

Talking points for Annapolis Team
Currently contentious issues
November 15th 2007

Elements to be included in the terms of reference:

a. **international law** (Hala)

- Terms of reference for our negotiations are meant to serve as criteria or standards on which our negotiations will be based. International law is the most basic of them. International law is a standard that is independent of you or of us, and is therefore, objective and fair. It also has the support and following of most states. It affords your interests and our interests equal protection.
- For an agreement to be sustainable, it has to have the support of both of our respective populations. For that to happen, they both have to perceive the agreement as just and fair. International law provides an objective yard stick by which to measure an agreement.
- The other proposed terms of reference, even when taken together, do not address all of the issues that need to be negotiated between us (*i.e.*, water). International law fills the gaps.
- We have no doubt that you expect the future state of Palestine to adhere to international laws and norms just like any other member of the community of nations.
- International law is a tool through which states, international organizations and entities formulate and regulate their international relations, similar to the way individuals regulate their relations with each other. All existing agreements between Israel and the PLO have been concluded under, and are regulated by, international law. Similarly, all other treaties Israel has signed with other states and international organizations have also been concluded under international law. This will also apply to any future agreement between us. Furthermore, it is our interest, just as it is your interest, to ensure that any future agreement we reach will be binding upon both parties and read in light of international standards and norms. Including explicitly international law in the TOR ensures that our commitment to this is clear.

b. **1397** (Rami)

c. **1515** (Rami)

d. **194** (Leila)

e. **API** (Azem)

Roadmap, Role of the International Community, and Follow-Up Mechanism

f. **Timeline and process** (Khaled)

- Establishing a clear timeline for reaching a comprehensive agreement is essential to re-build Palestinian confidence in the process. Indeed, without such a timeline the “political horizon” is meaningless.
- Israeli reluctance to agree to a timeline, particularly when it is widely recognized that the end of Bush’s term represents a *de facto* deadline, raises serious questions about Israeli intentions and whether it is negotiating in good faith.
- The Roadmap’s original timetable itself envisioned commencing permanent status negotiations within eight months from the start of Phase I. Since many Phase 1 and Phase 2 obligations have already been met (at least on the Palestinian side), 6-8 months is more than sufficient to conclude a permanent status agreement.
- Palestinians have learned their lesson from the past. The success of the process depends on knowing where we are headed [core issues] and when we will get there [timeline]. Israel’s refusal to discuss the former makes the latter an absolute necessity.
- The fact that previous timetables and deadlines have been repeatedly violated is *precisely* why a clear timeline and an empowered monitoring mechanism are now needed.
- The Roadmap, in Phase 1, explicitly calls upon the Quartet, in consultation with the parties, to establish “a formal monitoring mechanism and its implementation.”
- In addition to a clear time line for concluding negotiations, and more importantly, we also need to agree on establishing negotiations committees on both sides to negotiate the permanent status issues and agree on a work plan for those committees to ensure progress and discussion of issues and sub issues.
- We would also like an international conference to be convened every three months in order to monitor progress and to help overcome difficulties. This is will be in effect a monitoring mechanism for the peace process.
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g. **Role of Arab states** (Azem)

h. Security situation/Gaza (Enas)

i. Settlement freeze (Hala)

Why is a freeze necessary?

- A cessation of settlement activity or “settlement freeze” will ensure that **no further harm** comes to Palestinian long- and short-term interests and, by extension, to the two-state solution. In addition, it will help to restore Palestinian **trust and confidence** in Israel’s desire for peace and in the peace process, thereby facilitating the negotiations process and undermining violence. President Mahmoud Abbas cannot credibly negotiate an end to conflict while Israel continues to take measures that undermine negotiations.

Roadmap obligations

- Israel’s obligation to impose a comprehensive settlement freeze is clearly spelled out in Phase I of the **Roadmap**: “*Consistent with the Mitchell Report, GOI freezes all settlement activity (including natural growth of settlements).*”
- In addition to a comprehensive freeze, the Roadmap also requires Israel to dismantle all settlement **outposts** established since March 2001. There is no provision in the Roadmap for “authorized” or “unauthorized” outposts. All outposts are to be removed, regardless of their status under Israeli domestic law.
- Israel’s settlement freeze obligations, like all its Phase 1 obligations, are to be carried out simultaneously with those of Palestinians. As the Roadmap explicitly states: “*In each phase, the parties are expected to perform their obligations in parallel, unless otherwise indicated.*” In other words, a settlement freeze is **not conditional** on any steps taken or not taken by the Palestinians or any other party.

Definition of a freeze

- To comply with the Roadmap, a settlement freeze must include an end to all: (1) settlement and settlement-related **construction**; (2) subsidies and **economic incentives** for settlements and settlers; (3) **planning** and authorizations for settlements; (4) **land confiscations**, home demolitions and other property destruction; and (5) **migration** of settlers into the OPT. In addition, the freeze must apply to **all Palestinian territory** occupied by Israel in 1967, including East Jerusalem, and remain in effect **until the implementation of a permanent status agreement**.

Loopholes

- Any arrangement that does not end settlement growth, in both population and size, will allow settlement activity to continue to harm prospects for a viable Palestinian state, and will seriously undermine the credibility of all parties. Indeed, the various “**loopholes**” devised in the past have led to unprecedented settlement growth. For example, Israel’s

settler population grew by nearly 40% from 1993 to 2000, while the number of settler housing units (outside of East Jerusalem) increased by 52%.

[Below are some of the loopholes most commonly argued for by Israel and their counterarguments.]

- No new tenders or building permits – This allows Israel or other parties to continue acting upon tenders or building permits that the Israeli authorities have already issued.
 - The Israeli government *can* stop private developers and contractors from acting upon tenders or building permits that have already been issued. Under Israeli administrative and contract laws, the executive branch has the power to release itself from agreements in the event that their fulfillment is inconsistent with the public interest.
 - Economically, this would be in Israel’s interests as well, since it will cost Israel less to stop the construction now than to pay for their evacuation and dismantlement, as well as compensation to the evacuated settlers, in the future.
- Exempting East Jerusalem, settlement ‘blocs’ or other areas - No area of the West Bank should be excluded from a freeze.
 - If Israel continues to build in areas it intends to argue for in a permanent status agreement, it effectively renders the whole idea of a freeze meaningless.
 - Just as Israel would not agree to Palestinians fulfilling their security obligations only in Nablus, the Palestinians cannot be expected to accept a freeze only in certain parts of the OPT.
 - However, if Israel wants to geographically limit the freeze, then Palestinians are willing to start a freeze in and around East Jerusalem.
- Allowing “natural growth” – This allows significant growth in the settler population and construction ostensibly needed to accommodate this settler population growth.
 - There is nothing “natural” about Israeli settlement growth: Due in large part to Israeli government financing and incentives, the growth rate of Israel’s settler population in the OPT is *several times higher* than that of Israel itself. This is precisely why “natural growth” is explicitly excluded by the Roadmap.
- “No new settlements” – This would allow settlement growth to flourish as most of Israel’s construction of settlements is done under the guise of building settlement “neighborhoods” or “outposts”, or outright settlement expansion.
 - Indeed, during an investigation commissioned by the Israeli government in 2005, the director of Israel’s Administration for Rural Construction admitted that “when, because of international relations, it is not possible to establish new settlements in Judea and Samaria, policymakers decided that existing settlements would instead be expanded, even if the expansion is not contiguous with an existing settlement.”

- “No construction beyond the construction line” – This will not stop “upward” growth, *i.e.*, increases in the settler population and density of settlements within the construction line. Drawing of the line is also subjective, if not arbitrary.
- “No land expropriation for construction” – This will not stop settlement expansion. Israel already has confiscated far more land than it could ever need for settlement expansion – 40% of the West Bank.

Implementation mechanism

- Successful implementation of a comprehensive settlement freeze will require a robust and **empowered mechanism**, preferably with the involvement of third parties, to monitor, verify and ensure compliance with all aspects of the freeze.
- j. monitoring mechanism in RM vs. trilateral committee (Rami)