The "Geneva Accord" and the Palestinian Refugee Issue

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Following the first major leaks to the media in October, and later the formal launch ceremony Geneva on 1 December 2003, the unofficial Israeli-Palestinian "Geneva Accords" have attracted considerable attention. Most of the international community has welcomed them as a valuable contribution to the debate on Israeli-Palestinian peace. Within Israel, the accords were strongly attacked by Prime Minister Sharon and right-wing politicians and commentators as offering excessive concessions, rewarding terrorism, and/or subverting Israeli foreign policy. The accords were also criticized by many centrist politicians and opinion leaders on similar grounds, including Shinui Party leader Tommy Lapid and former Labor prime minister Ehud Barak, Within the Palestinian territories and diaspora, the Fateh mainstream was generally critical, and Islamists groups even more so. Particular criticism was directed to the accords' perceived concessions on the Palestinian "right of return."

This short paper examines the Geneva accords as they pertain to the Palestinian refugee issue. The first part offers a technical appraisal of Article 7 of the accords, identifying and assessing the arrangements that it proposes, and also noting the extent to which these reflect or diverge from previous formulations (notably those developed in the last round of final status negotiations in Taba in January 2001). In doing this, it is not the purpose of the paper to nitpick what, as Geneva initiative organizers freely admit, is still a work-in-progress. Rather, it is to give the refugee proposals the serious critical analytical attention they deserve, and in so doing perhaps identify areas that would benefit from further exploration, especially if and when the regional participants undertake to develop the as-yet incomplete annexes to the accord.

Second, this paper also reflects a little on the broader significance of the Geneva accord in potentially advancing dialogue on sensitive aspects of the refugee issue, as well as communicating (as its framers' explicitly intend) that there are both viable plans and partners for Middle East peace.

PART 1: Technical Assessment

Main Elements of the Geneva Accord

In its broad outlines, the Geneva Accord reflects previous proposals and understandings developed at the Taba final status negotiations in January 2001, as well as the prior Clinton parameters of December 2000.

This is hardly surprising, given that Taba represented the first substantive good-faith negotiations between the parties on the refugee issue. Moreover, even after the collapse of negotiations and the election of the Sharon government, members of the (former) Israeli refugee negotiating team (led by Geneva Accord architect Yossi Beilin) and their Palestinian counterparts (including officials in the Ministry of Planning and Economic Cooperation and the Negotiation Affairs Department of the PLO) continued to meet to develop joint communication strategies and explore areas of potential agreement. A number of countries supported research and track two projects that explored aspects of a

potential refugee agreement. Thus, when the Swiss-supported Geneva initiative began, it benefited from a substantial foundation of prior work.

The presence or absence of two other constraints on the Geneva initiative negotiators should also be noted. First, the unofficial and informal character of the agreement has meant that the parties have been able to adopt positions that might be much more difficult for official representatives to take. On the Palestinian side, some participants (holding or having held formal positions within the PA/PLO) were aware that their semi-official status might be seen as signaling a formal position that future Palestinian negotiators could be held to, and were inclined to caution as a result. Nonetheless, in general the Palestinian team went beyond the Palestinian public and political consensus, as evidenced by the subsequent refusal of Fateh (or FIDA), the PA cabinet, the Palestinian Legislative Council, or the PLO Executive Committee to endorse the contents of the Accord. On the Israeli side, this greater flexibility was even more evident, with the participants largely representing the dovish left of the left (Labor/Meretz/Peace Now) of the Israeli political spectrum. Even at Taba, refugee positions staked out by Beilin and the Israeli team had gone beyond the preferences of then Labor prime minister Ehud Barak.

Second, the Geneva initiative has emerged in a much less propitious set of circumstances than those of the Oslo era. In particular, the current intifada (and especially protests by Palestinian citizens of Israel in its early months) have substantially undercut whatever already weak support existed in Israel for the return of any refugees to 1948 areas. Indeed, current political discourse in Israel often focuses on the notion that Israeli already has too many Arabs, and needs to adopt demographic policies to preserve the Jewish share of the population. In this context, any refugee return at all is a hard sell. The intifada has also made Israelis more cautious about ceding security control over Palestinian borders to a future Palestinian state, for fear that weapons and terrorists might flow across it. At the same time, on the Palestinian side, violence, the intensification of Israeli occupation, and the hardline policies of the Sharon government tend to generate greater political polarization and disinclination to compromise. Indeed, a substantial portion of Palestinians in the West Bank and Gaza now feel that peace with Israel is impossible. Both within Palestine and in the diaspora, right of return advocacy groups are more vocal and active than ever, strengthened in part by effective use on new information and communication technologies.

Return, Repatriation, and Resettlement

The preamble to the Geneva Accord affirms that “this agreement marks the recognition of the right of the Jewish people to statehood and the recognition of the right of the Palestinian people to statehood, without prejudice to the equal rights of the Parties' respective citizens.” In so doing, the Accord explicitly calls for a two-state solution of the Palestinian-Israeli conflict. While not going as far as recognizing Israel as a Jewish state (something then Palestinian Prime Minister Mahmud Abu Mazen was pressed, but declined, to do at the Aqaba summit with US President George Bush and Israeli Prime Minister Ariel Sharon in June 2003), it also ties such statehood (including Israel’s) more

closely to ethnic identity.[1] The phraseology is clearly intended to assuage Israeli concerns that the Palestinians seek to (re)Arabize Israel through demographic change and refugee return.

In general, the Geneva Accords outline the same set of five choices for refugees that were included in the Clinton parameters and Taba negotiations: refugees have the option of repatriation to the Palestinian state; resettlement in third countries; repatriation to former areas of Israel swapped to the Palestinian state; return to the Israel; and absorption within present host countries. Several of these options involve restrictions, however:

- Absorption in host and third countries would obviously be determined by the willingness of countries to accept refugees. Like the draft agreements under discussion at Taba,[2] the Geneva accord (article 7.4) assigns special return, repatriation, or resettlement priority to Palestinians from Lebanon—the most disadvantaged community in the diaspora, and the group most likely to be rejected by the current host government.
- Repatriation to the Palestinian state (including former Israeli territories swapped to Palestine) is not limited in any way in Article 7 of the Accord. Nor are there any *de facto* restrictions imposed by Article 5.12 of the accord, dealing with international border crossings. Under that section, the proposed multinational force has the authority to block prohibited goods from entering Palestine, but not individuals. Israel would have an unseen presence at border terminals and the right to ask for further inspections, but no power to block the movement of people.[3]
- Return to Israel is the most sensitive and controversial aspect of the accord is essentially determined by Israel, as explained below.

As in the Israeli non-paper presented at Taba, these five options are represented as fulfilling UN General Assembly Resolution 194, although the formula on this differs in some respects. In the Taba Non-Paper (article 16), "the parties agree that the above constitutes a complete and final implementation of Article 11 of UNGAR 194 of 11th December 1948." The Palestinian side also favoured a clause (article 6) noting that "a just settlement of the refugee problem in accordance with UNSCR 242 must lead to the implementation of UNGAR 194." The Geneva accord, by contrast, asserts (article 7.2) that "The Parties recognize that UNGAR 194, UNSC Resolution 242, and the Arab Peace Initiative (Article 2.ii.) concerning the rights of the Palestinian refugees represent the basis for resolving the refugee issue, and agree that these rights are fulfilled according to Article 7 of this Agreement." Although the assertion of UNGAR 194 and the Arab peace

[1] I am grateful to Elia Zureik for pointing out the importance of the reamble.
[2] Under Article 8.a.1 of the Israeli "non-paper" presented in Taba, priority among those returning to Israel would be "accorded to those Palestinian refugees currently resident in Lebanon." Israeli Non-Paper, draft 2, 23 January 2001 (hereafter INP). Similar language was later included in article 6 of the joint Refugee Mechanism (hereafter, JRM), draft 2, 25 January 2001.
[3] The question of border controls is a particularly important one. Even at Taba, Israel had not yet fully agreed to full Palestinian control over border crossings. In the absence of any Israeli controls, the question of 1967 displaced persons becomes moot (other than as a practical and humanitarian issue), since the displaced could presumably return to the West Bank and Gaza as they saw fit.

initiative as a "basis" for resolving the refugee issue has drawn fire in Israel from both right-wing and centrist critics of the agreement, the practical implication of different formulation is negligible.

Instead, what is of critical importance is the way in which Israeli admission of returnees is determined. At Taba, the parties sought to agree on a capped limit to the number of refugees that would be enshrined in the agreement. Although no number was ever agreed, the Israeli side suggested 25,000 persons over three years, or 40,000 over five, with refugee return to be resolved over a fifteen year period. This seemed to suggest a minimum of 25-40,000 persons, with the possibility of 120-125,000 on a generous reading. The Palestinian side had no fixed number in mind, but did seek "six figures" (100,000+) in the negotiations.

By contrast, under the Geneva accord Israel would set its own number at its "sovereign discretion," a formulation similar to that in the Clinton parameters of December 2000.[4] The accord does call upon Israel (article 7.4.v.d) to "consider the average of the total numbers submitted by different third countries [for Palestinian refugee resettlement]," but "consider" has no force of obligation and clearly places no binding requirements on Israel. Moreover, any such average could turn out to be strikingly low.[5]

Given all this, critics of the accord who charge that it has abandoned the refugee's "right of return" are, in a practical sense, quite right: even if there is no specific renunciation of the right, under the terms of the initiative there is likely to be very little return at all to Israel. Despite the assertion of the Geneva accords that it would represent a "permanent and complete resolution of the Palestinian refugee issue," it could be argued that the individual rights of refugees under international human rights law (notably the Universal Declaration of Human Rights) cannot be abrogated by intergovernmental agreement, and hence would continue regardless. While this is probably true in a strict legal sense, in the absence of any mechanism to adjudicate and execute such claims (and given the unlikelihood of Israeli courts ever ruling in the refugees' favour), such an individualized right has very little substance at all.

Compensation

The Geneva accords recognize several types of compensation. Refugees are entitled for compensation for both "their refugeehood and for loss of property" (article 7.3.i), while

[4] "..some of the refugees would be absorbed into Israel consistent with Israel's sovereign decision." See the reported text of the Clinton parameters at http://www.peacelobby.org/clinton_parameters.htm.

[5] The average number of third country resettlements could be very low. for two reasons. First, post-9/11 restrictions on immigration and asylum (especially regarding populations from the Middle East) might reduce the number of places countries are willing to offer. Indicative of this danger, UNHCR reported that refugee resettlement under its auspices dropped by 56% between 2001 and 2002 largely for this reason. A second reason might be purely mathematical: although a few countries might be relatively generous in accepting refugees, a large number of small resettlement offers by various countries would pull down the average. In 2002, for example, UNHCR resettled approximately 21,000 refugees under its auspices. While a very few countries took large numbers (8,142 in the US; 4,744 in Canada; 2,771 in Australia), many accepted only a handful (Chile, 3). As a result, the *average* was only around 1,000 persons. UNHCR, *Refugees by Numbers 2003*, and *Resettlement Statistics 2002*, via http://www.unhcr.ch.

the agreement also recognizes "the right of states that have hosted Palestinian refugees to remuneration." There is little indication of how compensation to host countries shall be calculated or paid, other than to note that "there shall be remuneration" (article 7.11.vi). Somewhat greater detail is provided regarding refugee compensation.

Unlike US proposals at Camp David in 2000, or the Israeli position at Taba, there is no mention in the Geneva accords of compensation for Jewish refugees from Arab countries. It has long been the Palestinian position that while genuine Jewish refugees have a right to compensation, it is not a matter for Israeli-Palestinian discussion but rather between Israel and the countries concerned.

Valuation and Financing

An international fund is to be established (article 7.12), to which both Israel and the international community will contribute. Israel's contribution shall be determined in what amounts to a series of steps (article 7.9):

1. The International Commission will appoint a panel of experts to estimate, within six months, the value of refugee properties in 1948, based on UNCCP, Israeli, and other records.
2. The parties will then agree on an "economic multiplier" to be applied to the estimate, to bring it to current values. This will represent Israel's sole "lump sum" contribution to the fund.
3. An estimate of the value Israeli fixed assets transferred to the Palestinian state (the settlements and, presumably, roads, and other physical infrastructure) will be made by the International Commission, and deducted from the amount to be paid by Israel.

While this is less open ended than the initial Palestinian position at Taba (which simply held responsible for all compensation), it is also much less definitive than the Israeli non-paper at Taba (which called for Israel's lump-sum obligation to be spelled out in advance in the agreement).

Leaving aside the question of whether six months is a reasonable time frame to develop the aggregate value of refugee properties proposed under the Geneva accords (step 1), and whether Israel would wish to leave the valuation of the physical assets it "contributes" to the commission (step 3), the determination of a multiplier (step 2) could well prove to be a very serious stumbling block. Previous work by both IDRC/PRRN and by the World Bank has highlighted that the multiplier is at least as important, and probably more important, than the original value of refugee property.[6] Under the Geneva accord, there would be no Israeli contribution to compensation (and hence little or no refugee compensation payments) until the multiplier was agreed by Israel and the

[6] The World Bank, for example, estimated that the UNCCP estimate of £120 million for Palestinian refugee property could be valued in the year 2000 at anywhere from $486 million (assuming no inflation or imputed rate of return) to $3.4 billion (adjusting for inflation based on the US Consumer Price Index) to $26.4 billion (adjusting for inflation and applying an annual real interest rate of 4%). World Bank, "Palestinian Refugee Compensation: A Literature Review," draft, July 2000, appendix table 1.

Palestinian state, and little incentive for Israel to agree to a high number—or, indeed, to any number any time soon.[7]

Any such extended delay would represent a significant political liability, generating a potential crisis of unmet expectations among compensation claimants.

Although the agreement does not spell this out, its implication seems to be that Israel will finance all or most property claims, while other aspects of compensation (to host countries and to a proposed "refugeehood" fund) will be financed by the international community.

Modalities of Payment

The Geneva accord outlines three ways in which refugees would receive compensation:

1. A "fixed per capita award for property claims below a certain value" (article 7.1.v.ii.1). This is to operate on a "fast track procedure," requiring only that the claimant prove title, but not value, of the property.
2. A "claim-based award for property claims exceeding a certain value," which will require proof of both title and value of losses.
3. A "refugeehood fund" (article 7.10) that will support local projects and commemoration activities in refugee communities.

The first and second elements of this are virtually identical in phrasing to that agreed in the joint Israeli/Palestinian refugee mechanism paper developed at Taba.[8] What has been omitted, however, is the Taba paper's proposal for a per capita payment to all refugees for suffering due to displacement.[9] Instead, this has been replaced by the proposed collective compensation through the "refugeehood fund."

This approach may be problematic in several respects:

- A claims-based system tends to distribute resources among a relatively small share of the refugee population. According to a 1950 UNRWA survey of a sample group of refugee in Jordan, 66% of families had lost owned property and 59% had lost owned homes in Palestine. This suggests that up to a third of Palestinian families may have not owned significant immovable properties (most presumably share-croppers and renters).[10] UNCCP records, by contrast, suggest that there were 159,860 landowning families, which (given an average family size of 5-6) would suggest that the vast majority of families had owned properties. However, this points to another problem: how to ascertain how to allocate contemporary title to 159,860 historic family property holdings among the over 4 million

[7] The Iran-US Claims Tribunal represents an alarming parallel in this regard: established in 1981, it remained largely deadlocked until agreement was reached on a lump sum payment to the US some nine years later.
[8] JRM, article 25.b
[9] JRM, article 25.a
[10] Michael Fischbach, *Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict* (New York: Columbia University Press, 2003), Tables 4.3 and 4.4

refugees alive today (that is, an average of 25 potential heirs/claimants per set of holdings)?

- Given the overwhelmingly male character of property ownership and gender-discriminatory inheritance laws and practices, property/claims-based system would effectively exclude many women from direct receipt of compensation funds.
- Collective compensation to a refugeehood fund supporting general community development programs may not seem to be very real compensation to most refugees, especially if they do not received individualized benefits. The Taba proposals, by proposing some level of individual (per capita) payment to all refugees regardless of their property-ownership status would have more obviously and readily provided tangible benefits associated with peace.
- Moreover, such per capita payments are independent of property valuation, and hence to not require the parties and implementing mechanisms to come to agreement on levels of financing or valuation procedures. Claims-based systems, by contrast, are much more vulnerable to delay, which in turn could also have politically deleterious consequences.
- Finally, it is important to underscore the unequal nature of property ownership in 1948 Palestine. According to UNCCP data, 40% of refugee families owned properties worth less than P£100 in 1948. Extrapolating from that same data, it would seem that 87% of refugee families owned between a quarter and a third of all private land (by value), while the richest 13% owned two thirds or more. Claims-based systems tend to reproduce this inequality, while status-based payments are far more progressive in their social effects. To some extent the same effect can be achieved by setting the level of fast-track compensation (termed "per capita" in the Geneva accord) at a relatively high level, an issue that the Geneva accord leaves to later negotiation and determination by an international commission.

Implementing Mechanism

In establishing an implementation mechanism for refugee components of a peace agreement, the Geneva accords largely follow the preliminary agreements reached at Taba on these issues. An international commission is to be established, which "shall have full and exclusive responsibility for implementing all aspects of this agreement pertaining to refugees" (article 7.11.i.a). The proposed membership of the commission would be Israel, Palestine, the UN, UNRWA, the US, Arab host countries, the EU, Switzerland, Canada, Norway, Japan, the World Bank, Russia, and others. No system of voting or decision-making is specified (an issue that was also unresolved in the Taba negotiations). [11]

The international commission is to form a series of technical committees:

[11] Some relatively dovish Israeli commentators have expressed concern at what they see as the power and membership of the commission. See Asher Susser, "A Shaky Foundation," *Ha'aretz*, 15 December 2003.

- A committee responsible for determination of refugee status (with UNRWA registration being considered prima facade evidence of this, as at Taba)
- A compensation committee, based on more detailed provisions in an (as-yet unwritten) annex of the agreement. Like Taba, therefore, the administration of compensation is assigned to a commission consisting of state members, rather than to an independent quasi-judicial claims tribunal endorsed by the international community. The latter model has in the past been suggested by the US State Department and by the World Bank as a preferable arrangement with greater apparent neutrality and less risk of becoming entangled in donor politics.[12]
- A committee for remuneration of host countries. No further detail is provided on this.
- A rehabilitation and development committee, intended to develop programs and plans to meet the needs of (former) refugees in housing, education, health, and other sectors. It is not clear how this committee would fit in the context of other development coordination bodies, although the accord does emphasize that it shall be integrated into general regional development planning.
- A committee to administer the "refugeehood fund," to be detailed in an (as-yet unwritten) annex. If the fund represents a significant component of funds available for community development projects there would seem to be significant overlap between this and the previous committee.
- A "permanent place of residence" ("PPR") committee, which will receive applications from refugees regarding which of the five residential options they wish to utilize. The committee is then to determine permanent place of residence of the refugee, taking into account individual preferences and maintenance of family unity. Refugees must apply for an option within two years, or lose their refugee status. All return, repatriation, or (re)settlement is to be achieved within five years.

This latter set of procedures, which mirror those proposed at Taba, leave a number of questions unanswered, and could pose a number of potential problems:

- First, how meaningful can the decisions of the PPR committee be if they have no innate ability to make such residential option available? The committee might decide, for example, that refugee family "A" should return to Israel, or maintain permanent residence in Lebanon, or immigrate to the US. However, Israel, Lebanon, and the US all retain sovereign control over immigration and naturalization policy, and could easily refuse entry regardless of a PPR committee determination.[13] Indeed, it is almost impossible to imagine that any of them would devolve admission decisions to such a committee, and instead would insist on their own screening and evaluation procedures. That being the case, why

[12] US Department of State, "Proposed Initiative on Palestinian Displaced Persons and Refugees," draft, March 2000; World Bank, "Donor Coordination and Future Implementation," draft, July 2000. This was also the consensus of donor discussions at the December 2000 "no name group" meeting in Washington, DC.

[13] There is historical precedent for allowing international agencies to screen and assign third-country resettlement or asylum—Canada and others accepted this with refugees from the Kosovo war, for example. However, this was in an emergency situation, and in a pre-9/11 security and immigration environment.

shouldn't refugees apply directly to the authorities concerned, with the PPR simply facilitating their application? Having a powerless PPR "decision" inserted in the process only seems likely to slow everything down.

- Second, why is a PPR committee needed to process requests from the over 1.7 million refugees in Jordan (almost half of all UNRWA refugees) for Jordanian citizenship, something that almost all of them already enjoy? Or why would the PPR need be involved in dealing with Palestinian refugees wishing to take up residence in the Palestinian state, a procedure that ought to involve simply applying for a Palestinian passport at the nearest Palestinian consulate?
- Third, while a two year time period makes sense with regard to limited return to Israel and time-limited offers of third country resettlement, it makes no sense with regard to repatriation of Palestinians to a Palestinian state, nor to refugees who already have citizenship in their host country.
- Fourth, the requirement that those failing to submit a PPR request within two years will "lose their refugee status" is unclear: does this mean they become ineligible for compensation? That they lose their ability to claim Palestinian citizenship? That they can be stripped of their Jordanian citizenship for failing to renaturalize? That, bereft of any refugee status or protections, they can be deported from Lebanon? That they lose UNRWA service eligibility?

Perhaps most important of all, the model of assigning residency through bureaucratic process flies in the face of the central recommendations of almost all preplanning work that has been done on refugee absorption, which has stressed that "that the developmental challenges of absorption are most easily dealt with if population movements are voluntary and not bureaucratized."[14] It is essential that a refugee agreement NOT create artificial population movements divorced from employment and other economic opportunities. There is seems to be no overriding reason why a Palestinian living in Amman with Jordanian citizenship should have to decide within two years whether s/he wishes to move to Nablus or not, nor any need for a subcommittee of an international commission to decide whether s/he may or may not do so. Absorptive problems in the West Bank and Gaza are most likely to occur under conditions of perverse relocation incentives or bureaucratic dictate, and least likely to occur if the decision is left in the hands of refugee families.

[14] World Bank, "Housing and Infrastructure Scenarios for refugees and Displaced Persons," paper presented to the Stocktaking II Conference on Palestinian Refugee Research, Ottawa, June 2003, p.1. See also World Bank, "Palestinian Refugees: An Overview," draft, c July 2000, p. 28; World Bank, "Assessment of the Absorptive Capacity of the West Bank and Gaza in Integrating Returnees and Associated Costs: A Concept Note," draft, c July 2000; Rex Brynen, "Planning for Demographic Change: A Discussion Paper," draft prepared for the Ministry of Planning and International Cooperation, Palestinian Authority. June 2001; "The Palestinian-Israeli Conflict: A Non-paper on Political Scenarios and Refugee Implications," February 2002; "UK Comments on Canadian Non-Paper," February 2002; Rex Brynen, "Refugees, Repatriation, and Development: Some Lessons from Recent Work," paper presented to the Stocktaking II Conference on Palestinian Refugee Research, Ottawa, June 2003, pp. 1-5.

Moral Acknowledgement

Past proposals for a refugee agreement have attempted to address the issue of moral acknowledgement in a variety of ways. The initial Palestinian position at Taba included an explicit section on "moral responsibility" and a clause in which Israel directly recognized its responsibility for the forced displacement and dispossession of Palestinian refugees.[15] The Israeli non-paper responded by attempting to draft a mutually acceptable "narrative" that expressed regret but no sole or direct responsibility. An earlier Canadian "core group" paper included recognition that forced displacement had taken place (without identifying who displaced whom), agreement that such displacement was unacceptable, and a commitment to encouraging reconciliation through joint historical research and educational initiatives.

The Geneva accord adopts another variant, with no statement of moral regret or responsibility, but proposals (in the context of Article 7 on refugees) for a series of "reconciliation programs" between the two sides. these would be intended to exchange historical narratives, foster educational contacts, and promote cross-community programs. They could also include "appropriate ways of commemorating those villages and communities that existed prior to 1949" (article 7.14.iv).

End of Conflict

The Geneva accord emphasizes (as did the Israeli position before and at Taba) that implementation of the agreement constitutes the end of both refugee status (article 7.6) and refugee claims (article 7.7). Refugee status, as already noted, is to be resolved within two years through submission of residency preferences with the PPR committee of the international commission. It is also stated that UNRWA "should" be phased out within five years of the start of the international commission (article 7.13). No time limit is set on the filing or adjudication of refugee claims, the operation of the "refugeehood fund," nor the functioning of the international commission—although all of these might be addressed in the absent (and unfinished) annexes to the agreement.

On important aspect of the accord, consisting of a single incomplete sentence, is contained in article 17. This calls for a UNSC or UNGA resolution endorsing any peace agreement. While an UNGA resolution would have little practical effect, a UNSC resolution would have considerable force of international law, superseding UNGAR 194 and reinforcing the agreement's claim to represent an end to the conflict.

PART II: Advancing the Debate

As note earlier, Article 7 of the Geneva accord has proven to be its most controversial element. When details of the accord were first released, Israeli proponents were quick to note that the Palestinians had surrendered any real "right of return" to Israel—something

[15] Palestinian position paper, 22 January 2001.

they saw as a major selling point in Israel. This put Palestinian proponents on the defensive, under fire from their own constituencies for exactly that point. Several engaged in semantic gymnastics in an effort to show that they had not surrendered refugee rights. Unconvincing to Palestinian audiences, these statements were quickly seized upon by the Israeli right (and critics in the centre) to show that the Geneva accords did not in fact deliver what Beilin and others had suggested. The net effect is that a great many Palestinians reject the refugee portion of the agreement because they see it as giving up too much, while many Israelis reject it because it gives up too little. The ambiguous position of Arafat, Fateh, the PA, and PLO on the accords further increased Israeli suspicions.

One result of all this is that polls show the refugee section of the agreement has less support than almost any other component, with only 25% of Palestinians and 35% of Israelis supporting this aspect of the accord, while 72% of Palestinians and 61% of Israelis oppose it (see Annex). The most obvious explanation for this is that the two parties are far apart on the refugee issue, especially regarding any return of refugees to Israel. Indeed, the "right of return" has become something of a dangerous litmus test increasingly imposed by publics, politicians and commentators on both sides: Israelis insist on its explicit repudiation, while Palestinians look for its reaffirmation.

This effect is probably compounded by at least three other factors: the apparent waffling of the PLO/PA/Arafat on the issue, the relatively detailed nature of the Geneva accord (which leaves more to nitpick or oppose), and the association of the accord with individuals such as Yossi Beilin and Yasir Abd Rabbu. Whatever their very considerable personal merits and commitment to peace, Beilin is widely decried in Israel as "delusional" (Ehud Barak) and a "failed politician" (Tommy Lapid), responsible for the "foolishness" of the Oslo agreement (Foreign Minister Silvan Shalom). Abd Rabbu is a non-Fateh political figure who has alienated much of even his FIDA base and owes much of his influence to whatever access Arafat grants him. Nitpicking and political baggage may help to explain why support for Geneva appears to have declined over time (although differing polls make it hard to tell). It would also explain why a November 2003 International Crisis Group/Baker Institute poll outlining a very-Geneva-like solution (but with neither details nor personalities attached) secured greater support, from 53% of Israelis and 56% of Palestinians.[16] It should be noted that, despite concerns about the refugee component, the overall Geneva package seems to unite almost 40-50% of the population, a not inconsiderable achievement in the current context of violence and political polarization. This in turn highlights the need to see a refugee deal as part of, and embedded in, a broader peace settlement—not something that publics ought to assess in isolation.

On the Palestinian side, the Geneva initiative has reopened discussion of the right of return, its meaning, and its implementation. It remains to be seen whether the

[16] Poll results can be found on the ICG website at http://www.crisisweb.org/home/index.cfm?id=2384&l=1. The Palestinian results of the poll should be interpreted with caution, however—the organization used for polling (the Palestinian Center for Public Opinion) is rather unreliable.

consequences of this will be greater or lesser flexibility on the issue. It has also stimulated greater countervailing activity on the part of refugee advocacy and right-of-return organizations, as they seek to mobilize against what they see as an erosion of, and assault against, refugee rights (understood in their maximalist sense).[17] Here, the international community continues to send conflicting signals, praising the Geneva accords for their moderation, yet routinely approving UN General Assembly resolutions that invoke UNGAR194 without specifying what member states themselves understand by the refugee component of that resolution.

In Israel, the Geneva initiative as well as other development (including the Ayalon-Nusseibeh statement of principles, and criticism of government policy by four former heads of the Shin Beth/General Security Service) has stimulated another debate: that of the "demographic threat" to Israel posed by Palestinian population growth within Israel and the territories. The effects of this are two-edged. On the one hand, this debate brings with it greater recognition of the costs of long-term occupation of Palestinian territory. On the other hand, the debate has also hastened proposals (first by Deputy Prime Minister Ehud Olmert, and later more substantially by Sharon himself) to impose a unilateral disengagement on the Palestinians. Prime Minister Sharon in particular has tended to sell unilateral disengagement, first in Gaza and then in the West Bank, on grounds of practical necessity: that is, as a more secure arrangement pending a cessation of violence and credible Palestinian interlocutor with whom negotiations can be renewed. Yet however much it might be marketed as a stop-gap measure, unilateral separation also risks becoming (and may be intended to be) a more permanent status quo, one that counters the Palestinian "demographic threat" by (literally) walling Palestinians into a Bantustan-like entity. As in South Africa, this can then be declared as the manifestation of local self-determination in an effort to blunt native territorial and political demands. Whether it would be any more "successful" is, of course, another question.

In both cases, it may no longer be possible for the international community to repeat the usual formula that expresses support for a "viable Palestinian state" (an enormously flexible term) and for whatever details the parties might (eventually) agree to. The Geneva Accord was and is an attempt to establish some limits, parameters, endpoints and goalposts for processes (at Oslo, and again in the Roadmap) where such indicators of final outcome have been conspicuously absent. Perhaps Geneva's challenge to external supporters of peace is to outline (as the Clinton parameters briefly did) a more concrete vision of peace—and, in so doing, signal to Israelis, Palestinians, Arabs, and others, which endpoints are acceptable and which are not.

[17] See, for example, al-Awda/Palestinian Right of Return Coalition, "Defend the Right of Return," 13 October 2003 and "Statement by Refugee Communities," November 2003, both at http://www.al-awda.org/actionalerts/; BADIL, "Peace Agreements and Refugees—Lessons Learned," *Occasional Bulletin 14*, December 2003, at http://www.badil.org/Publications/Bulletins/B_14.htm.

Annex: Public Opinion Survey Data on the Geneva Accord

Figure 1: Israeli public attitudes toward the Geneva accord (December 2003)

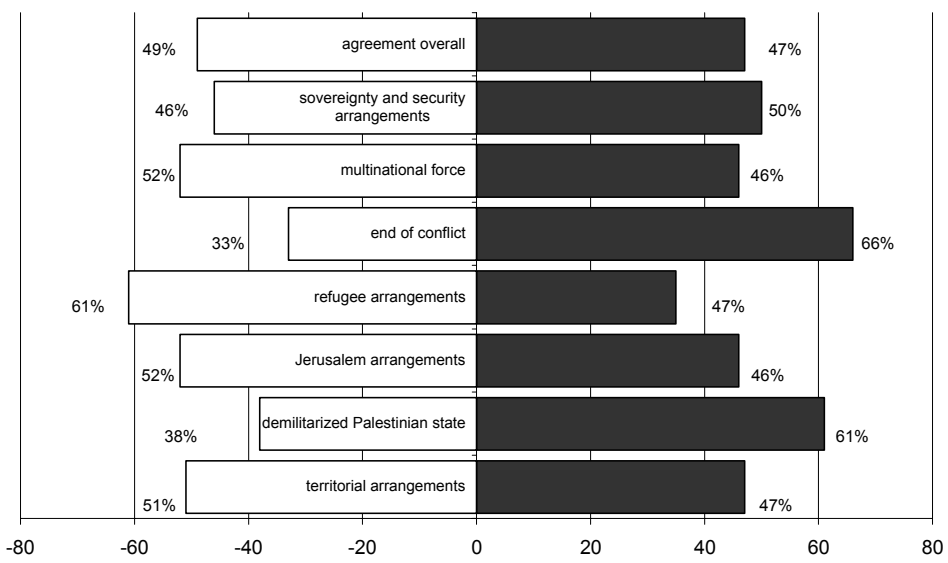
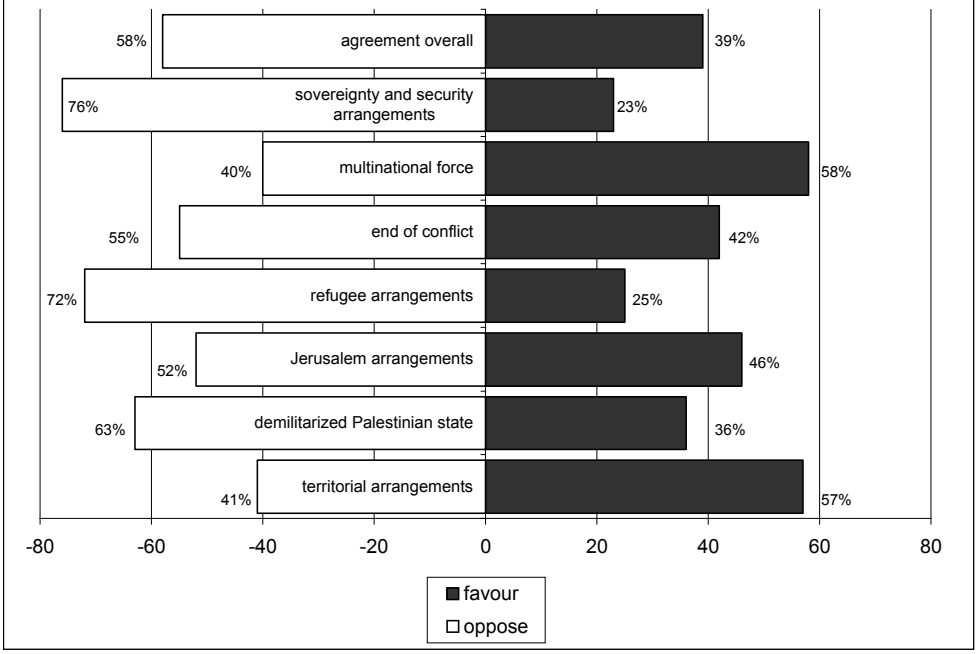


Figure 2: Palestinian public attitudes toward the Geneva accord (December 2003)



Survey source: Palestinian Center for Policy and Survey Research and the Harry S. Truman Research Institute for the Advancement of Peace at the Hebrew University, Jerusalem, 4-9 December 2003.

The questions following questions were asked (here in abbreviated form):

- **territorial arrangements**: An Israeli withdrawal from all of Gaza and the evacuation of its settlements. In the West Bank, Israel withdraws and evacuates most settlements, with the exception of few settlement areas in less than 3% of the West Bank that would be exchanged with an equal amount of Israeli territory.

- **demilitarized Palestinian state**: An independent Palestinian state established in the West Bank and Gaza, with no army but a strong security force. Both sides will be committed to end all forms of violence directed against the other.

- **Jerusalem arrangements**: East Jerusalem would become the capital of the Palestinian state with Arab neighborhoods coming under Palestinian sovereignty and Jewish neighborhoods coming under Israel sovereignty. The Old City (including al Haram al Sharif) would come under Palestinian sovereignty with the exception of the Jewish Quarter and the Wailing Wall that will come under Israeli sovereignty.

- **refugee arrangements**: Both sides agree that the solution will be based on UNGAR 194 and UNSCR 242 and on the Arab peace initiative. The refugees will be given five choices for permanent residency. In the case of Palestinian state and the Israeli areas swapped to the Palestinian state, no restrictions would be placed on refugee repatriation. Residency in the other three areas (host countries, third countries, and Israel) would be subject to the decision of the states concerned. The number of refugees returning to Israel will be based on the average number of refugees admitted to third countries like Australia, Canada, and Europe. All refugees will be entitled to compensation for their "refugeehood" and loss of properties.

- **end of conflict**: When the permanent status agreement is fully implemented, it will mean the end of the conflict and no further claims will be made by either side. The parties will recognize Palestine and Israel as the homelands of their respective peoples

- **multinational force**: This would be established to monitor the implementation of the agreement, to ensure the security of the Palestinian state, to give both sides security guarantees, and to monitor territorial borders and coast of the Palestinian state including its international crossings.

- **sovereignty and security arrangements**: The Palestinian state will have sovereignty over its land, water, and airspace, but Israeli will be allowed to use the Palestinian airspace for training purposes and will maintain two early warning stations in the West Bank for 15 years. The multinational force will remain in the Palestinian state and in its border crossings for an indefinite period of time.

- **agreement overall**: respondents' overall evaluation AFTER being informed and questioned on all components of the Geneva accords.