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Palestinian Refugees and the Two-State Solution

**Findings and recommendations of an expert roundtable
discussion**

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EXECUTIVE SUMMARY

The issue of the Palestinian refugees is at the core of the Palestinian-Israeli conflict and an agreement on this core issue is central to the survival of any political settlement to the conflict based upon the two-state solution. No settlement to this conflict can be achieved without reaching a fair and just solution to the refugee problem. Total rejection of the Palestinian refugees' right of return or of responsibility for the refugee problem seems counterproductive, as does the insistence on the full actual practice of this right. One side must relinquish its position, or both sides should take the necessary steps and meet somewhere along the spectrum between the two diametrically opposed positions. It is precisely because of its centrality that it was decided to assess the impact of the refugee problem on the prospects for achieving the two-state solution. The main objective is to advise on what could or should be the policy for a two-state solution to remain viable and sustainable and to be implemented as soon as possible. This policy paper presents policy recommendations for the international community, in general, and the European Union (EU), in particular, about how to tackle this issue within the framework of efforts aimed at achieving the two-state solution.

An open and free discussion of this issue, governed by the Chatham House Rule, was funded by the European Commission (EC) and conducted by the **Palestine-Israel Journal (PIJ)** to produce an advisory policy paper on the most painful issue of the historical conflict between the two nations, namely, the Palestinian refugee question which is a very sensitive and emotionally charged issue.

This policy paper on the refugee issue goes along with the attempts by EU countries to adopt a unified stance on all the core issues of the final status talks between Israel and the Palestinians (including their attempt to produce a policy paper on the future status of Jerusalem).

The **PIJ** is firmly convinced that without a clear commitment by both Israelis and Palestinians to understanding each other's national and historical pains there can be no satisfactory end to their conflict. By referring solely to the Jewish dimension of the State of Israel, Israeli Prime Minister Benjamin Netanyahu is trying to divert attention from the Palestinian refugee question. This counterproductive attempt adds further relevance to this policy paper produced by the **PIJ**.

The crucial question remains the shape of a two-state solution which can be possible, acceptable, viable, long-lasting, endorsed by all sides and which takes the refugees into consideration and provides them with a satisfactory solution.

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This paper is based upon a one-day closed roundtable discussion carried out on October 15th, 2009, in Jerusalem, by a prominent group of experts from Israel, Palestine and the international community, from diverse parts of the political spectrum. The discussion was held under the well-known Chatham House Rule.

The main policy-relevant insights of the workshop can be summarized as follows:

- * **Almost by definition, the crucial problem of the refugees is statelessness.** In this sense, the “right of return” must be exercised fully and end the statelessness of all refugees. The relation between people and land has to be fully implemented and this can be done through the two-state solution. This is a way to fulfill the refugees’ right to citizenship. First and foremost, Palestinians should have their own country and the right to statehood, living in peace and dignity. When this choice is offered to the Palestinian refugees, they can then choose to migrate to third countries or return to the Palestinian state, but the creation of a state should occur a priori. In this sense, the State of Palestine has to be the lynchpin of the solution for the right of return.
- * **The issue of Palestinian refugees is primarily a national political issue that has significant humanitarian dimensions.** Therefore, a solution would need to acknowledge political needs and national aspirations and rights, while addressing humanitarian aspects.
- * **Acknowledgement and recognition of past wrongs are the first step towards reconciliation.** Acknowledgement should open the door for Palestinian refugees to choose one of several options for exercising their right in accordance with their own preferences and the regional constraints. **A choice-based approach will increase the likelihood of a long-lasting resolution of the conflict as it addresses the refugees’ need to control their own destiny in ways that respect the constraints of regional actors** (Arab host countries, Israel, etc).

Recommendations

1. **A shift in the approach of negotiating over the issue is needed, which should begin with an acknowledgement of rights and then move on to a realistic compromise formula.** Attempts in previous rounds of official Israeli-Palestinian negotiations largely focused on agreeing on a specific number which would represent a compromise between the positions of both sides. Resolving such a crucial issue via market-like bargaining is a sure recipe for reaching a compromise which neither side will accept in the long term. Instead, the premise of the proposed rights approach is that justice for one party is not seen as necessarily coming at the expense of another

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- party. Such an approach requires a nuanced exploration of the needs and rights of each party.
2. **The refugee question requires a resolution of a multilateral nature.** It cannot be fully resolved by Palestinians and Israelis alone. Israel, Western and relevant regional actors need to explicitly acknowledge their historical responsibilities and, accordingly, to play a significant role in the resolution of the conflict, specifically, its refugee-related aspects.
 3. While the Palestine Liberation Organization (PLO) is internationally recognized as the sole legitimate representative of the Palestinian people, given the internal Palestinian divisions, and given the complexity of the refugee question, **a final status agreement signed by the PLO should be brought to ratification in a referendum among the Palestinian people** (including the Diaspora in countries which allow the Palestinian refugees to participate in such a vote). The referendum would be organized by the PLO itself — given the PLO’s status as the sole legitimate Palestinian representative — as part of its invigoration and democratization agenda. As there is a collective as well as an individual right, Palestinian refugees need to be engaged in the process if its resolution is to be long lasting. Some Israeli participants expressed their fears that a referendum might be counterproductive.
 4. **The process of actual return will be a long one and requires rigorous planning** (so as to avoid congestion or chaos). Refugees should be granted a period of time to consider their choice and should be provided with appropriate information that will help them make it. Therefore, **the implementation of a solution needs to be phased**, balancing the natural eagerness to solve the problem rapidly with realistic absorption and rehabilitation requirements and with responsible leadership guidance and a high level of refugee participation.
 5. The international community, including influential members of Jewish communities around the world should engage Israel to request that **its recent legislation regarding the Jewish character of the state and its declared expectations of the PLO to recognize its Jewish character should be more nuanced in the context of the refugee issue, and that it should avoid presenting such definitions as an all-or-nothing question.** Specifically, Israel may want to employ terms like “Israel as the national home of the Jewish people,” rather than the condensed and ambiguous “Jewish state.”
 6. **Public diplomacy and campaigning should be used to stir a fresh discussion within each society.** On the Israeli side, a key goal should be to **allay the fears and**

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concerns of Israelis by presenting new ideas and creative solutions which reconcile an acknowledgement of the right of return and, possibly, its limited implementation, with the national identity of Israel. On the Palestinian side, a key aim should be **to clarify to Palestinians what a resolution of the conflict within the two-state paradigm would entail.**

7. **Linking compensation of Palestinian refugees to that of Jewish immigrants/refugees from Arab countries** may have some advantages vis-à-vis Israeli public opinion, but it also creates false symmetry and increases the complexity of the problem, bearing in mind that these immigrants came to what they considered their homeland and were not in all cases expelled from their homeland to refuge. **Constructive creative thinking on this matter would be useful in order to avoid creating new problems and to help overcome the existing ones.**
8. **A solution to the refugee problem requires and is fully dependent on the shape and contour of the Palestinian state and its relationship with Israel.** This is true, in particular, in terms of the degree of the openness of the borders, the extent of freedom of access and the nature of residency and citizenship rights. Specifically, reciprocal freedom of transit, visit and worship, as well as agreed-upon modalities of residency deserve careful attention by the negotiators determining the relationship between the two states, keeping in mind, in particular, the needs of the refugee community, as well as Israeli concerns.
9. **Finally, almost all participants agreed that a solution to the refugee problem will be more achievable if it is reached within the framework of a package deal settling all demands of both sides on all final status issues related to the Palestinian-Israeli conflict (such as Jerusalem, borders, mutual security arrangements, and others).**

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GENERAL FRAMEWORK

The **Palestine-Israel Journal** held an expert roundtable on October 15th, 2009, to tackle the question of the “Refugees and the Two-State Solution.” The roundtable was the third in the series of three EC-funded policy-oriented roundtables. It sought to come up with a policy paper reviewing and evaluating the present situation of the refugees and the policy discussion about them. The refugee question is the most difficult to resolve within the two-state framework. It is precisely for this reason that it was decided to assess its impact on the prospects for achieving the two-state solution and to present conclusions and recommendations for measures which the international community, in general, and the European Union, in particular, could or should take so that a two-state solution would remain viable and be implemented as soon as possible. Recommendations for the Israeli and Palestinian governments were provided as well.

Following a presentation by an international expert on the current situation of the refugees and the relevant policy discussion, the roundtable participants, including two Palestinian experts who are themselves refugees, moved through a series of questions divided into three sessions which included the following:

- * Could the right of return be exercised fully, partially or symbolically, facilitating an agreed-upon political solution to the conflict?
- * Can the two-state solution satisfy the ambitions, interests and fears of both parties?
- * Have any new positions emerged within the two communities?

The discussion on the refugees, at this particular time, took into consideration three relevant recent developments : (1) Israel’s invigorated focus under Israeli Prime Minister Netanyahu on the PLO’s recognition of Israel as the state of the Jewish people; (2) doubts about the extent to which the current PLO leadership represents all Palestinians (in light of cleavages like Gaza-West Bank, Hamas-Fatah and the less recent inside-outside differences); and (3) proposed Israeli legislation on issues relating to Israel’s Jewish character, including banning the teaching of the *Nakba* and setting new expectations for the loyalty of non-Jews to the Israeli state. More specifically, the increasing doubts of Israel and some in the international community about the extent to which the refugee Diaspora could and would accept a two-state agreement signed by the PLO highlighted a crucial question about the kind of features such an agreement would have to include if they are to endorse it. Their endorsement was deemed highly significant for making any two-state agreement a long-lasting one.

The paper presents the key ideas and recommendations that came up during the discussion and does not pretend to be a comprehensive treatment of the topic. The paper

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is divided into ten parts and explores the implications of the current reality of the refugees and the policy discussion about them for the feasibility and viability of the two-state solution. The first section provides background data about the current state of the Palestinian refugees and essential information regarding the policy and legal debate around them. The second section details a proposed shift in the approach to the issue from a primarily compromise approach to a rights approach to be followed by compromise. The following sections clarify the “right of return,” the “right to self-determination” and the “right to compensation,” noting some significant distinctions that pertain to each of these which would be necessary within a rights approach. An exploration of ways which enable Palestinian refugees to have a choice regarding their place of residence follows. Specific means for achieving reciprocity in the rights approach between Israelis and Palestinians are then presented, followed by a short section about the nexus between Palestinian refugees and reconciliation. The paper concludes with two sections focusing on the period of time preceding the implementation of a final status agreement, namely, the inclusion of refugees in a process of ratification of any agreement and recommendations for progress that may be made with regard to the refugee issue, independently of a final status agreement.

It is worth noting that the roundtable was convened under the Chatham House Rule and, therefore, no specific statement is attributed to any particular expert. When a disagreement was identified and the conversation failed to yield any agreed-upon conclusion, the disagreement is noted in the text. When appropriate, minority and majority views are noted.

I. PALESTINIAN REFUGEES AND THE TWO-STATE SOLUTION - BACKGROUND

The Palestinian refugee population is dispersed worldwide, mostly in neighboring Arab states. The majority of the refugees reside in Jordan, Lebanon, Syria, as well as in the West Bank and the Gaza Strip.

The number of Palestinian refugees from what became Israel in 1948 varies significantly between Israel’s official estimates and United Nations (UN) records. While the Israeli government suggests 520,000 as the number, the United Nations Relief and Works Agency (UNRWA) puts the number at 957,000. Twenty years later, and as a result of 1967, some 300,000 Palestinians fled from the West Bank and the Gaza Strip, mostly to Jordan (roughly half of them had been displaced in 1948 and were being uprooted once again). **Today UNRWA-registered refugees number 4.6 million, with 1.3 million of them living in camps.** This number includes refugees living in refugee camps in the West Bank (including East Jerusalem) and in the Gaza Strip.

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As shall be discussed below, **the very definition of who should be considered a refugee is contested**. Points of disagreement include the status of the descendants of those who left their homes during 1948; the status of refugees who have received citizenship in some host country and are thus no longer stateless; and the status of Palestinians who were displaced inside Israel itself, losing their properties (as absentees), but were given Israeli citizenship and denied by the State of Israel any claim as refugees. The information below is focused on the UNRWA figures, chiefly because of their importance to international law and the importance of the reality they represent, with 58 UNRWA refugee camps present in the Middle East and a variety of UNRWA institutions providing them with diverse services.

The largest population of refugees is in Jordan. **There are nearly 2 million UNRWA-registered Palestinian refugees in Jordan**. This number represents 42% of all registered refugees. Most of them have Jordanian citizenship (although Palestinians are not fully integrated into the public sphere). In addition, there are also 1967 displaced persons in Jordan who were not granted citizenship. Their numbers are less precise as they are not registered with UNRWA, but it is estimated that the total of the 1967 displaced persons and their descendants stands at one million (many of whom are also 1948 refugees) and an overwhelming majority of them lives in Jordan.

In Lebanon, the UNRWA-registered number is 421,000 though the number has been contested due to migration patterns. Palestinian refugees in Lebanon present the most contentious case because of their vulnerable status and because they are treated as foreigners under Lebanese law. Consequently, they have very limited civil rights — in particular, they have no right to work without authorization and this authorization is restricted to a specific list of professions and is not open to all. Their right to free movement is also limited.

In Syria, there are around 467,000 registered refugees. They are considered residents and have most of the rights available to citizens, with the notable exception of the right to vote. They have not been fully naturalized.

In the West Bank and the Gaza Strip, there are 1.8 million refugees, making up some 40% of the population (roughly 70% of the Gaza population alone); 688,000 of these refugees live in camps.

In addition, there is a substantial refugee population in Egypt.

It is estimated by the United Nations High Commissioner for Refugees (UNHCR) that 34,000 Palestinians lived in Iraq before the American invasion in 2003. After the Iraq

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War, most of these refugees were expelled to the different corners of the globe, such as Chile, Australia and elsewhere. Only about 13,000 remain, most of whom are living in temporary UN camps near the Syrian and Jordanian borders, having been denied entry into Syria or Jordan.

The legal discussion on the “right of return” of these refugees revolves to a large extent around United Nations General Assembly Resolution (UNGAR) 194.

Article 11 of the resolution reads: [The UNGA] *“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.”*

Interpretations of the resolution sharply contradict each other. One interpretation sees it as the main legal basis for the right of return of the Palestinian refugees.

This view is often presented while noting that the implementation of UNGAR 194 was a condition for Israel’s acceptance to the United Nations. Proponents of this view usually argue that a durable resolution to the Israeli-Palestinian conflict cannot be reached without the implementation of Resolution 194. **An opposing interpretation argues that the resolution merely recommends that Israel permit the refugees to return to their homes** by using the term “should” (rather than “shall”) and qualifies even that by saying it applies only to those “wishing to... live at peace with their neighbors.” Those holding the latter view also add that, like all General Assembly resolutions, UNGAR 194 has no legally binding status.

II. FROM A COMPROMISE APPROACH TO A RIGHTS AND COMPROMISE APPROACH

The contradictory understanding of the rights that are at the basis of the refugee question contributed to the rise of what may be termed the “compromise approach” towards the issue. Simply put, **attempts in previous rounds of official Israeli-Palestinian negotiations largely focused on agreeing on a specific number which would represent a compromise between the positions of both sides.** Proposals of Israeli negotiators ranged from several thousands to tens of thousands and were essentially based on the principle of family reunification rather than on an explicit right of return. Palestinian negotiators reportedly sought higher six-figure numbers and wanted the issue to be dealt with as a practice of the right of return, even if symbolically. As is well known, no agreement has been reached.

The expert participants called for a shift in the approach to negotiating over the issue — from the “compromise approach” to a “rights and compromise approach.” Resolving such a crucial issue via market-like bargaining only is a sure recipe for reaching a compromise that neither side would accept in the long term. Instead, the proposed “rights and compromise approach” is based on the premise that justice for one party is not seen as necessarily coming at the expense of another party. Such an approach requires a nuanced exploration of the rights and needs of each party.

III. CLARIFYING THE “RIGHT OF RETURN”

The “right of return” is a term which requires rigorous clarification. Palestinians have used it extensively since the *Nakba* of 1948, in the sense that they demand actual return to their homes and lands from which they were uprooted as a result of the 1948 War when two-thirds of the Palestinian people were turned into refugees and scattered mostly throughout the West Bank, the Gaza Strip and the neighboring Arab countries, but also worldwide. While all Palestinians are committed to the term “right of return,” during the last two decades, their political leadership has signaled openness to different interpretations of this concept, which may enable the conclusion of a political settlement to the Palestinian-Israeli conflict. The realization of the non-practicality of insisting on actual return has led some Palestinian leaders to become more pragmatic and to seek other ways and means to address this issue. Israelis have mostly avoided a serious discussion of the issue for fear it would lead to a slippery slope dynamic that would endanger the existence of the Jewish majority in the State of Israel. It was deemed necessary to deconstruct this multi-faceted term in order to address it constructively. Indeed, when declaring his parameters in 2000, former President Bill Clinton stated that “the fundamental gap is on how to handle the concept of the right of return.”

What does this emotionally charged term mean? What are its sources of legitimacy? Who is entitled to this right?

According to Palestinian expert participants (some of them refugees themselves), **the right of return is understood by Palestinian refugees essentially as the right the refugees have to choose where they will live and whether they will return to their homes.** One crucial implication of such an understanding is that there is a difference between securing the right (and, in particular, securing Israeli recognition of this right) and actually exercising it. Another fundamental implication pertains to the availability of the choice to return, which is the crux of the matter, rather than actual return. This desire of the refugees to regain control over their own destiny after long years of displacement and of significant exclusion from decision making contributes to the importance of exploring the right of return as both an individual and a collective right (see more below).

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It is useful to note that at least **three different kinds of justifications are provided for the existence or inexistence of the right of return**: moral-historical, legal and political-humanitarian. Repeated references are, therefore, made to the injustice caused to the Palestinians as a result of the establishment of the State of Israel, to the legal rights of Palestinian refugees (and, in particular, UNGAR 194), as well as to the difficult humanitarian situation of the refugees and its political implications for the attempts at reaching a political settlement to the conflict, based upon the principle of the two-state solution.

It is noteworthy that each of these justifications has collective and individual components. Individually, Palestinian refugees have personal moral-historical grievances — relating to their own lost homes, the long periods of displacement they have lived, and their sufferings and loss as a result of this long displacement — collectively, they face the *Nakba* as an unjust phenomenon. Most Palestinian refugees perceive their legal rights to include both individual ones — like a return to their own family homes, lands and property and/or compensation for these — and collective — especially ending their status of statelessness by realizing their right to self-determination as Palestinians. Finally, the human rights (civil, economic, social, etc.) of each refugee have to be fulfilled and their infringement on a large scale has clear political consequences.

There are additional reasons for the importance of the right of return for Palestinians, all related to altering the contemporary interpretation of the past. First, its acknowledgement by Israel implies recognition of the injustice that has occurred and recognition of Israeli responsibility for this injustice whether total or shared responsibility. Second, it determines if the right of return enables actual return to Israel proper and the level of Israeli participation in funding compensation for the refugees who do not return to the State of Israel. Finally, Palestinians do not believe they have to pay the price for Jewish suffering in Western countries, mainly during the Holocaust. And the recognition of a right of return would arguably prove the justice of this belief and would demonstrate in their eyes that the price they have paid was unfair.

Israelis see the Palestinian right of return as a crucial issue for several additional reasons, related both to the understanding of the past and to a variety of future implications. **Most crucially, the return of Palestinian refugees to Israel is seen as a threat to Israel's *raison d'être* — endangering the demographic balance in Israel and its Jewish majority, which identifies it as a Jewish state considered by the Israelis as the national home for the Jewish people.** Any return is seen as easily reaching dramatic proportions in this respect, *inter alia* because of assumptions about the high birthrate among Palestinian families. Moreover, Israeli Jews perceive the current Jewish-Arab relations to be fraught with difficulties and are concerned that these would

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deepen if the size of the Palestinian-Arab population in Israel increases. Not least and from an Israeli perspective, refugees coming from countries like Lebanon are seen by some as also posing — in the strict sense — a security risk due to the high rate of participation of Palestinians in various militant groups in these countries.

Historically, most Israelis perceive the 1948 War to be the result of the Arabs' refusal to accept the Partition Resolution (UNGAR 181) and of their opting for war which resulted, among other things, in the creation of both the Israeli state and the Palestinian refugee problem. Israeli recognition of the right of return is seen to imply that this narrative is wrong and another narrative where Israel has some responsibility for the problem is admitted. Israelis perceive the situation of Jews coming to Israel in the late 1940s from Arab countries to be very similar to that of the Palestinian refugees and some argue that both peoples need to receive financial compensation. Finally, looking towards the future, Israeli acknowledgement of the right of return is seen to oblige Israel to provide significant financial compensation to the large refugee community, beyond what the government had committed to in 1949.

It is in the context of the above-mentioned perceptions and arguments of both peoples that a solution to the refugee problem must be found.

IV. THE RIGHT TO SELF-DETERMINATION – THE STATE OF PALESTINE AS THE LYNCHPIN OF THE SOLUTION OF REFUGEE NEEDS

The majority of participating experts agreed that the State of Palestine should be the lynchpin of the fulfillment of the right of return.

Palestinian participating experts specifically argued that, by definition, the crucial problem of the refugees is statelessness, alongside suffering and loss of property. In this sense, the right of return must be exercised fully and end the statelessness of all refugees. According to this view, unlike the initial Israeli conceptualization of “There is no such thing as a Palestinian people” (by then-Prime Minister Golda Meir), later Israeli prime ministers, starting with Yitzhak Rabin, did recognize the existence of the Palestinian people and the consequent implications. It is on this that Palestinians have to build. **Specifically, the relation between people and land has to be fully implemented and this can be done through the two-state solution. This is a way to fulfill their right to citizenship.** What Palestinians want and need, first and foremost, is to be recognized as a Palestinian people and, particularly, that they belong to the State of Palestine as an actual and symbolic place. First and foremost, Palestinians should have a country and the right to be Palestinians; they can then choose between return, staying where they are if allowed to, or migrating to third countries, but the creation of a state should occur first. In this sense, the State of Palestine has to be the lynchpin of the solu-

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tion for the right of return. In the words of one of the participating experts: “Canadian, European or American offers for alternative housing of refugees do not resolve the issue because it is their identity as Palestinians that really matters.”

Some experts argued for the use of the term “repatriation” — to bring or send back a person to his or her country or land of citizenship — rather than “return.” It was noted that repatriation is focused on a place of allegiance and that, in this sense, the State of Palestine is a crucial part of the solution.

Regardless of the term used, it was agreed that for the State of Palestine to effectively act as a lynchpin for the solution, it must have not only full Palestinian sovereignty but also the following three resources: (a) the institutional capacity to enable rapid mass integration of the returning refugees (creation of jobs, provision of welfare, etc), (b) a clear plan for the transfer of UNRWA institutions to the sovereign control of the state and the eventual disbanding of UNRWA, and (c) significant international community cooperation and, in particular, massive financial and political involvement. It was argued that a viable and credible plan for the implementation of mass refugee integration does not exist currently and is much needed if, indeed, the State of Palestine is to act as the central component in a solution of the refugees’ needs and rights.

Finally, it was agreed that a solution to the refugee problem is fully dependent on the shape and contour of the Palestinian state and its relationship with Israel. This is true, in particular, in terms of the degree of openness of the borders, the extent of freedom of access and the nature of residency and citizenship rights.

V. THE RIGHT FOR COMPENSATION

Past discussions on the right for compensation focused on three different components: (a) Palestinian property losses in 1948; (b) human capital losses, missed opportunities and suffering; and (c) moral reparations (also referred to by some as psychological damage). Some participating experts — both Israeli and Palestinian — argued that Israeli recognition of shared responsibility for suffering is more important than compensation for property. The idea of **devoting a certain percentage of Israel’s gross domestic product (GDP) to refugee compensation** was seen by some to have the advantage of linking Israel’s wellbeing to refugee compensation. The notion of **considering Israeli evacuated settlements as a potential part of Israel’s compensation to returning refugees** was flagged as a way of providing immediate housing solutions to returnees. Finally, it was noted by Israeli participants that **while Israeli compensation to the refugees was desirable, it should be part of an agreement that acknowledges Israel’s legitimacy, so that such compensation will not imply that the country is an illegitimate entity.**

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A significant discussion took place on the **advantages and disadvantages of linking compensation to Palestinian refugees with that to Jews who immigrated to Israel from Arab countries**. Supporters argued that such a link would play a dramatic role in **enabling the Israeli public to see the humanitarian dimensions of the Palestinian refugee question**. Some Palestinian participants expressed their full support to granting the Jews who immigrated to Israel from the Arab countries the right of return to these countries, but such a comment was ignored by the Israeli participants who did not believe that these immigrants wanted to return. However, opponents of such linkage pointed to the fact that Jews came from Arab countries to what they considered their homeland and were encouraged by Israel and the Zionist movement, while Palestinian refugees were expelled from what they considered their homeland. It is assumed that only a limited amount of money might be allocated by the international community and the Arab world for any sort of Jewish refugee compensation.

VI. ACTUAL RETURN: A CHOICE-BASED APPROACH

Since Clinton presented his parameters in December 2000, the discussion on actual return of refugees has shifted towards the choice-based approach. **The key premise of the approach is that actually having the choice to return is what matters most.**

Based on the recognition of the right of Palestinian refugees to return to their homeland, Palestine, **Clinton charted five possible ways for the implementation of this right which are consistent with the two-state solution:** (a) to the State of Palestine, (b) to areas in Israel being transferred to Palestine in the land swap, (c) rehabilitation in host countries, (d) resettlement in third countries, and (e) admission into Israel. He clarified that he believed the agreement should make clear that “return to the West Bank, the Gaza Strip, and areas acquired in the land swap would be the right of all Palestinian refugees, while rehabilitation in host countries, resettlement in third countries and absorption into Israel will depend upon the policies of those countries.” Clinton concluded that in such an agreement the “parties would agree that this implements Resolution 194.”

Such a framework received the support of most of the participating experts. **The aspect of this framework which drew the most intensive discussion related to the fifth option of admission into Israel. Here, it was proposed to draw a distinction between three different kinds of rights: the right to own property in Israel and visit it, the right to reside in Israel, and the right to Israeli citizenship.** Significantly, Palestinian participating experts agreed that it is the rights of owning property and of residence which were their key focus and they believed Palestinian refugees do not see the right for Israeli citizenship to be significant for the fulfillment of their right of return. It was

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evident that **these rights depended to a large extent on the nature of the relationship between the two states and that, therefore, negotiators determining this relationship would have to do so with the needs and rights of the refugees in mind.**

Other possibilities suggested by Israeli participants for **limiting actual return with a specific strict principle included limiting the return only to refugees living in Lebanon in dire conditions**, which would appear to Palestinians to provide significant actual return and, simultaneously, provide Israelis with an argument to counter a possible “slippery slope dynamic.” Israeli expert participants raised significant concerns about the strength of the principle limiting the scope of the return. Another principle that attracted more positive Israeli reactions was **permitting the return only of the original refugees who actually lived in historic Palestine on the eve of the 1948 events**. It was argued that this population is vanishing and the remaining persons are already in their sixties or older and do not pose any demographic concern to Israel’s Jewish character, but, at the same time, this principle will not provide a satisfactory solution to the problem.

However, there was a consensus and no objection to the right of the Palestinians displaced as a result of the 1967 war to return to their homes and lands in the West Bank and the Gaza Strip.

More broadly, the participating experts agreed that the **process of actual return will be a long one and will require rigorous planning** (so as to avoid congestion or chaos). Refugees should be granted a period of time to consider their choice and should be provided appropriate information that will help them make it. Therefore, **the implementation of a solution needs to be phased** and to balance, on the one hand, the natural eagerness for solving the problem rapidly with, on the other hand, the practical preparations needed for the absorption of the returning refugees (housing, jobs, education and health services, etc.), side by side with responsible guidance by the leadership and a high level of refugee participation in understanding and making the choice.

VII. RECIPROCITY AND THE RIGHTS APPROACH

While a choice-based approach for the implementation of the right of return was deemed positive by most participating experts, Israeli participating experts reiterated that this cannot occur without addressing some significant Israeli rights. In short, **the rights approach has to be reciprocal**. It was noted that, psychologically, it is extremely difficult to recognize the rights of the enemy without some reciprocal recognition. **Specifically, participating Israeli experts argued that recognition of Israel’s Jewish character is needed to enable Israel’s willingness to support refugee rights.**

Two ways for achieving this reciprocity were noted. First, as already noted above, it was argued that opening the humanitarian dimension of the discussion could be achieved by expanding it to **also include the rights of the Jews who immigrated to Israel from Arab countries.** This should not happen in a way that draws symmetry or equality of rights between the two groups of refugees. It should rather be a way to contextualize the discussion on Palestinian refugee rights. Second, reciprocity of some kind could be achieved by **expanding the discussion on rights for residency, ownership of property and visit in the other state to also include the rights of Jews wishing to reside in the State of Palestine and to abide by Palestinian laws and/or worship in the State of Palestine.** It was emphasized that this is in line with UNGAR 181 and the distinction it proposed between residency and citizenship, its emphasis on reciprocal “freedom of transit and visit” and “freedom of worship” and more. Such modalities can introduce reciprocity and enable the rights approach in which the parties do not compromise over their rights but find creative ways to reconcile them.

VIII. RECONCILIATION: SEEKING A LONG-LASTING RESOLUTION

Participating experts emphasized the gravity of the refugees’ grievances. Decades of displacement and exclusion, often in conditions of dire poverty, have had tremendous influence. Future rights for these refugees (return, ownership of property, compensation, etc.) would not be enough to change the way they think about their historical adversaries — the Israelis. **A past-oriented process would be needed to achieve this sort of healing and to increase the likelihood of long-lasting peace.**

One well-known modality which was noted as worthy of further exploration was that of the Truth and Reconciliation Commission which was established in South Africa and other countries. It was argued by some participating experts that without **an opportunity to voice the individual grievance of each refugee** — sharing the pains of homelessness and displacement and hearing from those who are now living in their homes — full reconciliation cannot be achieved. It is crucial to add, though, that such a process would have to be far wider in scope and address casualties, injuries and many other grievances caused by members of both nations to their counterparts as a result of the conflict. One other possibility would be to focus this reconciliation process solely on the question of the refugees by making it a part of the procedure a refugee would go through when seeking compensation.

IX. WHO SPEAKS FOR THE REFUGEES?

The question of enabling the refugees to speak also as individuals raises a crucial question: Who speaks for the refugees? The PA is by definition focused only on the West Bank, Gaza and East Jerusalem. **Some participating experts raised doubts about**

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the extent to which the PLO can still make a commitment on behalf of the refugee community. One reason for this was the divide between the Gaza Strip and the West Bank and, specifically, the possibility of Hamas refusing to allow a referendum to take place in the Strip. On the other hand, **most participating experts argued for the genuineness of Hamas's declarations that it would abide by any agreement between Israel and the PLO which secures majority support from the Palestinian population (including the refugee Diaspora in countries that allow the Palestinian refugees to participate in such a vote).** It was clearly said that **this split is temporary and Palestinian national unity, based on reconciliation between Fatah and Hamas and ending the split between Gaza and the West Bank, is crucial for any political settlement between Israel and the Palestinians represented by the PLO.**

The level of participation of refugees will arguably determine the sustainability of the solution and two possibly compatible means to achieving a high level of participation were proposed. The first was to have the PLO negotiate an agreement with Israel which will be ratified in a referendum by all Palestinians, including the refugee Diaspora. The second focused on the need to have the PLO more directly representative also of the refugee Diaspora. The possible compatibility seemed to lie in having direct elections to the Palestinian National Council (PNC) wherever possible and **in reforming the PLO so as to achieve an increased level of democratization, which may include also conducting referenda on certain crucial issues.** The participating experts emphasized that refugee participation and engagement has to commence as early as possible, even before the negotiation process begins, with an “awareness” campaign preparing them for such diplomatic engagement and then sustained throughout the process. The PLO remains the representative of the Palestinian people in Palestine and in the Diaspora. A sustainable agreement, therefore, requires resolving the individual legal rights, as well as the national collective rights; otherwise, an agreement would not be viable or sustainable.

X. PREPARING THE GROUND FOR THE RIGHTS AND COMPENSATION APPROACH

After reviewing all the above-mentioned topics, the discussion shifted to the near future — what can be done before final status negotiations in order to prepare the ground for the shift to the rights and compensation approach? How is it possible to reach any progress when no final status negotiations are taking place?

Several strategic directions were presented and explored:

First, Israel's recently proposed legislation regarding *Nakba* commemoration and the loyalty of non-Jews to the state were flagged as influencing negatively the way in

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which the PLO and the Palestinian refugees understand the possibility of resolving the refugee issue. Opposition to such laws and their rhetoric would de-radicalize Palestinian opinions in this respect. In addition, Israel's insistence that the PLO recognize Israel as the state of the Jewish people is counterproductive with respect to the possibility of reaching an agreed-upon solution to the question of the refugees. Israel's demand to be recognized as "the state of the Jews" means the denial beforehand of the Palestinian right of return and, furthermore, gives legitimacy to the possible disenfranchisement or expulsion of the Palestinians who remained in Palestine after the 1948 War and became Israeli citizens. **Israeli legislation and expectations of the PLO's recognition of its Jewish character should be more nuanced with respect to the refugee issue and avoid presenting such issues as an all-or-nothing question.**

Second, **an internal Israeli debate should be encouraged, using public diplomacy and campaigning and focusing mostly on clarifying ways in which the acknowledgement of the right return, or some limited actual return, would not mean the end of Israel as a Jewish state.** A key aim of such public diplomacy efforts and campaigns should be to allay fears and concerns by presenting new ideas and creative solutions which allow reconciling the right of return with the national identity of Israel. A secondary aim could be to challenge the assumption that time works in Israel's favor. The argument that the issue of Palestinian refugees could resolve itself without great effort as, with time, the first generation of refugees will disappear and the problem will be that of second and third generations should be countered by a clear explanation of the ways in which delays on this issue will weaken Palestinian (and, particularly, refugee) support for the two-state solution, while continued Israeli settlement construction in the occupied West Bank will inevitably convert Israel into an apartheid regime or a bi-national state. Moreover, the possibility of resolving the limited problem of the first generation of refugees is likely to have great symbolic value and losing this opportunity could leave Israel with no option but to deal with the more numerous subsequent generations. The fact that the new generations of Palestinian refugees still identify themselves with their villages, towns and cities from which their grandparents were expelled in 1948 proves that time cannot resolve this issue and it has to be addressed.

Third, **an internal Palestinian discourse (including the refugee Diaspora) should be generated, using public diplomacy and campaigning, focusing, in particular, on the reasons for which, in the current context, there is much value in the choice-based approach which has the State of Palestine as its lynchpin.** A key aim of such public diplomacy efforts and campaigns should be to clarify to Palestinians what a resolution of the conflict within the two-state paradigm would entail. PLO reforms are, therefore, a priority before any final agreement, as the organization is required to maintain its image and position as the representative body of all Palestinians. A referendum is the most feasible approach to dealing specifically with the refugee problem.

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Fourth, **a regional diplomatic discussion between the PLO, Israel and neighboring Arab countries has to be stimulated to engage issues so far left relatively untouched, and the practical implications this has for resolving the conflict.** Specifically, this includes issues related to the Arab countries hosting the 1948 refugees, addressing their claims for compensation, and the possible contribution by these countries to resolving the refugee problem.

Fifth, **Western countries should be similarly engaged, including, particularly, the responsibility of many Western governments for the manner in which Israel's creation has caused injustice to the Palestinian people.** As with the ideas about broadening the resolution of the refugee issue to include regional actors, the basic premise proposed by some participants was that **the refugee issue is not solely an Israeli-Palestinian problem but rather a multilateral one.** Its origins are a result of the policies of many other international actors. Consequently, in the context of the rights and compensation approach, these actors have to take responsibility for the solution of the problem.

Finally, some participating experts proposed **short-term measures of actual return, including Israel allowing the return of the displaced Palestinians of 1967; the return of Jerusalemites with confiscated IDs; and the relocation of the Palestinians internally displaced inside Israel in 1948 who became Israeli citizens, but were denied the right to go back to their original villages, etc.** It was argued that such moves would have no significant demographic effect and would have major symbolic value in terms of demonstrating to the refugee community, in particular, and the world, in general, that Israel is willing to find solutions to the problems of Palestinian refugees. **Some participants argued this is not feasible** since Israel's shifting policy regarding some of these groups is even more sensitive than that regarding the Palestinian refugees.

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ANNEX I – EXPERTS’ NAMES AND BIOGRAPHIES

Israelis

Dr. Hillel Cohen, Truman Institute - Hillel Cohen is a research fellow in the Truman Institute for the Advancement of Peace and teaches in the Middle East Department of Jerusalem’s Hebrew University. He is the author of *The Present Absentee: The Palestinian Internal Refugees in Israel since 1948* and of *Good Arabs: The Israeli Security Services and the Israeli Arabs*.

Dr. Yair Hirschfeld, ECF - Director of the Economic Cooperation Fund (ECF). He is one of the initiators and architects of the Oslo Process, a Professor at Haifa University and an author of many books and articles on the Israeli-Palestinian conflict.

Benjamin Pogrund, Yakar Center for Social Concern - Benjamin Pogrund is the director of Yakar’s Center for Social Concern in Jerusalem and was deputy editor of the **Rand Daily Mail** in Johannesburg. He is co-editor of *Shared Histories: A Palestinian-Israeli Dialogue* and is a member of the **Palestine-Israel Journal’s** Editorial Board.

Mossi Raz, Radio All for Peace - Business manager of Radio All for Peace, a joint Israeli-Palestinian radio station broadcasting from Jerusalem, aimed at helping resolve the conflict. He was an MK for Meretz, secretary-general of Peace Now, director of Ir-Shalem, deputy director at Giv’at Haviva and chair of the Council for Students Associations.

Col. (ret.) Itamar Yaar, YAAR Strategic Consultancy & Management - is a consultant to government ministries and companies, and is taking part in different NGOs and think tank strategic activities. He is former deputy head of the Israeli National Security Council (Prime Minister’s office). During the last few years, he led the National Security Net Assessment process and policy development regarding defense, foreign policy, resources, internal security, education and technology, demography and partnership with the Jewish people. Yaar had a 30-year career in the Israel Defense Forces (IDF). His senior positions were commanding officer of an armored brigade, J3 of the army, head of department in the planning branch defense staff, and the defense attaché in London, Helsinki and Dublin.

Palestinians

Abdallah Abdallah, Palestinian Legislative Council (PLC) - Head of the political committee of the PLC, and member of Fatah Revolutionary Council. He is a former PLO ambassador to Canada and Greece.

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Adnan Abdelrazek - Palestinian scholar and researcher and a former political affairs officer at the United Nations. He is the author of many articles and books, including *Arab Properties in West Jerusalem*, *The De-Arabization of East Jerusalem*, and *Architecture Renaissance in West Jerusalem* and a member of the **PIJ** editorial board..

Jihad AbuZnied, PLC – She is a Fatah PLC member and member of the Fatah Revolutionary Council from Shu’fat refugee camp.

Riman Barakat - A Palestinian researcher from Jerusalem. Her Master’s dissertation dealt with refugee and migration trends in Jerusalem. She was the Palestinian coordinator of the strategic affairs unit at the Israel-Palestine Center for Research and Information (IPCRI).

Safa Daher - Deputy head of the human resources department at al-Quds University. She is a refugee from Abbassiyyah village, Jaffa district.

Samaan Khouri, - Director of the Peace and Democracy Forum. He was an editor of the English edition of the Palestinian weekly *al-Fajr* and an active participant in the Geneva Initiative. He is a member of the Jerusalem Policy Forum Steering Committee and Palestinian co-chair, Palestinian-Israeli Peace NGO Forum and a member of the **PIJ** editorial board.

Walid Salem, The Center for Democracy & Community Development - Director of the Center for Democracy and Community Development, a writer, consultant, evaluator and trainer. He is the author of five books on the Israeli-Palestinian conflict. He has published tens of articles and research papers in various Palestinian and international outlets. Mr. Salem is also the coordinator of the Middle East Citizen Assembly and, since 2004, the coordinator of the Bringing Peace Together project, and a member of the **PIJ** editorial board.

Dr. Khalil Shikaki is a professor of political science and the director of the Palestinian Center for Policy and Survey Research in Ramallah, has reviewed the paper and shared his insight.

Internationals

Samer Abu Jobara, Political affairs officer, United Nations Special Coordinator Office for the Middle East (UNSCO).

Rob Blecher, Senior analyst, International Crisis Group.

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Christian Berger, European Commission representative, European Commission Technical Assistance Office to the West Bank and the Gaza Strip.

Gregory Galligan, Political officer, Canadian Embassy.

Leila Hilal, Legal advisor, United Nations Relief and Works Agency (UNRWA).

Crystal Kaplan, Regional refugee coordinator, U.S. Consulate.

Maher Tarawnah, A Jordanian diplomat, the Jordanian Representative Office in Ramallah.

Yuri Rudakov, Political counselor, Russian Embassy.

Moderators

Ziad AbuZayyad – An attorney-at-law, he is co-editor of the **Palestine-Israel Journal** and a writer and regular weekly columnist at *al-Quds* daily newspaper. He was the editor of the Arabic edition of the Palestinian daily newspaper *al-Fajr*. He is a former Palestinian Authority minister and a former member of the Palestinian Legislative Council.

Hillel Schenker - Co-editor of the **Palestine-Israel Journal**. A journalist who writes for the local and international press, he was a co-founder of Peace Now. He is vice chair of Democrats Abroad - Israel.

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ANNEX II – FURTHER READING AND WEBSITES

Following the facts on the ground and the policy discussion

The Palestinian Refugee Research Net
<http://prrn.mcgill.ca/>

The Refugee Question, the **Palestine-Israel Journal**, Vol. 15 No. 4 & Vol. 16 No. 1, 2008/2009.
<http://www.pij.org/current.php?id=70>

The Right of Return, the **Palestine-Israel Journal**, Vol. 9 No.2, 2002.
<http://www.pij.org/current.php?id=14>

Jerome Segal, Clearing up the Right of Return Confusions, 2001.
<http://www.mediamonitors.net/jerome1.html>

Alpher Joseph, and Khalil Shikaki. “The Palestinian Refugee Problem and the Right of Return.” Working Paper 98–07, Weatherhead Center for International Affairs, Harvard University, 1998.
<http://www.wcfia.harvard.edu/node/311>

“Nurturing Instability: Lebanon’s Palestinian Refugee Camps,” *Middle East Report*, 84, February 19, 2009.
<http://www.crisisgroup.org/home/index.cfm?id=5928&l=1>

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ANNEX III – CLINTON PARAMETERS – EXCERPT ON REFUGEES

Refugees:

I sense that the differences are more relating to formulations and less to what will happen on a practical level.

I believe that Israel is prepared to acknowledge the moral and material suffering caused to the Palestinian people as a result of the 1948 war and the need to assist the international community in addressing the problem.

An international commission should be established to implement all the aspects that flow from your agreement: compensation, resettlement, rehabilitation, etc.

The US is prepared to lead an international effort to help the refugees.

The fundamental gap is on how to handle the concept of the right of return. I know the history of the issue and how hard it will be for the Palestinian leadership to appear to be abandoning this principle.

The Israeli side could not accept any reference to a right of return that would imply a right to immigrate to Israel in defiance of Israel's sovereign policies and admission or that would threaten the Jewish character of the state.

Any solution must address both needs.

The solution will have to be consistent with the two-state approach that both sides have accepted as a way to end the Palestinian-Israeli conflict: the state of Palestine as the homeland of the Palestinian people and the state of Israel as the homeland of the Jewish people.

Under the two-state solution, the guiding principle should be that the Palestinian state would be the focal point for Palestinians who choose to return to the area without ruling out that Israel will accept some of these refugees.

I believe that we need to adopt a formulation on the right of return that will make clear that there is no specific right of return to Israel itself but that does not negate the aspiration of the Palestinian people to return to the area.

In light of the above, I propose two alternatives:

1- Both sides recognize the right of Palestinian refugees to return to historic Palestine, or,

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2- Both sides recognize the right of Palestinian refugees to return to their homeland.

The agreement will define the implementation of this general right in a way that is consistent with the two-state solution. It would list the five possible homes for the refugees:

- 1- The state of Palestine.
- 2- Areas in Israel being transferred to Palestine in the land swap.
- 3- Rehabilitation in host country.
- 4- Resettlement in third country.
- 5- Admission to Israel.

In listing these options, the agreement will make clear that the return to the West Bank, the Gaza Strip, and areas acquired in the land swap would be the right of all Palestinian refugees, while rehabilitation in host countries, resettlement in third countries and absorption into Israel will depend upon the policies of those countries.

Israel could indicate in the agreement that it intends to establish a policy so that some of the refugees would be absorbed into Israel consistent with Israel's sovereign decision.

I believe that priority should be given to the refugee population in Lebanon. The parties would agree that this implements Resolution 194.

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The **PALESTINE-ISRAEL *Journal of Politics, Economics & Culture (PIJ)*** is a quarterly registered non-profit organization No. 58-023862-4 founded in 1993 by Ziad Abu-Zayyad and the late Victor Cygielman, two prominent Palestinian and Israeli journalists. It was established, concurrently with the first phases of the Oslo peace process, as a platform to encourage debate on the core issues related to the peace process such as Jerusalem, Refugees, Settlements, and Borders etc. and promote dialogue among the opinion and policy-makers of the region.

Its objectives are to:

1. Provide a platform for Palestinians and Israelis - academics, public figures, practitioners, journalists and other experts to take part in the on-going debate;
2. Inform to a wider public the issues from the perspective of each side;
3. Strengthen the voices of local civil society members and organizations;
4. Foster, in a climate of constructive criticism and mutual respect, active dialogue and exchanges within and between civil societies on both sides;
5. Promote rapprochement and better understanding between the two peoples.

The PIJ seeks to achieve this in several ways.

> *Through the way we work:* The **PIJ** is the only publication to be produced as a specific joint venture between Israelis and Palestinians. Every aspect of the Journal is based on the equal and balanced participation of Israelis and Palestinians. The Journal is supported by a Board of Sponsors of international repute.

> *Through the production of the Journal itself:* As an independent, quarterly publication, the PIJ seeks to analyze freely and critically the complex issues dividing Israelis and Palestinians. Each issue has a special focus, in addition to a quarterly chronology of events, sections on culture, economics, viewpoints and relevant documents.

> *Through the dialogue events we organize:* With each issue we hold a roundtable of experts and a public conference-debate on the issue in question.

> *Through circulation of the Journal:* Its readership includes individuals, institutions, research centers, libraries and bookshops; academics and students; policy, decision and opinion-makers along with activists and NGOs, based locally and in some 20 countries overseas including the US, the UK, Jordan and Egypt.

> *Through the supplements:* Excerpts alongside full articles of each quarterly issue of the **PIJ** is translated in Hebrew and Arabic. It is uploaded in the Journal's website and

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it is disseminated as a supplement in two local newspapers, *Al Quds* (in Arabic), and *Ha'aretz* (in Hebrew).

> *Through our website www.pij.org*: All issues of the **PIJ** since its creation have been uploaded into the archives of the website. The website is also a forum for debate and dialogue among local and international stake-holders. Web-based blogs and interim articles as a reaction to ongoing events on the ground are regularly uploaded.

We are now in the process of expanding the existing activities of the website into an interactive, interface and instant print, electronic and audiovisual platform in English, Arabic and Hebrew.

The new **PIJ website** aims to:

1. Become the only joint Palestinian-Israeli news agency (print/electronic/audiovisual) that will cover all activities of civil society organisations involved in promoting conflict transformation towards resolution for a comprehensive Middle East peace between Israel and the Arab states and, more specifically, for a resolution of the Israel/Palestine conflict based on a two-state solution;
2. Provide Palestinian and Israeli users, and regional and international users, with political and legal tools, and socio-cultural and community-based services, aimed at moderating the impact of the conflict;
3. Encourage the creation of a joint Palestinian-Israeli community of dynamic bloggers whose purpose is to transform the conflict and energise peace efforts among their peoples;
4. Empower a joint cadre of young Palestinians and Israelis peace advocates through citizen journalism.

Following the deadlock of the peace process, the rise in violence and the dramatic shift in political and public positions that has occurred on both sides, direct contacts between Israeli and Palestinian civil society organizations have decreased dramatically. At this critical time, when hope is in short supply, the **PIJ** is the sole media which revives and even deepens channels of communication and dialogue. It is crucial that this dialogue be encouraged to develop further so as to transform tentative dialogue between the civil societies of both peoples into practical and dynamic steps for peace between Israeli and Palestinian leaderships. As one of the only joint ventures still to exist, the **PALESTINE-ISRAEL Journal** is more convinced than ever that it has an important responsibility and role to play in maintaining open the channels for cooperation and dialogue between the two peoples and providing a forum where the complex issues of the Palestinian-Israeli conflict can continue to be examined seriously, freely, independently and critically.