

Refugee Committee
Talking Points for December 14, 2008

GOALS OF THE MEETING

- **Secure Israeli agreement that they will discuss and negotiate Refugees thoroughly and in detail**, including the key sensitive issues: responsibility, return, restitution and compensation.
- **Clarify the structure of the future agreement on Refugees** which will be included in the Treaty: in view of the work already accomplished, we think that **the draft Article which has been discussed should be complemented by an Annex on Refugees which will have to be negotiated simultaneously**.
- Persuade the Israelis that **the most efficient way to proceed** is:
 - **To establish one sole committee** which mandate would extend to all issues related to Refugees (i.e. including returns);
 - **To identify the decidable issues to be discussed** and define the best way to address them: **a sound and effective approach** on which the parties could agree **would be to use the provisions of the draft Article on Refugees to break down the decidable issues which will have to be included in the Annex**.
- *[Recall briefly the **multilateral aspect of the file**. While this aspect should not be tackled extensively at this stage, it should be evoked - at least in passing- in order to:*
 - *Recall the multilateral and extraordinary dimension of the problem: only a resolution endorsed by Arab host States will be successful;*
 - *Convey the message that without a serious willingness on the Israeli side to consider in a reasonable manner the issues of responsibility, return and their contribution to refugee rights for reparations, Israel cannot expect to see any sign of flexibility from the PLO and Arab host States.]*

- I am pleased that we have been able to initiate talks on the refugee issue. It is a particularly sensitive matter for both sides and we have been able to discuss it in a constructive and appeased climate with Tal Becker and Daniel Taub.
- The two sides have worked constructively on the basis of a draft article on Refugees (I&Ps). After several weeks of exchange of drafts and meetings we have been able to identify the main subjects in dispute (recognition, return, restitution and compensation, the international mechanism) and to bridge the draft languages on some issues.
- This work will be useful for two reasons:
 - it could constitute a basis for the Article on Refugees (as long as this article is complemented by bilateral negotiations on a detailed annex) ;
 - it could be used to shape our future discussions.
- However, it appears that the way we have proceeded has lead us to neglect some of the complexities of the file. Therefore, for future talks, **I suggest to use the draft Article on Refugees to identify all the decidable issues which will have to be negotiated as part of an Annex on Refugees in order to reach a comprehensive and detailed agreement** which we will be able to duly implement, together with Arab host States.
- In addition, we think it is **preferable to discuss all the aspects of the refugee file (including the question of the returns) in the same forum.**
- In the scope of our discussion, our attention focused in particular on **the international mechanism**. We realized however that an agreement on the mechanism (and the definition of its mandate) **requires the resolution of the main policy issues** (on return, restitution/compensation in particular).
- These **sensitive policy issues will therefore have to be discussed seriously by the parties** to progress in the talks. We are confident that the parties will be able to agree on all of these issues especially if they adopt **an interest-based approach** rather than a positional one. In fact, Israel and the PLO have a common interest: a just and comprehensive resolution of the Palestinian refugee issue which will have to
 - meet the satisfaction of Palestinian refugees;
 - permit reaching an end of claims status; and
 - ensure the security of the States of Israel and Palestine as well as the establishment of a durable peace in the region.
- Last but not least, it is crucial at this stage to **clarify together the structure of the agreement we wish to negotiate on Refugees**. In fact, the resolution of the refugee issue requires much more details to better protect both sides' interests and enable a successful implementation of the solution. In our view, these specifics could be included in a detailed Annex on Refugees which would be negotiated simultaneously.

ANNEX

Progress on the Refugee Negotiations October 25, 2008

1- Overview:

Until July 2008, the refugee issue was managed by Tal Becker (“TB”) and Dr. Saeb Erekat (“SE”) through the exchange of drafts on the positions of the two parties (“Is&Ps” document). Originally, the Palestinian view was that a head of committee for refugees, with the required expertise, would be appointed to lead the negotiations for the Palestinian side, once discussions on the substantial aspects of the file were to begin.

On July 14, 2008, at SE’s request, the technical work carried out by the NSU on the international mechanism was presented to the Israeli side. Since that date, the Israeli and Palestinian negotiation teams convened 3 times. The Israeli team was composed of TB and Daniel Taub (“DT”). SE and Ziyad Clot (NSU, thereafter “ZC”) represented the Palestinian side. During these meetings, similarly to what occurred in the previous months, the discussion was structured on the basis of the Is&Ps document. Following the directives of Secretary of State Condoleeza Rice, the parties tried to bridge “minor” gaps between their respective positions, while isolating for future talks what was understood as the two main sensitive policy issues: return and responsibility.

In the meantime, two other important meetings took place:

- On August 27, 2008, NSU advisors on refugees met with Mr. Jonathan Schwartz from the US State Department to discuss the Palestinian proposal on the international mechanism. The meeting was very constructive and generated positive feedback from the US advisor.
- On September 19 & 20, 2008, ZC met with Mr. Mahmoud Hmoud, Head of the Legal Department of the Ministry of Foreign Affairs of Jordan, to discuss issues relating to the refugee file and the evolution of the talks with the Israelis. The outcome of the meetings was also positive.

2- Achievements:

While the principle that *“nothing is agreed until everything is agreed”* prevents the parties from considering that any of the points mentioned below is definitively settled, some progress can be reported:

- The Israeli side has agreed to the general structure of the article on Refugees proposed by the Palestinian team.
- The parties were able to bridge some minor gaps in the drafting of the provisions.
- The Palestinian proposal on the international mechanism / framework for the solution was presented to the Israelis, the US State Department and the Jordanians.
- The PLO has been able to coordinate with the Jordanian Government in a satisfactory manner.

3- Main problems:

1. *On the Palestinian side*

- a. **The negotiations on refugees were split between the TB/SE & Ehud Olmert (“EO”)/Abu Mazen (“AM”) tracks;** this latter track being in charge of the discussion over the number of Palestinian returns to Israel. This bifurcation in the discussions has created a lack of coordination on the Palestinian side
- b. **To date, no head of committee was appointed to lead the Palestinian negotiation team on refugees.**
- c. **The PLO has struggled to communicate in a consistent and effective manner on the refugee issue,** generating unrealistic expectations on the Israeli side, anxiety in Palestinian civil society and criticism in Arab media.
- d. **The Palestinian “red lines” on the refugee file are unclear.** This gives the impression that the PLO is ultimately ready to make unsustainable compromises on this file. It also prevents the definition of a clear strategy.
- e. **The most common message heard on refugees is one that implies all or nothing, as opposed to one which looks to maximize the options available to all sides.** In reality, the refugee issue is likely to be dealt with in a manner which will maximize creative solutions.

2. *On the Israeli side*

- a. **The general impression given by the Israelis in the negotiations on refugees is that they wish to secure their legal position in this file and reach an “end of claims” status at the lowest possible cost, while deferring its practical resolution to third parties.** It seems to be Israel’s belief that the Palestinian refugee issue can find a resolution based on humanitarian considerations only.
- b. **The Israelis indicated recently that the article currently discussed between the parties (“I&Ps”) will be the only document negotiated bilaterally with them. In other words, Israel seeks to limit its liabilities by handing off the refugee file to an international mechanism before all decidable issues have been settled.** Under these circumstances, the current article negotiated between the two parties would become obsolete. In fact, the current version of the Is&Ps document is based on the assumption that technical negotiations on a comprehensive agreement (“CAPS”) will follow the ongoing discussions on the framework agreement (“FAPS”).

There is an identified risk that Israel may continue to try to manipulate the process and avoid having to deal with outstanding refugee claims. In

other words, Israel wants to be rewarded with an end of claims via a partial solution.

- c. **On substance** (return, responsibility, restitution, non-material damages), **the Israelis have shown until now a very rigid approach that goes back to Camp David or even before.** Importantly, the Israelis introduced **the new framework of negotiating on the basis of the two ethnically-defined states: one Jewish and one Palestinian/Arab.** This presents an obstacle to several matters under negotiations, especially the refugees.

3. In the bilateral process

- a. **The fact that the discussion was structured on the basis of the Is&Ps document distracted the parties from discussing the interests underlying the substance of the file.** As a result of this process, the parties gave the false impression that the talks on this file were well-advanced whereas the main issues remain unsolved. A more adequate approach would be to discuss all decidable issues in an orderly manner.
- b. **The parties have not yet discussed in detail which claims would fit into the refugee file.** Therefore, the exact delimitation between the mandate of the refugee committee and what would be covered in the scope of the discussions on compensation for occupation may not be totally clear for the parties.

4. On coordination with interested parties

- a. The pursuit of the bilateral track with the Israelis has lead to a situation where **the parties have overlooked the importance of liaising with refugees' representatives and NGOs.** As the refugees are the holders of their individual rights, any solution that will be proposed to them will need their endorsement. The open letter entitled "*The Rights of Palestinian Refugees and the Final Status Negotiations*" handed over to President AM's office on behalf of 78 Palestinian organizations on September 22, 2008 shows some clear signs of anxiety in Palestinian civil society. In this petition, Palestinian refugees express the wish to be associated to the resolution process.
- b. The pursuit of the bilateral track with the Israelis creates a situation where **the PLO has to determine the best way to coordinate with Host states.** Liaison with Jordan has been satisfactory, but the question of the most efficient way to deal with Lebanon and Syria remains open.

4- Decisions required on the political level to facilitate the discussions and decision making by the Refugee Committee:

Internal Palestinian decisions

1. **Define clearly the needed outcome for the negotiations:** the goal of these talks should be clearly set: parameters for a peace agreement, comprehensive agreement, declaration of principles or otherwise. The strategy to be adopted and the focus in the discussions will be dictated by this goal.
2. **Define the best framework to negotiate the refugee issue:** the split between two different tracks (AM/EO and TB/SE as previously set) is not ideal and different options may be envisioned: for instance, the file could be managed at the President's level only or a Head of committee for the Palestinian team, whose mandate to negotiate the issue would be comprehensive, could be appointed.
3. **Clarify what are the Palestinian "red lines" for each one of the decidable issues of the refugee file.** This effort requires that the relevant decision-makers:
 - be extensively briefed on the technical aspects of the refugee file;
 - define with their advisors the best strategy in consideration of the defined objectives;
 - obtain political clearance at the highest political level on these objectives and the adopted strategy.
4. **Define a clear and consistent communication strategy on refugees** to support Palestinian interests and objectives in the negotiations. We suggest facilitating the association of the main Arab partners of the API. Outreach towards the international community is also of the highest importance to market the PLO position. To reinforce and rationalize the communication of the PLO on refugees, an option could be to appoint a spoke person, or a small communication team, whose role would be to communicate exclusively on refugees towards the relevant audiences.
5. **Agree on the best momentum to engage seriously on the refugee file:** regarding the sequencing of the talks, we would recommend **prioritizing the discussions on the future borders (including Jerusalem) and resources of the Palestinian State:** in fact, the options made available to refugees will largely depend on Palestine's future resources and absorption capacity.
6. **Make sure of the exact delimitation between the claims fitting under the refugee file and the ones relating to compensation for occupation.** This question could be resolved directly by the Heads of these two committees.
7. More generally, **close coordination with the Legal Committee** is required, especially for the 'end of claims' issue.
8. **Define the best way to liaise with refugees' representatives and NGOs.** This has become now a crucial need.

9. **Establish a flexible and effective way to coordinate with Arab Host States.** Similarly, the objective is to facilitate the eventual endorsement of the settlement by enabling a manageable coordination with other parties.
10. **On substance, the relevant Palestinian decision-makers should make decisions on the policy issues set out below, before discussing them with the Israeli counterpart.**

Decisions to be made by the Refugee committee (Isr + Pal)

Please note that this list is based on the following two assumptions:

- the Refugee committee which will be established will have a full mandate to negotiate all aspects of the refugee file (including the question of the return)
- the negotiations on FAPS will be followed by discussions that would lead to a comprehensive and detailed agreement on refugees (CAPS). Therefore, the following list includes all the issues which should be resolved in the scope of the FAPS.

- **Definition of what is ultimately acceptable for Israel's recognition of responsibility**
- **Scope and modalities of the right of return and property restitution**
- **Scope and level of property compensation**
- **Scope and level of compensation for non-material damages**
- **Composition of the international mechanism**
- **Institutional framework of the international mechanism**
- **Cooperation with other international organizations**
- **Funding of the mechanism**
- **[Status determination (refugee definition)]** –this could also fit in CAPS
- **Prioritization and sequencing of returns**

As a general recommendation, **both parties should organize their future discussions on the basis of the decidable issues and their respective interests.** It should be explained to the Israeli side that **no solution on refugees is possible without the resolution of the main policy issues (responsibility, return, restitution etc).**

5. Summary of positions:

The positions of the two parties are detailed thereafter in the chart attached in para. 7.

For brevity, the main respective positions can be summarized in the following points:

- The Palestinian position is based on international law and is consistent with the Arab Peace Initiative which calls for a just solution of the refugee issue to be agreed upon in accordance with UNGA Resolution 194. Thus, in the Palestinian view, a just and comprehensive resolution of the refugee issue requires the acknowledgment of all refugee rights and their negotiated implementation in a way that will accommodate the parties' legitimate rights and concerns - Israel, Palestine, Arab Host States. Once the parties agree on all the policy and technical aspects of the file, an international mechanism will be established with the support and participation of the international community to implement refugee rights in the agreed way. Palestinian rights are set out below:
 - Their right to have Israel acknowledge for its responsibility;
 - The recognition of the right of return and its negotiated implementation;
 - The recognition and implementation of the rights to restitution and compensation, including for material and non-material damages.
- At this stage, the Israeli position remains blurry in the absence of a real and orderly discussion on substance. Israel seems, however, to be pushing toward a resolution of the issue based on humanitarian considerations, thus trying to avoid as much as possible the main policy issues. The following points illustrate their approach:
 - The Israeli side has been promoting the role of an “American led mechanism” to resolve the refugee issue. This notion remains unclear at this stage but this proposal shows Israeli efforts to try to defer the practical resolution of the issue to the US, the international community and the Arab States.
 - They view the creation of the Palestinian State as the main solution for resolving the fate of Palestinian refugees. In their opinion, it seems logical to entitle all refugees to Palestinian citizenship.
 - The issue of restitution was raised by Palestinian negotiators at the political level. It was only evoked once in passing at the technical committed level, but was rejected. This question was not however discussed in detail.
 - Israel is ready to agree to contribute financially to the international fund which will finance the mechanism but the extent and purpose of this contribution have not been discussed.
 - The Israeli side focuses essentially on the rehabilitation aspect of the resolution, overlooking its responsibilities regarding reparations. It still refuses to recognize Palestinian refugees' rights for non-material damages.
 - The only time the question of recognition was evoked at the technical committee level it generated an animated but unfruitful discussion.
 - The Israeli team raised once the issue of Jewish refugee claims to indicate that, in order to satisfy Israeli public opinion, the article on

refugees would have to include at least an implicit reference to the fate of Jewish refugees to indicate that the issue will also be resolved in the near future. The Palestinian team strongly opposed this suggestion.

6. Assessment of what is achievable:

What could be achievable in this committee depends on the decisions made at the leadership level. As the Israelis are trying to limit their involvement to the minimum in the resolution of the refugee issue, the greatest challenge for the PLO will be to show them that this is not conceivable and that it is in fact in their best interest to be associated to the resolution process to ensure a real and durable peace.

If the decisions are made on the core issues, it seems possible to achieve either (i) a bilateral FAPS which will have to be complemented by a detailed legal instrument (CAPS) or (ii) a comprehensive treaty which will deal with all the issues in detail. The goal (option (i) or (ii)) will have to be clearly defined by the parties before resuming the talks. If option (i) is preferred, the PLO will have to obtain from the Israelis the commitment that the complementary agreement will be negotiated following the FAPS.

The great specificity and challenge of the refugee file is that it will not be resolved on the day an agreement is found with the Israeli counterpart. Therefore, in parallel with the bilateral negotiations with the Israelis, the PLO should make its best efforts to ensure the endorsement of the resolution proposal by Palestinian refugees and Arab States.