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Principles and Mechanisms for a Durable Solution for Palestinian Refugees: The "Taba Proposals"

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. Together, the proposals provide one of the first detailed insights concerning the content of the negotiations on the refugee issue including principles and mechanisms for a durable solution for Palestinian refugees.

The Palestinian proposal is consistent with the Palestinian national consensus concerning a durable solution for refugees and provides an agenda for advocacy and lobbying, as well as the foundation for future negotiations on the refugee issue. The Israeli proposal does not represent the political consensus on the Palestinian refugee issue inside Israel and must be interpreted in the context of Taba, which Israel did not consider to be "serious" negotiations.

The following bulletin provides a comparative overview of the two proposals. This includes similarities and differences and the degree to which the two proposals conform to international law and practice, with a special focus on principles and mechanisms for a durable solution.

Overview

The Palestinian proposal, dated 22 January 2001, contains 61 paragraphs (2133 words) grouped under 16 sub-headings. The agreement covers a range of issues related to a durable solution for Palestinian refugees, including a legal framework, a refugee definition, a description of the modalities of a durable solution, a description of mechanisms to implement the various modalities, delineation of the roles of the parties to the proposed agreement, and, pending full implementation, an end of claims clause.

By contrast, the "private" Israeli response to the Palestinian proposal, dated 23 January 2001, contains 16 paragraphs (1285 words) grouped under 10 separate sub-headings. The response includes a political narrative of the Palestinian refugee issue accompanied by a framework for a solution, a description of a mechanism to implement the framework, the modalities for compensation and rehabilitation, delineation of the roles of the parties, a

separate clause on former Jewish refugees, and an end of claims clause. Unlike the Palestinian proposal, the Israeli response does not include a refugee definition.

While the two proposals contain similar features such as, (1) recognition of the intrinsic link between a solution of the refugee problem and a comprehensive and just peace; (2) reference to UN Security Resolution 242 (1967) and UN General Assembly Resolution 194 (1948), 11 December 1948 as the basis for a just settlement/solution of the refugee issue; (3) a description of the proposed mechanism/s to implement a solution; (4) special procedures for refugees in Lebanon; and (5) an “end of claims” clause, there are notable differences in content between the Palestinian and Israeli proposals.

In general, the Palestinian proposal provides a legal framework for a durable solution that is consistent both with the terms of UN General Assembly Resolution 194 as well as international law and practice relative to durable solutions for refugees. The word right/s is used 19 times in the proposal in relation to a host of basic rights (i.e., non-discrimination, civil, political, social, and economic rights) recognized under international law. The Palestinian proposal recognizes that the starting point in crafting a durable solution for Palestinian refugees, as in other refugee cases, is the wish or choice of each individual refugee.

The Israeli response, by contrast, primarily provides a political framework, components of which are inconsistent with Resolution 194 as well as international law and practice relative to durable solutions for refugees. The word right is used only twice in the proposal, once in relation to the right to self-determination and the second time in quotation marks referring to the “Right of Return.” While the Israeli response does provide refugees with a list of 5 options for a solution (an agreed limit of refugees to Israel, a land swap, resettlement in a Palestinian state, rehabilitation in host countries, and third-country resettlement), the starting point in crafting these solutions is Israel’s definition of itself as “the homeland for Jewish people” (characterized by a Jewish majority and Jewish control of the land) rather than the wishes and individual rights of each refugee.

According to the political narrative in the Israeli response, the basis for an exclusive Jewish state appears to be rooted in Israel’s interpretation of UN General Assembly Resolution 181, which recommended the partition of Palestine into two states. Analysis of the resolution, however, reveals that the General Assembly did not intend to create two states based on Jewish or Arab ethno-religious criteria. Resolution 181 (Part I, Section B, Art. 10(d) and Section C, Chapter 2) includes detailed provisions affirming the principle of equality or non-discrimination in the constitution of each state and in defining the rights of religious and minority groups. Moreover, the population of the proposed Jewish state included nearly equal numbers of Jews and Arabs.

Finally, while the Palestinian proposal affirms Israel’s moral and legal responsibility for: 1) the forced displacement and dispossession of Palestinian civilians in 1948; 2) preventing refugees from returning to their homes; and, 3) resolution of the refugee issue, the Israeli response avoids explicit reference to Israel’s responsibility for the refugee

issue and a durable solution. Rather, the Israeli proposal appears to acknowledge partial responsibility together with “all those parties directly or indirectly responsible.”

Principles

The Palestinian proposal for a durable solution is based on the framework set forth in UN General Assembly Resolution 194(III), 11 December 1948, and international law. Resolution 194 affirms the right of all Palestinian refugees to return *to their homes* and receive compensation for losses and damages. Refugees choosing not to return should be assisted in resettling and also compensated for losses and damages. The Resolution also recognizes the individual and voluntary character of return and the need for social and economic rehabilitation of all refugees. Moreover, the drafting history and language of the resolution indicates that Israel is called upon to facilitate conditions conducive to the safe return of the refugees.

These same principles are set forth in refugee law. UNHCR Executive Committee Conclusions 18 (XXXI), 1980 and 40 (XXXVI), 1985 recognize repatriation as the “most appropriate solution” for refugees. In addition, “The repatriation of refugees should only take place at their freely expressed wish; the voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of absolute safety, *preferably to the place of residence of the refugee in his country of origin*, should always be respected.” [Italics added] Finally, the Conclusions call upon governments of origin to provide formal guarantees for the safety of returning refugees.

The Palestinian proposal incorporates each of these basic principles. Paragraph 5 reaffirms that “all refugees who wish to return *to their homes* in Israel and live at peace with their neighbors have the right to do so.” Paragraphs 19 and 20 affirm the voluntary character of return as well as maintenance of the family unit and emphasize that refugees should be provided with information necessary for them to make an informed decision. Refugees are allotted five years to present their claim to return; implementation, however, is not subject to time limitations. Paragraphs 21-25 affirm the principle of safe return consistent with human rights and international law, including full enjoyment of civil and social rights. In order to facilitate return, Israel is called upon to modify internal laws as necessary.

The Israeli response contains few of these principles. Paragraph 7 acknowledges Palestinian “yearning” for the “Right of Return” but stops short of recognizing the principle of return as set forth in international law. The only reference (paragraph 8(e)) to the voluntary character of a solution relates to third country resettlement. Paragraphs 8 (a & b) call for a cap on the number of refugees going to Israel as well as relocation of refugees to areas inside Israel, which will subsequently be transferred through a land swap to the Palestinian state. These solutions impose arbitrary restrictions on the individual right of return and violate the voluntary character (i.e., refugee choice) of return, as well as numerous other fundamental rights including freedom of movement and right to restitution.

The Palestinian proposal also affirms the principles of restitution and compensation. Paragraph 27 states that “Real property owned by a returning refugee shall be restored to the refugee or his or her lawful successors.” In the event that restitution is “impossible, impracticable, or inequitable” the proposal recognizes the principle of in-kind restitution – i.e., property equal in size and/or value. Paragraphs 30-31 recognize the principle of compensation for loss of property and loss of use and profit as well as compensation for suffering and losses incurred as a result of refugee’s physical displacement. Material and non-material compensation is to be awarded on an individual basis unless property is collectively owned. The proposal also recognizes the compensation for communal property (Paragraphs 38-39) and for host countries (Paragraph 41).

The Israeli response affirms that “each refugee may apply for compensation programs.” These include (Paragraph 10(a)) “financial and in-kind compensation” for “displacement and material loss, as well as the economic growth of the relevant communities.” While the response does recognize both “per-capita and claims based criteria” for compensation, the program focuses on collective “economic development and social regeneration” of refugee communities. Interestingly, the response also recognizes that host countries (Paragraph 11) shall receive compensation “for the significant costs they bore in hosting refugees.” The response does not, however, recognize the right to real property restitution.

Finally, the Palestinian proposal (Paragraph 61) affirms that “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 [...] or until the refugee has, based on his voluntary choice, received compensation and settled somewhere else.” By contrast, the Israeli response (Paragraph 16) affirms that implementation of the 5 solutions set forth in the proposal (i.e., no right of return, no recognition of refugee choice) “constitutes a complete and final implementation” of UN Resolution 194. The response also includes a paragraph (15), which commits the Parties to “cooperate in pursuing an equitable and just resolution” of the issue of “former Jewish refugees.” The role of the Palestinian state in resolving this issue is not clear.

Mechanisms

The Palestinian proposal establishes three separate mechanisms to facilitate implementation of the modalities (return, restitution, compensation) of the durable solution as delineated in the proposed agreement. This includes a Repatriation Commission, a Compensation Commission, and an International Fund. In addition, the proposed agreement provides for continued operation of UNRWA until the implementation of a durable solution in accordance with UN Resolution 194.

The Repatriation Commission (Paragraphs 7-14) is mandated to: verify refugee status, determine priorities for certain categories of refugees and certain areas, determine procedures for repatriation, process applications, repatriate the refugees, provide assistance to returning refugees, and ensure the protection of returning refugees. These roles are consistent with the mandate of the UN High Commissioner for Refugees in

repatriation operations in other refugee cases. The composition of the Commission (the Parties, United Nations, UNRWA, Arab host countries, US, EU, and Canada) reflects the international character of the Palestinian refugee issue as well as the unique role played by various parties, including humanitarian assistance, financial and political support, and international legitimacy. Importantly the Commission is to include a dispute resolution mechanism regarding interpretation of the agreement and accords refugees the right of appeal.

The Compensation Commission (Paragraphs 42-50) is mandated to evaluate Palestinian material and non-material losses, administer implementation of provisions of the agreement, and administer and adjudicate claims of real property by refugees. The composition of the Compensation Commission (the Parties, US, EU, UN, World Bank and Donor States) also reflects the international character and unique contributions – i.e., financial support, transparency, international legitimacy – of a variety of parties. The Commission is authorized to use the records of the UNCCP, Israeli Custodian of Absentees' Property, UNRWA, and any other relevant records. Within 6 months of the adoption of the agreement Israel is required to pass legislation to guarantee access to refugee claimants or representatives to Israeli archives to develop claims. The Compensation Commission also includes a dispute mechanism and appeals process for refugees.

Finally, the proposed agreement establishes an International Fund (Paragraphs 51-58) “to support and finance the implementation of the provisions” of the agreement concerning a durable solution for Palestinian refugees. The steering committee of the fund, mandated to mobilize, coordinate and manage international financial and other assistance, is to be composed of Palestine, US, World Bank, EU, Donor States, with the World Bank and the UN acting as a joint-secretariat. In addition to donor funds, financial contributions are to be mobilized through compensation funds paid by Israel and multilateral funding instruments developed by the World Bank. Funds are to be used to support return, compensation, repatriation assistance, rehabilitation assistance, transitional costs and related socio-economic assistance.

The Israeli proposal establishes two mechanisms to facilitate implementation of the 5 options set forth in the agreement. This includes an International Commission and an International Fund. Unlike the Palestinian proposal, the Israeli response calls for the “phased termination” of UNRWA “in accordance with a timetable to be agreed upon between the parties” not exceeding five years and the “discontinuation of the status of the Palestinian refugee camp.”

The International Commission (Paragraphs 10 & 12) essentially combines two of the mechanisms in the Palestinian proposal (Repatriation and Compensation Commissions) into a single institution. The International Commission in the Israeli proposal is mandated to implement the resolution of the refugee issue as set forth in the Israeli proposal “in all its respects” according to the five listed solutions. This includes gathering and verification of claims, and allocation and disbursement of resources. The composition of the International Commission (the Palestinian state, host countries, Israel, 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) reflects the combined membership of all three Palestinian mechanisms, with the notable exception of UNRWA. Unlike the Palestinian proposal, which authorizes the professional members of the Repatriation and Compensation Commissions to define their own structure and work procedures, the structure and mode of operation of the International Commission proposed by Israel is to be defined in the agreement, leaving it vulnerable to political manipulation.

The Israeli response also establishes (Paragraph 10) an International Fund. The exact mandate and composition of the Fund is not delineated in the proposal, however, the text suggests that the Fund will act as an arm of the International Commission. Israel and the international community are designated as the principle contributors to the fund though the agreement also introduces an agreed upon ceiling for Israeli contributions. Moreover, the proposal states that “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.”

Conclusion

The Palestinian proposal is significant in that it is consistent with principles of international law as affirmed in UN General Assembly Resolution 194 relevant to durable solutions for refugees. These principles, moreover, have been affirmed in numerous agreements in other refugee cases, including Kosovo, Bosnia, Rwanda, Mozambique, Guatemala, and Cambodia. The Palestinian proposal provides for a set of mechanisms that address each component of a durable solution (return, restitution, and compensation). The three mechanisms also fill the international protection gap (created by the collapse of UNCCP protection and non-intervention of UNHCR), while recognizing the ongoing important role played by UNRWA until there is a durable solution in accordance with the terms of Resolution 194.

The Israeli proposal represents a significant improvement from details set forth in the 1995 Beilin-Abu Mazen plan concerning refugees, including recognition of at least a limited return of refugees to Israel, unrestricted resettlement and citizenship in the Palestinian state, and recognition of the right of host countries to compensation. The principles and mechanisms delineated in the Taba proposal, however, do not fully conform to the principles set forth in Resolution 194. The proposal does not recognize the right of return or right to real property restitution and imposes arbitrary restrictions on the principle of refugee choice. While the phrasing and some of the content does represent an improvement from Beilin-Abu Mazen, the basic framework (resettlement and socio-economic rehabilitation) remains the same.

In general, the Israeli proposal to resolve the Palestinian refugee issue avoids the principal player to a durable solution – i.e., the refugees themselves. The primary aim of the proposal – i.e., to maintain a Jewish majority and Jewish control of refugee land by

denying Palestinian refugees the opportunity to exercise their basic human right to return to their homes – violates the cardinal principle of non-discrimination. The exilic-based solutions offered to Palestinian refugees would not only underwrite mass displacement but also would set a precedent and facilitate its re-occurrence. Finally, Israel cannot purchase the right to generate refugees through generous offers of compensation, nor can the international community purchase this right through generous aid programs to resettle refugees who would otherwise choose to return home.