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Implementing a Negotiated Settlement on the Palestinian Refugee Question: The International Dimensions

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SUMMARY POINTS

- Today there are an estimated six million Palestinian refugees. Resolving their plight has been a core part of the peace agenda in the Middle East since 1948. While considerable diplomatic effort in the past two decades has centred on reaching a bilateral Israeli–Palestinian permanent status agreement, implementing any such agreement will present an equally massive challenge.
- Any permanent status agreement that would see the end of conflict would have to address the moral, legal, and material aspects of the refugee question, including the provision of durable solutions to ensure permanent national protection and socio-economic development for the refugees. The vast scale and complexities involved in implementing a solution for some six million persons residing in more than five geographical areas following more than 60 years of conflict would render implementation a major operational task.
- Third parties and international agency representatives will be especially critical for lending political, financial, and logistical support and needed technical expertise in seeing through the implementation process. Such support and expertise are likely to be channelled through an ‘implementation mechanism’ (or agreed institutional arrangement).
- The implementation mechanism should account for both dimensions of a comprehensive solution to the refugee question: repatriation, resettlement and rehabilitation and reparations (i.e., restitution and compensation), with the former likely to require significant international resources, policy engagement, and monitoring and oversight.
- Early preparations by the international community in consultation with refugees, refugee-hosting governments and the parties would benefit an eventual implementation phase. The contributions of the international community will be influenced by the agreed design and mandate of the institutional mechanism for implementation. Preparations should avoid prejudicing any future agreement to be decided by the parties while anticipating measures that the international community may need to take in order to facilitate implementation and the policy options with respect to them.
- This paper outlines possible international contributions and their implications based on wide consultations and reflection on existing technical preparatory activities produced through Track II initiatives.

1. INTRODUCTION

Today there are an estimated six million Palestinian refugees, with thousands more internally displaced inside Israel and the occupied West Bank and Gaza Strip.¹ Resolving their plight has been a core part of the peace agenda in the Middle East since 1948. While considerable diplomatic effort in the past two decades has centred on reaching a bilateral settlement between Israelis and Palestinians on the principal framework for a permanent status solution, implementing any agreement that may be reached presents an equally massive challenge. This paper briefs on implementation issues with an emphasis on the role of third-party donor governments and international agency representatives.

Following the signing of the Oslo Declaration of Principles in 1993, Israeli and Palestinian technical teams began preparations for permanent status negotiations inclusive of the core issues of the conflict: borders, security, Israeli settlements, economic relations, water, Jerusalem and refugees. Informal dialogue sessions with academic, policy and official representatives ('Track II' proceedings) were also initiated to assist the parties and their advisers in reaching common understandings to aid progress on the official track. An especially high number of Track II meetings were pursued on the refugee question. Efforts led by the International Research and Development Centre (IDRC) through the Ottawa Track II process and subsequent technical contributions commissioned from the International Organization for Migration (IOM), along with the work of the Palestinian Negotiation Support Unit (NSU), raised a substantial degree of policy awareness among peace process elites on the key aspects of a negotiated solution to the refugee question.² The Chatham House series on the regional dimension of the Palestinian refugee issue, launched in 2000, brought to light the perspectives of the Palestinian refugees residing inside and outside the occupied territories and the interests of the host governments, complementing these other streams of analysis.³ Other initiatives that took up the refugee questions and that produced ideas relevant to implementation scenarios include the Economic Dimensions of a Two-State Agreement between Israel and Palestine by the joint Israeli–Palestinian economic Aix Group, and the model peace agreement and Refugees Annex drafted by the Geneva Initiative.⁴

From these discussions and others with international representatives, the mechanism for implementing an agreed settlement on the refugee question (hereinafter the 'implementation mechanism') was identified as a critical issue appropriate for further study. The implementation mechanism was viewed as appropriate for broad engagement given the assumed large role third parties would play in supporting if not participating in the mechanism. The vast scale and complexities involved in implementing a solution for some six million persons residing in more than five geographical areas following more than 60 years of conflict would render implementation a major operational task. In order to be better positioned to meet the challenge, it was argued that the international community should give more consideration to the policy context and to the operational and financial requirements of a post-conflict transition. It was felt that engaging on questions of policy options and technicalities of the implementation mechanism would avoid prejudicing future political decisions on the refugee question while advancing knowledge and managing expectations around challenges.

Developing this thinking, Chatham House undertook a series of consultations between 2010 and early 2011 with key regional and international stakeholders on the issue of the implementation mechanism in partnership with the IDRC in Europe and the Middle East region. They included donor government representatives, Arab host government authorities, refugee activists, international organizations, and Palestinian and Israeli strategic advisers and negotiators.

1 I.J. Gassner (ed.), *Survey of Palestinian Refugees and Internally Displaced Persons 2008–2009*, BADIL Resource Center for Palestinian Residency & Refugee Rights, Vol. 6, 2008–2009, ISSN 1728-1679.

2 See the Palestinian Refugee ResearchNet for a comprehensive sourcing of policy and briefing papers stemming from the IDRC and Ottawa Track II process, <http://prrn.mcgill.ca/>. Some of the NSU policy work on Palestinian refugees can be viewed at the online Al Jazeera Transparency Unit <http://www.ajtransparency.com/en>.

3 For an overview of the Chatham House Regional Palestinian Refugee Project see <http://www.chathamhouse.org/research/middle-east/current-projects/regional-dimension-palestinian-refugee-issue>.

4 A copy of the Geneva Annex on Refugees is on file with the author.

This paper discusses the implementation issues of multilateral relevance, taking into account the Chatham House stakeholder consultations, earlier preparatory work and official negotiations around the most recent round of permanent status talks between Mahmoud Abbas and Ehud Olmert, dubbed the 'Annapolis process'.

2. OVERVIEW OF THE PALESTINIAN REFUGEE ISSUE

Origins of displacement and conflict

Today some 70% of all Palestinians are displaced.⁵ The problem of Palestinian displacement and the origins of the Israeli–Palestinian conflict began with the displacement of three-quarters of the Palestinian population, following the 1947 UN decision to partition Mandate Palestine, when mass flight occurred to Lebanon, Syria, Jordan, Egypt, Iraq and what is now defined as the West Bank and Gaza Strip. Subsequent periods of regional upheaval and the Israeli military occupation of the West Bank and Gaza Strip led to more displacements, with increasing numbers of internally displaced.⁶ The continuing situation of forced displacement presents humanitarian and political challenges for regional peace and stability.

In response to the original dispersal of more than 726,000 refugees,⁷ the UN General Assembly called for the voluntary repatriation of the refugees and the restitution of their property.

Article 11 reads:

Resolves that the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.

Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations.

Palestinian leaders and activists have made UN Resolution 194 and principles of international human rights law the centrepiece of their demands for an individual and collective right of return to their places of origin while Israel dispute its relevance on legal, practical and moral grounds.⁸ The Arab Peace Initiative, repeatedly endorsed by the Arab League, includes Resolution 194 as the principal basis for resolving the refugee issue as part of a comprehensive settlement.⁹ Israelis have viewed the initiative with suspicion, in part because of its references to the resolution. Satisfying deeply held and competing expectations around the statement and its meanings for the rights of the refugees and future political outcomes is one of the main challenges to reaching a peace agreement. The final resolution of refugee rights will have a large role in shaping implementation needs.

5 For updated estimates of the total population of Palestinian refugees, see the annual *Survey of Palestinian Refugees and Internally Displaced Persons* produced by the BADIL Resource Center for Palestinian Residency and Refugee Rights.

6 United Nations Conciliation Commission for Palestine, *Final Report of the United Nations Economic Survey Mission for the Middle East*, Part I, *The Final Report and Appendices*; Part II, *The Technical Supplement* (New York: Columbia University Press, 1949).

7 BADIL, *Survey of Palestinian Refugees and Internally Displaced Persons*. See also United Nations Office for the Coordination of Humanitarian Affairs (OCHA), *The Humanitarian Monitor*, April 2010, http://archive.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2010_04_english.pdf. For current trends see Amnesty International Press Release, *Record Number of Palestinians Displaced by Demolitions as Quartet Continues to Talk*, [http://www.amnesty.org/en/news/record-number-palestinians-displaced-demolitions-quartet-continues talk-2011-12-13](http://www.amnesty.org/en/news/record-number-palestinians-displaced-demolitions-quartet-continues-talk-2011-12-13), 13 December 2011.

8 PLO Negotiation Affairs Department, <http://www.nad-plo.org/etemplate.php?id=12>.

9 See The Arab Peace Initiative, <http://www.un.org/depts/dpa/qpal/docs/2011Brussels/P1%20Abdelaziz%20Aboughosh%20EN.pdf>.

Status in exile

The six million Palestinian refugees counted today include '1948 refugees' and those sometimes referred to as '1967 displaced persons' (those originally displaced and their descendants).¹⁰ Of these persons approximately five million are registered with the United Nations Relief and Works Agency (UNRWA).¹¹ With few exceptions neither group of persons has been allowed to return to former homes or lands in Israel, nor have any of these refugees been admitted to the putative Palestinian state in the West Bank and Gaza Strip, meaning that they remain in exile.

Given their diverse geographical locations and protracted exile, Palestinian refugees live under disparate conditions. With the exception of those that have settled in the Americas and Europe, the vast majority live under *de facto* temporary protection regimes and/or circumstances that suggest temporariness. More than half of all recognized Palestinian refugees remain stateless. Upwards of 29% live in camps that, while in many cases resembling urban areas, suffer from poor infrastructure and extreme overcrowding. In terms of socio-economic indicators, such as rates of unemployment and chronic illnesses, Palestinian refugees also frequently register lower than national populations in their countries of residence.¹²

The formal legal status of refugees ranges from temporary residence without an automatic right to work and own property, such as in Lebanon and Egypt, to temporary residence with equal access to social and economic opportunities, as in Syria. Jordan is the only country to have nationalized Palestinian refugees who fled to Jordan and the West Bank after 1948, pursuant to a generalized order of naturalization in 1949. Still Palestinians in Jordan suffer forms of institutional discrimination that include under-representation in the political system and dramatically lower rates of public-sector employment.¹³ Between 2004 and 2008 there were 2,700 documented cases of Palestinians who were arbitrarily stripped of their Jordanian nationality, reflecting the insecurity refugees have experienced in Jordan.¹⁴ An undetermined number of '1967 displaced persons' in Jordan also remain *de jure* temporary residents, forced to obtain official permission to work and security clearance to obtain business licences in the country despite having lived there for multiple generations.¹⁵

Regional attempts to standardize the treatment of Palestinian refugees in the 1960s failed as individual countries increasingly began to view Palestinian residents as a threat to security or to their demographic balances. Although the presence of Palestinian refugees has not featured greatly in the turmoil sweeping the Middle East and North Africa in 2011, they are facing heightened insecurity and poor humanitarian conditions as national economies stall, social tensions rise and violence occurs.¹⁶ Palestinian refugees are consequently likely to experience higher degrees of instability and marginalization, especially as the Israeli–Palestinian peace process appears indefinitely stalled.

Donor states have responded to the refugees' protracted displacement through continued financial support to UNRWA, a direct public service provider to the refugees across the region.¹⁷ UNRWA's role in promoting the refugees' human development through educational, healthcare

10 BADIL, *Survey of Palestinian Refugees and Internally Displaced Persons*.

11 See UNRWA statistics, <http://www.unrwa.org/userfiles/2011092751539.pdf>.

12 For surveys of Palestinian refugee living conditions see the Norwegian research agency website <http://www.fao.no/ais/mideast/palestinianrefugees/index.htm>. Updated surveys have been prepared by UNRWA; see, for instance, *Socio-economic Survey of Palestinian Refugees in Lebanon*, <http://www.unrwa.org/userfiles/2011012074253.pdf> (2011).

13 IDRC, *Perception Survey of Palestinian Refugees in Jordan* (informal title), 2009–10, unpublished survey on file with the author.

14 Human Rights Watch, *Stateless Again: Palestinian-Origin Jordanians Deprived of their Nationality* (New York: HRW, February 2010), ISBN: 1-56432-575-X.

15 BADIL, *Survey of Palestinian Refugees and Internally Displaced Persons*.

16 BBC Syria, 'Palestinian Refugees Flee Camp: UN', <http://www.bbc.co.uk/news/world-middle-east-14533967>, 15 August 2011.

17 General Assembly Resolution Assistance to Palestine Refugees, A/302/IV, 8 December 1949, <http://www.unrwa.org/etemplate.php?id=241> (reaffirmed annually in the UNGA).

and social services has led to a relative stabilization of their situation. Yet its humanitarian function has not replaced the need for a political solution. Throughout the consultations host and Palestinian stakeholders voiced their position that recognition of the right of return was a necessary precursor to deciding issues of implementation. It was emphasized that recognition of the right of return would be an important factor in creating the enabling environment for implementing durable solutions for refugees. Consultations with Israelis revealed recognition of the relevance of UN Resolution 194 to Palestinians – but objections to the right of return as a central concern to Israelis were repeated.

Reparations

In addition to durable solutions for the refugees, implementation issues arise around repairing past losses. Palestinian refugees held or occupied more than four million dunums¹⁸ of personal and communal property. These properties were confiscated by the Israeli Custodian of Absentee Property and transferred to the Israeli Land Authority, which then provided long-term leases to Israeli occupants.¹⁹ There was limited restitution of bank accounts early on and limited compensation to internally displaced persons for lost land, but reparations for the material losses experienced by the refugees have been delayed pending a peace settlement. Palestinian negotiators have also asserted claims for compensation for the total Arab share of public property in Mandate Palestine – calculated to be worth US\$149 million in 1948 values.²⁰ Other claims arising include compensation for lost opportunities and non-material damages or ‘compensation for refugeehood’ – something noted as an anomaly in the Palestinian–Israeli context by international and third-party participants.

In response to Palestinian claims for restitution and compensation, in 2001 and 2008 Israeli officials recognized the principle of compensation for material losses, as well as payment for non-material ones.²¹ Negotiators involved in the 2001 Taba talks were said to have discussed the modalities of compensation, including valuation of immovable property, at the side of the official talks, but generally there has been minimal official engagement on the details of a reparation package for the refugees.

Policy thinking in this area has been advanced mostly through Track II programmes, individual initiatives and technical preparatory work such as the aggregate valuation study done by the NSU.²² Israeli economist Robi Nathanson sought to quantify refugee land losses on the basis of the Israeli Custodian of Absentee Property records. Nathanson’s study included only individually held cultivated properties, whereas the NSU study included an extremely broad range of material losses, including communal and movable property and lost opportunities, relying on proxy values where actual prices were unavailable.²³ Nathanson’s aggregate value of \$8 billion pales in comparison with the \$300 billion valuation reached by the NSU experts, who actualized values to present-day prices in line with international business standards.²⁴ These differences show that, far from being a settled matter between the parties, many key details about the substance of a reparation programme for the refugees remain in contention and thus there are still many unanswered policy questions about restitution and compensation, as there are about durable solutions. Moreover, the expectations of the refugees in this respect

18 1 dunum = 1,000 m². See M.R. Fischbach, *The Usefulness of the UNCCP Archives for Palestinian Refugee Compensation/Reconstruction Claims*, paper presented at the Stocktaking Conference on Palestinian Refugee Research, Ottawa, 17–20 June 2003.

19 For a comprehensive review and explanation of these structures see S. Jiryis, ‘The Legal Structure for the Expropriation and Absorption of Arab Lands in Israel’, *Journal of Palestine Studies*, Vol. 2, No. 4, Summer 1973, pp. 82–104.

20 Thierry J. Senechal, *Draft Valuation of Palestinian Refugee Losses: A Study Based on the National Wealth of Palestine 1948*, <http://transparency.aljazeera.net/files/2767.pdf>.

21 Joint Document on Refugees for Annapolis (#5), *Joint Provision document (Is & Ps) on Refugees n. 2*, Al Jazeera Transparency Unit, <http://transparency.aljazeera.net/en/document/2644>.

22 Senechal, *Valuation of Palestinian Refugee Losses*.

23 Presentation by Dr Roby Nathanson, shown to author in 2007.

24 *Ibid.*; Senechal, *Valuation of Palestinian Refugee Losses*.

have not been extensively documented. In the absence of political traction most surveys of refugee opinion have concentrated on assessing attitudes towards return and other durable solution options.

In addition to the Track II Israeli initiatives and the NSU study, the IDRC has published a significant volume of work analysing compensation modalities and regimes for the Israeli–Palestinian contexts. With the IOM, the IDRC has produced analysis about a future implementation mechanism and mass claims processes.²⁵

²⁵ Norbert Wühler and Heike Niebergall, *Implementation Mechanism: Policy Choices and Implementation Issues*, International Development Research Center, Palestinian Refugee Policy Papers Series (forthcoming 2012).

3. THE IMPLEMENTATION MECHANISM

Any permanent status agreement that would see the end of conflict would have to address the moral, legal, and material aspects of the refugee question, including the provision of durable solutions to ensure refugees permanent national protection and socio-economic development for the refugees. In practical terms this means that any institutional mechanism(s) established to implement the agreement would be likely to include two programmes: one for the repatriation, resettlement and rehabilitation of the refugees and one for processing restitution and compensation claims. While the former would depend on administrative and field coordination functions, the latter might work best as a quasi-judicial mass claims programme with the capacity to process efficiently and fairly the expected millions of claims and/or awards.

A number of policy issues related to the structure, mandate and functions of an implementation mechanism may have to be decided during negotiations.²⁶ As a general matter, however, positions advanced at previous negotiation sessions and analysed in Track II initiatives have proposed that the two main functions of a mechanism – repatriation/resettlement/rehabilitation and reparation – be governed by an overarching policy-making body with a dedicated central fund to finance the work of the mechanism.²⁷ An executive secretariat unit could provide technical and administrative support to the operational programmes. The forthcoming analysis from the IDRC with the IOM provides a detailed technical assessment of the policy issues arising from this basic early ‘consensus’ model, including the composition of the policy-making organ, the design and function of the operational units, and the management of the fund.²⁸ While many of these issues have been viewed as falling within the remit of bilateral negotiations, several of them have implications for the international community and the ultimate success of any implementation phase of peace-building.

First, the composition of the policy-making board is likely to include at least a degree of third-party representation. Israeli negotiators in the Annapolis process sought to have the process led by the United States. This contrasts with negotiation positions taken at Taba and the Track II Geneva Initiative – both of which proposed wide country representation on the board, including the parties, host and donor governments, and multilateral financial institutions such as the World Bank.²⁹ The risks and benefits of wide representation were summed up in the IOM paper with the general assessment that inclusive representation could produce a more transparent, comprehensive and politically endorsed mechanism. Although some concerns have been expressed that overloading the governing board with too many members could lead to inefficiency in decision-making, this risk could be managed by proper procedural rules that would avoid a one-party veto scenario. Constructive involvement of third parties in governing the mechanism could be aided by early engagement with the parties or other decision-makers grappling with this issue.

As stressed during the consultations, the inclusion of refugee-hosting countries in the mechanism’s governing body would be critical, especially if a political agreement on refugees were to be concluded through bilateral negotiations. During the consultations, host countries expressed concern over their currently limited coordination and input on policy decisions concerning the future of the refugees. Authorities expressed a desire to begin coordinating earlier rather than later to ensure that their interests are taken into account, and that the refugees residing in their countries would not be neglected in either the peace-making or peace-building phases. It was suggested that tripartite agreements between individual host countries, the Palestine Liberation Organization (PLO) and the international organizations leading implementation of durable solutions, such as UNRWA, should be negotiated following the conclusion of a bilateral permanent status agreement similar to those pursued by the

²⁶ Ibid.

²⁷ Joint Document on Refugees for Annapolis; see also PLO Negotiation Affairs Department Negotiation Support Unit, *Blueprint for an International Mechanism to Administer the Solution for the Palestinian Refugees*, 11 February 2008, Al Jazeera Transparency Unit, <http://transparency.aljazeera.net/files/2217.pdf>.

²⁸ Wühler and Niebergall, *Implementation Mechanism*.

²⁹ The Geneva Initiative, *Geneva Accord*, Art. 7(11) and 7(12), 2003, <http://www.geneva-accord.org/mainmenu/english>.

United Nations High Commissioner for Refugees (UNHCR); this was seen as an additional or alternative method to involving hosts and refugees, and taking account of the need to ensure that solutions are adapted to local contexts.

Consultations also revealed an international priority to establish a timetable for implementation. Donor countries articulated a need to see the timeline of the mechanism capped in order to plan contributions and manage expectations, suggesting an interest in capping the commitments of third parties. Discussions of timelines in Track II initiatives have tended to focus on the wind-down of UNRWA with little detail sketched out as to timelines for the two implementing programmes.

In addition to political dictates, a number of practical factors are likely to influence the timescale needed for implementation. They include the pace and scope of repatriation, resettlement and rehabilitation, the availability of funds, the efficiency of the mechanism(s) and stakeholder cooperation. Ultimately, ensuring the sustainable (re-)integration of refugees could very well require that the mechanism or coordination functions stemming from this process continue for up to 10–15 years. This will largely depend, however, on the durable solutions agreed, refugee choices, the efficiency of any repatriation and resettlement processes and integrated national development plans. On the claims side – by way of example – the United Nations Compensation Commission for claims stemming from Iraq’s invasion of Kuwait processed more than 2.6 million claims worth more than \$352 billion dollars in compensation.³⁰ It took 16 years to conclude its work. Depending on what remedies are made available to the refugees and the sub-mechanisms established to verify claims and disburse awards, a tribunal for Palestinians could be faced with double that number of claims.

A short deadline for the implementation process could harm peace-building efforts. In general, best practice favours deferring timing issues to the planning bodies of the mechanism to develop flexible timetables that correspond with and adapt to circumstances on the ground as implementation proceeds. Such fluidity, however, should not preclude sound planning and monitoring, against which expectations could be reasonably handled. Another possible strategy for managing the process and ensuring adequate support is maintained without overburdening donor governments and Israel would be to schedule earmarked payments to the mechanism’s units and programmes.

A third major issue of concern to the international community is whether and when to convene a multilateral conference following the signing of a peace agreement. Such a conference could be used to formally establish the mechanism and secure donor pledges with the possible option of setting out the schedule of payments at that point. Donor governments in particular expressed an eagerness to hold an immediate pledging conference to reinforce support for an agreement and create financial and logistical momentum towards its implementation. The role of a pledging conference has been discussed at length in the companion paper prepared by the International Organization of Migration, which provides a comparative overview of the international involvement of historical claims commissions.³¹

Related to the manner in which the international community would launch an institutional mechanism for implementation is the question of whether the peace agreement and establishment of a specialized agency to implement the refugee component of the agreement would require UN Security Council endorsement. The technical dimensions of the question have been addressed in work published by the IDRC.³² For now it is important to emphasize that donor countries are eager to facilitate peace-making and see a high-profile conference

30 United Nations Compensation Commission, ‘Status of Processing and Payment of Claims’, <http://www.uncc.ch/status.htm>, accessed 17 January 2012.

31 Norbert Wühler and Heike Niebergall, *International Support for Reparation Processes and the Palestinian Refugee Issue*, forthcoming Chatham House Programme Paper, February 2012, available online at <http://www.chathamhouse.org/publications/papers>.

32 Wühler and Niebergall, *Implementation Mechanism*. See also draft paper prepared by the International Organization for Migration for the International Development Research Center, ‘Implementing an Agreed Solution of the Palestinian Refugee Issue – Policy Choices and Implementation Issues’, 30 November 2009 (on file with the author).

following the conclusion of a peace settlement as useful for legitimizing the settlement and encouraging momentum to build around it. Such a conference – or other avenues – may be useful for specifying financial support, given the huge cost of implementing durable solutions for the refugees while avoiding raising expectations of unfeasible financing.

Finally, nearly all participants in the consultations – including Israeli experts – stressed the need to ensure the credibility of the mechanism with the refugees themselves. Participants from donor governments and representatives of international organizations in particular urged that the marginalization of the refugees in the peace process be remedied as soon as possible as a pre-emptive measure for any future implementation scenario. In addition, extensive discussions were held around one presumed role of the implementation mechanism and/or its sub-programmes to inform the refugees of their rights and options under a peace agreement, and ensure their involvement, particularly in rehabilitation development initiatives. The international role in promoting refugee participation pre- and post-agreement was identified as an issue needing further exploration.³³

33 See, for example, the Civitas project undertaken by Karma Nabulsi and team at Nuffield College Oxford, 'Foundations for Participation: Civic Structures for the Palestinian Refugee Camps and Exile Communities', <http://www.docstoc.com/docs/70911426/Civitas>.

4. COMPONENTS OF IMPLEMENTATION

Repatriation, resettlement and rehabilitation

Parameters

Internationally recognized solutions include repatriation to the place of origin, local integration in the country of refuge and third-country resettlement. Repatriation or relocation to a Palestinian state has been conventionally viewed as a preferred destination for repatriating refugees, although for this to be a real option a peace settlement would have to allow Palestinians sovereignty over their international borders. Assuming that a fully independent Palestinian state would emerge from a peace settlement, repatriation to it would become a fourth option.

Key challenges

In past negotiation rounds these four options have been subject to the receiving state's discretion. Former US President Clinton's bridging parameters proposed to frame 'return' as 'admission to Israel', conditional upon Israel's 'sovereign discretion'. Local integration in host countries was proposed, consistent with host-state policies. These limitations were repeated in the Geneva Accord. While of clear relevance to a political compromise, in practice subjecting durable solutions to ad hoc quotas could complicate the implementation phase if refugee preferences cannot be accommodated within the agreed parameters. As it may be assumed that the fair and credible implementation of destination options would be voluntary, the balance of refugee preferences could significantly alter the operational balance, and thus influence where and how post-conflict resources are directed. Rehabilitation measures could be an important tool for creating push-pull factors.

Complicating the prospects is the strong possibility that a peace agreement would leave many fundamental policy issues unresolved, and that addressing them would therefore fall under the purview of the governing board of international actors.³⁴ In addition, popular reactions to a settlement could mean that the mechanism will quickly face operational stalemate and/or will have to function in a hostile environment.

These variables and others should be anticipated as early as possible and incorporated into the mechanism's policy directives and sub-programme planning processes. Donor governments sitting on the governing board of the mechanism or otherwise wishing to contribute to peace-building will need to direct their support in ways that address these potential problems – the exact outline of which cannot be known until a settlement is reached and accepted by refugees, the parties and host governments.

Accordingly, consultations with international organizations and donor states stressed that managing community expectations is imperative. Discussions with host governments and refugee representatives suggested that early refugee involvement in decision-making on how available durable solutions may be prioritized and implemented within communities, including complementary rehabilitation measures, would be useful for setting realistic outcomes and enabling planning.

Consultations with international organizations included a review of possible means to adopt in managing expectations around feasible outcomes, including town hall meetings, community liaison offices, accessible verification processes, dissemination of available assistance as well as potential hardships in the possible destinations, and tripartite dialogues with receiving states, the refugees and international agencies leading on behalf of the mechanism. The geographical span and diversity of the Palestinian refugee population and the anticipated

³⁴ For further analysis, see Wühler and Niebergall, *Implementation Mechanism*.

menu of durable solutions would make these processes complex to deliver and potentially unmanageable unless they are planned and conducted through a capable, well-resourced coordination mechanism with clear political support. Discussions around these issues with hosts and refugee representatives as well as international organizations suggested that further technical work was needed to develop appropriate schemes for facilitating refugee participation to promote sound policy planning and action.

Track II proposals that have addressed the structure of decision-making and action, such as the Geneva Initiative, have proposed the creation of multiple committees under the mechanism to implement different elements of the agreement. For instance, the model peace agreement prepared by the Geneva Initiative provides for six technical committees to carry forward operation of the mechanism. The committee's mandates are too narrowly drawn and appear to have overlapping functions, creating an over-complicated, non-streamlined mechanism.

Comparative experiences suggest that the implementation of durable solutions should remain flexible enough to allow for refugee mobility rather than stringently requiring over-controlled, unidirectional movements. Consultations confirmed the need to maintain an adaptive approach and avoid over-bureaucratizing implementation of the return, resettlement and rehabilitation component of any solution. Discussions with international organizations, Palestinian stakeholders and donor representatives suggested a potentially more efficient approach than following the multiple and potentially redundant sub-committee approach proposed by the Geneva Initiative. This could be for the implementation mechanism to host a coordinating body to plan and oversee the repatriation, resettlement and rehabilitation programme, while existing international agencies and NGOs on the ground could act as implementing agents.³⁵

At least one expert involved in the consultations suggested letting refugees move spontaneously without any international involvement. This may be a feasible approach for refugees residing in Jordan, or for others who have maintained family or business links in the Palestinian territories or Israel. For the most part, however, the movement of people without established ties in their place of destination could lead to instability. Unanticipated movements could overload aid initiatives such as job creation programmes in the absence of a managed flow of persons. It could overburden state-building efforts in a newly established Palestinian state or lead to the politicization of who can and cannot enter.

A specialized body within an implementation mechanism would be able to aid the prioritization and sequencing of refugee repatriation and resettlement. Palestinian leaders have consistently sought the prioritizing of refugees in Lebanon owing to that country's long-standing policy against the integration of refugees. Yet beyond this general principle little attention has been paid to date on prioritization and sequencing criteria. Since it is unlikely to be decided by a peace agreement, a core decision-making organ will be needed to provide a comprehensive plan.

To achieve policy planning objectives, the unit would probably have to be composed of persons with expertise to assess the socio-economic conditions in the region, identify the most vulnerable refugees and outline what development assistance is needed in their places of destination. Even as efforts are made to avoid over-scripting the movement of the refugees, such planning would be important to ensure the targeting of those in need. A specialized unit would be a logical forum for consultations with Israel, third countries, host states and the refugees about rehabilitation assistance programmes, and to act as the focal point for global coordination as implementation proceeds. UNRWA could play a vital role in informing the planning process but since its mandate is limited in geographical scope, granting UNRWA exclusive responsibility might lead to a narrowing of the mechanism's mandate and be detrimental to the peace process.

Finally, it was suggested that maintaining a formal repatriation, resettlement and rehabilitation unit in the mechanism could be an effective strategy to ensure that it is pursued in tandem with the mass claims programme. For instance, it could help ensure more strategic timing of the disbursement of non-material damages payments (e.g. in coordination with refugee relocation).

³⁵ *Ibid.*

Several commentators raised the idea that non-material damages could be a form of rehabilitation assistance, encouraging the possibility of linking the two main components of a refugee solution within one overarching mechanism. This could also help to avoid an imbalance of funding that privileges only the reparation claims side, and could reduce the potential administrative duplication that might result from two separate mechanisms (which will both, for instance, need to verify the status of refugees). Overall, having an overarching mechanism or one with integrated systems and complementary policies would help to enable rehabilitation to proceed in a rational manner, taking into account projections for housing restitution and compensation.

International roles

Third-party involvement is likely to include five main areas: participation in the mechanism's governing body, albeit limited to a workable number of states; provision of expert capacity and technical support; resettlement of refugees; monitoring; and financing. This last role, anticipated to be the largest, is addressed in more detail below.

In order to facilitate peace-making and expand refugee choices and opportunities in a post-conflict situation, the international community should give further consideration to the scope of resettlement it may be willing to offer to refugees. Western Europe in particular is a likely preferred destination for many Palestinian refugees, many of whom have links to the continent. Recent studies of the employment situation of Palestinian refugees in Lebanon reveal that up to 40% have relatives living in Europe.³⁶ Limitations on or lack of interest in returning to Israel, or shortcomings in the ability of the Palestinian state to absorb unlimited numbers of refugees, could place greater pressure on third states to welcome Palestinians.

The international community is likely to be best suited to play a substantial role in facilitating and monitoring the implementation of durable solutions for the refugees. As part of this responsibility, whether through diplomacy, UN partners and/or the repatriation, resettlement and rehabilitation body of the implementation mechanism, donor countries could play a vital role *vis-à-vis* Middle Eastern states in advocating the freedom of movement of refugees, encouraging absorbing states, including Israel, to ensure that refugees are provided with the necessary legal remedies to gain full national protection. This would put an end to their dislocation and vulnerability, and promote normalization in the region.

Financing-specific issues

Consultations revealed broad agreement among donors that funds should be directed towards real, defensible needs and calibrated according to available resources. States expressed a preference not to be seen as prejudicing a peace agreement or favouring one outcome or another. Contributions would therefore have to be targeted on needs that donor states can reasonably justify to their own citizens. In addition, European governments in particular have expressed a reluctance to act as financial guarantors of implementation, as well as reservations about financial participation in property compensation.

Socio-economic rehabilitation assistance is likely to be the most defensible cost for the international community to cover. It would thus constitute the bulk of third-party monetary contributions. Unpublished studies by the Palestinian Authority's Ministry of Planning in cooperation with the World Bank suggest that the provision of housing and job assistance would be the most costly aspect of on the reintegration of repatriated refugees. These studies found that the most cost-effective approach to integrating refugees who chose to stay or move to the Palestinian state would be to expand and dramatically improve infrastructure in existing camp communities while handing over service delivery to national authorities. Rather than establishing new towns and urban centres for refugees, and alleviating overcrowding through

³⁶ Sharifa Shafie, *Palestinian Refugees in Lebanon*, <http://www.forcedmigration.org/research-resources/expert-guides/palestinian-refugees-in-lebanon/fmo018.pdf>.

housing construction and infrastructure expansion, therefore, a more sustainable solution would be to utilize existing community networks and, if necessary, to integrate utility systems with surrounding municipalities. Job-creation programmes would complement infrastructure development. The same macro calculations would be likely to apply to integration programmes for refugees choosing to stay in host states.³⁷

In 2003, the World Bank produced a cost analysis of refugee reintegration in the West Bank and Gaza Strip, comparing infrastructure and housing costs for the expansion of existing Palestinian communities and the creation of new settlements.³⁸ Other attempts at costing the rehabilitation of Palestinian refugees were made by the Palestinian-Israeli Track II initiative, the 'Aix Group'. Based on work conducted in 2007, it estimated a total amount ranging between \$10 billion and \$14 billion over a 10-year period for those refugees staying in their current locations.³⁹ The group estimated 'resettlement' costs separately at between \$8 billion and \$19 billion. These numbers were based solely on refugees registered with UNRWA – 4.5 million at the time. The striking variation in their range reflects the inevitable uncertainty about accurately capturing refugee choices in advance. The separation of resettlement and rehabilitation costs was also arbitrary.⁴⁰

A sustainable durable solution programme would require humanitarian assistance in the relocation process to be coupled with long-term development benefits for the communities into which refugees are moving or reintegrating. Compensating refugees without aiding the environment around them could create potentially destabilizing imbalances. Moreover, as countries accept the naturalization of refugees – or, as in the case of Jordan, where refugees have already been naturalized – their financial responsibilities in meeting the socio-economic needs of their new citizens will grow. The level of economic development in the Arab host countries could still leave the international community as the primary donor for these programmes, with the imperative that the planning be done in a comprehensive manner, moving from immediate aid to relocating refugees to long-term development assistance for the wider communities into which the refugees are moving or reintegrating.

Host governments may be in a position to absorb a portion of UNRWA aid budgets. This is the case in Syria where the current refugee population amounts to 4% of the total population, but that aid support may fall short of the amount needed to achieve integration and ensure that refugees are not marginalized. In particular, targeted housing and job-creation interventions could require additional earmarked funds. The amounts needed to achieve normalization could be massive if the process is to include formalizing refugee property entitlement and reducing existing rates of overcrowding.

Resettlement costs would also need to be factored into international contributions. For instance, it is expected that Europe would be a preferred destination for thousands of Palestinian refugees, especially those with links to the continent. Receiving countries would incur costs associated with transitional housing and welfare services. West European countries typically already have programmes for resettling refugees and are likely to allocate funds from their regular budgets for Palestinians. Costs and programming are more likely to be factored into the overall contribution of individual states than to come from the central fund of the implementation mechanism.

If, as has been suggested, a new organizational unit is created to implement an agreement on refugees, funds would also be required to establish the mechanism and support its operation. Contributions of this nature could be directed toward administrative costs to be managed by the mechanism's secretariat or other managerial body such as the World Bank.

37 This applies to refugees living in UNRWA areas of operation. In Egypt refugees are largely residing in housing that is assimilated into the broader society.

38 World Bank, *Housing and Infrastructure: Scenarios for Refugees and Displaced Persons*, May 2003, http://web.idrc.ca/en/ev-330960201-1-DO_TOPIC.html.

39 World Bank, *Housing and Infrastructure: Scenarios for Refugees and Displaced Persons*, May 2003, http://web.idrc.ca/en/ev-330960201-1-DO_TOPIC.html.

40 The Aix Group calculations were not evidentiary based, making it difficult to test them or bring them forward to present-day costs. Aix Group, *Economic Dimensions of a Two-State Agreement Between Israel and Palestine*, November 2007, http://www.aixgroup.org/economic_dimensions_english_website.pdf.

Mass claims tribunal

Parameters

Precepts of transitional justice and best practices in international refugee policy prescribe that returning refugees should be restituted to their former lands and homes where possible or receive compensation. The majority of Track II efforts have focused on developing the technical parameters for property compensation and payment for non-material damages.

While it is widely assumed in diplomatic circles that there would be reparation for immovable property losses, less explored is whether there would be restitution or compensation for other forms of material-property deprivations. Some Track II initiatives have proposed fast-track per capita sums for all refugees to redress land and livelihood losses for those who may not be in a position to prove formal title. (Some 40–60% of Palestinian refugees lived and worked on the land as sharecroppers in pre-1948 Palestine.) Other possible types of compensation include for the Arab share of public property in pre-1948 Palestine, businesses and personal items. Beyond the question of what is to be restituted or compensated are the questions of how losses would be valued, the rights and treatment of secondary occupants, and who pays for what.

These are largely political issues. Although they would rightly be informed by technical expertise and third-party leadership, they should be decided first in a framework peace agreement or ancillary policy deliberations.

Key challenges

International involvement in the reparation side of implementation is likely to be more limited than in the area of repatriation, resettlement and rehabilitation. A claims process would be quasi-judicial whereas repatriation and development would depend more on administrative and programmatic functions across borders. As such, the international community would not play an extensive policy or logistical role unless restitution were part of the agreement, in which case the it might play an enforcement role, as happened in Bosnia.

Moreover, most of the key policy questions that would need to be answered in order to establish a claims programme, such as the type of losses that will be restituted and/or compensated and who will contribute financing, would have to be decided in the constituent peace agreement or ancillary policy deliberations. Discussions would benefit from international expertise and third-party leadership, but most questions will need to be decided by the parties during the negotiations to guide the claims process. The international community as well as the host countries may need to watch these discussions carefully in order to protect the interests and rights of their nationals of Palestinian origin to ensure that any agreed reparation programme is fair and consistent with international standards. Extensive analysis of the pertinent questions has been conducted by the IOM.⁴¹

It is anticipated that the implementation mechanism for property and non-material damage claims would include a claims commission composed of independent experts and a secretariat unit to provide technical and administrative support. The extensive experience with other post-conflict mass claims tribunals such as the UNCC and the Commission for Real Property Claims of Displaced Persons and Refugees means that the service of international experts would be drawn upon to run the claims commission but it should be independent and without political representation.⁴²

41 Wühler and Niebergall, *Implementation Mechanism*.

42 For a review of other international tribunals relevant to the Palestinian context see IOM, *Property Restitution and Compensation: Practices and Experiences of Claims Programmes* (2008); see also Wühler and Niebergall, *International Support for Reparation Processes and the Palestinian Refugee Issue*.

The one policy area where the international community will be heavily involved early in the process is financing. The leading question facing decision-makers is who pays refugees for properties that are not restituted and for other injuries and damages. Separate from the issue of financing the creation and administrative functioning of an implementation mechanism is whether third parties would dedicate funds to cover compensation claims. If, as discussed above, payments may be viewed as an indirect form of rehabilitation assistance, it may be appropriate for third parties to contribute funds. On the other hand, such financial support may be less defensible to publics that do not feel their non-party country is responsible for the losses suffered by the refugees.

As mentioned, the range of estimates of refugee material losses from \$8 billion to \$300 billion is based on political questions.⁴³ The types of losses included and the methodology employed to value them will determine the aggregate contribution required to fund a compensation programme. A figure should be agreed early on in order to establish the amount Israel or other contributors would have to deposit in a fund. The amount would need to correspond to actual losses to ensure adequate funding to match refugee claims, and thus render the agreement meaningful and feasible.

Arab host countries have likewise asserted a demand to be compensated for the years in which they gave shelter to the refugees. Jordan, where the majority of Palestinian refugees are concentrated, has been the most vociferous in maintaining compensation as a benchmark for its support for a peace agreement. Jordan and other countries reasserted their demands during Chatham House consultations. The appropriateness of host compensation has come into doubt as refugee and legal experts pointed out in consultations that there is neither a strong economic justification nor historical precedent for 'compensating' refugee-hosting governments. Donor governments also expressed an unwillingness to compensate host governments through direct budgetary contributions but indicated acceptance of the idea that they would require development assistance to ensure the rehabilitation of refugees remaining in their countries. In addition, traditional donor disbursements to UNRWA may be made instead to host governments during the transitional period. It is widely acknowledged, however, that the cooperation of the host countries is essential for the implementation of an agreement and that they are under no obligation to accept the terms of an agreement they did not participate in formulating.⁴⁴

The total bill for resolving the refugee issue will be hefty enough, combining compensation with the other costs of repatriation, resettlement and rehabilitation. Consistent with its long-standing commitments to supporting the peace process and state-building, the international community would probably be called upon to contribute funds for redressing losses, as well as repatriating and resettling refugees. However, the political imperative of guaranteeing that an agreement can be implemented should be weighed against legal requirements and cost-effectiveness. Managing Israeli and Palestinian expectations regarding Europe's contribution for restitution and compensation would be essential at an early stage, to encourage feasible amounts to be agreed.

Extensive contributions would increase the direct involvement in the process as states would seek to audit expenditures and might wish to have a say on the amounts to be distributed to the refugees. Such oversight should be performed by the mechanism, with the appropriate reporting arrangements.

43 The lesser figure, reached by an Israeli economist, covers a portion of refugee land in 1948 prices with an arbitrary multiplier. The substantially higher figure reflects a wide range of material losses, including the Arab share of public property, actualized to present-day prices per standard international valuation practices.

44 For more information please refer to Nadim Shehadi, *Palestinian Refugees: Regional Perspective*, Chatham House Briefing Paper, April 2009, available online at http://www.chathamhouse.org/sites/default/files/public/Research/Middle%20East/0409palrefugees_shehadi.pdf.

5. CONCLUSION

The implementation of a resolution of the Palestinian refugee question, while obviously a long way off, provides perspective on the international dimensions of any peace-building effort in the Israeli–Palestinian domain while also shedding light on the scope and complexities of the refugee problem. The main challenge will be to ensure that a post-agreement implementation mechanism is as cost-effective and streamlined as possible, without sacrificing or oversimplifying refugee needs. This paper has sought to call attention to the twofold aspects of a refugee solution: repatriation, resettlement and rehabilitation on one hand, and the processing of reparation claims on the other. Sound policy approaches to peace-building should not prioritize one at the expense of the other. While many of the Track II initiatives have tended to highlight the claims side of peace-building with a focus on compensation issues, the international community will need to emphasize its role in the context of repatriation, resettlement and rehabilitation, while recognizing that the two processes are interrelated and best regarded as complementary.

These policy imperatives are likely to play out in the creation and functioning of the implementation mechanism. Should repatriation, resettlement or rehabilitation be institutionally separated or left to regular national and regional dynamics, for instance, this key need may be de-prioritized in practice, including as a result of underfunding. If repatriation and sustainable development are not built into the mechanism, they may be neglected, leaving the plight of the refugees unresolved and continuing to present a potential source of regional unrest. International monitoring and financial auditing should also be performed as comprehensive tasks across units with a view to assessing progress in implementing any agreement on refugees in its entirety.

Ultimately, without a peace agreement resolving all aspects of the Palestinian–Israeli conflict, it is impossible to predict with certainty some of the key aspects of the mechanism, including how its governing body will be constituted, the scope of its mandate and financing procedures. At the same time, analysing the requirements of an implementation mechanism can help inform international engagement on the refugee question because it highlights the nature of the refugee problem and just what kinds of political solutions are needed.

The effort to conduct preparatory work to support an agreement once it is achieved should continue, with a view to addressing the major policy decisions that decision-makers will have to take. Ways of making an implementation mechanism more participatory should also be explored further. Refugee inclusion is understood as an essential ingredient of any sustainable solutions. Thinking about better ways to include them in peace-making processes will benefit both any negotiation process and implementation of an agreement. Ensuring the representation and participation of the host countries is also vital to effective implementation of an eventual solution to this long-running crisis.

ABOUT THE AUTHOR

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Chatham House Palestinian Refugees Project (The Minster Lovell Process)

The Chatham House project on the Palestinian Refugee Issue in the Middle East Peace Process, ongoing since 1999, aims at an in-depth examination of the regional, legal and political complexities of the issue. By the end of 2011, 32 gatherings had been held, mostly in the Oxfordshire village of Minster Lovell, and also in Europe and the Middle East. The activities over that period have been funded by the European Union, the International Development Research Centre (Canada), the Swiss Agency for Development and Cooperation and the UK Foreign and Commonwealth Office.

The Minster Lovell Process provides an informal mechanism to bridge some of the communications gaps that exist between parties directly concerned with the Palestinian refugee issue. It seeks to raise awareness of the issue and to highlight the importance of its regional dimension through continuous dialogue in the absence of, and in preparation for, formal negotiations.

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