

To the attention of Dr. Saeb Bamyia

May [], 2008

Dear Saeb,

I am writing to congratulate you on the publication of the Aix Group's research findings on the economic dimensions of a two-state agreement. The report reinforces the premise that a negotiated agreement between Israelis and Palestinians based on a two-state model is possible and feasible. Therefore, efforts like yours are extremely valuable in our quest for a permanent status agreement. I would like to take this opportunity to address in particular the part of your report dealing with refugees.

As you know from your own personal experience as a refugee, and from your long involvement in the Palestinian political struggle, the refugee issue is a core aspect of our conflict with Israel and one of the most complex, sensitive and contentious negotiation issues. The Aix Group report makes some useful strides in setting out a just and practical framework for resolving the issue. In the first place, the proposed framework is comprehensive, addressing both the need to resolve the status and life conditions of the refugees and their claims for full reparations, including property restitution and compensation as well as nonmaterial damages. This finding is important not only for identifying the true scope of the economic dimensions of a solution for the refugees, but also for establishing that a compensation process alone will not resolve the problem. Moreover, the report clarifies some of the technical details of a just solution that in the past have been overlooked such as the distinction between refugee rehabilitation and reparations – enabling refugee integration in the host countries or a Palestinian state should not replace individual reparations (e.g., compensation payments).

Contrary to the spin presented in Israeli news media, the report also upholds the right of return in that it provides for refugees to choose between a menu of destination options, including repatriation to Israel. These aspects of the report help to clarify and reinforce some of the key principles of a just and agreed solution on refugees and begin to touch on their financial consequences. They deserve to be promoted.

At the same time, I am concerned with some of the conclusions published in the report which have the potential of undermining the PLO position and/or Palestinian interests in an agreed solution.

First, the report specifies the amount of compensation to be paid for refugee losses in advance of negotiations and according to standards that contravene international law. Under international law, Palestinian property should be restituted unless materially impossible or per refugee choice. Any property not restituted should be fully compensated. Compensation should also be paid for damaged property returned to its owner. In order to establish a just figure for compensation, the scope of restitution will have to first be agreed with the Israelis. Unfortunately, the report inverts the international standards and treats restitution as an alternative to compensation, not vice versa.

Second, the report estimates the value of refugee losses far below what may and should be reasonably claimed. The low figures presented in the Aix Group report may be explained by numerous factors; foremost among them is that the Aix Group applied an ad hoc valuation methodology. Under international law, compensation should be paid in an amount that restitution would bear. This standard of full compensation (roughly stated as market value plus substantive interest, or actualization to present-day value) is the more appropriate standard than the one of “full and fair” applied by the Aix Group, which is unknown in international law. To underscore the consequences of applying ad hoc standards, I would like to bring to your attention the valuation exercise that is currently being carried out by the NSU on behalf of the PLO/NAD. The provisional assessment, reached by the team of international economists and lawyers engaged in this exercise estimates the total Palestinian refugee material losses to be substantially higher than Aix group’s figures.

While determining who will contribute what to an international claims program should be part of a comprehensive agreement with Israel, ultimately, we prefer not to dwell on final figures at this point but to keep focused on the principles and their implementation modalities. The danger with the Aix Group report is that Israel and third states supporting the peace process will become distracted by the numbers, which overlook the matter of restitution and do not accurately reflect the total scope of the financial contributions they will be asked to make. In this way, the report may prejudice our ability to achieve a just outcome.

As such, I would like to ask that you promote the report in such a way as not to exclude remedies other than compensation and to stress that the financial estimates are only indicative and not based on a professional valuation exercise, while emphasizing the underlying principles which will first have to be decided at negotiations before any compensation figures may be reasonably determined. In addition, as I have highlighted here, the economic dimensions of an agreement on refugees cannot be separated from the need to have all refugee rights recognized as well as the political substance of the solution. I urge you to take care to ensure that the positions you are endorsing through your participation with the Aix Group conform to international law so as not to further erode Palestinian rights in advance of a final agreement.

I have asked the NSU to provide you with a comprehensive note including their technical comments on Aix group’s study. We stay available with respect to any additional talks you may have with the Israelis on the refugee issue in order to meet these ends and ensure consistency in your conclusions with the Palestinian negotiation positions and interests.

[In solidarity,]

Maen Erekat

CC: Dr Saeb Erekat
Mr Ahmed Qurei