the rehabilitation shall be immediate and extensive.

e. Relocation to third countries: voluntary relocation to third countries expressing the willingness and capacity to absorb Palestinian refugees.

Definition of a Refugee

9. See Article 6 of Palestinian paper as a Palestinian Position

Compensation and Rehabilitation

10. Each refugee may apply for compensation programs and rehabilitation assistance as shall be detailed in Articles XX. For this purpose an International Commission and an International Fund shall be established (Articles XX below) that shall have full and exclusive responsibility for the implementation of the resolution of the refugee problem in all its aspects, including the gathering and verification of claims, and allocation and disbursement of resources, to be conducted in accordance with the following principles:

a. These programs shall address financial and in-kind compensation for displacement (moral suffering - Palestinian based position) and material loss, as well as the economic growth of the relevant communities. The dual objectives of individual historic justice and communal economic development shall guide the elaboration of these programs.

b. Programs of a compensatory nature shall be devised on both per-capita and claims based criteria, the former being of a fast-track nature (as detailed in Article XX below), and shall be managed according to a definitive and complete register of property claims to be compiled by an appropriate arm of the International Commission and Fund.

c. The Rehabilitation Assistance and Compensation Programs shall form an integral part of efforts to promote economic development and social regeneration of both the individuals concerned and the communities and societies in which they live or resettle, thus incorporating options or baskets of assistance (to be detailed).

d. Compensation for Host Countries will be in accordance with Article XX below.

e. The international community and the State of Israel shall be the principal contributors to the International Fund up to an agreed ceiling respectively. Israeli fixed assets that will remain in the State of Palestine following the Israeli withdrawal will be transferred to become assets of the International Fund in lieu of an amount of \$XX, constituting an integral part of the overall lump-sum of \$XX.

Host Countries

11. The refugees' host countries shall receive compensation for the significant costs they bore in hosting the refugees. Future rehabilitation costs and investments shall be addressed according to the details of this agreement, via bilateral arrangements between the host countries and the International Commission.

International Commission

12. The International Commission shall consist of the Palestinian State, Host Countries, Israel and members of the international community, including the United Nations, the World Bank, The European Union and the G8, as well as other relevant international institutions. The International Commission shall have full and exclusive responsibility for implementing the resolution of the refugee issue in all its aspects. The mandate, structure and mode of operation of the International Commission shall be detailed in this agreement.

UNRWA

13. The phased termination of UNRWA shall be in accordance with a timetable to be agreed upon between the parties, and shall not exceed five years. The scope of UNRWA's services should change appropriately as the implementation of this agreement proceeds (whereby the first phase shall include the transfer of the service and administrative functions of UNRWA to host governments and modalities for the transfer of relevant functions to the International Commission, as well as the discontinuation of the status of Palestinian refugee camp - new Palestinian text to be suggested).

Priority to Lebanese refugees

14. Preference in all the above programs shall be accorded to the Palestinian refugee population in Lebanon.

Former Jewish refugees

15. Although the issue of compensation to former Jewish refugees from Arab countries is not part of the bilateral Israeli-Palestinian agreement, in recognition of their suffering and losses, the Parties pledge to cooperate in pursuing an equitable and just resolution to the issue.

End of claims

16. The Parties agree that the above constitutes a complete and final implementation of Article 11 of UNGAR 194 of 11th December 1948, and consider the implementation of the agreed programs and measures as detailed above constitute a full, final and irrevocable settlement of the Palestinian refugee issue in all its dimensions. No additional claims or demands arising from this issue shall be made by either Party. With the implementation of these articles there shall be no individuals qualified for the status of a Palestinian Refugee.