

## Preliminary Comments on US Proposals as Presented on October 2 2009

### 1. TOR

The terms of reference for the process should be: international law, UNSCR 242, 338, 1397 and 1515, UNGAR 194, the “land for peace” principle, agreements previously reached by the parties, and the Arab Peace Initiative.

The goal is the end of the Israeli-Palestinian conflict through the two-state solution. This requires: (1) the end of the Israeli occupation and the establishment of a fully sovereign and viable Palestinian state on the 1967 border (plus any agreed land swaps) with East Jerusalem as its capital, and (2) a just and agreed resolution to the Palestinian refugees issue in accordance with UNGAR 194.

*Language in the US proposal that does not meet these requirements:*

- “Resolve the open disputes and claims” – implies that the conflict is over disputed territory, rather than ending a military occupation and fulfilling the right of self-determination in accordance with international law.
- “territorial and security issues addressed by ... 242 and 338” – This can only be understood as an exclusion of other issues addressed by 242, in particular the requirement for a just solution to the refugee issue.
- “Territorially and economically viable Palestinian state” – The concept of viability is much broader. Qualifying it in this manner implies limits to full sovereignty.
- “Realistic” “agreements and arrangements that enable two states to live ...” – Realistic to whom? Why “agreements” in the plural, and what is meant by “arrangements”? This language favours partial, interim arrangements based on unilateral actions rather than a comprehensive PS agreement.
- “Land to be discussed is the territory occupied in 1967.” – Much more is involved: air space, sea space, territory on the Israeli side of the 1967 border, sovereignty, etc. For detailed analysis, see **Annex A**, attached herewith.

### 2. Negotiations should include all PS Issues

Negotiations must resolve all PS issues, including Borders, Settlements, Jerusalem, Refugees, Water and Security. Note that the paper does not include water as a PS issue, while it lists Water under the multilateral track.

*Language that does not meet these requirements:*

- “Negotiations ... will resolve ... issues such as ...” – “Such as” implies that not all of the issues listed need to be resolved.

### 3. Normalization

The Arab Peace Initiative is clear about sequencing of events. Normalization of relations is on offer once (a) Israel withdraws fully from all Arab territories occupied since 1967, (b) the establishment of a sovereign Palestinian state on the 1967 border with East Jerusalem as its capital, and (c) a just and agreed resolution of the Palestinian refugees issue in accordance with UNGAR 194.

*Language that does not meet these requirements:*

- “[A] structured negotiation track with multilateral participation will begin ... in parallel with the bilateral negotiations to address issues of common interest such as ...” – The issues identified are means of promoting normalization in disguise prior to resolution of territorial and refugee issues..

### 4. Third party/ US Role

The US should play an active and sustained role as an **unbiased and honest broker** in PSN. There should also be a credible and robust monitoring, verification and enforcement mechanism, which would include public reports and real consequences for (non-)compliance with existing obligations of both parties and progress (or lack thereof) in the peace process.

### 5. Previous Agreements and Obligations

Existing agreements and obligations must be respected and implemented. Key among these is a genuine and comprehensive settlement freeze (which was notably absent from the US paper). The paper does not explicitly reference any previous agreement or obligation (Interim Agreements, Roadmap, AMA).

*Language that does not meet these requirements:*

- “... building on previous agreements and obligations.” – Implies that agreements are not binding, and undermines their authority and the need to implement them.

### 6. Gaza

While the situation in Gaza merits urgent attention, the language is inappropriate . It describes the situation in Gaza as if it were a natural or humanitarian disaster; and reduces the rights of Palestinian residents to a “challenge” to meet “legitimate needs”. Humanitarian relief for Gaza is an urgent non-political issue and should not be linked to the conduct of the negotiations. Rather, there should be reference to Gaza and WB being one territorial unit. And, rather than “facilitate the flow of aid and commerce”, there has to be an unequivocal reference to ending the siege on Gaza

## 7. PA Steps

The paper refers to a number of specific steps that were not previously identified in the Roadmap, and have not been developed in consultation with the PA and/or PLO. While it is in the PA's own interest to carry out most of these measures (and more), there should be consultation and agreement with the PA on specific steps, rather than imposition, to ensure they are in line with the PRDP and various ministries' plans, to take into account priorities, feasibility, and ensure efficiency in implementation.

Re: "*refrain from pursuing ... any initiative ... in international legal forums*" – The expectation that Palestinians will forsake peaceful, lawful means of enforcing their rights is totally unacceptable. When the ANC negotiated for peace with the Nationalist Party in South Africa, they continued to publicly support the global BDS movement which they had initiated. And in fact it was this leverage that allowed for a meaningful, though perhaps not friendly, atmosphere which resulted in the two sides reaching a lasting agreement.