

## **Joint provision document (Is & Ps) on refugees n. 2**

**6.1. The Parties commit to a comprehensive, just and agreed resolution of the refugee issue in accordance with** [P: international law and the Arab Peace Initiative] *[I: the vision of the two States for two people]*, **as agreed in this Article.**

6.2.

[P: Israel acknowledges its moral and legal responsibility for the longstanding displacement and dispossession of the Palestinian civilian population as a result of Israeli action during and following the conflict of 1948.]

*[I: Propose preambular paragraph: Recognizing with sorrow, the suffering and loss endured by individuals, families and communities on both sides, including refugees, as a result of the conflict between them]*

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*Comment: The Israeli suggested preamble does not fit in the Article on refugees. It could however be inserted in the Preamble of the Agreement. The proposed wording does not grasp the peculiarity of the fate of Palestinian refugees (the forced & longstanding displacement, the life in the camps, in exile, the statelessness etc.) which cannot be considered jointly with the suffering & loss endured by the victims of the conflict.*

*Inserting the Israeli preamble in this Article would be detrimental as it is likely that it would be very badly received by refugees who are not waiting for Israel's pity but for the recognition of its responsibility and of their own rights.*

*Israel's recognition of responsibility is:*

- *a right Palestinian refugees have under international law (part of their "satisfaction")*
  - *a necessary prerequisite for a real and lasting peace*
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**6.3. Palestinian refugees** *[I: shall be entitled to Palestinian citizenship and]* **shall be provided with** [P: repatriation], **resettlement and integration options, including:**

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*Comment: We strongly advise to convince Israel to remove the highlighted phrasing for the following reasons:*

- *the right of the refugees to be offered Palestinian citizenship is a Palestinian domestic issue*

- Any decision as regards as citizenship cannot be imposed on people but requires the individual's consent
  - Citizenship options will depend on the relocation options offered to the refugees. No commitment or guiding principle could be therefore taken as to citizenship before both parties have a clearer idea of the relocation options and refugee choices made in this regard
  - It is very likely that the resolution of the refugee issue will also require some creative solutions based on mixed status (citizenship + residency rights in a country different from the State of citizenship). This will probably be discussed at a later stage.
  - [Any premature decision on citizenship can alter refugees' right of return and restitution]
  - [PLO policy on citizenship for refugees is not defined yet.]
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- [P: Return to Israel – to be implemented in accordance with an agreed annual quota and within an agreed period of time (renewable on the basis of both parties' consent);]
  - **Resettlement in the Palestinian State**, [I: as homeland of the Palestinian people, in accordance with Palestinian law] **at the sole discretion of the Palestinian State;**
  - **Integration in consenting host States; and**
  - **Resettlement in third States.**

6.4. **Palestinian refugees shall be granted** [P: restitution and full] **compensation** [I: in respect of claims arising out of the refugee issue] [P: for the material and non-material damages they have suffered, including loss of livelihood and opportunities and human suffering, as a result of their protracted displacement.]

6.5. [P: States that have hosted Palestinian refugees shall be entitled for remuneration.]

6.6. **In order to enable a comprehensive, just and effective settlement of the Palestinian refugee issue**, [P: an international mechanism shall be established, with the participation of Palestine, Israel, the host countries and other stakeholder countries and entities] [I: the parties have agreed to invite the United States, in coordination with them, to establish and lead an international mechanism] **to implement all aspects of the agreed solution to the refugee issue as set out in this Article, bringing an end to the Palestinian refugee status** [I: and enabling the phased termination of UNRWA] [P: and enabling a phased termination of UNRWA in parallel to the implementation of the Treaty and in coordination with the international mechanism to be established under Article 6.7].

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*Comments:*

## *1- The US establishment and lead of the IM*

*The Israeli proposal to have the IM established and lead by the US is not based on any legal and/or technical consideration. It is advisable to ask them their motives in this regard. For the Palestinians, several arguments incite to refuse the Israeli proposal and to offer, alternatively, a joint management of the IM:*

- *The objective is to put in place an independent IM specifically geared toward the resolution of the Palestinian refugee problem. Nothing seems to justify a specific role for the US in this regard. There is a clear risk to rely on the sole capacity of a single State as all stakeholders and refugees would become dependant of this country's own agenda, domestic concerns etc. The resolution of the refugee issue will require a continued involvement which will last during an extended period of time. A stable and joint management is better suited to offer the necessary guarantees.*
- *Technically, a joint management with appropriate voting rules will prevent any blocking in the functioning of the IM*
- *Strategically, giving the whole responsibility of the mechanism to the US may alienate other players which may be inclined to participate and contribute financially to the implementation of the mechanism (EU, Japan, Russia etc)*
- *The positions of Arab host countries (which will have to be represented in the IM) will also have to be taken into account. It is likely that they will prefer a joint management.*
- *One can reasonably advocate that the responsibility for the creation & perpetuation of the Palestinian refugee issue is also shared by the International Community (cf. 1947 partition plan, inability to resolve the issue afterward). It therefore makes sense to have the International Community directly involved in the resolution of this problem;*
- *The current image of the US in the Middle East and its ability to be perceived as an honest broker in this very sensitive issue are concerns that cannot be underestimated. A joint leadership would permit to overcome this.*

## *2- The phasing out of UNRWA*

*Enabling the phased termination of UNRWA is a mid-term objective the Palestinians agree upon. Once the refugee issue will be resolved, UNRWA's reason to exist will disappear.*

*However, it should be made clear that this termination should be coordinated with the implementation of the solution on refugees by the IM. In fact, the existing structures and know how of UNRWA should be used to facilitate the implementation*

*of the solution, especially since UNRWA is present in the main Arab host countries and a well-known and reliable interlocutor for refugee communities. Practically and financially, it is sound to use the infrastructures which already exist. They may be modified/transformed according to the terms of the implementation of the solution (to be defined in the Treaty)*

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6.7.[P: The comprehensive mission of the international mechanism will include:

a) a refugee repatriation/resettlement/integration program]: **the international mechanism shall notably assist in coordinating the orderly and secure [P: repatriation], resettlement and integration of Palestinian refugees. As part of its comprehensive mission, the international mechanism shall also provide rehabilitation assistance to Palestinian refugees and to relevant States in order to facilitate refugees' economic and social integration and development.**

b) [P: the program for refugee claims for restitution/compensation]: **All claims for [P: restitution and] compensation arising out of the refugee issue shall be resolved in accordance with procedure, criteria and time-limits determined by the international mechanism.** [P: In order to enable the proper and effective resolution of the claims filed before the international mechanism, both parties commit to make available all necessary records in their possession, including the Israeli Custodian of Absentee Property records.].

6.8.**In furtherance of the above, an international fund** shall be established [P: to finance:

- the repatriation/resettlement/integration and rehabilitation program, and
- the restitution/compensation ("claims") program.]

*[I: to enable the international mechanism to fulfill its mission].*

**Israel commits** [P: to contribute financially to the fund as necessary to cover restitution and compensation claims as agreed in the Treaty] *[I: to make a fixed financial contribution to the fund], together with contributions from international stakeholders.*

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*The applicable legal principle to compensation is that one should pay **according to his responsibility**. This should be therefore the guiding principle for the funding of the IM.*

*As Israel holds a central responsibility in the creation of the Palestinian refugee issue, it should be the first donor. Symbolically, this is also crucial for the refugees.*

*Israel's answer to this will be that it will not be able to pay for the extraordinary amounts involved: in reality, an economic study recently commissioned by the NSU proves that Israel's (booming) economy would be at least capable of coping with the indemnification for the 1948 property losses (the payments would be spread during a 10 to 20 year time period). For your personal information, the figure we arrive at for these losses is around USD 290 billions.*

*The Palestinian position is however not yet defined on this point (i.e. what should Israel pay for?). Considering the responsibilities at stake, and Israel's economic capacity, we suggest the following approach:*

- *Israel would contribute financially to the fund as necessary to cover all restitution and compensation claims. Please note that we could draw Israel's attention to the fact that by accepting the principle of the restitution of some properties, it would be able to alleviate its financial burden.*
- *The International Community would finance the return/resettlement/integration program (the costs generated by the implementation of this program are difficult to assess precisely, but they would be significantly inferior to the amount required for the restitution/compensation claims)*

*Please note that, legally, one could also ask Israel to contribute to the return/resettlement/integration program, as it is also responsible for the protracted and longstanding displacement of the refugees. **Your political guidance is therefore needed to validate the best strategic way to address this issue..***

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**6.9.The Parties call on the international community to assist in the resolution of the refugee issue, in accordance with this Article, through their [P: participation in] [I: support for] the international mechanism and through financial contributions to the international fund.**

**6.10.The international mechanism shall constitute the exclusive forum for dealing with Palestinian refugee claims [P: as agreed in the Article].**

**6.11.Israel and Palestine shall have no further commitment or obligation arising from the refugee issue beyond those specified in the [P: Treaty] [I: Article].**

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*In their proposals, the Israelis often refer to the "Treaty".*

*It is our understanding that, following the framework peace agreement ("FAPS"), both parties wish to negotiate "CAPS". A later Treaty would therefore specify in more details the parties' respective commitments on the refugee issue. Could you please confirm that this is the Israelis' understanding of what they name "the Treaty"?*

*If this is the case, it would be advisable to define in the near future the respective scope of Article 6 of the FAPS vs. the Treaty.*

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