

PALESTINIAN REFUGEES HOW CAN A DURABLE SOLUTION BE ACHIEVED?

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HOW CAN A DURABLE SOLUTION BE ACHIEVED?

WORKING PAPER NO. 6

OF THE

CEPS MIDDLE EAST & EURO-MED PROJECT

TANJA SALEM*

It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

Preamble, The Universal Declaration of Human Rights (1948)

The upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent.

Preamble, Council of Europe, Framework Convention (1995)

1. Introduction

The refugee question is at the core of the conflict between Israel and the Palestinians. Palestinians were first displaced as a direct consequence of the 1948 war and its aftermath. Twenty years later, another wave of Palestinian refugees was created as a consequence of the war during which Israel occupied the West Bank and the Gaza Strip.

The purpose of the present paper is to:

- deliver a critical analysis of past approaches to deal with the refugee issue in the various attempts to resolve the conflict between Israel and the Palestinians;
- discuss lessons to be learned from the settlement and its implementation mechanisms in Bosnia and Herzegovina; and
- propose a direction for a long-term strategy for the international community that avoids past pitfalls and could ultimately lead both parties to an agreement.

In the Background section, we will first give a definition of Palestinian refugees, a short summary of how the refugee problem was created, and an indication of their numbers then and today.

Section 3 puts the Oslo and Madrid processes in a comparative perspective. First the refugee issue is discussed in the context of the former. Then the treatment of the refugee issue in the case of the Dayton Agreement and its implementation in Bosnia and Herzegovina is summarised and contrasted with the handling of the refugee issue under the Oslo accords.

Section 4 gives a summary of the constraints applying to recent proposals from the international community presented within the logical framework set by the Clinton Parameters. Section 5 concludes with a summary of the major flaws identified in past

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attempts by the international community to propose and to implement a sustainable settlement of the Israeli-Palestinian conflict. Finally, it proposes medium and long-term policies that could lead to such a settlement.

2. Background

Ethnic conflicts are “often characterized by ‘multiple disagreements over what kind of conflict it is, and about whether it is ‘one’ or ‘many’”.¹ This has become apparent at every junction in the Madrid and Oslo processes, where the parties to the negotiations fundamentally disagreed even as to the identity of the parties involved, their part in the conflict(s) (Arabs or Palestinians, or both) and what conflict or conflicts were supposed to be resolved: the occupation following the 1967 war, or the dispossession of Palestinians during the armed conflict and war of 1947-48 and the 1967 war. Thus the representation of the history of ethnic conflict becomes part and parcel of the conflict itself, as differing versions of history are transformed into bargaining chips to be negotiated.

In order to create a framework for the discussion of a resolution of a conflict, defining its constituent parts is a prerequisite. Therefore, in what follows, we outline the two versions of the history of the conflict – at the heart of which lies the issue of refugees. The versions we go with are those on the Israeli and on the Palestinian side that agree on the facts, but disagree regarding the interpretation of those facts. This is the basis the present paper builds on.

2.1 Definition – Palestinian refugees and “displaced persons”

For the purpose of this paper, where we refer to refugees, we refer to persons and their descendants who:

- were expelled or forced to leave their homes between November 1947 (Partition Plan) and July 1949 (Rhodes Armistice Agreements), from the territory controlled by Israel on that latter date and in particular,
 - Palestinian refugees from the 1948 war who became UNRWA registered refugees;
 - Palestinian refugees from the 1948 war who ended up in places other than UNRWA's area of operations, i.e., Egypt and other North African countries, Iraq, and the Gulf region;
 - Palestinians who were outside British Mandatory Palestine when the 1948 war broke out, or those who were outside the territories when the 1967 war broke out and who were prevented from returning by Israel; and
 - well-to-do Palestinians who sought refuge in 1948 but whose pride prevented them from registering with UNRWA.
- have been expelled by Israel after that date;²

¹ Mc Gary, J. and B. O’Leary (1995), *Explaining Northern Ireland: Broken Images*, Oxford: OUP, p. 1; quoted in Bell, C. (2000), *Peace Agreements and Human Rights*, Oxford: OUP, p. 15.

² In his book *Israel’s Border Wars, 1949-1956*, Israeli historian Benny Morris discusses the issue of expelling border communities, i.e. Israeli Arabs. On various sourced expulsions of Palestinians from Israel after 1949, see also: Nur Masalha’s well documented article on <http://www.nad-plo.org/permanent/refug7full.pdf>, which recounts incidents such as the expulsion of the remaining 2,700 inhabitants of the southern Arab town al-Majdal (now called Ashkelon) who were transported to the border of the Gaza Strip over a period of a few weeks. The practice of expelling Palestinians or Arab citizens of Israel has continued to be practised by Israel in various ways up to today.

- were internally displaced Palestinians, who remained in the area that became Israel and were originally acknowledged as UNRWA's responsibility but who were subsequently excluded on the assumption that their condition would be addressed by Israel;
- were residents from Gaza and the West Bank (including East Jerusalem) and their descendants and were displaced for the first time in the 1967 war;
- after 1967, were deported by the Israeli occupation authorities from the West Bank and Gaza; or
- are so-called “late comers”, i.e. those who left the occupied territories to study, visit relatives, work, get married, etc., and whose Israeli-issued residency permits expired and were prevented by Israel from returning to their homes.

This coincides with the Israeli definition of absentees,³ a category of Palestinians meant to be stripped of its most elementary human and civil rights:

Any person was declared to be an absentee if he was, on, or after 29th November 1947 a citizen or a subject of any of the Arab states; in any of these states for any length of time in any part of Palestine outside the Israeli-occupied area, or in any place other than his habitual residence even if such place as well as his habitual abode were within Israeli-occupied territory.⁴

Table 1. Total displaced Palestinians today and at the time of displacement

	Palestinians displaced during the armed conflict and war of 1947-48^a		Palestinians displaced as a result of the 1967 War^b
	<i>Total according to early UN documents</i>	<i>1950 UNRWA records</i>	
At time of displacement	711,000-900,000	914,000	300,000
	<i>Total according to Palestinian estimates</i>	<i>Total UNRWA registered refugees^c</i>	
Today	5,928,430	4,010,354	1,000,000

^a There are a variety of figures concerning the number of refugees from 1948. The UN Conciliation Commission on Palestine reported a figure of 711,000 in its report of 23 October 1951, but later that year, the Commission used a figure of around 900,000 in calculating the global estimate of Palestinian refugee losses (UN Documents A/1367/Rev.1 and A/1985). Palestinian sources arrive at a figure of 804,767 with the total number rising to 935,573 if the population of extra villages from UNRWA records is added (Abu-Sitta, 1998), *The Palestinian Nakba*, 1948). Recent figures are based on Table 6 in Dumper, M. et al. (2001). In his report to the Refugee Task Force of the European Commission, he has used figures from Salman Abu-Sitta (1998), *The Palestinian Nakba. The Register of Depopulated Localities in Palestine*, The Palestine Return Center, London. Mick Dumper has updated the figures to 1999 using a 3.5% population growth rate. I have done the same to get to 2002 figures.

^b Source for figures at the time of displacement: Amro, T. (1995), “Displaced Persons: Categories and Numbers Used by the Palestinian Delegation [to the Quadripartite Committee] (not including spouses and descendants)”, Art. 74, No. 14. Alternative Information Center for Palestinian Residency and Refugee Rights, Jerusalem. Reprinted in Zureik, E. (1996), *Palestinian Refugees and the Peace Process*, Institute for Palestine Studies, Washington, D.C. Source for recent figures: Zureik, E. (1996), *Palestinian Refugees and the Peace Process*, Institute for Palestine Studies, Washington, D.C.

^c UNRWA has registered only those refugees who live in areas where UNRWA operates (excluding, for example, refugees who fled to Egypt and Iraq). In addition, in those areas only those refugees who were in need of UNRWA’s assistance were registered. UNRWA June 2001 figures have been updated assuming a 3.5% population growth rate.

Summarising the information in Table 1, most Palestinians who were forced to abandon their homes belong to either those who were expelled or fled during the period of November 1947

³ See section 2.2 of this paper for an explanation of the expression “absentee”.

⁴ The definition used is that provided by the Palestinian delegation at the first meeting of the Refugee Working Group (RWG) held in Ottawa, Canada on 13 May 1992. From: Zureik, E. (1996), *Palestinian Refugees and the Peace Process*, Institute for Palestine Studies, Washington, D.C.

and January 1949, or during the 1967 War. According to the United Nations, about 750,000 Palestinians (half of the Arab population of Mandatory Palestine) became refugees during the first wave. Palestinian demographers tend to talk about almost 1 million.⁵

2.2 The narrative – The Palestinian exodus, 1947-48

Regarding the historiography on the direct cause of the 1948 exodus of Palestinian refugees, two schools of historical research have emerged. As indicated above, although they agree on the events, they disagree as to the interpretation of the events.

On the one hand, Palestinian historians and some Israeli ‘New historians’, such as Ilan Pappé, have interpreted the exodus of the Palestinians as the result of a pre-meditated Zionist campaign to ethnically cleanse areas under Israeli rule.⁶ On the other hand, some of the ‘New historians’,⁷ although agreeing that some of the Palestinians were indeed expelled or massacred, insist that approximately half of the refugees have fled rather than being expelled.

All the above authors agree that about 70,000 refugees in the first wave (i.e. before the start of the war) fled an unstable situation, leaving their property behind and counting on returning once the situation had calmed down. About 250,000 were expelled in the final stages of war. Yet, this accounts for not even half of the refugee population. The dispute between the narratives is about the 350,000 or so who exited Palestine between March and June 1948, which some claim not to have been a result of a premeditated plan, but of their own accord. As Ilan Pappé points out, however, it is immaterial whether people leave their homes “voluntarily” in times of war, or whether they are actually physically forced to leave. What is material is that they were never allowed back.⁸

UNGA Resolution 194 and the UN partition plan

The UN partition plan (November 1947, before the exodus) ruled that Palestine should be divided into a Jewish State (57% of the territory of British Mandate Palestine) and an Arab State (43%), which would share an economic union, and that Jerusalem should be a separate international zone (*corpus separatum*) to be administered by the UN (UN General Assembly Resolution 181[II]). It also ruled that “Palestinian citizens residing in Palestine outside the city of Jerusalem, as well as Arabs and Jews, who, not holding Palestinian citizenship, reside in Palestine outside the city of Jerusalem, shall, upon the recognition of independence, become citizens of the state in which they are resident [Arab State and Jewish State respectively] and enjoy full civil and political rights (1947 UN Partition Plan, (C) Declaration, Chapter (3)[1]).”⁹ In essence, the partition plan did not aim at establishing ethnically homogeneous states, but focused on questions of sovereignty, while approximately 45% of the population of the territory designated for the Jewish state was Palestinian.

⁵ See footnote a in Table 1.

⁶ Khalidi, W. (ed.) (1971), *From Haven to Conquest: Readings in Zionism and the Palestine Problem until 1948*, Institute for Palestine Studies, Washington, D.C.; Finkelstein, N.G. (1995), *Image and Reality of the Israel-Palestine Conflict*, London: Verso; Masalha, N. (1992), *Expulsion of the Palestinians: The Concept of “Transfer” in Zionist Political Thought, 1882-1948*, Institute for Palestine Studies, Washington, D.C.; Pappé, I. (1994), *The Making of the Arab-Israeli Conflict, 1947-1951*, London: I.B.Taurus.

⁷ Morris, B. (1988), *The Birth of the Palestinian Refugee Problem*, Cambridge: Cambridge University Press.

⁸ Pappé, I. (1999), “Were They Expelled? The History, Historiography and Relevance of the Palestinian Refugee Problem”, in Ghada Karmi and Eugene Cotran (eds) (1999), *The Palestinian Exodus, 1948-1988*, London: Ithaca Press, pp. 37-62.

⁹ Davis, U. (1996), *Palestinian Refugees at the Crossroads of 1996 Permanent Status Negotiations*, Shaml Monograph, 1, Shaml Palestinian Diaspora and Refugee Centre, p. 16, (<http://www.shaml.org/publications/monos/mono1-2.htm>).

After the Palestinian exodus, the UN General Assembly (UNGA) ruled in Resolution 194 to reverse the demographic situation created as a result of the expulsions and flight of the Palestinians, resolving that “the [Palestinian] refugees wishing to return to their homes to live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those not choosing to return and for loss of or damage to property”.¹⁰

The Israeli “Law Of Return” and the “Absentees Property Law”

Following the mass exodus, the Israeli government enacted the “Law of Return” (according to which every Jew has the right to take Israeli citizenship) and the “Absentees Property Law” (both in 1950), which nullified all rights to property, residence and citizenship in Israel for all Palestinians who were not physically present within Israel’s border or “internally displaced”. The latter – numbering over 250,000 in Israel today – are not allowed to return to their villages of origin nor to their properties despite living close to their original homes.¹¹

The second exodus as a consequence of the 1967 war

During and after the 1967 War (when Israel occupied the West Bank, the Gaza Strip, and East Jerusalem),¹² more than 400,000 Palestinians were displaced or not allowed to return to their homes, half of whom were 1948 refugees displaced for a second time in less than two decades.¹³ Some 38,000 second-time refugees from the Gaza Strip fled to Egypt.

Table 2. Palestinian estimates of displaced persons and refugees as a result of the 1967 war

Category	Estimate
Displaced to Jordan	
1967 displaced for the first time	107,000
1948 displaced for the second time	93,000
Unclear status (including residents of Latroun villages near Jerusalem)	12,500
Total	212,500
Displaced to Egypt	
1967 displaced for the first time	32,000
1948 displaced for the second time	3,000
Deportees	4,000
Total	39,000
People abroad who were unable to return	60,000
Persons with "lost" ID permits (1967-91)	100,000
Deportees (1967-91)	1,660
Grand total	413,160

Source: Amro, T. (1995), “Displaced Persons: Categories and Numbers Used by the Palestinian Delegation” [to the Quadripartite Committee] (not including spouses and descendants, Art. 74, No. 14. Jerusalem: Alternative Information Center for Palestinian Residency and Refugee Rights; reprinted in Elia Zureik (1996), *Palestinian Refugees and the Peace Process*, Institute for Palestine Studies, Washington, D.C.

¹⁰ UN General Assembly Resolution 194.

¹¹ These Palestinian citizens of Israel have in the past unsuccessfully attempted to regain their properties through Israeli courts.

¹² The 1951 Geneva Convention defines a refugee as a person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country”.

¹³ The Geneva Convention does not include “internally displaced persons”, i.e. persons who flee their homes for the same reasons as refugees, but remain within their own country and are thus subject to the laws of that state – between 1950 and 1967, the West Bank was part of Jordan.

3. Refugees and displaced persons: Negotiating solutions

3.1 Palestine-Israel

3.1.1 *The parties' perceptions of the refugee issue prior to Madrid*

Palestinian perceptions

Initially, the PLO did not accept UNGA Resolution 194, as it had also refused the UN partition plan (UNGA 181), which implied two states, one Jewish, one Palestinian.¹⁴ The PLO was established to “liberate”¹⁵ all of British Mandate Palestine. From the perspective of the PLO and indeed most Palestinians at the time, this implied:

- re-gaining at least part of what they had lost by returning to their homes; and
- gaining independence and self-determination as a people in an historical context where colonies were struggling against foreign rule around the globe.

During the 1970s, however, also as a consequence of the two wars in 1967 and 1973, some groups within the PLO started to positively discuss the establishment of a Palestinian state in the territories occupied in 1967 as a strategic interim aim.¹⁶

The 1988 Palestine Declaration of Independence defines the international legal borders of the projected State of Palestine as the borders designated for the Arab state in the UN General Assembly Resolution 181 (II), 1947.¹⁷ It was pronounced shortly after the so-called *fakk al-irtibat*, the dissolution of the unity of the Hashemite Kingdom east and west of the river Jordan and nullification of the 1950 annexation of the West Bank to Transjordan.

Israeli perceptions

David Ben-Gurion provided the first Israeli version of the Palestinian exodus, one which is still accepted today by many professional historians in Israel. On 11 October 1961, he declared in the Knesset:

The Arabs' exit from Palestine...began immediately after the UNGA Resolution, from the areas earmarked for the Jewish state. And we have explicit documents testifying that they left Palestine following instructions by the Arab leaders, with the Mufti at their head, under the assumption that the invasion of the Arab armies at the expiration of the Mandate will destroy the Jewish state and push all the Jews into the sea, dead or alive.¹⁸

Generally the Israeli narrative claims that:

- The Arab residents of Mandate Palestine left of their own accord or were encouraged to leave by the Arab governments;

¹⁴ Suleiman, J. (2001), “The PLO, From Right of Return to Bantustan”, in Aruri, N. (ed.), *Palestinian Refugees: The Right of Return*, Pluto, pp. 87-102.

¹⁵ At the time it was not stated whether this would be achieved through an independent Palestinian state in all of Mandate Palestine, or by making it part of an Arab state.

¹⁶ This became the official position of the PLO following the 1977 Palestinian National Conference.

¹⁷ All Palestinian residents of the occupied West Bank (including East Jerusalem) were Jordanian citizens (see below). After *Fakk al-Irtibat* they became stateless and their new status was reflected in the replacement of their five-year Jordanian passport with a two-year Jordanian passport.

¹⁸ Pappé, I. (1999), “Were They Expelled? The History, Historiography and Relevance of the Palestinian Refugee Problem”, in Ghada Karmi and Eugene Cotran, *The Palestinian Exodus, 1948-1988*, London: Ithaca Press, pp. 37-62.

- Jewish refugees were also created as a result of the 1948 hostilities;¹⁹ and
- Jews who have immigrated into Israel from Arab countries were denied their rights to their homes and properties in the same way Palestinians were by Israel.²⁰

The historical facts laid out in section 2.2 above speak for themselves.

3.1.2 Madrid

The Madrid Conference was convened in October 1991 on the basis of UNSC Resolutions 242 and 338.²¹ Even though formally the Palestinians were part of the Jordanian delegation, by November 1992, the PLO became de facto recognised as the representative of the Palestinians for the purpose of the negotiations later on.²² The multilateral track of the peace process was launched in January 1992, to lay the foundations for securing the peace that might come through bilateral talks by initiating efforts at “cooperation on arms control and regional security, the environment, water resources, and regional economic cooperation and development.” Only when the Palestinians threatened to boycott these talks did the Americans agree to launch a fifth set of multilaterals to deal with refugees. This is how the Refugee Working Group (RWG), headed by Canada, was formed.²³

The RWG has been a multilateral working group composed of representatives from a number of European countries, the US, Israel, Egypt, Jordan, the Palestinians, Syria and Lebanon (although these last two have boycotted the proceedings). The last plenary session of the RWG was held in December 1995. In 1997, the Arab League called for a boycott of the multilaterals in protest over Israeli policies. The RWG continued to work at a lower level until September 2000, when all multilateral track activities were suspended.

The RWG and UNGA Resolution 194

¹⁹ “As for the equation between the Jewish and Palestinian refugees, this seems to be even a more doubtful line of reasoning. The Jewish refugees remained in Palestine and returned to their homes once they were repatriated as part of a POW exchange at the end of the fighting. They were prisoners of war, and were treated like that. Moreover, the sheer numbers speak for themselves: 750,000 Palestinian refugees vis-a-vis 5000 Jewish refugees.” In Pappé, I. (1999), “Were They Expelled? The History, Historiography and Relevance of the Palestinian Refugee Problem”, in Ghada Karmi and Eugene Cotran, *The Palestinian Exodus, 1948-1988*, London: Ithaca Press, pp. 37-62.

²⁰ During the last round of negotiations at Camp David in 2000, the Israeli side argued that compensation for Palestinian refugees should be offset by compensation of Jews who left Arab countries when they emigrated to Israel. Many had to leave their properties behind without adequate compensation due to rules set up by Arab governments on the repatriation of profits. However, they were never denied re-entry. Although this may be part of an overall peace settlement between Israel and the Arab countries, it goes beyond the scope of this paper to do this matter any justice. At the negotiations at Taba in January 2001, the Israeli side conceded that “the issue of compensation to former Jewish refugees from Arab countries is not part of the bilateral Israeli-Palestinian agreement” (Israeli ‘Non-paper’ at Taba).

²¹ For the full text of UNGA Resolutions 242 and 338 see <http://www.domino.un.org/unispal.nsf>. The former resolution had been adopted in the wake of the 1967 war, calling for, among other things, “a withdrawal of Israeli armed forces from territories occupied in the recent conflict”, and affirms “the necessity of achieving a just settlement of the refugee problem”. Resolution 338 essentially reaffirmed Resolution 242 after the war in 1973.

²² Adelman, H. (1994), “Overview of the Refugee Problem and the Working Group on Refugees”, paper presented at the Institute on Global Conflict and Cooperation Conference on Promoting Regional Cooperation in the Middle East, Vouliagmeni, Greece, 4-8 November, p. 7. It was not until January 1993 that the Knesset passed a law revoking the prohibition on contact with the PLO (so that the Sarpsborg negotiations could begin the next day).

²³ *Ibid.*, p. 6.

At the first meeting in Ottawa on 12 May 1992, UNGA Resolution 194 was adopted as the basis for discussing the refugee issue, and the Palestinian delegation included Palestinians from the diaspora, thus recognising that all Palestinians, no matter where they lived, had their part to play in negotiating a settlement. Israel boycotted the first full session of the RWG in Ottawa in May 1992, but later agreed to participate at the second set of talks.²⁴

Israel has rejected considering UNGA Resolution 194 as the basis for the work of the RWG, and insisted that the proceedings of the RWG should be restricted to humanitarian and technical matters. In addition – albeit accepting UNSC 242 – both Palestinian and Israeli sides disagreed as to the meaning of the word “refugees” in Resolution 242. The former argued that it included both, refugees of 1948 and displaced persons of 1967, whereas the latter argued that it merely referred to the persons displaced as a result of the 1967 war.

The activities of the RWG

As a result, the work of the RWG has always focused on so-called technical and humanitarian issues, such as collection of data on refugees living in the camps in neighbouring countries (which the Norwegian research institute FAFO has conducted and published), and for projects aimed at improving the living conditions of Palestinian refugees in host countries. But the bulk of the funds flowed into the West Bank and Gaza (by 1994, \$230 million had been raised for projects in the West Bank and Gaza, but only \$10 million had been raised for projects in Jordan, Lebanon and Syria).²⁵

Thus, three factors characterised the discussions on refugees under the Madrid formula:

- The de facto recognition that Palestinians from the diaspora had a role in negotiating a settlement, implying a limited recognition by Israel and the international community of the sources of the conflict to go beyond the 1967 “acquisition of territory by war”.
- The focus on technical and humanitarian issues while avoiding the underlying issue, namely the political and citizenship status of Palestinian refugees.²⁶
- And within this framework, the heavy financial bias in favour of those Palestinians who were living inside the areas recognised by all parties as subject to discussion (Palestinians resident in the West Bank and Gaza), but which amount to less than one-third of the population concerned.²⁷

²⁴ Suleiman, J. (2001), “The PLO, From Right of Return to Bantustan”, in Aruri, N. (ed.), *Palestinian Refugees: The Right of Return*, p. 97. The Israeli representatives refused to attend the first session of the RWG because the organization of the talks broke the agreement that the Palestinians would only be represented by persons from the West Bank excluding East Jerusalem and Gaza (see also Adelman [1994], p. 6).

²⁵ Adelman, H. (1994), “Overview of the Refugee Problem and the Working Group on Refugees”, paper presented at the Institute on Global Conflict and Cooperation Conference on Promoting Regional Cooperation in the Middle East, Vouliagmeni, Greece, 4-8 November, p. 17.

²⁶ Andrew Robinson (the current Canadian gavel-holder of the RWG) noted, “The purely humanitarian approach, which is mostly what has been possible until now, does not really allow us to get to the heart of the issue.” Robinson, A. (1996), “The Refugee Working Group: Constraints and Challenges of the Situation in Lebanon”, paper presented to the conference on The Palestinians in Lebanon, Oxford, September 1996. The RWG discussion also centred around family reunification, as a way of bringing the issue of refugee return in through the back door. This was also the reason why Israel became suspicious of this theme (its delegation walked out of the November 1992 meeting in protest).

²⁷ For a detailed account of the refugee issue in Madrid and Oslo, see Tamari, S. (1996), *The Future of Palestinian Refugees in the Peace Negotiations: Return, Resettlement, Repatriation*, Institute for Palestine Studies, Washington D.C., February.

3.1.3 The Oslo accords

The kick-off of the Oslo accords was marked by the Declaration of Principles (DOP). The latter was preceded by mutual letters of recognition by Yasir Arafat and Yitzhak Rabin on 9 September 1993. The DOP – as was also the Madrid Conference – was based on UNGA 242 and 338, but as a document signed by both parties, the PLO effectively agreed that the aim of the peace process was the settlement of the conflict through the implementation of these two resolutions, and no mention was made of UNGA 194 or the 1948 refugees’ right of return.²⁸

The DOP effectively distinguishes between what it terms persons “displaced” as a result of the 1967 war and “refugees” and relegates the solution of the “refugee” issue to the “permanent status negotiations”, without linking the issue to any legal reference.²⁹ Regarding “displaced persons”, it determines that Israel and the Palestinian representatives on the one hand, and the governments of Jordan and Egypt should form a Quadripartite Committee to discuss the means of returning the displaced people of 1967 to the West Bank and Gaza Strip.³⁰

Thus the return of each Palestinian displaced as a result of the 1967 war is conditional upon Israeli approval and is subject to Israel’s security considerations according to the DOP, at least until “permanent status negotiations” are concluded. This is consistent with the DOP’s endorsement of Israel’s right to have joint sovereignty over all crossing points, by land, air and sea at least until the permanent status negotiations would determine otherwise.

The Quadripartite Committee on displaced persons established under Oslo discussed the issue of the Palestinians displaced in 1967 on the basis of:

- the DOP and its annexes;
- the articles concerning displaced persons in the Jordanian-Israeli treaty; and
- the Camp David I agreement as the basis for the committee’s work.

The work of the Committee, however, was slow (the participants being unable to agree on a common definition of “displaced person”) and has been stalled since the peace process came to a halt in 1996 when Likud came to power in Israel.

Oslo II and the unofficial “Beilin Abu-Mazen Plan”

According to the 1993 DOP, so-called “permanent status” negotiations were to start at the beginning of the third year of the interim period in May 1996. The permanent status

²⁸ “The aim of the Israeli-Palestinian negotiations within the current Middle East peace process is, among other things, to establish a Palestinian Interim Self-Government Authority, the elected Council (the “Council”), for the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years, leading to a permanent settlement based on UN Security Council Resolutions 242 and 338. It is understood that the interim arrangements are an integral part of the whole peace process and that the negotiations on the permanent status will lead to the implementation of UN Security Council Resolutions 242 and 338.” Article I, Declaration of Principles (henceforth DOP).

²⁹ Suleiman, J. (2001), “The PLO, From Right of Return to Bantustan”, in Aruri, N. (ed.) (2001), *Palestinian Refugees: The Right of Return*, Pluto, p.98; the relevant article of the DOP is Art. 5, para. 3. Similarly, the question of Jerusalem and the delineation of borders were relegated to final status negotiations.

³⁰ Article 12 of the DOP reads: “The two parties will invite the Governments of Jordan and Egypt to participate in establishing further liaison and cooperation arrangements between the Government of Israel and the Palestinian representatives, on the one hand, and the Governments of Jordan and Egypt, on the other hand, to promote cooperation between them. These arrangements will include the constitution of a Continuing Committee that will decide by agreement on the modalities of admission of persons displaced from the West Bank and Gaza Strip in 1967, together with necessary measures to prevent disruption and disorder. Other matters of common concern will be dealt with by this Committee.”

negotiations were to discuss “all remaining issues, including Jerusalem, settlements, security arrangements, borders, relations and cooperation with other neighbours, and other issues of common interest”.³¹

Following the Oslo II accords, the parties started work on the preparations of the permanent status negotiations, in the course of which the so-called “Beilin-Abu Mazen Plan” was circulated in October 1995 as a basis for the negotiations.³² The plan was unofficial – i.e. endorsed by neither side – and left a number of issues unresolved. Nevertheless, it deserves to be presented as it illustrates well that various proposed solutions and the issues they have left unresolved have not substantially changed since. Appendix A gives a summary of the Beilin-Abu Mazen Plan, the positions at Camp David as well as the positions as presented at Taba in January 2001 regarding refugees.³³

3.1.4 The Taba Non-papers

Many observers claim that Palestinians and Israelis were never closer to a “deal” than at Taba in January 2001. As can be seen from Appendix A, the unofficial Beilin-Abu Mazen plan of six years before was very similar to the proposals at Taba.

Narrative

The Palestinian position at Taba was that 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 UNGA Resolution 194. The unofficial Beilin-Abu Mazen plan does not attribute responsibility to any of the parties.

Return and citizenship

The Beilin-Abu Mazen plan contains one paragraph each for the Palestinian and for the official Israeli narrative. The Israeli position is ambiguous regarding the right of return and reformulates it as a right of return to “a Palestinian state”. The position of the respective parties in the Taba negotiations was unchanged. In the Beilin-Abu Mazen plan, however, both positions figure in the same draft “agreement”, whereas at Taba only two separate unofficial non-papers were achieved.

The Palestinian proposal at Taba is based on the framework set forth in UNGA Resolution 194(III), 11 December 1948, and international law: the right of all Palestinian refugees to return to their homes and receive compensation for losses and damages. Those choosing not to return should be assisted in resettling and also compensated for losses and damages.³⁴ Paragraph 5 of the Palestinian Non-paper reaffirms that “all refugees who wish to return to their homes in Israel and live at peace with their neighbours have the right to do so”. But whereas paragraph 15 reaffirms the right of the Palestinian refugees in Lebanon to return to Israel, paragraph 16 implies that Israel could agree to specific numbers of returnees to Israel,

³¹ Israeli-Palestinian Interim Agreement on the Westbank and Gaza Strip, Washington D.C., 28 December 1995, as published by the Jerusalem Media and Communication Center, Occasional Document series No. 7, August 1996, <http://www.jmcc.org/research/series/oslo2.html>.

³² For the full text (excluding Appendices) of the Beilin-Abu-Mazen Plan see <http://www.us-israel.org/jsource/Peace/beilinzamen.html>. A scanned copy of the original document used to be available from the Palestinian National Authority’s website until summer 2002 and can be made available by the author.

³³ Israeli ‘Non-paper’ at Taba.

³⁴ These same principles are set forth in refugee law. UNHCR Executive Committee Conclusions 18 (XXXI), 1980 and 40 (XXXVI), 1985, recognise repatriation as the “most appropriate solution” for refugees.

which are to be fixed by negotiation.³⁵

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.³⁶

The Israeli proposal at Taba, however, also 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 (in addition to family reunification);
- unrestricted resettlement and citizenship in the Palestinian state; and
- recognition of the right of host countries to compensation.³⁷

The principles and mechanisms delineated in the Israeli proposal at Taba, however, do not fully conform to the principles set forth in UNGA 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.³⁸

Compensation

Regarding compensation, the Israeli and Palestinian positions at Taba looked quite different from the Beilin-Abu Mazen Plan – and went opposite ways. According to the latter compensation was to be paid following the establishment of an International Commission for Palestinian Refugees (ICPR). Nevertheless, the Beilin-Abu Mazen Plan was not clear about what the basis for the assessment of refugee claims would be, whether the approach was to be a lump-sum, or an individual one. Payments should have been made “on the basis of both individual physical/moral loss and need of economic support to enable resettlement and rehabilitation”. But, it was not clear who (Israel, donor countries) would contribute and how contributions would be determined.

³⁵ “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.” As noted in the UNGA Resolution 194(III), para. 16.

³⁶ UNHCR Executive Committee Conclusions 18 (XXXI), 1980 and 40 (XXXVI), 1985, also state that “(T)he 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.” Finally, the Conclusions call upon governments of origin to provide formal guarantees for the safety of returning refugees.

³⁷ For a detailed commentary of the Taba proposals, see: Rempel, T. (2001), “Principles and Mechanisms for a Durable Solution for Palestinian Refugees: The ‘Taba Proposals’”, *Bulletin* No. 10, BADIL Resource Center, Bethlehem, November.

³⁸ According to the account of the Taba talks by EU Ambassador Moratinos. “(T)he Israeli side, informally, suggested a three-track 15-year absorption program, which was discussed but not agreed upon. The first track referred to the absorption by Israel. No numbers were agreed upon, but with a non-paper referring to 25,000 in the first three years of this program, (40,000 in the first five years of this program did not appear in the non-paper, but was raised verbally)...The second track referred to the absorption of Palestinian refugees into the Israeli territory, that shall be transferred to Palestinian sovereignty, and the third track referring to the absorption of refugees in the context of family reunification scheme.”

At Taba, the Israeli position envisaged a lump-sum payment, guided by the “dual objectives of individual historic justice and communal economic development”.³⁹ In addition, at Taba “the Israeli side requested that the issue of compensation to former Jewish refugees from Arab countries be recognized, while accepting that it was not a Palestinian responsibility or a bilateral issue. The Palestinian side maintained that this is not a subject for a bilateral Palestinian-Israeli agreement”.⁴⁰

The Palestinian position regarding principles and their implementation was very similar to the one adopted by the international community in the case of Bosnia and Herzegovina under Dayton (see Section 3.2). A Compensation Commission (paragraphs 42-50) should be 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 Compensation Commission shall be composed of the Parties, US, EU, UN, World Bank and Donor States. This would strengthen the Commission’s international legitimacy, and facilitate international financial support and transparency.⁴¹

Importantly, the Commission was to be authorized to use the records of the UNCCP, Israeli Custodian of Absentees’ Property, UNRWA, and any other relevant records to verify claims. Within six months of the adoption of the agreement Israel should be 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, and 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.⁴²

The following section presents the case of Bosnia and Herzegovina. The illustration of the Dayton agreement and its implementation mechanisms in particular regarding the refugee question serves a number of purposes, namely to illustrate:

- the importance of addressing refugee issues for peace-building;
- that a viable refugee repatriation programme can be designed and work in practice; and
- that any solution to an ethnic conflict can only lead to a sustainable peace if it puts safeguards in place which clearly define and prevent future abuses.

³⁹ Israeli Non-paper, <http://www.mideastweb.org/Taba.htm>, retrieved 24 June 2002.

⁴⁰ Moratinos, Miguel, EU Special Envoy (2001) “Minutes of the Negotiations at Taba”, Washington D.C., January.

⁴¹ BADIL (2001), “Principles and Mechanisms for a Durable Solution for Palestinian Refugees: The Taba Proposals”, *Bulletin* No. 10, November; available at http://www.badil.org/Publications/Bulletins/B_10.htm.

⁴² Palestinian ‘Non-paper’ as published by *Le Monde Diplomatique* and BADIL (2001), “Principles and Mechanisms for a Durable Solution for Palestinian Refugees: The Taba Proposals”, *Bulletin* No. 10, BADIL Resource Centre, Bethlehem, November (http://www.badil.org/Publications/Bulletins/B_10.htm).

In Bosnia and Herzegovina the international community has recognised the importance of a solution to the refugee problem for peace-building and has put all their weight to bear on the parties to respect general principles within which a solution would be implemented. In particular, it shows that a sustainable solution to any ethnic conflict requires both backward-looking elements, and forward-looking safeguards. This link between past conflict and future co-habitation has not been given the attention it requires in the Madrid and Oslo processes. After all, “solving” a conflict must ensure that core issues do not remain unaddressed as they will otherwise resurface in one form or another.

3.2 The treatment of refugee issues in Bosnia and Herzegovina

Bosnia and Herzegovina (BiH) has been the most recent example of a relatively successful resolution of an ethnic conflict that saw the displacement of a large number of people (an estimated 2 million). As such, the Bosnian case serves as a precedent and an example in how ethnic conflicts can be resolved and how the risk of recurrence of such conflicts can be minimised through international involvement in drafting the agreement, as well as in monitoring and enforcing its implementation.

After the secession of first Slovenia and Croatia (and the recognition thereof by the international community), the Republics of Serbia and Montenegro started to call themselves the Federal Republic of Yugoslavia (FRY), as the successor state of the Socialist Federal Republic of Yugoslavia. BiH was left as a territory with a largely mixed population that – after it applied for and was granted international recognition in 1991 – descended into war.

The Serbian authorities claimed that the dissolution of Yugoslavia had been caused by the illegal secession of Slovenia and Croatia, and that this had resulted in an ‘inter-ethnic and civil war’ in Bosnia. Serbian authorities also argued that the requisite territorial unit was that of Yugoslavia as a whole, and that any attempt to proclaim independence by the republics was in violation of the international law prohibition on disrupting territorial integrity. On the other side, BiH was caught in a situation where non-recognition of the country as a sovereign state would leave the Bosnian claims for territorial integrity vulnerable to Serbian and Croatia expansionist claims.

Among the international community there were two competing views of the conflict, as well. Put briefly, according to the United States, the war in Bosnia was an act of aggression by Serbs against the legitimate government of a sovereign, internationally recognised state, and part of a pattern of Serb nationalism begun by Slobodan Milosevic earlier in Slovenia and Croatia. The second view, associated with some European states (mainly France and the UK) and Canada, saw the Yugoslav and Bosnian conflicts as a type of civil war between long-time ethnic rivals, unleashed by the death of Tito and the fall of communism.

The American approach dominated at the end of the conflict, when a peace settlement was negotiated at Dayton in 1995, with its implementation overseen by the international community in great detail.

The political set-up created through the Dayton Agreement balances “national” (ethnic) self-determination on the one hand (through dividing Bosnia into two parts according to ethnic lines, as well as through a cantonal structure which effectively splits the country along ethnic lines) and minority rights on the other. This highly complex political system resulted from the need to compromise in the negotiations: while the agreement allowed for continued existence of war-time parallel structures of power (administrative as well as executive) – as manifested

by the evictions in 1996⁴³ – the institutions set up to bolster and enforce the Dayton Agreement ensured that progress was being made also on minority and human rights.⁴⁴

3.2.1 Return

The conflict in BiH resulted in the largest displacement of people to occur in Europe since the Second World War. In 1996 the UNHCR estimated that over 2 million people had been displaced, with approximately 1 million displaced within BiH, half a million living in the neighbouring countries formerly part of the federal Yugoslav state, and approximately 700,000 receiving temporary protection in other countries, half of which were in Germany.

According to the Dayton Accords “all refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them the property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them” (Dayton Agreement Art. 1).⁴⁵

The right to return is specifically stated to be to refugees’ “homes of origin” although it also provides that “choice of destination shall be up to the individual or family and the principle of the unity of the family shall be preserved”. The UNHCR is called on to develop, in close consultation with asylum countries and the parties, a repatriation plan to allow for “early return of refugees and displaced persons” (Dayton, Arts. I and V; see also Appendix B to this paper).

3.2.2 Real Property Restitution

A Commission for Displaced Persons and Refugees is established to deal with land claims. A procedure for addressing the claims is set out and the Commission given extensive powers to “effect any transactions necessary” with regard to title to the property (see Dayton Accords Appendix B).

A Refugees and Displaced Persons Property Fund is established in the Central Bank of BiH to be administered by the Commission. It is to be funded “through the purchase, sale, lease and mortgage of real property which is the subject of claims before the Commission” and by direct payments from the parties, by states or international or non-governmental organisations (Dayton Accord, Appendix B).

Since 1999 the basis for reclaiming and repossession of property has been the Property Law Implementation Plan (PLIP). In April 1998, the first legal framework for property repossession was adopted in Federation legislation, followed in December 1998 by like legislation in Republika Srpska (RS). But an intensive campaign, involving the imposition of

⁴³ As estimated 100,000 Serbs were evicted from Sarajevo. This was followed by evictions in Mostar, Banja Luka and other places throughout BiH.

⁴⁴ Thus in addition to Bosnian-Croat-Serb proportionality in all the institutions of the state of BiH, where a canton is ‘mixed’, Bosnian and Croat, full consociational cantonal government has initially been provided for. This “mixed canton regime” was abolished in October 2002 and replaced by the new constitutional set-up following the agreement on restructuring in May 2002 (Bell, op. cit., p. 148).

⁴⁵ The political background to the push for return, as opposed to third-country resettlement by European host countries, is the increasingly hostile attitude to immigration on the one hand, and on the other a preference for solving conflicts where they originate, rather than through measures which ultimately rubber-stamp ethnic cleansing in zones of conflict. Prior to the existence of “temporary protection”, international covenants obliged host countries to provide work permits, access to social and health care (as is the case under temporary protection), but importantly, they undertook not to expel refugees once they were recognised as such. This new legal status left unclear “when, how and under what authority protection would be terminated”, (Bell, op. cit., p. 252).

a package of property laws by the High Representative was required in order to strengthen and harmonise the laws. In their current form, the laws have been in place since October 1999.

The objective of the PLIP is to ensure that all outstanding claims by refugees and displaced persons to repossess their properties are resolved. By treating repossession of property as a question of rule of law and of the local administrative and executive authorities, the PLIP promotes respect for civil rights over political interests and opens enormous possibilities for the overall return of DPs and refugees.

The International Community has kept a close monitoring and supervision operation, which aims at ensuring that domestic mechanisms for resolving property claims operate consistently throughout the country, guarded by a tough intervention strategy. The latter has resulted in the removal by the High Representative of a few dozen officials, who obstructed the process of property implementation.

The PLIP structure has developed a standardised system for this task. Where there is a clear abuse of the process, or systematic refusal to implement the law, the field officers file non-compliance reports, followed by an appropriate intervention strategy on the side of the International Community (ranging from warnings to aid sanctioning). As mentioned above, in the most egregious cases the High Representative will dismiss the responsible official.

3.2.3 Safeguards

Refugee return and Human Rights clauses as mutually reinforcing safeguards

The most important institution regarding human rights safeguards is the Human Rights Chamber (established by Annex 6, GFAP). As a complaints institution, the Human Rights Chamber issues binding decisions. Initially, implementation of the decisions was problematic. Yet implementation of Chamber decisions increased from 10% in early 1999 to the current 80%. The Human Rights Chamber decides, in the absence of a local jurisdiction reflecting the European Court of Human Rights (ECHR) in this matter.⁴⁶

Refugee return and human rights clauses are mutually reinforcing in that the latter ensures that violations do not recur and return is actually feasible, and both aim at ensuring that ethnicity is removed as a criterion defining community boundaries, thus reducing the probability of renewed hostilities in the long-term through cooperation at the local level rather than separation.

Safeguarding implementation

As part of the Dayton Accords, the international community put in place a Peace Implementation Council (PIC),⁴⁷ meeting on a regular basis and continued Contact Group Meetings (including representatives of the US, France, Germany and Russia). The High Representative of the International Community and SFOR were set up as the executive arms for the implementation of the Dayton Peace Agreement.⁴⁸

⁴⁶ In the words of Patrik Volf, spokesman for the Public Affairs Department of the High Representative, the presence of international experts in Bosnian institutions and the national courts are “decisive in order to make these institutions fully functional. International involvement has therefore been a success, but it is an expensive project and considering the permanent funding crisis within the international community and hard to copy”. (from an e-mail exchange in October 2002).

⁴⁷ The PIC comprises 55 countries and international organisations that sponsor and direct the peace implementation process.

⁴⁸ Information in this section has been provided by Bell, op. cit., pp. 107-117, and <http://www.ohr.int/>.

Among the most important milestones in the peace implementation process was the PIC Conference in Bonn in December 1997. Elaborating on Annex 10 of the Dayton Peace Agreement, the PIC granted the power to the High Representative to remove from office those public officials who obstruct legal commitments and the Dayton Peace Agreement, and to impose laws as he sees fit if BiH's legislative bodies fail to do so.

Summary

The most important legal and institutional safeguards of the Dayton Agreement are:

- the High Representative of the International Community established under Annex 10 of the Agreement, where he is defined as the final authority regarding the civilian implementation of the peace settlement;
- the provisions for international involvement in the shared institutions aimed at making them work (including the Constitutional Court);
- the human rights protections with enforcement mechanisms built into the constitution (created initially as Annex 4 of the Dayton Accord);
- the establishment of a Human Rights Chamber as an institution set up to deal with complaints;
- the provisions aimed at reversing the ethnic cleansing which led to the Entity and Federation's cantonal structures in the first place⁴⁹ (through refugee return);
- a complex system of sanctions and benefits linked to the Property Law Implementation Plan (PLIP) – international aid distribution is also dependent on the municipal efforts linked to property return;
- that SFOR and the Commander of SFOR (COMSFOR) – currently 16.000 soldiers – provide the basis for a safe and secure environment as the military arm of peace implementation, with far reaching powers within BiH; and
- the initial presence of International Police Task Force (IPTF), replaced recently by the European Union Police Mission (EUPM), that proactively oversees the activities of the local police forces.⁵⁰

Despite these measures, it has been held that the Dayton Accords in part confirmed the results of the ethnic cleansing operations by the Serbs. In particular, the fact that the country was divided in two – at the end of the war in 1995 – ethnically cleansed territories, the Republika Srpska constituting the Serb part, the Federation of BiH constituting the Bosnian and Croat part of the country. By virtue of the constitutions of these two “entities”, only Bosnians and Croats in the Federation and Serbs in the RS were declared constituent ethnic groups.

In May 2002, an agreement (initiated by a decision of the State Constitutional Court) was reached with all political parties to make all three ethnic groups in BiH constituent peoples across all of the country's territory, thus getting closer to a model of one state for all citizens, and one step away from ethnically defined internal borders. This would also make it easier for refugees and displaced persons to return, where upon return they constitute a minority amongst those who contributed to their expulsion previously. The negotiations resulted in a complex new constitutional set-up, which will ensure that each ethnic group's representatives will be proportionally represented in state and entity institutions according to the pre-war

⁴⁹ Bell, *op. cit.*, p. 149.

⁵⁰ An example of its proactive approach is a project undertaken to screen all police officers working in BiH.

census of 1991.⁵¹

In addition to the international parties' role in the implementation of the Dayton Accord, the Stability Pact for South Eastern Europe is a “first serious attempt by the international community to replace the previous, reactive crisis intervention policy in south eastern Europe with a comprehensive, long-term, conflict prevention strategy”.⁵² The Stability Pact is co-ordinated by the European Commission and the World Bank.

3.2.4 Implementation to date

Before presenting data on return, repossession and compensation attention needs to be drawn to the reliability of the existing statistics. Because there has been no census so far in BiH, statistics are collected by different institutions in their respective areas of expertise. Therefore, these figures cannot account, for example, for persons, who have returned, but have not registered. Similarly, people may have returned, and left again, but not informed the institutions collecting the data.

Return and repossession

To date almost two-thirds of the displaced people are accounted for in the statistics. Out of two million displaced persons, almost half have returned, and about 16% have resettled in third countries. Some 40% of displaced persons are not accounted for (see Table 3).

Table 3. Return and Resettlement to date

Persons		Bosnians	Croats	Serbs	Other	Total
Returnees to BiH	Refugees	267,029	59,892	78,954	4,656	410,531
	Displaced persons	295,235	148,580	39,699	2,386	485,900
Settled in third countries		na	na	na	na	328,900

Sources: UNHCR (August 2002); for third country settlement, the BiH Ministry for Refugees.

Obviously not all refugees were property-owners. But out of the total claims filed, about 59% were implemented. This means that almost 60% of those who had lost their property have legally and actually regained control over it (as shown in Table 4).

Table 4. Property restitution – Claims filed, processed and repossessions

	Number of Claims	Claims processed	% of Claims processed	Repossessions	Implementation ratio
Federation of BiH (FBiH)	141,812	123,726	87%	88,497	62%
Republika Srpska (RS)	107,578	75,815	70%	58,068	54%
Brcko District	6,922	5,086	73%	4,419	64%
Total	256,312	204,627	80%	150,984	59%

Source: PLIP (August 2002).

⁵¹ “Helsinki Committee for Human Rights in Republika Srpska, Bosnia & Herzegovina, Harmonizing Constitutional Changes” (2002), Institute for War and Peace Reporting, 2 July 2002, (http://www.iwpr.net/index.pl?archive/bcr2/bcr2_20020531_4_hr_eng.txt).

⁵² The Special Coordinator chairs the most important political instrument of the Stability Pact, the Regional Table. There are three Working Tables which operate under the Regional Table:

- Working Table I: Democratisation and Human Rights;
- Working Table II: Economic Reconstruction, Cooperation and Development; and
- Working Table III: Security Issues (with two Sub-Tables: Security and Defence, and Justice and Home Affairs).

Compensation for lost property

So far, legally, there is no lost property. Whoever files a claim and provides the necessary evidence will get the occupancy right back. Damages or destroyed property are only indirectly compensated for via reconstruction aid, in addition to local regulations dealing with veterans benefits.

3.3 Lessons to be learned

Central features of the Bosnian settlement were:

- the principles guiding the negotiations (such as respect for human rights, or the right of refugees to return to their properties in the case of Bosnia) have been put down in the initial agreement;
- a formal mechanism forcing recognition by all sides of past violations which are not to be repeated as part of the initial agreement (War Crimes Tribunal);
- safeguards for both sides in order for violence not to recur, through binding reference to international human rights and humanitarian law; and
- implementation ensured through an international executive body bolstered by the presence of international representatives in national institutions and international military and police forces.

Furthermore, a workable compromise was struck between self-determination and respect for individual human rights and citizenship rights. The highly complex political system resulted from the need to compromise in the negotiations: while the agreement itself allowed for continued existence of war-time parallel structures of power, the institutions set up to bolster and enforce the Dayton Agreement ensured that progress was being made also on minority and human rights.⁵³ A very strong legal framework guarantees individual rights and its implementation is overseen by international institutions.

The Right of return, property restitution and implementation mechanisms

- Both the individual right of refugees to return to their homes and to be compensated for lost property have been recognised in principle in the agreement.
- There are *no numbers* of returnees or properties returned agreed upon *in any of the initial agreements a priori, but rather principles* agreed upon in the agreement, such as certain rules to deal with conflicting claims by current and past users/owners of the properties concerned.
- The details of how the return is organised and how many return in practice are left to the implementation mechanisms in all cases. In the case of Bosnia, the UNHCR has been given a prominent role in this process.
- In order to enable the return of the refugees – who in all cases have to return to areas where they were subject to serious human rights violations and/or harassment – specific legal and institutional mechanisms were set-up, in order for refugees to be free of fear and

⁵³ The annex to the Constitution of the Federation lists human rights instruments that are incorporated into the Federation Constitution, and are therefore binding in the territory of the Federation. The instruments that deal with citizenship include: the 1948 Universal Declaration of Human Rights; the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Protocols thereto; the 1951 Convention Relating to the Status of Refugees and the 1966 Protocol thereto; the 1957 Convention on the Nationality of Married Women; the 1961 Convention on the Reduction of Statelessness; the 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto; and the 1989 Convention on the Rights of the Child.

thus able to make a real choice whether or not they want to return to their homes or areas of origin, or to live elsewhere.

Property restitution

- The implementation of property restitution has been handed over to a commission, which is composed of representatives of all the communities concerned (four appointed by the Federation of Bosnia Herzegovina, two by the Republika Srpska) plus three by the European Court of Human Rights. Compensation is given if the rightful owner is unwilling or unable to return and live in his/her property.

4. Constraints applying to a resolution of the refugee issue assuming a Taba-type settlement of the conflict

Official negotiation processes have left the future of the refugees largely undetermined. While the Taba talks got close to a map of a two-state solution, the refugee chapters of the Oslo-to-Taba processes did not get far in defining a solution.

On the Israeli side, fears of having to compromise the Jewish character of the state of Israel, and the real costs associated with returning expropriated properties and paying potentially very large amounts of compensation have caused Israeli negotiators to stop short of recognising Palestinian refugee rights as they are laid down in international law.⁵⁴

On the Palestinian side, international and Israeli pressure on the one hand, and pressure from the Palestinian community within the West Bank and Gaza Strip (WBGs) and the diaspora on the other, have determined the PLO's and the PA's strategies. The PLO's position was based on the principles underpinning UNGA Resolution 194 while it recognised at the same time that their negotiating position implied the need to accept negotiating numbers at least to some extent. Last but not least, the negotiations did not include host countries. The latter are critical determinants of the practicability of any solution.

In what follows, we provide a summary of the constraints on the ground faced by anyone contemplating a resolution of the refugee issue. This is done within the logical framework of what has come to be referred to as the "Clinton parameters". The options for Palestinian refugees envisaged in the Clinton parameters provide a framework that can easily be used to delineate all the logical options for a resolution of the refugee issue.⁵⁵

1. Return of refugees to their homes and properties in Israel;
2. "Return" to future Palestinian state;
3. "Return" to territory which, while today in Israel, would be transferred to a Palestinian state;
4. Resettlement in the present country of residence;

⁵⁴ See for example, Gideon Levi's article "The Fear of Return", *Ha'aretz*, 17 August 1997; also Uri Avnery's article on the "Right of Return", 14 January 2001, where he refers to the Right of Return as "the new scarecrow" after the PLO Charter, (<http://www.avnery-news.co.il>).

⁵⁵ The Clinton parameters are in essence what was presented in the Israeli Non-paper at the Taba talks. The text of the Clinton parameters can be found in the Appendix to the ICG Proposals. According to President Clinton, Israel would not have to recognise its moral responsibility in creating the refugee problem, but would "acknowledge the moral and material suffering caused to the Palestinian people as a result of the 1948 war", thus putting the blame on those who started the war: Arab countries who attacked the newly declared Israeli state; Israel also acknowledges "the need to assist the international community's effort in addressing the problem. The president knows the history of the issue and how hard it is for the Palestinian leadership to appear to be abandoning this principle. At the same time, the Israeli side could not accept any reference to the Right of Return that would imply a right to immigrate to Israel in defiance of Israel's sovereign policy on admission, or that would threaten the Jewish character of the state".

5. Resettlement in another Arab country; or
6. Resettlement in a non-Arab third country.

In section 4.1 the political and economic constraints applying in each case are fleshed out. Sections 4.2 and 4.3 give a critical summary of past discussions amongst the stakeholders regarding citizenship rights and the monetary conditions accompanying a solution, respectively. Section 4.4 presents survey information available regarding refugee choice.

4.1 Political and economic constraints applying under the Clinton Parameters for permanent settlement of refugees

As a starting point, Table 5 gives an estimate of today's population of Palestinian refugees by country of residence. The highest proportion of refugees live in Jordan with approximately 2 million, followed by the occupied West Bank and Gaza Strip with a total of 1.6 million refugees. Syria and Lebanon together host roughly 900,000 refugees, and other Arab countries together host about 300,000 Palestinian refugees. About 200,000 refugees live in the US, and some 250,000 live in other non-Arab countries.

Table 5. Today's Palestinian refugee population (as of 2002)

Place of refuge	Number of refugees
Israel	276,250
Gaza Strip	876,196
West Bank	746,654
Jordan	1,992,049
Lebanon	466,628
Syria	508,845
Egypt	46,282
Saudi Arabia	314,239
Kuwait	39,308
Other Gulf	120,747
Iraq, Libya	84,957
Other Arab countries	6,340
USA	197,913
Other countries	252,022
Grand Total	5,928,430

Source: Salman Abu-Sitta (1998), *The Palestinian Nakba. The Register of Depopulated Localities in Palestine*. The Palestine Return Center, London. Figures up-dated to 2002 using a 3.5% population growth rate.

The figures for refugees living in the Arab countries vary, as Palestinians living in the Gulf usually have identity cards for Lebanon and Syria, but only temporary work and residency permits for the Gulf states. Similarly, Palestinians living in other Arab countries, such as Libya or Egypt, may live there on a precarious basis, as has been illustrated in September 1995, when 30,000 Palestinians (most of whom had Lebanese identity cards) were expelled from Libya, ending up living in tents in no mans land for a number of years.⁵⁶ Many Palestinians are not registered as refugees with UNRWA and lack identity cards, and are

⁵⁶ "...[A visiting diplomat at the UNRWA headquarters in Gaza said] 'These pictures look great after being colored...How did you manage to develop pictures of 1948 refugees so professionally?' The answer to that question was, unfortunately, that the pictures were not of 1948 refugees. They were taken from 1995." See Shawa, Salma A. (1996), "The Lost Tribe: Palestinians Expelled by Libya Stranded in Makeshift Camp", *The Washington Report on Middle East Affairs*, August/September, p. 9. (http://www.wrmea.com/Washington-Report_org/www/backissues/0896/9608009.htm).

forced to live without access to regular work or health care in countries such as Iraq and Lebanon.⁵⁷

The number of UNRWA registered refugees is lower than the total, owing to the fact that UNRWA's area of operations does not cover all countries that the refugees fled to and registration is voluntary, and also to UNRWA's registration criteria (which state that only the children of male refugees can be registered).

*Table 6. UNRWA registered refugees in 2002**

Field of operations	Official camps	Registered refugees	Registered refugees in camps
Jordan	10	1,697,108	298,029
Lebanon	12	396,377	222,243
Syria	10	405,359	113,297
West Bank	19	629,042	168,849
Gaza Strip	8	882,468	476,132
Agency total	59	4,010,354	1,278,551

*Finally, a word of caveat needs to be said regarding the figures: as in other cases that involve large numbers of refugees, the numbers should be considered approximate rather than definitive, even though the best estimates available have been used.

Source: UNRWA, <http://www.un.org/unrwa/refugees/me.html>; figures as of 30 June 2001 updated to 2002 figures by assuming a 3.5% population growth rate.

4.1.1 Israel

Political constraints

The Israeli approach in the negotiations has always been to avoid the recognition of its responsibility for creating the refugee problem, and for denying the right of return as understood in international law.⁵⁸ In this context, Israeli negotiators have repeatedly insisted that – rather than recognising the right of return as expressed in UNGA Resolution 194 – a limited number of refugees (under the Beilin-Abu Mazen plan family reunions, under Taba a few thousand more, but always subject to Israeli approval) should be allowed to return on “humanitarian grounds”. This, in conjunction with third-country resettlement and compensation would then be considered the “implementation” of UNGA Resolution 194, and the PA would sign an end-of-claims clause.

Although the position presented by the Israeli negotiators at Taba has always been regarded as the position of a minority, opinion polls performed by the JMCC before Camp David do not necessarily confirm this view. A survey performed before the outbreak of the second Intifada, in 1999, regarding the prime responsibility for creating the refugee problem, reports that:

- a total of 11.8% of Israeli Jews blamed Israel composed of 4.8% blaming it entirely, and 7.0% mostly;
- some 35.5% blamed both Israel and the Arab side; and
- a total of 43.3% blamed the Arab side, composed of 21.1% blaming it entirely and 22.2% mostly and close to 10% did not know.

Regarding the right of return,

- a total of 11.5% of the Jewish Israeli respondents to the survey said that anyone wishing to return should be allowed to do so;

⁵⁷ BADIL (2002), *al-Majdal*, No. 15, September.

⁵⁸ See Section 3.1.4 for a discussion of the Palestinian and the Israeli positions at Taba.

- close to 43% of Israeli Jews said no refugee should be allowed to go back; and
- around one-third (32.6%) approved of the return of a limited number – from “few hundreds” to “few thousands” – in the context of negotiations between Israel and the Palestinians.

Regarding the question of where Palestinian should be refugees settled:

- a majority of the Jewish sample (57.2%) said that they should be settled in their present locations in the Middle East and elsewhere;
- one-third mentioned the Palestinian state as a possible place for absorbing the refugees; and
- only 5.3% approved of their return to their homes in Israel.

A total of 51% left it for Israel solely to decide on the feasibility of solving the refugee problem. Around one-fifth of Israeli Jews endorsed the return of a limited number of refugees depending on negotiations between Israel and the Palestinians. Naturally, as Palestinian public opinion changes as the political climate changes, so does Israeli public opinion. It can therefore be assumed, that were these same questions asked now, the answers of Israeli citizens would differ.

Economic constraints

On the Israeli side, no studies have ever been performed on the economic feasibility of absorbing Palestinian refugees in their former places of residence. Nevertheless, there are some sources that give an indication of Israel’s economic constraints against the absorption of additional citizens. Very limited research has been realised by Palestinians themselves.

Table 7. Jewish population concentration in the world, 1993 (in thousands)

Country	Population	Targeted for Immigration
United States	5,650	0-00
Israel	4,335	-
France	530	300-700
Russia	410	-
Canada	358	50-150
Britain	296	20-40
Ukraine	245	100-200
Argentine	210	150-200
Brazil	100	50-100
South Africa	98	50-80
Australia	91	-
Hungary	55	-
Germany	52	-
Belorussia	41	-
Mexico	41	-
Others (Latin America)	451	50-100
Total	12,963	770-1,770

Sources: Population in the first column was taken from the *Israel 2020 Plan*, Vol. 6, A. Harman Institute of Contemporary Jewry, The Hebrew University of Jerusalem; Immigration projections as quoted by Prime Minister Sharon in the second column, *Jerusalem Post*, 27 April 2001, courtesy of Salman Abu-Sitta.

There are also Israeli plans and past experience with the absorption of new Jewish immigrants. Given that economic constraints are “colour-blind” we consider these plans as an

indicative threshold. Also, grass-roots projects by Palestinian NGO's such as BADIL, aiming to test the ground for repatriation and reconciliation indicate that much can be done in order to eliminate perceptions of fear and mistrust on both sides.⁵⁹

In addition, Israeli plans for immigration suggest that it is economically feasible to accommodate a higher population in Israel. It is widely known that during the 1990s Israel has absorbed about 1 million of new immigrants from the former Soviet Union. In fact, the decade of the 1990s has seen the highest rates of immigration into Israel since the first decade of the state's existence.

Israeli population projections in 1995 planned for further Jewish immigration over the next 20 years of around 600,000 net (i.e. with the number of projected outward migrants already subtracted). Unofficial figures quoted by Prime Minister Sharon in 2001 indicate between 0.7 million and 1.7 million persons as the immigration target over the next few years.⁶⁰

Jewish immigration from the former Soviet Union and other countries has been supported financially by the United States Department of State for Migration and Refugee Assistance. The annual amount (see Table 8 below) "includes funding to support resettlement in Israel through a grant to the United Israel Appeal (UIA). This grant helps finance programs of the Jewish Agency for Israel that assist in the absorption into Israeli society of Jewish humanitarian migrants coming to Israel from the former Soviet Union and certain countries of distress."⁶¹

Given the number of immigrants recorded in 2001, this amounts to between \$1,374 and \$1,782 per immigrant (depending on whether all Jewish immigrants are counted, or only those born in one of the states formerly part of the Soviet Union, see Table 9 below).

Table 8. US funding support for resettlement in Israel of "Jewish humanitarian migrants coming to Israel from the former Soviet Union" (in millions of \$)

	Account FY 2001	FY 2002	FY 2003
	Actual	Estimate	Request
Migration and Refugee Assistance	59.87	60	60

Source: "Emergency Refugee and Migration Assistance, Fiscal Year 2003", Congressional Presentation Document and Bureau Performance Plan, US Government, Department of State, Bureau of Population, Refugees and Migration, p. 36.

Table 9. 2001 average US contribution per Jewish immigrant to Israel

	Number of immigrants	Per person (\$)
Soviet Union	33,600	1,782
Total	43,580	1,374

Source: "Emergency Refugee and Migration Assistance, Fiscal Year 2003", Congressional Presentation Document and Bureau Performance Plan, US Government, Department of State, Bureau of Population, Refugees and Migration, p. 36 and CBS (<http://www.cbs.gov.il>).

⁵⁹ BADIL, the refugee advocacy group and resource centre in Bethlehem, has previously been involved in such initiatives, organising trips for Palestinians from refugee camps in WBGS to their villages of origin in Israel, and engaging in communication with today's Jewish Israeli residents (see <http://www.badil.org>).

⁶⁰ Explanatory notes to the 1995 population projections, (<http://www.cbs.gov.il>).

⁶¹ "Emergency Refugee and Migration Assistance, Fiscal Year 2003", Congressional Presentation Document and Bureau Performance Plan, US Government, Department of State, Bureau of Population, Refugees and Migration, p. 35.

Palestinian researchers, most notably Salman Abu-Sitta, base their argument for the economic feasibility of refugee return on historical and geographical facts, although, unlike Israeli forward plans for Jewish immigrants, it is not backed up by a thorough analysis of the Israeli national economy.

Today 86% of the refugees live in historical Palestine and within a 100-mile radius around it. Abu-Sitta argues there is enough space in Israel to accommodate returning refugees. Similar to the division of WBGS into zones under the Oslo accords, he divides Israel into areas A, B and C showing that:

- Area A has a population of 3,013,000 Jews (as of end 1997), which is the same area and largely the same location as the land which the Jews purchased or acquired in 1948. It measures 1,628 square kilometres (km²), or 8% of Israel. In this area live two-thirds of Israel's Jewish population.
- Area B has a mixed population. Its area is 6% of Israel, and is just less than the land of Palestinians who remained in Israel. A further 10% of Israeli Jews live there.
- Area C, or 86% of Israel, is largely the land that the Palestinian refugees came from, and there are about 860,000 Israeli Jews living in either originally Palestinian towns or nearby established towns.

Abu-Sitta argues that the rural areas in area C are controlled by 200,000 Jewish Israelis who mainly live and work in Kibbutzim, producing 1.8% of Israel's GDP, but use 75% of Israel's water resources (the southern area C, according to Abu-Sitta uses 500 million cubic meters of water per year, which is equal to the entire water resources of the West Bank currently confiscated by Israel).

Abu-Sitta advances two ideas for refugee return. The first one envisages that the registered refugees in Lebanon (362,000) are allowed to return to their homes in the Galilee, whereby Jews would still remain a majority in all areas. If 760,000 refugees in Gaza are allowed to return to their homes in the southern part of area C, the percentage of the Jewish majority in this area drops by only 6%.

4.1.2 West Bank and Gaza Strip

Political Constraints

The political constraints limiting immigration of refugees into a future Palestinian state in the WBGS are related to the perception amongst the refugee community that their right of return should be recognised by the parties as it is recognised in international law. As mentioned above, it is difficult for the PLO to negotiate a deal that does not find the support of the majority of its most influential constituency post-Oslo, the population of the WBGS (see also Section 4.3).

In addition, the refugee community living in WBGS are not the sole political constraint faced by the PLO. Ultimately, the refugees living in neighbouring host countries as well as host country governments impose limits on any solution the PLO may propose in a number of ways. From a rights-based perspective, the PLO represents refugees wherever they may live. From a pragmatic point of view, a solution by passing the rights of a sizeable refugee population represent a destabilising factor not only in the host countries, but for the region as a whole.

If the PLO, as the weaker party to the negotiations, is forced to compromise on the core issue in the conflict, it needs the support of the host countries, as well as the constituencies on

whose behalf it is negotiating, in order to ensure that any agreement will not collapse immediately after being signed.

The PA's planning has so far taken into account only the return of the so-called displaced persons (of the 1967 war), and has considered the return of those displaced as a first step, which could be realised even before a final status agreement. Given that over half of those displaced as a result of the 1967 war were second-time refugees originally made homeless in 1948, the argument was brought forward that a return programme for the displaced persons could even serve as a prototype for a later return programme for refugees to their homes and properties.⁶²

Economic Constraints

Gaza Strip has a very high population density. Almost 4000 persons per km² are living in extremely crowded conditions in refugee camps (approximately 1,132,063 persons in 360 km² with higher concentration in camps such as Jabaliye).⁶³ Even if some of the camps could be redeveloped it is assumed that a passage between Gaza and West Bank is needed in order to create opportunities for Gaza's population to work.

The West Bank and the Gaza Strip taken together are currently home to about 3 million people. In projecting population growth through 2025, the Palestinian Central Bureau of Statistics (PCBS) has projected that, given 500,000 returnees, 4.9 million people would inhabit WBGS by 2010, and 7.4 million by 2025.⁶⁴

Several studies provided estimates of the resources required to accommodate demographic changes associated with a refugee influx within the general development plans for WBGS. A study by the Exeter refugee study team addresses the PA's planning priorities, under the scenarios that between 500,000 and 2 million persons displaced during 1967 return to the WBGS. The paper clearly points out that the absorptive capacity of the WBGS depends crucially on the general economic development of the WBGS, and particular to accommodating the employment needs of the growing current population.

Generally there have been two different approaches to "plan" the absorption of displaced persons in the WBGS. Whereas the PA's departments have taken the approach of planning return in the way of large scale projects, where unit cost figures are calculated for a range of returnee needs (housing, roads, water and schools), the identification of possible absorption areas etc, another school of thought (including the World Bank, the PA's Negotiations Affairs Department, and ANERA staff)⁶⁵ have argued that incremental increases in population are easier to accommodate.

Whereas the first school aims to organise and implement a repatriation programme, the second school follows a more market-based approach to returning refugees. Rather than building new towns, or extending existing ones, where returnees would be "implanted", they argue that it would be better to improve the WBGS infrastructure, financial markets, and generally the conditions for economic activity to take place. Following that, people could relocate where they see the best opportunities for themselves and their families. The second

⁶² Dumper, M. et al. (2001), "A Study of Policy and Financial Instruments for the Return and Integration of Palestinian Displaced Persons in the West Bank and Gaza Strip. A Report submitted to the Refugee Task Force of the European Union's Office of the Special Envoy for the Middle East Peace Process", unpublished paper, January, p. 78.

⁶³ See data for the year 2000 (<http://www.maptown.com/geos/gazastrip.html>).

⁶⁴ Dumper, op. cit., p. 30.

⁶⁵ Telephone interview between Rex Brynen and M. Dumper, op. cit., pp. 85-87.

school of thought also emphasises that according to their scenario, the absorption capacity of the WBGS would be higher (up to 50% expansion in many neighbourhoods). Given the figures circulated, we assume that the second school argues for the absorptive capacity equal to the upper limit of the PA planning estimates of 2 million returnees into the WBGS.

4.1.3 Jordan

Political constraints

Because Jordan formally annexed the West Bank in 1950 (subsequently "disengaging" from that commitment in 1988) most Palestinian refugees (95%) in Jordan hold Jordanian citizenship. Moreover, Palestinians fully participate in the political and economic life of the country, making up about 60% of the total population.⁶⁶ Indicative of this integration is the very high proportion of Palestinians residing outside the camps. While there are few differences in average living condition between Palestinian refugees and non-Palestinian Jordanians, conditions in the camps are significantly below national averages.

All refugees who came to Jordan in the aftermath of the 1948 war have Jordanian citizenship on the basis of a citizenship law from 1954. But those who arrived after 1954, and didn't have citizenship before then (because they were not resident in the West Bank) generally do not have citizenship. Amongst them are displaced persons from Gaza who immigrated to Jordan in the aftermath of the 1967 war, and some others who were not Jordanian citizens prior to the occupation by Israel of the West Bank and Gaza in 1967.

Jordan is generally thought of as the country most able to retain its present refugee population due to the fact that refugees already enjoy citizenship rights and because most refugees are politically and economically more integrated than refugees in countries such as Lebanon or Syria. About 300,000 refugees live in camps, which are politically and economically less integrated into Jordanian society. Politically, they do not participate in municipal or rural council elections, and the Department for Palestinian Affairs (DPA) is responsible for administering the camps. The DPA selects representatives to the so-called Camp Service Improvement Committees (CSICs) who are in turn in charge of managing infrastructure improvements, social and economic support, as well as child and health care.

Although most Palestinians in Jordan formally enjoy equal citizen's rights, they feel discriminated against by internal Jordanian policies on job recruitment and public service allocation. Also, due to the delicate political situation, refugees in Jordan have no leadership of their own or independent refugee organisations on a grass-roots level as is the case in the WBGS, or Lebanon, for example.⁶⁷

Also, the Israeli military campaign in the occupied West Bank and US preparations for a launch of an attack on Iraq have led the Jordanian regime to return to suppressing general political expression and organisation in a fashion similar to the period before the signing of the Oslo accords. This has manifested itself in various forms, such as arbitrary arrests of political dissenters, the imposition of travel restrictions for Palestinians from the WBGS to Jordan, the laying of mines along the common border and most recently the imposition of a military siege on the city of Ma'an.⁶⁸ Recent events and historical evidence suggest that a non

⁶⁶ Brynen, R. (1998), "Palestinian Refugees and the Middle East Peace Process", paper prepared for the New Hampshire International Seminar/Yale-Maria Lecture in Middle East Studies, University of New Hampshire, 3 April (<http://www.arts.mcgill.ca/MEPP/PRRN/papers/UNH.html#fn9>).

⁶⁷ BADIL (2000), "Country Profiles – Palestinian Refugees in Exile", BADIL Resource Center, Bethlehem.

⁶⁸ Al-Hayat, and J. Schwedler (2002), "Occupied Maan: Jordan's Closed Military Zone", 3 December, (<http://www.merip.org/mero/mero120302.html>).

resolution to the refugee issue both in the West Bank and Gaza Strip as well as in Jordan will continue to have repercussions on the political regime and the development of democracy and civil society in Jordan itself.

Economic constraints

It has been argued that Jordan has the economic capacity to keep all the refugees it currently hosts. Figures have been circulated quoting the costs to Jordan associated with hosting Palestinian refugees (the figure quoted to us in an informal interview was \$40bn).⁶⁹

Apart from the general challenges faced by the country with regard to its economic reform programme, the refugee camps are generally much worse off in terms of infrastructure and in terms of household income and unemployment (whereas unemployment in Jordan in 1998 was estimated to be 14.7%, the average for the 13 refugee camps stood at 20.8%). UNRWA is currently engaged in a programme to improve infrastructure and the quality of housing stock in Jordan.

4.1.4 Syria

Political constraints

Syria so far has refused to participate in multilateral negotiations based on the position that Israeli withdrawal from Arab and Palestinian land is a pre-condition for the opening of talks with Israel. The official Syrian position reaffirms the refugees' right to return to their homes and properties. Syria has also taken measures against refugee resettlement in its territory by issuing entry restrictions on Palestinians with Egyptian, Jordanian and Iraqi travel documents. It is not clear, however, what the Syrian government's position would be were an Israeli withdrawal from the Golan Heights achieved, for example.⁷⁰

The Israeli government considers Syria as an ideal country for refugee re-settlement due to the civil rights afforded to Palestinian refugees, and due to the fact that Palestinian refugees in Syria constitute only 2.5% of the total population.⁷¹ Together with Jordan, former IDF General Shlomo Gazit views Syria as a country where it is most possible to resettle refugees.

Refugees with Syrian travel documents are allowed to travel in and out of the country freely, that is without re-entry permits as previously required. Palestinian refugees in Syria are also allowed to own businesses, lease properties, become Union members and to establish residence anywhere they wish in Syria. But they cannot vote, be candidates for the Syrian parliament nor the presidency, and they are not allowed to own more than one home nor to purchase arable land.

Economic constraints

In Syria the general economic situation has deteriorated over the past decade. While economic growth has stalled, unemployment has been on the rise and so have levels of poverty. Currently UNRWA is taking care of basic services in ten recognised camps. About 70% of Palestinian refugees in Syria live outside the camps. Of a total of approximately 400,000 Palestinian refugees, 120,000 live in al-Yarmuk, which is not recognised as a camp by UNRWA.

⁶⁹ Informal telephone interview with Jalal Hussein, CERMOC, conducted by Juliette Abu-Iyoun in June 2002.

⁷⁰ BADIL (2000), "Country Profiles – Palestinian Refugees in Exile," p.32, BADIL Resource Center, Bethlehem.

⁷¹ Ibid., p. 31.

Even though UNRWA administers schools and further education institutions and provides health services, the Syrian government has been providing assistance to refugees for education (primary, secondary and university), and also health care.⁷² The financial constraints faced by the Syrian government in recent years, however, have often implied better health services for Palestinian refugees through UNRWA than those available to Syrian citizens.

It has been argued that Syria has the economic capacity to keep all the refugees it currently hosts. Nonetheless, there are serious challenges ahead in terms of economic development and integration of refugees that would have to be addressed. Figures have been circulated quoting the costs to Jordan associated with hosting Palestinian refugees (the figure quoted to us in an informal interview was \$10 billion annually).⁷³

4.1.5 Lebanon

Political constraints

The gist of the Lebanese position, as spelled out by top government officials, is that Palestinian refugees must be fully repatriated, if not to their original homes, then to other third countries. This position is reflected in a survey of 1,000 Lebanese carried out in the early 1990s. Around three-quarters of those surveyed rejected resettlement of the Palestinians in Lebanon, and this was true across Lebanon's confessional lines.⁷⁴

Only a small fraction of Palestinians have acquired Lebanese citizenship, with a mere 3,000 naturalized until the 1980s. Although an estimated 35,000 to 60,000 were granted citizenship in 1994,⁷⁵ the overwhelming majority of Palestinians remain stateless and are treated as foreigners who have no rights of property ownership, investment, or employment – at most, they have privileges granted by a complex and lengthy permit process. Large institutions are essentially closed to Palestinians because these are governed by rules that make allocations in accordance with sectarian affiliation. Palestinians continue to be excluded from more than seventy-two professions. Basic Lebanese labour law says that non-Lebanese must obtain work permits for all regular jobs: construction, sanitation, agriculture. A second law restricts the practice of most professions – medicine, engineering, pharmacy – to Lebanese, forcing Palestinians to take jobs that offer low wages, insecurity, and no benefits.

These are just some of the restrictions faced by Palestinian refugees in Lebanon, in addition to restrictions on real estate and land ownership, travel, access to social services and education.⁷⁶ For example, on 22 September 1995, the Lebanese government made visas obligatory for Palestinian refugees residing in Lebanon who are holders of Lebanese travel documents. This

⁷² Ibid., p. 34.

⁷³ Informal interview with Jalal Hussein, CERMOC conducted by Juliette Abou-Iyoun for CEPS in June 2002.

⁷⁴ Zureik.

⁷⁵ The figure of 60,000 is based on: Haddad, S. (2000), "The Palestinian Predicament in Lebanon", *Middle East Quarterly*, September, Vol. 7, No. 3, p. 29. According to Suhail Natour, Lebanese nationality was "re-instated" to nearly 35,000 refugees from seven villages, based on the recent naturalization law (Act 5247, 20 June 1994i), Natour, S. (2002), "The Palestinian Refugees in Lebanon", mimeo, CEPS). Natour also criticises public Lebanese statistics on Palestinians in Lebanon, arguing that Lebanon has an incentive to exaggerate the numbers in order to magnify the problem and the costs associated with hosting them, in preparation for future claims for compensation.

⁷⁶ Said, Wadie (2001), *The Obligations of Host Countries to Refugees under International Law: The Case of Lebanon*, in Aruri, N. (ed.) (2001), *Palestinian Refugees, The Right of Return*, Pluto, pp. 123-151; and Ghandour, N. (2001), "Meeting the Needs of Palestinian Refugees in Lebanon", in Aruri, N. (ed.) (2001), *Palestinian Refugees, The Right of Return*, Pluto, pp. 152-164.

meant that Palestinians who left the country faced the possibility of being refused a re-entry visa to come back. Nevertheless, that decision was annulled on 12 January 1999, when the government decided to treat Palestinian refugees who are holders of Lebanese travel documents on the same basis as full Lebanese passport holders, facilitating their movement to and from *op. cit* foreign countries.⁷⁷ This episode is just one example in the many where the status and legal situation of Palestinian refugees have changed practically overnight, a pattern characteristic of the fragile situation of Palestinian refugees in Lebanon generally.

Such government policy is a reflection of public opinion in Lebanon, which asserts that any improvement in the living standards and status of Palestinian refugees would add to pressures for their resettlement in the country, which is vociferously opposed by a majority of Lebanese. Indeed, some 45% of respondents to a survey conducted in 1999 and 2000 have responded positively when asked whether they agreed that civil war may break out if resettlement of Palestinian refugees in Lebanon was imposed. On the other hand this is expressed by fears on the Palestinian side of forced expulsion from the country.⁷⁸

Economic constraints

The 1975-91 civil war seriously damaged Lebanon's economic infrastructure, and cut national output by half. Although Lebanon was recovering during the initial years following the war, economic growth has been slow or negative over the past years, with -0.5% in 2000, and 1% in 2001. In addition, government borrowing has been pushed very high by the post-war boom in reconstruction, with some analysts suggesting the danger of a looming debt default.

During the 1970s, Palestinians were able to find work in the informal sector, but the situation after the civil war changed. Syrian immigrant labour has replaced Palestinian workers in many sectors, thus adding to the economic distress Palestinian refugees suffer in Lebanon, and exacerbating the social tensions described above.

The interdependence of the Syrian economy and body politic with their Lebanese counterparts cannot be underestimated as a key factor determining the opportunities for a peaceful settlement of the Palestinian-Israeli conflict. It also needs to be emphasised that the current situation risks spiralling out of control once again, if the economic situation is left to deteriorate and no sustainable political solution is found to the plight of Palestinian refugees (who make up over 10% of Lebanon's resident population).

4.1.6 Other Arab countries

Political constraints

Elsewhere in the region, the residency and other conditions of Palestinians has generally deteriorated in recent years. In Kuwait, the 1990-91 Gulf war and its aftermath saw some 300,000 Palestinians leave the country either because of the Iraqi occupation or subsequent expulsions by the Kuwaiti authorities. Many of the Palestinians from Kuwait used to have Syrian or Lebanese travel documents, and some were Jordanian citizens. While some returned to Syria, Lebanon and Jordan (see Table 10), a considerable proportion left to live in Western countries although it is not clear how many were able to regularise their residence in there.

Elsewhere in the Gulf, other countries have also reduced the number of Palestinian expatriates employed. In Libya, the government signalled its opposition to the post-Oslo Middle East peace process by also expelling many Palestinians; those with nowhere else to go found

⁷⁷ Haddad, S. (2000), "The Palestinian Predicament in Lebanon", in *Middle East Quarterly*, September, Vol. 7, No. 3, p. 29.

⁷⁸ Haddad, *op. cit.*

themselves trapped in tents on the Libyan-Egyptian borders for months on end. In both Egypt and Iraq, Palestinians have been increasingly treated like other foreigners, with corresponding restrictions on employment and access to government services.⁷⁹

Table 10. Refugees – proportions in camps and in total population

	Jordan	Lebanon	Syria	West Bank	Gaza
Registered refugees	1,413,252	359,005	356,739	542,642	746,050
Refugees as a proportion of local population	31.30%	10.50%	2.40%	34.20%	74.40%
Refugee camps	10	12	10	19	8
Proportion of refugees in camps	18.70%	54.50%	29.20%	26.30%	55.10%

Source: Brynen, R. (1998), “Palestinian Refugees and the Middle East Peace Process”, paper prepared for the New Hampshire International Seminar/Yale-Maria Lecture in Middle East Studies, University of New Hampshire, 3 April 1998, (<http://www.arts.mcgill.ca/MEPP/PRRN/papers/UNH.html#fn9>).

4.1.7 Rest of world

We are not aware of either provisional or conditional statements about the number of refugees that might be accepted for resettlement in the rest of the world. Previously, Canada has come forward offering the integration of a limited number of refugees from Lebanon in Canada. Other previous examples of international offers have aimed at resolving emergency situations (such as when some Palestinians were allowed to travel to a number of European countries following the stand-off in the Church of the Nativity in spring 2002). Presumably numbers would only be forthcoming at a certain stage in a negotiation process, when the all parties were moving together in a fair and balanced way towards the implementation of firm principles.

4.2 Citizenship and residency rights of refugees

Most Palestinian refugees today do not enjoy full citizenship rights, wherever they reside. In addition to a lack in citizenship rights, Palestinian refugees are not granted rights any refugee should have in host countries under the International Convention Relating to the Status of Refugees, and other conventions, such as the International Covenant on Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.⁸⁰ As described in each individual case above, this translates into a lack of educational and job opportunities and certainly a lack of opportunity of political expression for the majority of refugees.

In the event of a solution, several scenarios have been proposed. To some extent, these scenarios tried to take account of the fact that Palestinian refugees may ultimately be denied the right of return to their homes and properties. In particular, the proposals discussed have included dual citizenship or residency (including full residency and employment rights) in one country, and citizenship of another country. The full set of options that has been debated is:

⁷⁹ Brynen, R. (1998), “Palestinian Refugees and the Middle East Peace Process”, paper prepared for the New Hampshire International Seminar/Yale-Maria Lecture in Middle East Studies, University of New Hampshire, 3 April 1998, (<http://www.arts.mcgill.ca/MEPP/PRRN/papers/UNH.html#fn9>).

⁸⁰ International Covenant on Economic, Social and Cultural Rights (ICESCR), opened for signature 16 December 1966, UNTS 2 (entered into force 3 January 1967); International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969).

- Israeli citizenship
- citizenship of a Palestinian state
- citizenship of country of residence
- dual citizenship.

Until a settlement is reached, the priority is to push for full residency rights (but not for citizenship) for all Palestinian refugees residing in host countries, and most urgently in Lebanon. Full residency rights need to be granted fast in order to avoid a further escalation of the humanitarian situation of refugees in host countries (in particular in Lebanon) and in the WBGS.

Pushing for citizenship rights for refugees in host countries by representatives of the international community may, on the other hand, backfire and exacerbate the humanitarian crisis due to the possibility of violence by the indigenous population against Palestinian refugees and attempts at expulsion, in particular in Lebanon.

Proposals floated recently for giving Palestinians in Lebanon the ability to gain citizenship of a future Palestinian state with permanent residency and employment rights⁸¹ does not satisfy their human right to participate in the democratic process of the country which effectively is the centre of their lives. This is particularly dangerous, given successive Lebanese governments' views and actions regarding resettlement and Israel's outright denial of the right of return in principle (see also Section 4.1.5).

The outcome of such proposals may indeed serve to prolong the deprivation of Palestinians of true citizenship rights, which are intended to guarantee civil participation in the communal and political decision-making processes in the country which is the centre of an individual's concerns. Such arrangements, if not taken truly as a matter of choice by refugees (i.e. if refugees are not given, for example, the possibility to choose between Lebanese citizenship and that of a Palestinian state) may lead to a prolongation of the plight of refugees, turning their long period of exile into a permanent one.

4.3 What monetary conditions were envisaged to accompany a solution under the Oslo accords?

Under the Beilin-Abu Mazen plan, as well as the ICG proposal, compensation would be raised and paid through an International Commission for Palestinian Refugees (see Appendix A). Whereas the Beilin-Abu Mazen Plan envisaged the Commission to be a bilateral body, which would extend invitations to donor countries to join, the ICG proposal foresees the Commission to be a multilateral body that includes the host countries, as well as Saudi Arabia. This also implied that the compensation of Jewish emigrants from Arab countries would be part of the overall deal.

It has to be noted for correctness that neither the Beilin-Abu Mazen Plan, nor the later Clinton parameters and ICG proposals mentioned property restitution at all, thus completely discarding what has been designated as the premier option in settling the conflict in Bosnia-Herzegovina (see also Section 3.1).

The implementing Commission shall have the function of organising the "return" to the WBGS, resettlement and compensation, including the compensation of host countries. Compensation shall be a mix of individual compensation for lost property, and funds

⁸¹ Salam, N. (1994), "Between Repatriation and Resettlement: Palestinian Refugees in Lebanon", *Journal of Palestine Studies*, No. 93, Autumn.

extended for the development aspects of resettlement schemes in the WBGS and host countries.

As illustrated below, the sums proposed by the international donor community, this would amount to an economic development plan for Palestinian refugee communities in the WBGS, and the host countries, rather than recognition of and compensation for actual losses.

4.3.1 Palestinian claims for compensation

The Palestinian proposal at Taba expressed what UNGA Resolution 194 envisages, namely that 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”;
- “refugees for suffering and losses incurred as a result of the refugee’s physical displacement”;
- “the state of Palestine for the Palestinian communal property existing within the internationally recognized borders of the State of Israel (including real property as well as financial and other movable property)”.

In addition:

- “Unless property is collectively owned, material (and non-material) compensation should be awarded on an individual basis”;
- Claims for compensation should be administrated and adjudicated by a Compensation Commission”;
- “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”.⁸²

The Palestinian negotiators insisted that Israel shall provide the funds needed for such compensation. These funds should be transferred to an International Fund and disbursed by the Fund and a Compensation Commission.

The Compensation Commission is envisaged to evaluate the Palestinian material and non-material losses, to administer the implementation of compensation, and to administer and adjudicate claims of real property by refugees. It shall be composed of Palestinian representatives Israel, the United States, the EU, the United Nations, the World Bank and donor countries.

The records of the United Nations Conciliation Commission for Palestine, as well as the records of the "Custodian for Absentees Property" shall be used by the Commission as prima facie evidence of the losses of the refugees. The Commission may also use UNRWA's records and any other relevant records.

The economist Atif Kubursi puts material losses at \$20.9 billion by expressing the 1948 valuation of Palestine pounds in 1998 prices. When human capital losses are included, total losses amount to \$33.2 billion, and if a real rate of growth of 4% is included, these numbers rise to \$148 billion and \$236 billion, respectively.

⁸² Palestinian Non-paper at Taba, op. cit.

In terms of approximate amounts considered feasible, several estimates have been made. The Harvard-based Joint Working Group on Israeli-Palestinian Relations, in a paper written by Joseph Alpher and Khalil Shikaki, suggested that individual compensation to Palestinians, largely financed by Israel, might total \$15-20 billion.⁸³ Rashid Khalidi suggests that reparations might total some \$40 billion (if based on per capita payments of around \$20,000), or several times this amount if based on the current value of both material and non-material losses.⁸⁴

Obviously any of these amounts can only be regarded as indicative at the moment, and some of the proposed amounts are claims based, while others are based on estimates of what the authors consider as feasible in terms of supply and the refugees' needs to build new lives.

An interesting idea advanced by Rex Brynen, that would allow for a direct link between the damage incurred and compensation for it, is in part inspired by the Bosnian case. He suggests utilising "some or all of the rental income from former Palestinian properties (especially those presently leased to individuals by the state or Jewish National Fund) as a source for general monetary compensation for the refugees."⁸⁵ This symbolic value would be heightened if the current legal and customary practices which prevent non-Jews from renting such lands were to be lifted or alleviated."

4.3.2 What Israel is willing to offer

The Israeli proposal at Taba was to establish an international fund for the compensation and rehabilitation of Palestinian refugees, to which they may apply for compensation programs and rehabilitation assistance. Programs of a compensatory nature shall be devised on both a per-capita basis and claims based, 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 International Fund. Israel and the international community shall contribute to the fund, and compensation shall also be paid to host governments.

Nevertheless, Israel proposed an *a priori* agreed ceiling to refugee compensation, such that a lump sum shall be paid, minus Israeli fixed assets remaining in the State of Palestine, following Israeli withdrawal.

Rex Brynen suggests that a total of \$10 billion of Israeli contributions represents, "relative to GNP, about the same level of generosity evident in the current Saudi and Kuwaiti foreign aid programs, and only slightly more than Denmark's ratio of ODA/GNP, and might also be considered economically feasible. A total ten-year contribution of \$25 billion is equivalent to more than one-quarter of the entire Israeli defence budget, and can only be considered the extreme upper boundary of what is economically possible (see Table 11)".⁸⁶ On the other hand, \$25 billion equals less than eight and a half years of US military aid to Israel, which in times of peace can be expected to be less needed.

⁸³ Alpher, J. and Khalil Shikaki (1998), "The Palestinian Refugee Problem and the Right of Return", Weatherhead Center for International Affairs, paper 98-97 Harvard University, Cambridge, May, p. 14, quoted by Brynen, R. (1999), "Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem: Financing Palestinian Refugee Compensation", McGill University, (<http://www.arts.mcgill.ca/MEPP/PRRN/brynen.html>).

⁸⁴ Khalidi, R. (1999), "Toward a Solution", *Palestinian Refugees: Their Problem and Future*, Center for Policy Analysis on Palestine, Washington D.C., October 1994, p. 24, quoted in Brynen, (1999), *ibid*.

⁸⁵ Brynen (1999), *ibid*.

⁸⁶ Brynen (1999), *ibid*.

Table 11. Relative burden of Israeli contributions to Palestinian refugee compensation (spread over a ten-year period)

Total amount	\$1 billion	\$5 billion	\$10 billion	\$25 billion	\$50 billion	\$100 billion
Annual amount	\$100 million	\$200 million	\$ 1 billion	\$2.5 billion	\$5 billion	\$10 billion
Per Israeli (annual)	\$17	\$83	\$167	\$417	\$833	\$1,666
Percentage of GNP	0.12	0.59	1.18	2.95	5.91	11.81
Percentage of government expenditure	0.19	0.95	1.91	4.77	9.54	19.08
Percentage of defence expenditure	1.19	5.95	11.90	29.76	59.52	119.05
Per UNRWA-registered refugee	\$277	\$1,388	\$2,777	\$6,944	\$13,888	\$27,778
Per original 1948 refugee	\$1,333	\$6,666	\$13,333	\$33,333	\$66,666	\$133,333

Source: Brynen, R. (1999), "Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem: Financing Palestinian Refugee Compensation", McGill University, (<http://www.arts.mcgill.ca/MEPP/PRRN/brynen.html>).

Brynen points out, however, that what is considered as economically feasible by some, may not be politically feasible, and hints that ultimately the amount actually contributed by Israel may not exceed \$5 billion.

An Israeli political analyst has suggested that Israel might assume a portion of a refugee compensation scheme totalling \$7 to 10 billion, on condition that:⁸⁷

- a) the compensation was part of a bilateral political agreement, stating clearly that Israel's decision was ex gratis; and
- b) Israel's share of compensation was clearly limited in scope, and was made conditional upon the wealthy industrial countries and the rich Arab oil-producing countries participating in financing a "package" for refugee rehabilitation.

This is exactly what the ICG working group has suggested as a solution.

4.3.3 What the international community is willing to offer

Rex Brynen points out that very few donors will explicitly finance "compensation" as this falls outside the mandate of most development agencies. Similarly, cash transfers to a compensation fund for Palestinian refugees are unlikely to win legislative support in most donor countries.

Donors in general prefer instead to conduct bilateral assistance programs, which offer greater political visibility and economic leverage. Rather than designing a regional refugee fund, Brynen suggests that international efforts should be focused on developing a coordinated array of individual repatriation and development initiatives that donors can finance on a bilateral basis. In addition, international assistance for repatriation, resettlement and development as a surrogate for compensation is unlikely to find the support of the refugee community.

⁸⁷ Gazit, S. (1995), *The Palestinian Refugee Problem*, Jaffee Center for Strategic Studies, Tel Aviv, pp. 21-22, quoted in Brynen, 1999, *ibid*.

Brynen also notes that post-agreement refugee development initiatives are unlikely to represent a major new infusion of resources, but rather a relabelling or re-targeting of existing programs. Already, approximately 41% of the current population of the West Bank and Gaza Strip are refugees, and since Gaza has tended to win a slightly disproportionate share of aid (on the basis of both poverty and the presence of the PA), donors have already, in effect, spent over \$2 billion in assistance to refugees over the years 1994-1999.

Ultimately, international assistance to the return/resettlement of refugees from Western and Arab donors would ultimately consist of repackaging current development aid, given the fact that Palestinians already receive more assistance per capita than any other developing country: around \$225 per person per year, compared to an average of \$12.72 for the South as a whole.⁸⁸ Arab countries not hosting refugees have been providing aid to the host countries, to the PLO and more recently to the PA, disbursing some \$219 billion between 1994 and 1998. Western donors have provided \$2.3 billion. Table 12 below summarises estimates made by Brynen, on the basis that approximately half of the funds made available will be used by host countries as UNRWA phases out its services.

Table 12. Possible Arab and international support for resolution of the refugee issue (\$ millions)

	5 years (optimistic)	10 years (optimistic)	5 years (pessimistic)	10 years (pessimistic)
Earmarking of existing aid	1,400	2,450	1,400	2,450
UNRWA termination	875	1,750	875	875
New assistance	500	500	0	0
Total assistance	2,775	4,700	2,275	3,325
Minus transitional support for PA	(695)	(1,175)	(570)	(835)
Minus transitional support for other hosts	(695)	(1,175)	(570)	(835)
Total amount remaining for refugees	1,385	2,350	1,135	1,655

Source: Brynen, R. (1999), "Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem: Financing Palestinian Refugee Compensation", McGill University, (<http://www.arts.mcgill.ca/MEPP/PRRN/brynen.html>).

Given that the repatriation and absorption costs of 500,000 returning refugees might total \$1.6 to \$4.8 billion,⁸⁹ excluding any compensation amounts,⁹⁰ Brynen points out that little or no money would be available for cash payments to compensate refugees. Under the pessimistic scenario in Table 12 above (where no new monies would be made available by the international donor community above those already provided), the amount available to compensate refugees would drop to \$1,135 million during the first five years, and to a total of \$1,655 million over ten years.

⁸⁸ Brynen (1999), *ibid*.

⁸⁹ In Bosnia, the external financing requirements for refugee reintegration were estimated at \$520 million for 1998 alone. The Bosnian authorities have suggested that much larger amounts will eventually be needed – \$8,000 to 10,000 per person, or some \$3-4 billion total. Reconstruction and Return Task Force, Report, March 1998, at <http://www.ohr-dept/rrtf/key-docs/reports/default.asp?contentid=561>. To date, international donors have provided only a fraction of this.

⁹⁰ Borjas, G. and D. Rodrik (1998), "Project on Palestinian Refugees: Summary Report", Institute for Social and Economic Policy in the Middle East, Harvard University, (unpublished), May, quoted in Brynen (1999), *op. cit*.

Brynen also illustrates what this could in practice mean in terms of cash payments to refugees as shown in Table 13, in a scenario where those not living in camps are not compensated at all and those who do reside in camps (estimated at 3.5 million), may receive less than \$1000.

*Table 13. Distributing refugee compensation**

	\$1 billion	\$2 billion	\$5 billion	\$10 billion	\$25 billion
First generation refugees					
Returnees	\$1,530.56	\$2,746.53	\$6,913.19	\$13,857.64	\$34,604.17
Non-returnees	\$780.56	\$1,996.53	\$6,163.19	\$13,107.64	\$33,854.17
Subsequent generation refugees					
Returnees	\$875.45	\$1,070.87	\$1,740.51	\$2,856.58	\$6,190.85
Non-returnees	\$125.45	\$320.87	\$990.51	\$2,106.58	\$5,440.85

The assumptions Brynen has used in his scenarios are:

- a ten-year time frame, and a total refugee population of 3.6 million persons, of whom 10% are first-generation refugees;
- the repatriation of 750,000 refugees over that period, with returning refugees receiving a \$750 repatriation package, financed by international donors. This is considered part of the individual compensation package. Development assistance to refugees or assistance to host governments, however, is not considered part of individual compensation, due to its much more diffuse and indirect character; and
- other than the repatriation package, returnees and non-returnees receive similar levels of compensation, largely paid for by Israel. Half of all compensation resources are paid to first generation refugees, distributed evenly on a per capita basis. All remaining funds are paid to second and subsequent generation refugees on an equal per capita basis.

Source: Brynen, R. (1999), "Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem: Financing Palestinian Refugee Compensation", McGill University, (<http://www.arts.mcgill.ca/MEPP/PRRN/brynen.html>).

4.4 Refugee voices: What solution would find their support?

The surveying of Palestinian refugee attitudes by sub-group is politically sensitive and difficult to achieve. No systematic study, where the same questions are asked to refugees wherever they may live, has been done to date. Nevertheless, several indicative surveys of different refugee communities do exist.

Table 14. Which of the following solutions to the refugee issue is the most just in your opinion?

The most just solution	Palestinians in Israel (N=500)	Israeli Jews (N=500)	Palestinians in the Westbank	Palestinians in Gaza
UNGA Resolution 194	61.4	4.5	81.1	82.6
Return of a limited number	22	14.9	10.4	12.2
Only those approved by Israel	5	56.8	3.5	1.8
There is no refugee problem	1.6	0.2	0.5	0
Don't know	9.2	5	-	-
No answer	0.8	18.7	4.5	3.4
Total	100	100	100	100

Source: Zureik, E. (1999), "Public Opinion and Palestinian Refugees", Queen's University, Kingston, Ontario, report submitted to the International Development Research Centre, Ottawa, December.

A statistical survey by Elia Zureik on public opinion and Palestinian refugees, conducted in 1999,⁹¹ compares the opinions of Israeli Jews, Palestinians in Israel and the WBGS on the issue of Palestinian refugees (see Table 14). Even though the sample included only a minority (23.2%) of internally displaced Arab Israelis, and it is not reported how many of the persons interviewed in the West Bank were refugees. Given that most of the population in Gaza are 1948 refugees, it can be assumed that most Gazan respondents were refugees.

4.4.1 The Right of Return as a principle

In excess of 80% of Palestinians in the West Bank and Gaza defined a just solution to the refugee problem in terms of applying the UNGA Resolution 194, while a very small number opted for leaving a just solution to be decided solely by Israel (1.8% for Gazans and 3.5% for those in the West Bank). Between 10 and 12% of both groups said that a just solution involves the return of a limited number of refugees, depending on negotiations between Israel and the Palestinians. Among the Palestinians in Israel, the corresponding figure is 22%.

A survey produced jointly by Oxfam and the Jerusalem Media and Information Centre broadly confirms these results. Interviewing only West Bank and Gaza residents, 88.3% of male interviewees, and 83.9% of female interviewees said that a solution should be based on UNGA resolution 194.

Palestinian refugees in Syria consider the right of return (UNGA Resolution 194 of 1948) as the only basis for a fair solution. A poll based on a sample of 200 refugees in Syria revealed the following results:

- 98% of Palestinian refugees in Syria prefer to return back to their homeland in Palestine;
- 1% would consider resettlement in areas under full Palestinian control in the West Bank and Gaza; and
- 99% reject any resettlement or transfer proposals.⁹²

A survey of Palestinian refugees in Lebanon, conducted in 1994 among 600 respondents, focused on several issues dealing mainly with the consequences of the peace agreement between Israel and the Palestinians (Sha'ban, U. [1994]).⁹³ Approximately seventy percent of the refugees in Sha'ban's sample opposed resettlement in Lebanon, and 82% said that they would like to live in Palestine in the future. Only 8% chose Lebanon as their first choice of future residence. Nevertheless, when asked to choose a country of residence in the event that they could not return to their original homes, 45% named Lebanon, 20% Europe, 6% the Americas, and 6% named other Arab countries. About 15% did not choose any country. Around half of the well-to-do refugees and the older groups named Lebanon as their preferred country, if they were not allowed to return to Palestine. The majority of the young and educated rejected Lebanon as a place for permanent settlement.

In a survey of Palestinian refugee camps in 1991, Basma Kodmani-Darwish studied a total of 406 respondents: 150 from Jordan (Wihdat, Jabal el-Hussein, Jarash, Zarqa, Martyr, and Baqa'a camps, in addition to interviews with Palestinians from Amman, Wadi el-Sir, Zarka, Irbid, Soueileh, and Al-Aghwar) and 256 from Lebanon (100 respondents from the Beddawi

⁹¹ Zureik, E. (1999), "Public Opinion and Palestinian Refugees", Queen's University, Kingston, Ontario, report submitted to the International Development Research Centre, Ottawa, December.

⁹² The poll was conducted by Dr. Nabil Mahmoud between March and April 1998, taking into consideration demographic, sex and age distribution; quoted in BADIL's publication *al-Majdal*, No. 4, p. 19, December 1999.

⁹³ Sha'ban, U., A. Radwan and S.A. Al-Botmeh (1995), "Poverty in the West Bank, Gaza, and Jerusalem". Palestinian Economic Policy Research Institute, Jerusalem. The results are reported in: Zureik, E. (1996), op. cit.

and Nahr el-Bared camps in the north, 78 respondents from Ein el-Hilweh camp in the south, and a similar number from Bourj el-Barajneh camp in the center of the country). Among the Lebanese respondents, a clear consensus emerged with regard to the right of return, with more than 90% saying that exercise of their right of return was essential for settling the conflict, as a matter of principle and justice.⁹⁴

A British parliamentary committee, composed of representatives from the Labour Middle East Council, Conservative Middle East Council, and Liberal Democrat Middle East Council (London, March 2001)⁹⁵ has published a report following a fact-finding trip amongst the refugee communities, academics and policymakers in the region. The main conclusion regarding the refugees' attitudes towards the right of return and mechanisms for its implementation was:

Most remarkable was the cohesion and consistency amongst refugees. Given the prominence certain refugees (like those of Lebanon) had been given over others in both the media, among experts and by those involved in the Oslo peace process, as well as the wide diversity of situations Palestinians found themselves in, the Commission was surprised and impressed by the unity of views on almost every issue of note for the refugees. Certain positions that could be seen to divide the refugees, since they involved a possible enhancement of their personal interests over other groups of refugees, were confronted outright by the refugees themselves...Everywhere we went, refugees shared the view that the right of return must apply to all refugees, no matter what their current physical or financial position is, wherever they were.⁹⁶

4.4.2 Is it feasible to apply UNGA Resolution 194 for solving the refugee issue?

According to Zureik's survey, the percentage of those who responded positively to this question varied from 66.8% for those in the West Bank and 58% among Gazans, to 49.2% for the Palestinians in Israel. The corresponding figures among the three groups who advocated the return of a limited number of refugees in the context of negotiations were as follows: 15.7%, 24.2% and 29.6%, respectively.⁹⁷

The survey by Oxfam/JMCC notes that "between refugees and non-refugees, there is not a great difference of opinion over the 'most feasible' solution to the refugee issue". Refugees are slightly more likely to say that a solution based on international law is the most feasible solution (65.2% as opposed to 62.6% of non-refugees), while non-refugees are slightly more likely to say either a negotiated solution or a return approved by Israel is the most feasible (18.5%). Only a tiny minority (0.4%) of all respondents said that only those approved by Israel should be allowed to return and compensation given to those who do not return.⁹⁸

⁹⁴ Kodmani-Darwish, B. (1994), "The Palestinian Question: A Fragmented Solution for a Dispersed People", PhD thesis, Institute d'Etudes Politique, Paris. The results are reported in: Zureik, E. (1996), op. cit.

⁹⁵ Joint Parliamentary Middle East Councils Commission of Enquiry (2001), "Right of Return – Palestinian Refugees", London, March.

⁹⁶ Ibid., pp. 22-23.

⁹⁷ Zureik, E. (1999), op. cit.

⁹⁸ Daneels, I. (2001), "Palestinian Refugees and the Peace Process, an Analysis of Public Opinion Surveys in the West Bank and Gaza Strip", a joint project of Oxfam Great Britain and the Jerusalem Media and Communication Center (JMCC), pp. 69-70.

In Syria, several resettlement projects have been proposed for Palestinian refugees since the beginning of the 1950's. The first proposal to resettle Palestinian Refugees in Syria in an area between the Turkish, Iraqi, and Syrian borders was completely rejected by the refugees.⁹⁹

About 50% of Kodmani-Darwish's 1991 respondents in Lebanon said they would choose to live in the West Bank and Gaza. But this was more a product of necessity than free choice, with around one-third attributing this choice to their possible expulsion from Lebanon. Nevertheless, even for those who chose not to live in the new Palestinian entity, the majority would want to exercise their right to establish residency there, even on a temporary basis, and to obtain a Palestinian identity card.¹⁰⁰

Very little information is available on Palestinians in Jordan. Despite the fact that Palestinians in Jordan enjoy citizenship rights, there is tension between Jordanians and Palestinians. According to Kodmani-Darwish, only 13% of the Palestinians she surveyed felt very close to Jordanians, compared to 50% who felt close to Palestinians in the occupied territories. One-third of the Palestinians questioned said they would remain in Jordan under any circumstances.¹⁰¹

Only 6% said that the situation in Jordan was unbearable enough to make them want to leave. About 37% saw Jordan as a substitute state, whereas 49% rejected the proposition. Yet, 56% endorsed the idea of Palestinian-Jordanian confederation.

These polls were taken at different times, and of different constituent groups of the refugee community. In particular, Palestinians in Jordan, over half of which are 1948 refugees, with relatives living mainly in camps in the West Bank rather than inside Israel (such as is the case with refugees in Lebanon and Syria), show different attitudes compared to those in Lebanon and Syria.

Quoting a representative opinion of one of their interviewees, the British parliamentary committee concludes with the following statement by one refugee:

We do not mind even to live with our Jewish neighbours, side by side. We were asked: if there was a settlement which was built on a Palestinian village, what would you like to do with it? The answer is simple, we will live side by side with the Israeli... Even if we end up with a state on every single inch that was occupied in 1967; even if we dismantle all the Israeli settlements in the West Bank and Gaza; even if we restore all the land of Jerusalem and have full sovereignty over East Jerusalem; if we have a 100% sovereign Palestinian state, in my opinion, this will never solve the basic element of the Palestinian-Israeli conflict – namely the issue of the refugees.¹⁰²

4.4.3 Summary

There is a very clear consensus among Palestinian refugees that any settlement needs to include the recognition by Israel in principle of the Right of the Refugees to Return to their homes and properties as expressed in UNGA Resolution 194.

Differences between different refugee sub-groups and time periods when the surveys were taken exist as to the preferences of refugees regarding second-best options, i.e. third country

⁹⁹ BADIL (2000), op. cit., p. 34.

¹⁰⁰ The results are reported in: Zureik, E. (1996), op. cit.

¹⁰¹ Kodmani-Darwish, B. (1994), op. cit.

¹⁰² Joint Parliamentary Middle East Councils Commission of Enquiry (2001), op. cit.

resettlement or “return to a future Palestinian state”. There are some indications that a minority of Palestinians (15.7%, 24.2%, and 29.6%, respectively in the West Bank, Gaza Strip and Israel) are willing to compromise on the number of those returning to their homes and properties. But, when asked whether they agreed that only those approved by Israel should be allowed to return, only 0.4% Palestinians in the West Bank, Gaza Strip and Israel have accepted this.

Whereas Lebanese and Syrian refugees generally opposed any settlement that would imply the loss of their right to return to their homes and properties, Lebanese respondents expressed different preferences regarding the second-best option if this right were denied to them. In an early survey (1991) they expressed fears of expulsion, and as a consequence half the respondents expressed a willingness to relocate to a Palestinian entity in WBGS. In a more recent survey, refugees expressed a preference of staying in Lebanon over “returning to a homeland in a future Palestinian state.”

Summarising the constraints on any solution, we note that they actually seem prohibitive, given that:

- refugee choice over return or third-country resettlement is recognised in international law and defended by the affected communities;
- host countries face genuine political difficulties as a result of being caught between outside pressures, their own populations and the refugee communities, impeding temporary, let-alone permanent resettlement; and
- Israel can afford to be and is – especially in the current climate – unwilling to even discuss the principles underlying any solution deemed acceptable by the refugee communities and the host-countries.

The proposals for a settlement under the Oslo accords, with regard to restitution, compensation and citizenship rights can be traced back to these same differences between the parties.

Nevertheless, we have also seen that the political and economic constraints faced by the parties are not set in stone. Opinion poll results change as conditions on the ground changes, and so do governments’ positions. The last chapter suggests what the international community can do to help the parties approach a sustainable solution.

5. What the international community can do to help achieve a sustainable solution

This paper has aimed at showing that a sustainable solution to the refugee issue cannot be achieved without revisiting the failures of past negotiations and compromises. Against the background of a narrative commonly accepted by mainstream historians, the paper has presented a critical analysis of past approaches to deal with the refugee issue, in the various attempts to resolve the conflict between Israel and the Palestinians. We have contrasted the handling of the refugee issue in the case of Bosnia and Herzegovina with its treatment under the Oslo process, and outlined the first principles emerging from such an exercise. What remains is to propose a direction for a strategy for the international community, that avoids past pitfalls and could ultimately lead both parties to an agreement.

5.1 Core issues that the Madrid and Oslo processes have failed to address

The ICG proposals and all the previous proposals under the Oslo accords have failed to address a number of issues. The first and most notable failure is “represented by the absence” of a link between past conflict and present and future co-habitation. In fact, none of the proposals have addressed the issue that Israel today is not a homogenous Jewish state nor

society, but one in which Palestinians, as citizens of Israel, make up a minority of some 20%, with demographic forecasts picturing its rapid growth to over 30% within a decade or two. Issues of social justice, non-discrimination and self-determination of this Palestinian collective are therefore of vital importance to a peaceful and durable solution of the Israeli-Palestinian conflict, especially in light of recent discriminatory legislation in Israel. Moreover, the right of return, property restitution and compensation of internally displaced Palestinians in Israel (approximately 25% of Israel's Palestinian citizens) is directly relevant to the search for a durable solution for the Palestinian refugee question and must be addressed by a forward looking approach.¹⁰³

All of the proposed agreements, official and unofficial, under the Oslo accords (except for the Palestinian Non-paper at Taba) denied the refugees the choice given them by international law. At the same time, no real solution related to dispossession, exile, legal status and lack of opportunities has been proposed, while the PLO has been expected to sign an end of claims clause on behalf of the entire Palestinian refugee community.

Further, negotiations to date have aimed to specify a quota on returning refugees *a priori*. Yet, this is bound to fail technically on two grounds. First, it encourages unsustainable compromises as numbers are reduced to symbolic proportions in successive re-negotiations, turning an intended peace agreement into pacification. The effect is that the conflict is 'managed' rather than resolved – a rather risky strategy as illustrated by the current situation in the region.

Secondly, it is impossible to predict what choices people would make in times of peace, and equally impossible to implement a solution against the will of the population. Furthermore, such a solution would not be in line with international precedents. Donors have argued against quotas and organised return or resettlement programmes on practical grounds, as they are unlikely to work in practice.¹⁰⁴

Rather than leading to a sustainable solution, the premature signing of end of claims clauses and dismantlement of support structures for refugees would be counter-productive. For example, Israeli proposals and international proposals under the Oslo accords were very keen to abolish UNRWA, or to turn it into a resettlement agency. But as long as no settlement is agreed upon by all the stakeholders, and most Palestinians are kept in the dismal conditions currently prevailing, a premature dismantlement of UNRWA could have disastrous consequences and repercussions throughout the region.

In addition, none of the proposals under the Oslo accords, except for the Saudi Initiative in 2002, have attempted to involve the host country governments in solving the refugee issue. The principle of choice between repatriation and resettlement implies that the host countries should be ready to integrate those refugees who are not willing to return to their homes and properties. Thus any solution to the refugee problem, as pointed out by a number of Middle

¹⁰³ See the paper prepared for CEPS by the Human Rights Advocacy Group "al-Musawah" (see also <http://www.adalah.org>).

¹⁰⁴ "There is a consensus, spoken or informal, among key international donors that in the Palestinian planning process agreement there should be no top-down, bureaucratically-driven, state-centric repatriation approach...Refugee absorption in the Palestinian state should instead enhance, build on and have as its cornerstones flexibility and choice...In this sense the approach should echo more closely the Israeli approach of the 1990s with regard to the settlement of Russian immigrants, which is internationally regarded as a huge success at least in economic terms, although perhaps not in terms of cultural integration." Transcript of Rex Brynen's contribution to "Recent Research Trends on Absorption of the Palestinian Refugees", a workshop organised by Shaml, Palestinian Refugee and Diaspora Centre, at the City Inn Palace, Al-Bireh, Ramallah, 16-17 October, 2002, (http://www.shaml.org/agenda/absorption/index_absorption.html).

East analysts, needs to be based on respect of refugee rights not only by the Israeli side, but also by those currently hosting Palestinian refugees.

Regarding compensation, Israeli willingness to allocate resources to compensation under the Oslo accords was expected to fall at the very lowest end of the range presented, that is, between \$1 billion and \$5 billion, and over ten years, international donors are likely to earmark \$2 billion or less for (post-UNRWA) refugee-specific purposes. The one-off amounts available for compensation for UNRWA registered refugees alone would not exceed the annual amount made available by the United States to Jewish humanitarian migrants coming to Israel from the former Soviet Union.¹⁰⁵

Donor organisations will not be willing nor able to provide compensation as opposed to development/reconstruction aid and in addition these amounts are clearly inadequate to meet the needs of refugee repatriation and compensation, as shown in Table 13 above. Rex Brynen concluded that “the resulting crisis of expectations could prove to be a substantial stumbling block in final status negotiations”.¹⁰⁶

5.2 The role of donor funded policy research

It appears that historical facts as laid out by Israeli, Palestinian and international historians need to be recognised by all parties in order for Palestinian refugees to be able to trust any international efforts to broker a settlement especially if – given the balance of power between the players – a solution would involve enormous sacrifices on the Palestinian side. This could be implemented through the recognition of UNGA Resolution 194 in principle, as demanded by the Palestinian delegation at the Taba talks.

This recognition of principles has not been achieved in any of the ‘blueprints’ for an agreement to date, and this meta-conflict over what the conflict is actually about runs through academic and policy research regarding the Israeli-Palestinian conflict. Given the balance of power in the negotiations, international donors have exclusively focused their feasibility studies on the absorption capacity of the WBGs, Arab host countries and the West.

While these studies could be used for any ‘category’ of Palestinian refugees, the studies explicitly covered the return of those Palestinians displaced as a result of the 1967 war. This allowed donors to avoid controversy by working exclusively on areas where there was general agreement at the time. As always, scenario studies were conducted on the basis that they would not prejudice the outcome of eventual final status talks (particularly in view of the fact that roughly half of those displaced during the 1967 war were also 1948 refugees, who would ultimately claim their right to return to their homes and properties in Israel).

Studies performed by the PLO (and specifically the Ramallah-based Negotiations Affairs Department, NAD) naturally did not venture beyond the red lines set by the discourse determined by the Oslo accords. At the Taba talks, the Palestinian side had worked out principles for the resolution of the refugee issue, while leaving the door half open for compromise on implementation. Yet, no detailed and comprehensive scenarios or studies supporting such a view were published, for fear of a backlash from the affected communities.

¹⁰⁵ US Government (2003), Emergency Refugee and Migration Assistance, Fiscal Year 2003, Congressional Presentation Document and Bureau Performance Plan, US Government, Department of State, Bureau of Population, Refugees and Migration, p. 36 and CBS (<http://www.cbs.gov.il>).

¹⁰⁶ The latter is particularly evident in view of the figures circulated for a one-off “compensation”, which would amount to less per capita than the amount currently provided by the US government per annum for the integration of Russian immigrants into Israel.

The NGO and refugee rights community have repeatedly expressed their outrage at what they saw as attempts by some Palestinian officials to assuage Israeli fears by giving up the right of return in advance of any negotiations.¹⁰⁷ At the same time, no detailed and comprehensive studies (with a coherent methodology across all refugee communities) exist that would envisage an implementation of UNGA Resolution 194. The few existing studies have been realised on the basis of extremely limited budgets by independent Palestinian NGOs and refugee advocacy groups, such as BADIL in Bethlehem or the Palestine Return Centre in London (see section 4.1 above).

The result of these conflicting pressures and the absence of in-depth studies performed by stakeholders with differing perspectives has led to debates of symbolic value rather than to a lively debate founded on an in-depth exploration of a complex issue. Therefore, what is needed is a forum for debate where all stakeholders are afforded equal opportunities to air their views in an informed manner. This does not imply that forums for discussions are needed – some are already in place (for example at Shaml Centre in Al-Bireh) – but that the stakeholders need to be equipped with the means to back up their positions with research, allowing for a better informed debate.

5.3 What the international community can do

The international community, and in particular the European Union is caught in a dilemma. On the one hand, it supports a solution only if it respects the choice of the refugees and hence international law. On the other, it is keen to reassure Israel that refugee choice will not include the choice of returning to their homes and properties as expressed in UNGA Resolution 194 and as implemented in other international conflicts where refugee repatriation has become more and more common.

The international community has a choice over where it puts its funds for “capacity building”. Donors may re-focus their capacity building exercises more on strengthening the fabric of civil society in refugee communities than almost exclusively focusing on governing institutions, in order to enable a more fruitful exchange between the main stakeholders.

For example, any agreement needs to be preceded by economic feasibility research that includes all the options (i.e. also property restitution and return to Israel). No valid analysis is possible without laying out the facts as they are, prior to negotiating a compromise – what is the value of a cost-benefit analysis when some logical options are simply ignored? Under present circumstances, feasible options may actually not even be considered, and a “clash of expectations” becomes unavoidable, with undesirable consequences for all parties.

Strengthening the research and communications capacity of groups representing the “civil society of the refugee community” in its different locations (geographically and socially) would:

- allow for refugees to feel that they are part of a solution rather than subject to it;
- help legitimise any solution subsequently negotiated by governments; and
- help bring actual scenario research alive by making it more relevant to the situation on the ground.

¹⁰⁷ See for example the open letter of Palestinian civic organisations in response to Sari Nuseibeh’s published speech at the Hebrew University in autumn 2001, and also responses to President Arafat’s Op-Ed in the New York Times earlier last year.

In addition, funding for organisations such as NGOs that represent civil society among the refugee community in its different locations, including the West,¹⁰⁸ may help them communicate their plight to the relevant stakeholders. In particular, it may assist in generating a better knowledge of the historical facts, and an increased readiness to accept the implementation of principles that are already well-established and accepted within the European Union.

In the context of compensation, Rex Brynen has suggested that “Within Israel, the refugee issue needs to be further aired, in an effort to build some degree of public recognition (and acceptance) that future compensation payments to Palestinian refugees are both justified and in the interest of both Israel and the Palestinians.” This applies not only to the issue of compensation, but generally to the core issues of return and restitution.

Regarding the revision of the role of UNRWA, one proposal which may merit further attention is that of increasing the involvement of the UNHCR, which has extensive experience in defending refugee rights in host countries, as well as in administering return programmes (including the civil rights and generally the legal and institutional component of such an exercise).

Furthermore – and particularly in view of recent developments affecting the entire region – international pressure needs to be brought on the parties to respect principles and international law, which includes:

- the rights of refugees under international law, as primarily expressed in UNGA Resolution 194;
- the treatment of refugees and displaced persons currently unable to return to their homes and properties by host countries; and
- citizenship law – as it exists in Arab countries and Israel citizenship and that its attendant rights and obligations are inextricably linked to ethnicity. This is therefore inconsistent with international humanitarian and human rights law.

In Bosnia and Herzegovina the principles guiding the negotiations have been put down in the initial agreement, with a formal mechanism (the War Crimes Tribunal in The Hague) in place that effectively forces recognition of past violations. Furthermore, in the case of BiH, the Office of the High Representative (OHR) has the power to repeal and actually has repealed citizenship law not in line with international law. The international community has never even touched upon this incompatibility as a source of conflict in the Middle East. Even though this has historical roots going back to the period of the French and British Mandates, today it should be recognised that these laws only serve to aggravate and exacerbate already existing cleavages, rendering truly democratic change difficult.

Any solution has to win the support of the host countries. This could give momentum to any agreement in terms of offering Israel the carrot of peaceful coexistence with its neighbours, while at the same time making it difficult for host countries to continue denying refugees wishing to remain on their soil the right to do so. Turning this argument around, it has also been argued that it would be rather difficult for Arab states to deny Palestinian refugees their rights, once Israel has recognised the same. Both are two sides of the same coin, and they stick where the principles – the basis of a true agreement – lie.

Once an agreement in principle is on the table, models for implementation can be discussed. For example, a commission composed of all the stakeholders could be instated with the task

¹⁰⁸ Many highly skilled Palestinians live in Western countries, and they may be ready to co-fund and disseminate relevant research.

of implementing an agreement based on those principles. An agreement in principle to deal with conflicting claims of current owners and original owners/claimants of property can be the basis of carrying out any solution. The model for implementing an agreement on refugees could be similar to that of the Office of the High Representative and the Commission on Real Property Restitution (CRPR) in Bosnia and Herzegovina, where both legislation and mechanisms for the execution of real property restitution are being developed successfully. Similar to what Rex Brynen has suggested, it may be possible to think of an agreement linking restitution and compensation in some way, for example where proceeds from the lease and rental of refugee properties accrue to their original owners in full or in part.

After all, the international community has an interest and a historical responsibility in speaking out clearly against past operations of ethnic cleansing, as well as at current attempts to perpetrate it. The issue is particularly urgent in order to avoid a continued radicalisation of the Israeli population with regard to the Palestinian minority living in their midst as Israeli citizens,¹⁰⁹ with mainstream political opinion debating what is euphemistically called a “population transfer”. Greater public understanding of the origins of the refugee problem will certainly facilitate any future peace initiatives.

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¹⁰⁹ Yiftachel, O. (2002), “The Shrinking Space of Citizenship: Ethnocratic Politics in Israel”, *Middle East Report*, No. 223, Summer, (http://www.merip.org/mer/mer223/223_yiftachel.html).

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APPENDIX A. SUMMARY OF POSITIONS REGARDING REFUGEES IN THE PERMANENT STATUS TALKS

	1995 Beilin-Abu Mazen Plan	2000 Camp David	Taba*	
			Palestinian Non-paper	Israeli Non-paper
Narrative	<p>“Art. VII 1. Whereas the Palestinian side considers that the right of the Palestinian refugees to return to their homes is enshrined in international law and natural justice, it recognizes that the prerequisites of the new era of peace and coexistence, as well as the realities on the ground since 1948 have rendered the implementation of this right impracticable. The Palestinian side, thus, declares its readiness to accept and implement policies and measures that will ensure, insofar as this is possible, the welfare and well-being of these refugees.”</p> <p>“2. Whereas the Israeli side acknowledges the moral and material suffering caused to the Palestinian people as a result of armed conflict and war of 1947-1948; It further acknowledges the Palestinian refugees’ right of return to the Palestinian state and their right to compensation and rehabilitation for moral and material losses.”</p>	<p>The official Palestinian position was that Israel should recognise the Right of Return as enshrined in international law and in particular UNGA Resolution 192, while also stating that “the right of return may be implemented in phases so as to address Israel’s demographic concerns”. The Israeli position was that Israel bore no responsibility for the creation of the refugee problem and hence rejected the right of return.</p>	<p>“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.”</p>	<p>“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.”</p>
Responsibility	No mention of responsibility	No official document released, but Palestinian side demanded that Israel recognise its responsibility for the creation of the refugee problem, whereas the Israeli side rejected any responsibility.	“3. Israel shall bear responsibility for the 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.”
Legal basis for settlement of the refugee issue	No legal basis mentioned, although implicit in the formulation of Article VII, para.1. quoted above.	No official document released. Presumably, the Israeli position was consistent with the Oslo framework (UNGA Resolutions 242 and 338), whereas the Palestinian position was based on UNGA Resolutions 242, 338 and 194.	“5.a ...in accordance with United Nations Security Council Resolution 242.... must lead to the implementation of United Nations General Assembly Resolution 194”	“Both sides suggested, as a basis, that the parties should agree that a just settlement of the refugee problem in accordance with the UN Security Council Resolution 242 must lead to the implementation of UN General Assembly Resolution 194.” – see Moratinos (2001), “Minutes of the Negotiations at Taba”.

Definition of a refugee	No definition is given, however, the period of 1947-1949 is given as the period when the suffering of the refugees was caused.	N/A	“6.a. A Palestinian refugee is any Palestinian who was prevented from returning to his or her home after November 29, 1947.”	No definition available
Modalities of implementation – who has authority to decide who returns/is compensated	Establishment of an International Commission for Palestinian Refugees (ICPR) for the final settlement of the refugee issue, including the Parties (Government of Israel and the PA), and donor countries. The work of the ICPR shall be financed by all its participants, including Israel. Criteria for compensation should account for: moral loss, immovable property and financial and economic support enabling resettlement and rehabilitation of Palestinians residing in refugee camps.	Israel demanded control of external Palestinian borders; the Palestinian Authority would not have control over who returns to a Palestinian state. Compensation was not discussed.	“7. A Repatriation Commission shall be established in order to guarantee and manage the implementation of the right to return The Commission shall be composed of representatives from the United Nations, the Parties, UNRWA, the Arab host countries, the EU, and Canada.”	
Compensation: Ceiling or individual compensation	A mix between individual compensation (rights based) and a needs based/development approach.	N/A	Individual compensation	Ceiling
<u>Where are refugees allowed to go:</u>				
Back to their homes (incl. inside Israel)	Subject to Israeli discretion: “Israel will continue to enable family reunification and will absorb Palestinian refugees in special defined cases, to be agreed upon with the ICPR.” (Art. VII, para. 5)	N/A	<p>“15. All refugees currently residing 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.</p> <p>“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.”</p> <p>The Palestinian side did not present a number, but stated that the negotiations could not start without an Israeli opening position. It maintained that Israel's acceptance of the return of refugees should not prejudice existing programs within Israel such as family reunification.” (Moratinos)</p>	“The Israeli side, informally, suggested a three-track, 15-year absorption program, which was discussed but not agreed upon. The first track referred to the absorption to Israel. No numbers were agreed upon, but with a Non-paper referring to 25,000 in the first three years of this program (40,000 in the first five years of this program did not appear in the Non-paper but was raised verbally). The second track referred to the absorption of Palestinian refugees into the Israeli territory, that shall be transferred to Palestinian sovereignty, and the third track referring to the absorption of refugees in the context of family reunification scheme.” (Moratinos)

PALESTINIAN REFUGEES – HOW CAN A DURABLE SOLUTION BE ACHIEVED?

To a future Palestinian state	Number to be decided by the Palestinian Authority – absorptive capacity of West Bank/Gaza Strip; choice of refugees and alternative opportunities (host countries, emigration to third countries, etc.)	N/A	No numbers, as returnees determined solely by Palestinian Authority. Return to the WBGS was subject of a number of PA studies on absorption capacity there.	Subject to Palestinian discretion except for Palestinian refugees returning to Israeli swapped territory – see above.
Compensation			<p>“Both sides agreed to the establishment of an International Commission and an International Fund as a mechanism for dealing with compensation in all its aspects. Both sides agreed that ‘small-sum’ compensation shall be paid to the refugees in the ‘fast-track’ procedure, claims of compensation for property losses below a certain amount shall be subject to ‘fast-track’ procedures...</p> <p>The Palestinian side, however, said that this sum would be calculated on the records of the UNCCP, the Custodian for Absentee Property and other relevant data with a multiplier to reach a fair value.</p> <p>... The Palestinian side raised the issue of restitution of refugee property. The Israeli side rejected this.” (Moratinos)</p>	<p>“According to the Israeli side the calculation of this payment would be based on a macro-economic survey to evaluate the assets in order to reach a fair value.</p> <p>... There was also progress on Israeli compensation for material losses, land and assets expropriated, including agreement on a payment from an Israeli lump sum or proper amount to be agreed upon that would feed into the International Fund.” (Moratinos)</p>

* Unless stated otherwise, the quotes are excerpts from the Palestinian and the Israeli Non-papers presented at the Taba talks in January 2001, as later published by *Le Monde Diplomatique*.

APPENDIX B. THE DAYTON AGREEMENT ON REFUGEES AND DISPLACED PERSONS

The Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska (the "Parties") have agreed as follows:

Chapter One: Protection

Article I: Rights of Refugees and Displaced Persons

1. All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them. The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina. The Parties confirm that they will accept the return of such persons who have left their territory, including those who have been accorded temporary protection by third countries.

2. The Parties shall ensure that refugees and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution, or discrimination, particularly on account of their ethnic origin, religious belief, or political opinion.

3. The Parties shall take all necessary steps to prevent activities within their territories which would hinder or impede the safe and voluntary return of refugees and displaced persons. To demonstrate their commitment to securing full respect for the human rights and fundamental freedoms of all persons within their jurisdiction and creating without delay conditions suitable for return of refugees and displaced persons, the Parties shall take immediately the following confidence building measures:

- a. the repeal of domestic legislation and administrative practices with discriminatory intent or effect;
- b. the prevention and prompt suppression of any written or verbal incitement, through media or otherwise, of ethnic or religious hostility or hatred;
- c. the dissemination, through the media, of warnings against, and the prompt suppression of, acts of retribution by military, paramilitary, and police services, and by other public officials or private individuals;
- d. the protection of ethnic and/or minority populations wherever they are found and the provision of immediate access to these populations by international humanitarian organizations and monitors;
- e. the prosecution, dismissal or transfer, as appropriate, of persons in military, paramilitary, and police forces, and other public servants, responsible for serious violations of the basic rights of persons belonging to ethnic or minority groups.

4. Choice of destination shall be up to the individual or family, and the principle of the unity of the family shall be preserved. The Parties shall not interfere with the returnees' choice of destination, nor shall they compel them to remain in or move to situations of serious danger or insecurity, or to areas lacking in the basic infrastructure necessary to resume a normal life. The Parties shall facilitate the flow of information necessary for refugees and displaced persons to make informed judgments about local conditions for return.

5. The Parties call upon the United Nations High Commissioner for Refugees ("UNHCR") to develop in close consultation with asylum countries and the Parties a repatriation plan that will allow for an early, peaceful, orderly and phased return of refugees and displaced persons, which may include priorities for certain areas and certain categories of returnees. The Parties agree to implement such a plan and to conform their international agreements and internal laws to it. They accordingly call upon States that have accepted refugees to promote the early return of refugees consistent with international law.

Article II: Creation of Suitable Conditions for Return

1. The Parties undertake to create in their territories the political, economic, and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group. The Parties shall provide all possible assistance to refugees and displaced persons and work to facilitate their voluntary return in a peaceful, orderly and phased manner, in accordance with the UNHCR repatriation plan.
2. The Parties shall not discriminate against returning refugees and displaced persons with respect to conscription into military service, and shall give positive consideration to requests for exemption from military or other obligatory service based on individual circumstances, so as to enable returnees to rebuild their lives.

Article III: Cooperation with International Organizations and International Monitoring

1. The Parties note with satisfaction the leading humanitarian role of UNHCR, which has been entrusted by the Secretary-General of the United Nations with the role of coordinating among all agencies assisting with the repatriation and relief of refugees and displaced persons.
2. The Parties shall give full and unrestricted access by UNHCR, the International Committee of the Red Cross ("ICRC"), the United Nations Development Programme ("UNDP"), and other relevant international, domestic and nongovernmental organizations to all refugees and displaced persons, with a view to facilitating the work of those organizations in tracing persons, the provision of medical assistance, food distribution, reintegration assistance, the provision of temporary and permanent housing, and other activities vital to the discharge of their mandates and operational responsibilities without administrative impediments. These activities shall include traditional protection functions and the monitoring of basic human rights and humanitarian conditions, as well as the implementation of the provisions of this Chapter.

The Parties shall provide for the security of all personnel of such organizations.

Article IV: Repatriation Assistance

The Parties shall facilitate the provision of adequately monitored, short-term repatriation assistance on a non-discriminatory basis to all returning refugees and displaced persons who are in need, in accordance with a plan developed by UNHCR and other relevant organizations, to enable the families and individuals returning to re-establish their lives and livelihoods in local communities.

Article V: Persons Unaccounted For

The Parties shall provide information through the tracing mechanisms of the ICRC on all persons unaccounted for. The Parties shall also cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for.

Article VI: Amnesty

Any returning refugee or displaced person charged with a crime, other than a serious violation of international humanitarian law as defined in the Statute of the International Tribunal for the Former Yugoslavia since January 1, 1991 or a common crime unrelated to the conflict, shall upon return enjoy an amnesty. In no case shall charges for crimes be imposed for political or other inappropriate reasons or to circumvent the application of the amnesty.

Chapter Two: Commission for Displaced Persons and Refugees

Article VII: Establishment of the Commission

The Parties hereby establish an independent Commission for Displaced Persons and Refugees (the "Commission"). The Commission shall have its headquarters in Sarajevo and may have offices at other locations, as it deems appropriate.

Article VIII: Cooperation

The Parties shall cooperate with the work of the Commission, and shall respect and implement its decisions expeditiously and in good faith, in cooperation with relevant international and nongovernmental organizations having responsibility for the return and reintegration of refugees and displaced persons.

Article IX: Composition

1. The Commission shall be composed of nine members. Within 90 days after this Agreement enters into force, the Federation of Bosnia and Herzegovina shall appoint four members, two for a term of three years and the others for a term of four years, and the Republika Srpska shall appoint two members, one for a term of three years and the other for a term of four years. The President of the European Court of Human Rights shall appoint the remaining members, each for a term of five years, and shall designate one such member as the Chairman. The members of the Commission may be reappointed.
2. Members of the Commission must be of recognized high moral standing.
3. The Commission may sit in panels, as provided in its rules and regulations. References in this Annex to the Commission shall include, as appropriate, such panels, except that the power to promulgate rules and regulations is vested only in the Commission as a whole.
4. Members appointed after the transfer described in Article XVI below shall be appointed by the Presidency of Bosnia and Herzegovina.

Article X: Facilities, Staff and Expenses

1. The Commission shall have appropriate facilities and a professionally competent staff, experienced in administrative, financial, banking and legal matters, to assist it in carrying out its functions. The staff shall be headed by an Executive Officer, who shall be appointed by the Commission.
2. The salaries and expenses of the Commission and its staff shall be determined jointly by the Parties and shall be borne equally by the Parties.
3. Members of the Commission shall not be held criminally or civilly liable for any acts carried out within the scope of their duties. Members of the Commission, and their families, who are not citizens of Bosnia and Herzegovina shall be accorded the same privileges and immunities as are enjoyed by diplomatic agents and their families under the Vienna Convention on Diplomatic Relations.
4. The Commission may receive assistance from international and nongovernmental organizations, in their areas of special expertise falling within the mandate of the Commission, on terms to be agreed.
5. The Commission shall cooperate with other entities established by the General Framework Agreement, agreed by the Parties, or authorized by the United Nations Security Council.

Article XI: Mandate

The Commission shall receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since April 1, 1992, and where the claimant does not now enjoy possession of that property. Claims may be for return of the property or for just compensation in lieu of return.

Article XII: Proceedings before the Commission

1. Upon receipt of a claim, the Commission shall determine the lawful owner of the property with respect to which the claim is made and the value of that property. The Commission, through its staff or a duly designated international or nongovernmental organization, shall be entitled to have access to any and all property records in Bosnia and Herzegovina, and to any and all real property located in Bosnia and Herzegovina for purposes of inspection, evaluation and assessment related to consideration of a claim.

2. Any person requesting the return of property who is found by the Commission to be the lawful owner of that property shall be awarded its return. Any person requesting compensation in lieu of return who is found by the Commission to be the lawful owner of that property shall be awarded just compensation as determined by the Commission. The Commission shall make decisions by a majority of its members.

3. In determining the lawful owner of any property, the Commission shall not recognize as valid any illegal property transaction, including any transfer that was made under duress, in exchange for exit permission or documents, or that was otherwise in connection with ethnic cleansing. Any person who is awarded return of property may accept a satisfactory lease arrangement rather than retake possession.

4. The Commission shall establish fixed rates that may be applied to determine the value of all real property in Bosnia and Herzegovina that is the subject of a claim before the Commission. The rates shall be based on an assessment or survey of properties in the territory of Bosnia and Herzegovina undertaken prior to April 1, 1992, if available, or may be based on other reasonable criteria as determined by the Commission.

5. The Commission shall have the power to effect any transactions necessary to transfer or assign title, mortgage, lease, or otherwise dispose of property with respect to which a claim is made, or which is determined to be abandoned. In particular, the Commission may lawfully sell, mortgage, or lease real property to any resident or citizen of Bosnia and Herzegovina, or to either Party, where the lawful owner has sought and received compensation in lieu of return, or where the property is determined to be abandoned in accordance with local law. The Commission may also lease property pending consideration and final determination of ownership.

6. In cases in which the claimant is awarded compensation in lieu of return of the property, the Commission may award a monetary grant or a compensation bond for the future purchase of real property. The Parties welcome the willingness of the international community assisting in the construction and financing of housing in Bosnia and Herzegovina to accept compensation bonds awarded by the Commission as payment, and to award persons holding such compensation bonds priority in obtaining that housing.

Commission decisions shall be final, and any title, deed, mortgage, or other legal instrument created or awarded by the Commission shall be recognized as lawful throughout Bosnia and Herzegovina.

7. Failure of any Party or individual to cooperate with the Commission shall not prevent the Commission from making its decision.

Article XIII: Use of Vacant Property

The Parties, after notification to the Commission and in coordination with UNHCR and other international and nongovernmental organizations contributing to relief and reconstruction, may temporarily house refugees and displaced persons in vacant property, subject to final determination of ownership by the Commission and to such temporary lease provisions as it may require.

Article XIV: Refugees and Displaced Persons Property Fund

1. A Refugees and Displaced Persons Property Fund (the "Fund") shall be established in the Central Bank of Bosnia and Herzegovina to be administered by the Commission. The Fund shall be replenished through the purchase, sale, lease and mortgage of real property which is the subject of claims before the Commission. It may also be replenished by direct payments from the Parties, or from contributions by States or international or nongovernmental organizations.

2. Compensation bonds issued pursuant to Article XII (6) shall create future liabilities on the Fund under terms and conditions to be defined by the Commission.

Article XV: Rules and Regulations

The Commission shall promulgate such rules and regulations, consistent with this Agreement, as may be necessary to carry out its functions. In developing these rules and regulations, the Commission shall consider domestic laws on property rights.

Article XVI: Transfer

Five years after this Agreement takes effect, responsibility for the financing and operation of the Commission shall transfer from the Parties to the Government of Bosnia and Herzegovina, unless the Parties otherwise agree. In the latter case, the Commission shall continue to operate as provided above.

Article XVII: Notice

The Parties shall give effective notice of the terms of this Agreement throughout Bosnia and Herzegovina, and in all countries known to have persons who were citizens or residents of Bosnia and Herzegovina.

Article XVIII: Entry into Force

This Agreement shall enter into force upon signature.

For the Republic of Bosnia and Herzegovina
For the Federation of Bosnia and Herzegovina
For the Republika Srpska

Annex 7 of the Dayton Peace Agreement, available at:
<http://www.crpc.org.ba/new/en/html/laws/DPA/annex7.htm>

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