

FINAL

Subject: Meetings of the Sub-WG on Exceptional Categories and of the Sub-WG on Goods of Concern held on May 21, 2007.

The Sub-WG on Exceptional Categories met at 10:00 on May 21, 2007 at the Notre Dame Hotel in Jerusalem. That meeting was immediately followed by a meeting of the Sub-WG on Goods of Concern. The participants in both meetings were the following:

USSC
Denis Lefebvre (Chair)

PA:
Nizar Farsakh
Bader Rock
Rami Dajani

GOI:
Oded Herrmann
Igal Ostanovsky
Yochai Guiski
Avi Bitton

EUBAM
Patrick Delval
Alfredo Savanio
Louis Elie
David Steinke
Juhanna Sanlulo

EXEPTIONAL CATEGORIES: EXECUTIVE SUMMARY.

The parties discussed the four exceptional categories and the outcome of the discussions is the following:

Humanitarian cases:

The GOI adopts a narrower interpretation because they are of the view that all cases except the most pressing ones should cross at Karem Shalom (KS) while the PA adopts a slightly broader definition and points out that the AMA does not provide for the crossing of travelers at KS. Notwithstanding their different approach based on divergent interpretations of the Rafah agreements on the use of KS, the definitions of the PA and the GOI are very close.

GOI definition of Humanitarian cases:

Cases in which entry is required as a matter of urgency, in order to deal with a critical situation/special occasion i.e.:

- Urgent medical treatment
- Funeral/Wedding of a first degree relative
- Urgent of a first degree relative who is in a critical medical situation
- Other exceptional cases where passage is required, especially in life saving situations.

PA definition of Humanitarian cases:

Humanitarian cases are those where entry is required on compassionate and humanitarian grounds, interpreted in a manner consistent with international law and common state practice. Examples of such cases include:

- Access to necessary medical treatment
- Visit for the funeral, wedding or other special occasion of a dependent or a close family member
- Visit by accompanying spouse and/or dependent(s) of a Palestinian ID card holder
- Other exceptional cases where passage is required, where the protection of the individual is required

Each definition has four bullets which can be compared as follows:

In bullet one the PA includes “necessary” medical treatment while the GOI’s position is that only urgent cases should be allowed to cross and that other cases can be referred to KS. It was noted that the PA card holders can cross and that the different position of the parties would only affect very few cases i.e. non ID card holders that require necessary but not urgent medical treatment.

The position of the parties in bullets two is very close (first degree relatives versus dependents and close family members). Close family members include, in addition to first degree relatives, individuals who are considered part of the immediate family due to special circumstances such as the sharing of the same household or being a dependent of one of the members of the immediate family for a long period of time.

Bullets three: The two bullets are different. The GOI bullet three has been agreed to but there is a disagreement on the PA bullet three. The GOI is prepared to allow children who are accompanying an ID card holder for a visit while the PA wants to allow spouses and other dependents also.

Bullets four are practically identical.

The parties have not been able to close the gap between them although the gap is very narrow.

Foreign representatives of recognized international organizations:

An agreement was reached. The parties agreed on the following definition:

- Foreign representatives of recognized organizations are individuals who are acting on behalf of a recognized international organization in their professional capacity.
- Recognized international organizations are those organizations that are commonly and broadly recognized as such by the international community.

The GOI noted that if in practice they disagree with any organization they will invoke the dispute resolution mechanism in the Security Implementation Protocol.

Diplomats:

An agreement was reached. The parties agreed on the following definition:

- Diplomats are individuals with valid diplomatic credentials and identification, and a reasonable number of accompanying staff (which shall not exceed four unless the diplomat is the head of a delegation) including the driver if the passage is by vehicle, in accordance with the procedures set out in the APRC and the Security Implementation Protocol.

Foreign investors:

The GOI suggested that the definition of “foreign investor” agreed by the GOI and the PA in the Civil Affairs Committee (CAC) should be adopted for the purposes of the APRC. The GOI agreed to share that definition with the PA and the PA will respond at that time.

GOODS OF CONCERN: EXECUTIVE SUMMARY

The work of the Sub-WG on Goods of Concern has been divided into two parts:

- The development of procedures for handling goods of concern at the Rafah Crossing (Seizure, referral to KS, storage and disposal); and
- The development of a definition of goods of concern.

Procedures for handling goods of concern:

The GOI agreed with the generic procedures developed by the PA with the assistance of EUBAM for the handling of different categories of goods of concern (illegal, restricted, prohibited items) subject to the following changes and clarifications:

1. The PA will implement the procedures immediately and do their best with the limited training and equipment they have. With the assistance of the EUBAM the PA will initiate a program to increase their ability to interdict goods of concern at the Rafah Crossing (training and equipment).
2. The PA will clarify that the “security authority” and the “Disposal and Destruction Committee” referred to in the procedures are organizations which fall under the jurisdiction of the President.

3. All procedures will be transparent and monitored by EUBAM; and all seizures will be reported to the Liaison Office.
4. Penal procedures undertaken against individuals who attempt to import goods of concern at RCP will be reported to the Liaison Office.

The PA's response to those four points was as follows:

1. The PA agreed to implement the procedures immediately but mentioned that to achieve full effectiveness a training and equipment enhancement program is necessary.
2. Agreed.
3. Reporting will be in accordance with Article II (10) of the Customs Annex.
4. Reporting will be in accordance with Article III (10) of the Customs Annex.

The PA will revise the procedures and the revised procedures will be tabled at the next meeting of the Sub-WG.

The PA noted that the procedures for the transfer of goods to KS have not been developed yet. However since such goods are not limited to goods of concern, it was agreed that these procedures will not be developed by this Sub-WG. It is recognized however that the input of the SWG may be required when these procedures are developed.

Definition of Goods of Concern:

The GOI has proposed lists of chemicals; weapons and explosives; and other equipment that should not be allowed to cross at the RCP. The PA has confirmed that the lists contain items which, with a few minor exceptions, do not constitute personal effects and, as such, are not allowed to cross at Rafah (they should be transferred to KS). Following the meeting the only points that have not been agreed to are the following:

- **Chemicals:** The PA confirmed that the GOI's list of chemicals does not constitute personal effects and those chemicals are not allowed to cross at the RCP. However the PA pointed out that some products that contain minute amounts of chemicals such as perfume, some medications, some cosmetics etc. are personal effects and should be allowed to cross at the RCP. To achieve that purpose the PA proposed to exempt from the interdiction "those chemicals that have been prepared in a commercial form for civilian use" The GOI agreed in principle that items containing minute amount of chemicals and that are normally used in daily life should be allowed to cross but offered to develop an alternative description for those items. Their alternative wording will be reviewed at the next meeting.
- **Other equipment:** The PA agreed that many or the items in the list of equipment proposed by the GOI cannot cross through RCP because they are for commercial/industrial use and do not qualify as personal effects. Most of the other items would not qualify as personal effects because they exceed \$200. The GOI is concerned that some items which do not have a commercial/industrial use and which have a value of less than USD200 could present a security risk. They will

- identify the specific items they are concerned with and submit it to the PA. The PA has agreed to review the list of items that will be submitted by the GOI.
- Weapons and explosives: The PA agreed that the weapons and explosives included in the list submitted by the GOI are not allowed to cross at Rafah. Both parties agree however that ornamental swords and daggers are not included in the list of weapons and explosives.

Action items:

The parties have agreed to do the following before the next meeting:

- The GOI will share the definition of “foreign investor” developed by the CAC with the PA for the PA’s consideration;
- The PA will redraft the procedures for handling goods of concern in accordance with the discussions at the meeting;
- The GOI will provide to the PA a list of equipment with a value of less than USD200 that presents some security risk;
- The PA will revise the text of the exception to the list of weapons and explosives to exempt only ornamental swords and daggers; and
- The GOI will develop an alternative wording for the items that contain a minute amount of chemical but should be allowed to cross at Rafah.

A last meeting of the two Sub-WGs is scheduled for the 4th of June following the CEC meeting. This will give us enough time to draft the final report from each of the two Sub-WGs to the SWG that will next meet on June 12.

As evidenced by the agreements documented above the parties have agreed on every major issue. The only issues that have eluded agreement are minor, affect few people and should be resolved. Throughout the work of the Sub-WGs, the parties have shown good faith, creativity, and a determination to reach reasonable compromises. Given the road traveled so far, it would be a shame to report to the SWG on June 12 with less than a full agreement.

Prepared by Denis Lefebvre
Sent May 31, 2007