PROGRESS OR BREAKTHROUGH NEEDED

THE MULTILATERAL WORKING GROUP ON REFUGEES

by

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OUTLINE

1. Introduction

2. Criteria for Assessment

3. Political Background

4. Negotiating Background

5. The Canadian Role
   Canada as Principal Violinist
   Canada as a Clown
   Canada as a Lion Tamer
   Fear, Awe and Laughter

6. The Paradoxes of Praxis

7. Three Sessions of the Working Group on Refugees

8. New Initiatives

Introduction

This paper will focus on the Multilateral Working Group on Refugees (WGR) as the fifth track of the multilateral talks on peace in the Middle East were called.[1] After an analysis of the political and negotiating background and the theory and practice of negotiating interethnic conflicts, as well as the essential refugee issues, it will offer an analysis of progress that has been made in those sessions which may contribute to the overall success of the Middle East Peace Talks. The analysis is intended to be used as a basis for indicating what new initiatives or steps may be appropriate to assist in these talks, and, in particular, to indicate whether an initiative is required which will produce a breakthrough or whether the world community should sit patiently as incrementally small steps are put in place which may possibly advance the peace process.

This paper takes as its central issue the very opposite end of the spectrum of negotiations aimed at reducing the chances of military confrontation between the Syrians and Israelis, namely humanitarian issues - refugees - and, much more narrowly, family reunification. These talks are concerned with creating trust through a focus on such measures and through the diplomatic and negotiating methods used to deal with such issues.

Criteria for Assessment

This paper will be written with its greatest focus on the "gaveller", on the Canadian team charged with chairing the Multilateral Working Group on Refugees (WGR). The measure of progress or relative success will be very different from the criteria used by the Palestinians or the Israelis, or the Syrians

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[1] I personally became involved indirectly in the talks in two different capacities. The Centre for Refugee Studies (CRS) at York University, of which I was the Director, was asked to prepare some briefing papers - a bibliography and a summary of the history and various perspectives on some key issues - for the Canadian government officials engaged in the talks. (The bibliography was eventually distributed at Lisbon to all the key players in all the multilateral and bilateral talks by the Canadian delegation which requested that additions be proposed to allow a complete bibliography to be prepared.) Further, as an academic who had written extensively on refugees and on Palestinian refugees in particular, I was also asked, along with five other Canadian academic specialists on the Middle East, to share my thoughts on suggested strategies and tactics that Canada could adopt in facilitating progress in the multilateral talks on refugees. My participation in the planning and debriefing sessions enabled me to obtain a birds eye view of the tactics adopted by the Canadian delegation to assist in building confidence and advancing the negotiation process. Discussions with other members of the Jordanian and Palestinian delegation, both in Canada and the Middle East, were also helpful. Since the talks are ongoing, it would be inappropriate to reveal any confidential information if, in fact, I had been privy to any. However, quite aside from the fact that nothing of a confidential nature of which I am aware was revealed to me, the nature of this analysis does not require the revelation of specific information and I will avoid attributing any comments to particular persons.

or Jordanians for that matter, to measure success. Rabin, when he was elected Prime Minister on June 23, 1992, promised some settlement within a year. This paper is being written almost one year after that promise was made. Of course, the timeframe for completing an agreement at the Madrid talks which opened the negotiations on October 30, 1991 had also been one year. In any case, it is almost a year since Rabin was elected and virtually all Palestinians, most Israelis and, I would suspect, most observors, would regard the results of the negotiations as meager at best. Increasing numbers of Palestinians even question the benefits of remaining at the table.

Adopting the perspective of the Canadians may seem odd. After all, from most perspectives, the Canadian role seems very minor. Further, it must fit in with the overall strategy of the Americans as the significant co-chair of these talks who had promised to be a "driving force", playing a role as an honest broker attempting to help the parties move toward a comprehensive peace. Canada is not a "driving force" at the talks. As will be seen, in one analogy which I will use, I will liken the Canadian role to that of the first violinist in an orchestra who must tune his or her section in with the overall conduct of the orchestra. But the position of first violinist has always been recognized as critical in an orchestra and offers a unique insight into the peace talks as a whole.

The Multilateral Working Group on Refugees (WGR) is by its very nature concerned primarily with the Palestinian-Israeli negotiations rather than the Syrian-Israeli negotiations. The multilateral talks in general are intended to supplement the bilateral talks and clearly not replace them or act as a forum for putting pressure on the bilateral discussants, but to provide: a) an appropriate atmosphere; b) small practical steps upon which a foundation can be built; and c) utilization of expertise, experience, knowledge and resources of others. The Canadian government has assumed responsibility for initiating a sustainable process which will induce the parties concerned to work together on the problems of the displaced within the countries involved in the bilateral negotiations or originating from that area. As will be seen, I view the talks as far more critical than this rhetoric suggests, essentially determining the sovereign issues over membership and representation rather than the more muscular issues of territory, although these issues are discussed under the rubric of humanitarian concerns. But the timetable and measures of success will not be those of either the Israelis or the Palestinians.

If we take the measure of progress to be the goals of either of these parties, then not only would there be little measure of success, but one would wonder why peace talks were even being conducted since the goals of the respective parties seem so far apart. The Palestinians who have agreed to negotiate want the talks

to set the foundation for establishing a Palestinian state in the entire occupied territories, including East Jerusalem. (There are, of course, large numbers of Palestinians, in particular the supporters of Islamic Jihad and of the Islamic Resistance Movement or Hamas, who still aspire to reject the Jews from the Middle East altogether and destory the Zionist entity, Israel.) Further, the peace is to be a comprehensive one, involving all aspects in dispute, including the right of return of the Palestinian refugees. Finally, the Palestinians involved in the negotiations are determined that the talks advance under the united leadership of the PLO.

On the other hand, the Israelis entered the talks only on condition that the invitation made no mention of an exchange of land for peace. The Israeli-Palestinian negotiations were to proceed in a two step solution, with the first step focussing on a deliberately vague concept of "interim self-government" in the occupied territories with the final settlement to be based on Resolution 242 to begin half way through the establishment of that interim self-government. Any reference to self-determination or the Palestinians achieving a state of their own was deliberately omitted because Likud envisioned the self-government as one of an adminsistrative nature only rather than the government possessing soveriegn executive, judicial and legislative powers. The Labour government too objected to a sovereign Palestinian entity and envisioned parts of the occupied territories being conjoined with Jordan. As such, even the Palestinian negotiating team was not given autonomy, but was conjoined as part of the Jordanian delegation. Finally, there was an explicit agreement that the Palestinian delegates would not come from the PLO and would only come from the West Bank and Gaza and exclude East Jerusalem.

The only thing the parties seemed to have in common is that they were finally willing to seek peace on the basis of some form of mutual recognition. The Multilateral Working Group on Refugees (WGR) was set up as part of the overall negotiations relatively well on into the process. At the opening of the multilateral negotiations in Moscow on January 28, 1992, the Americans gave a commitment to the Palestinians that members from the diaspora would be allowed in the future to participate in certain specific working groups, one in particular which was soon to be convened on refugees. Such talks by definition dealt with Palestinians who were not resident in the occupied territories. The role of the diaspora Palestinians is critical in the analysis of the WGR, especially in light of two of the three goals of the Palestinians, the search for a comprehensive peace, including a resolution of the refugee situation, and the retention of the unity of Palestinians in the territories and in the diaspora under the leadership of the PLO which was based outside the occupied territories.

Even dealing with the right of return of refugees, let alone actually doing something about it, would be unfavourable to the

Israelis. For the Israelis, the refugees as refugees, by definition, could only be part of the final comprehensive agreement rather than a step leading up to an interim agreement. It was not one of the items placed on the agenda following the first Bilateral talks. If something is done to improve the quality of life of the refugees, however, then the refugees gain materially and the Israelis gain because this provides one less reason for the refugees to be antagonistic without introducing an element which is unfavourable to the Israelis, except, of course, for those Israelis who prefer to see the lives of the refugees in Gaza and the West Bank become more and more miserable to increase their inclination to move elsewhere. For the Israelis, negotiating over the *humanitarian* aspects of the refugee issue at this stage could only be a confidence building measure and not a substantive issue. For the Palestinians, the procedural form used and the inclusion of that issue was substantive. The essence of that substantive character can only be grasped by reviewing, however briefly, the refugee aspect of the conflict.

Political Background

Anyone familiar in the least with the Middle East needs no background. However, this background is very selective and sketchy since it focuses only on the refugee aspects of the conflict. The Israeli-Arab-Palestinian entailed both state to state and bloc to bloc conflict as well as one which was essentially a rivalry between two groups over both self-determination and a given territory. The Israeli/Arab conflict is a traditional situation inviting the applicability of both Confidence Building Measures and (CBMs) and Confidence and Security Building Measures (CSBMs) because various state armed forces face one another across clear demarcation lines.[2] It differs from the traditional areas of applicability of CBMs and CSBMs in that, even now, some territory is in dispute. In the case of the Israeli-Syrian conflict, it is the Golan Heights. In the case of the Lebanese-Israeli conflict, and quite aside from the issue of whether Lebanon is merely a satellite and stalking horse for Syria, Israeli control of the "security border" in the south of Lebanon is in dispute. And in the case of Jordan, even though Jordan withdrew any claim to the West Bank, the majority of Jordanian citizens are Palestinians for whom the conflict over the sovereignty of the West Bank (and Gaza) is considered the central issue; without a resolution of that matter, no peace between Jordan and Israel is considered possible.

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[2] For an analysis of various theoretical schools dealing with CBMs and CSBMs, see Howard Adelman, "Transformational Dynamics: Towards a Theoretical Foundation for Confidence Building Measures," in Confidence and Security Building: The Arab-Israeli Nexus, ed. by David Dewitt and Gabi Ben Dor, forthcoming.

The heart of the conflict is considered to be the age old question of the competing claims over the territory of Palestine between Jewish Zionists and Arab nationalists of all stripes. When Great Britain, as an imperial authority with the largest empire the world had ever known and as the mandatory authority over Palestine, was on its sick bed after World War II, it left Palestine without a last will and testament. While controlling Palestine, Britain refused to give the land to either Jacob, later called Israel, or Esau, or divide it between them. Nor did Britain transfer the legal authority to do so to the United Nations. Britain died intestate as an imperial power in Palestine.[3]

The United Nations tried to use its moral authority to fill the gap and divide the land between the two sons without giving either one the mansion of Jerusalem that was the centrepiece of the estate. Jacob accepted the judgement of the United Nations. Esau did not, insisting that the division proposed was inequitable and illegal. In any case, as the brother of majority, Esau insisted he was entitled to exercise majority control in a united inheritance. The result was war with Jacob, then renamed Israel, initially gaining possession of an even large tract than that allocated by the United Nations. The result was also that over 600,000 of Esau's children became refugees. In a subsequent battle in 1967, Israel

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[3] It is surprising that some 'scholars' dispute this fact. For example, Paul de Waart, from the Faculty of Law, Vrije Universiteit Amsterdam, and Chairman of Project on the Dynamics of Self-Determination, a series of workshops on the Middle East peace prospects,with Palestinians and Israelis participating, stated that,"the Occupied Territories still have the international status of a mandated territory,>." and the General Assembly is "the competent authority in respect of mandated territories." ("Perceptions of the Role of International Law " in *Proceedings of the Seminar - The Israel-Palestinian Conflict: The Impact of Shifting Perceptions on Collective Identities and Political Prospects* - "Dynamics of Self-Determination", Gent 12-14 September, 1991, edited by Marc Cogan, VU University Press, Amsterdam, 1992, pp. 11 & 13) His authority was Rostow who, in a letter to the Editor of the American Journal of International Law (1990/3, p. 718-719) commenting on Professor Robert's article, "Prolonged Military Occupations: the Israeli-Occupied Territories since 1967" wrote, "Many believe that the Palestinian Mandate was somehow terminated in 1947...A trust never terminates when the trustee dies, resigns, embezzles the trust property or is dismissed. The authorities responsible for the trust appoint a new trustee, or otherwise arranges for its winding up." This is academic farce rather than intellectual clowning. Three essential facts are ignored. The British held a Mandate nit a Trust, and in international law these are very different entities. Not only did the holder of the Mandate die intestate in Palestine without a will, but the League of Nations which had the authority for assigning Mandates predeceased Great Britain. The only way the Mandate could be transferred to anyone or to the United Nations, even in accordance with the rules of the United Nations, was either by direct transfer from Great Britain or by the United Nations action to transfer the Mandate to the Trusteeship Council. Britain refused to make any transfer before it abandoned Palestine. And the effort by the General Assembly of the United Nations to transfer legal authority to the Trusteeship Council failed when the Mandate was surrendered on May 15, 1948. There just was no successor legal authority for the Mandate. Therefore, Roberts was correct when he stated that, "the British Mandate ceased to be operative."

gained control of all of Great Britain's mandatory Palestine of 1948.

After May 15th, 1948, the war was primarily an inter-state and not an inter-communal one. The conflict, however, was essentially intercommunal. The various state parties utilized the inter-communal conflict to advance state interests. When Count Folk Bernadotte was the mediator before his assassination in September of 1948, he followed an unfortunate pattern of trying to resolve both conflicts at one and the same time. Although they were interdependent, their solutions were not, for each type required very different approaches and techniques.

Count Bernadotte August 6 1948 proposal for an unprecedented "right of return" for the Palestinian refugees had much more to do with his own ideological convictions that people had a "natural" soil to which they belonged and from which they could not be alienated without destroying the soul of that people. When he was assassinated by Israeli terrorists, this proposal, which was initially greeted with widespread scepticism, was, three days after his martyrdom, voted by the United Nations as a basic principle for dealing with the Palestinian refugees, with the words "or compensation" added to provide an escape. When Bernadotte tacked on the "right of return" of the refugees to the conditions for armistice between the conflicting states, the result was a measure which delayed the armistice and led to complicating and perpetuating the conflict for many, many years (though I have argued that this measure would not likely have been endorsed by the UN had not Bernadotte been assassinated by Israeli terrorists).[4] Ralph Bunche was able to negotiate a meaningful armistice because he focused on the issues of state-state conflict and left the Palestinian-Arab conflict to one side so that the conditions for war could first be removed. If these multilateral talks were to progress, would they require setting aside the issue of the right to return?

The dispute has, over forty five years, for many and probably most Arabs, been narrowed down to competing claims over the West Bank and the Gaza strip. The Likud saw these areas as integral to the land of Eretz Israel within which the Palestinians could have some degree of municipal autonomy, but neither citizenship in Israel nor the developing a sovereign regime were realistic prospects. Small parties, even further to the right of Likud, saw this as an inherently unstable situation and envisioned (depending

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[4] Cf. Adelman, Howard, "Palestine Refugees, Economic Integration and Durable Solutions," in Refugees in the Age of Total War. ed. Anna Bramwell, London: Unwin Hyman, 1988 as well as "Palestinian Refugees and the Peace Process," Perspectives on Peacemaking, eds., Janice Stein and Paul Moranz, London: Croon-Helm Ltd., 1984.

on the party) either the transfer of the majority of the Arab population out of the territories through a combination of inducements and despair, or some process of forceful "ethnic cleansing", perhaps using the precedent set by the Serbs in Croatia and Bosnia-Hercegovina.

The Labour Party, following the pattern set by the Zionists in 1944 and agreed to in 1947, offered territorial compromise, not the return of all the territories captured in the 1967 war (let alone the 1948 war), but the transfer of most of the populated parts of the territory to some form of interim self-government until the final resolution of the status of the territories could be determined. There were three caveats. United and greater Jerusalem was not negotiable. Some of the territory would be retained for security purposes. Thirdly, in the territory over which Israel surrendered eventual sovereign authority and current sovereign claims, an independent Palestinian state would not be allowed to emerge; any sovereignty surrendered, would have to be vested in Jordan even if the West bank and Gaza enjoyed a large degree of autonomy.

In spite of these caveats, it is understandable that the Palestinians interested in advancing the peace process and repartitioning the pre-1948 Palestine Mandate would welcome the election of Rabin even if his position was far from their own. Those who continued to reject partition and advocated the destruction of Israel saw no essential difference between the Labour Party and the Likud positions. There were and are, of course, still idealists on both sides who, instead of highlighting totally independent Palestinian and Israeli states, focused on sovereign but interrelated and interconnected peoples. For example, Sari Nusseibah's solution to the intractable problem of Jerusalem was based on a two-capitals united city requiring, "maximizing integration to the extent possible" - "the more permeable or porous the Israeli-Palestinian boder, the less stringent the metropolitan border need(s) to be."[5] This position is consistent with that of advanced thinkers who challenge the accepted fact that state sovereignty is the primary constitutive principle of modern political life because it reifies the practices of state sovereignty which are inextricably linked to controlled borders, exclusive memberships, the projection of danger onto others and the legitimation of the use of violence in defence of one's own sovereignty and which envision absolute sovereignty as a waning

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[5] Sari Nusseibah "Some Thoughts on Jerusalem" - *Proceedings of the Seminar - The Israeil-Palestinian Conflict: The Impact of Shifting Perceptions on Collective Identities and Political Prospects* - "Dynamics of Self-Determination", Gent 12-14 September, 1991, edited by Marc Cogan, VU University Press, Amsterdam, 1992, pp. 102-103.

concept as globalization proceeds at a faster and faster clip.[6] However, whatever the alternatives, the only realistic alteranitives seemed to be an agreement between two sovereign peoples over separated sovereign territories.

With respect to self-determination and the territory over which that governance was to be exercised, the United Nations, the institution charged with responsibility for keeping international peace, and which has assumed that responsibility with gusto following the termination of the Cold War, ceased to be a core player since the 1948 fiasco and the vote on partition.[7] The refugee issue, particularly with respect to the role of UNRWA, the United Nations Relief and Works Agency for Palestine Refugees in the Near East, remained a central **responsibility** of the United Nations.

The Palestinians, though part of the Jordanian delegation, are a distinct national group. The primacy of that identity may have begun in the 1920s, but it only came to the fore after the Israeli capture of the West Bank and Gaza in the 1967 war. Even then, Palestinians continued the strategy of relying on others for the achievement of their political goals. Increasingly, the Palestinians came more and more to rely on their own efforts. But the initiative heretofore resided with diaspora Palestinians. When

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[6] Cf. R.B.J. Walker and Saul H. Mendlovitz, eds., *Contending Sovereignties: Redefining Political Community*, Boulder, Co.: Lynne Reiner Publishers, 1990.

[7] There are some who still argue that the United Nations continues to have a legal responsibility with respect to Palestine. For example, in an article, "Perceptions of the Role of International Law", Paul de Waart of the Faculty of Law, Vrije Universiteit in Amsterdam, and Chairman of the Project Board, DSD (Dynamics of Self-Determination), argues that, "the Occupied Territories still have the international status of a mandated territory" (p. 11), and that the General Assembly is "the competent authority in respect of mandated territories" (Cogen, p. 13). Similarly, Rostow in a letter to the Editor of the American Journal of International Law (1990/3, p. 718-719) commenting on Professor Robert's article, "Prolonged Military Occupations: the Israeli-Occupied Territories since 1967", argued that "Many believe that the Palestinian Mandate was somehow terminated in 1947...A trust never terminates when the trustee dies, resigns, embezzles the trust property or is dismissed. The authorities responsible for the trust appoint a new trustee, or otherwise arranges for its winding up." Aside from the fact that Palestine was never a trust but was a Mandate, there are two problems with this thesis of continuing legal responsibility of the United Nations. The authority responsible for the mandate, the League of Nations, died. Further, the League never transferred its authority to reassign mandates to a successor. Finally, the UN never assumed it. Under the Trusteeship Council, a procedure was to be followed for Britain to transfer the Mandate to the UN. Britain, peaked at the partition resolution, refused to do. Therefore, Roberts was correct when he stated that, "the British Mandate ceased to be operative as to the territories of Israel and Jordan." If the Mandate ceased to be operative, and the UN ceased to have legal responsibility after May 15, 1948 when the Mandate was terminated, the issue is still open whether the normative rules of the UN, and which ones, continue to apply to the peoples in the occupied territories, even if any legislative responsibility is extant.

the Palestinians were expelled from Lebanon following the Israeli invasion of that country, the indigenous population fell into a melancholic torpor. With the Egyptian peace treaty, the defeat of Palestinian armed units on the last available frontier with Israel (they were expelled from Jordan following Black September in 1970), the vision of a messenger of salvation arriving from without was gradually lost. The "shaking off" or uprising that began spontaneously in 1987 under a young leadership, rebelling as much at the passivity of their elders as against the Israelis, shifted the centre of gravity of the Palestinian movement to the occupied territories from the diaspora. This shift was virtually inevitable given that the Israeli political right had become the established government with an announced policy of holding onto the territories, its large settlement schemes in the population heartland of the West Bank, the large number of Russian immigrant arrivals and finally and belatedly the acknowledgement by the Palestinian leadership that it would accept half a loaf (whether as an interim tactic or a strategic retreat) rather than insisting on the whole loaf or nothing.

This shift was evident in the commentary following the short-lived rumours of Arafat's death in a plane crash in Libya. For example, the Middle East journalist, Kattab, noted that one of the effects of Arafat's death would be to reinforce the shift of the power centre of Palestinian politics to the occupied territories.

What is the significance of this shift for Palestinian refugees and displaced persons? It means two things. For the first time we can openly state and acknowledge (even if it still has to be done subtley and diplomatically - the wounds are still too fresh) that the Palestinians in the diaspora are unlikely to be going back to their homes in Lod, in Jaffa, in Haifa. If they want to go back, it will not be to their homes; it will be at best their homeland. As Yehoshafat Harkabi put it, "For the Palestinians, accepting Israel's existence meant relinquishing the hope of ingathering the diaspora population, since a smaller Palestinian state, truncated by the partition, would not be sufficient to absorb such a population.[8] But the Palestinians, if they obtain the right to self-determination, would make that decision. It is they who would decide who and how many could return. "The PSA (Palestinian sovereign authority) would have the right to decide how many refugees would be settled in the territory it controls and at what rate, in keeping with the availability of resources to

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[8] Yehoshafat Harkabi, "Changes in the Arab-Israeli Conflict," *Conflict Management in the Near East*, ed. Steven L. Spiegel, Boulder: Westview Press, p. 251.

absorb them."[9]

Repatriation to what is now Israel can be finally faced as a forlorn and misplaced hope. The corollary question can also be addressed - do the Palestinians in the diaspora want to go to the West Bank (Gaza is clearly too crowded) and, if so, under what political and economic conditions, or would they just as soon settle elsewhere?

The second point is that the Palestinians who were displaced in 1947-48 and who now live in Gaza and the West Bank with their descendants will also not be going back. They will most likely be staying where they are unless they choose and are able to emigrate. The effect of both these points is that, for the first time, the resolution of the plight of the displaced is *conceptually*, though not practically, easier. The general outline of the answers is obvious.

Further, not only is the conceptual opportunity available for the first time. The existential plight of the Palestinians makes the situation desperate. They are being squeezed from all directions. About 400,000 have been expelled from Kuwait. They are in the process of being displaced from Saudi Arabia as potential fifth columnists. The traditional outlets are being closed off. Desperation can give rise to horrific explosions. It can also provide an opportunity to address the issue.

It means, basically, that there will be two distinct, though overlapping solutions to the Palestinian refugee problem. It also means that all kinds of small, and some large, interim steps can be envisaged which will both contribute to the peace process and greatly improve the plight of the refugees and the displaced. For example, the major health, education and welfare ministry of the Palestinian peoples (UNRWA) can be transferred to the control of the indigenous Palestinian inhabitants, and this could be done even within the framework of an interim administrative arrangement with direct assistance provided to the Palestinians themselves. There is no longer any vested interest, political or otherwise, for **any** of the parties keeping the Palestinians in refugee camps pending a final peace solution, for the prospect of return to their homes (except, perhaps, for a small number under family reunification following a peace treaty) will finally have been buried. It also means that concrete steps can be taken to ascertain both the wishes of the Palestinian diaspora population, given alternative political and economic scenarios, and when the steps do not entail either a return to the West Bank during the interim period **or** a surrender of

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[9] Ann Mosely Lesch, Report of a Study Group Convened by the American Academy of Arts and Sciences, *Transition to palestinian Self-Government: Practical Steps Toward Israeli-Palestinian Peace*, Bloomington: Indiana University Press and the American Academy of Arts and Sciences, 1992, p. 53.

the right to such return, then permanent settlement can be provided for Palestinians in the diaspora.

In other words, the opportunity is ripe for dramatic improvements in the conditions and protection provided for the Palestinian people as well as opportunities to govern themselves, at the very minimum, in certain key areas of health, education and welfare.

However, the Palestinians are neither united in the strategies to be adopted or the goals to be sought. The Palestinian camp is not homogenized. It is a four-headed hydra. Some differ with those who have entered into negotiations only in strategy, and argue that there should be negotiations, but not with Shamir or under the terms offered. There are political rejectionists opposed to a two state solution. There are religious rejectionists opposed to the continued existence of a Zionist entity. The leading head, however, remained the PLO which agreed to enter negotiations, but with the clear goal of creating a two state solution to the Palestinian-Jewish conflict.

The national identity of the Palestinian people is now symbolically represented by the PLO even though the shift in the centre of gravity of the politics of the Palestinian community is now in the occupied territories. At the same time, religious fundamentalism within the territories challenges the hegemony of that identity. The Israelis are gradually overcoming their resistance to any symbolic nationalist expression of a self administered health, education, welfare, and, I would add, housing ministry, but the process is slow and painful. It is important to the Palestinians to insist on such recognition, and to do so in a way which is continuous with the diaspora symbols of their nationalist struggle. The religious fundamentalists will also resist, but for very different reasons, and will fight for control of those areas of responsibility.

In a discussion of the 1948-68 period, primacy was placed on the refugee issue for the resolution of the Palestinian problem. In the next twenty years, primacy shifted to the political issue under the leadership of the PLO. In the third period of this development, the refugee issue is the one that unites the political agenda of the diaspora with the self-determination wishes of the indigenous population in the territories. Part of the negotiations over the degree of sovereignty to be enjoyed by the Palestinians entailed control over who could and who could not be a member of a sovereign people. If the bi-lateral talks are viewed as primarily about sovereignty over land, the WGR could be seen as primarily indirect ways of discussing the sovereign issue of people, who represents, who is represented and who has control over determining the membership in the people represented. If the bilateral peace talks are about the degree of sovereignty to be accorded to the Palestinians, the Multilateral Working Group on Refugees, though

rhetorically about the humanitarian aspects of the refugee issue, is primarily about the membership aspects of the sovereignty question - who determines who can return to the West Bank and Gaza as a member of the Palestinian community.

Negotiating Background

Following the Sadat initiative, it was only a matter of time before all the inter-state conflicts were settled on the basis of swapping land captured during war for peace. The Sadat scenario followed the script of an idealist advocate of Confidence Building Measures which break through stereotypes by concrete actions to build trust. President Jimmy Carter played the role of the passive helpful fixer. The Syrian-Israeli conflict requires mediation by a much more sceptical realistic upholder of Confidence Building Measures.[10] Normative constraints may be put in place to ensure that victory is not achieved by wiping the members of the other party from the face of the earth or removed physically from the arena of conflict. If this were the whole picture when applied to the Israeli-Palestinian conflict, then what is required is not a conception of collaboration but an analysis of the Prisoner's Dilemma which suggest that it is impossible for mutually

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[10] This distinction between Idealist and Sceptical Realist Confidence Building Theorists is made in my article, "Towards a Confidence Transformational Dynamic," to be published in a volume on Confidence Building Measures in the Midlle East edited by David Dewiit and Gabi ben Dor. Although rationality and morality may be at the centre as a necessary precondition of resolving conflicts for Confidence Building Measure (CBM) Theorists, for idealist CBM theorists, the most important matters which require initial attention may be appearances, peripheral issues which affect the context, the attitudes, the style in which the negotiations are conducted. Strong positive sum strategies are founded on developing mutual trust between the contending parties in the conflict through contacts and exchanges that initially side step the central issues in the conflict. When there is a sufficient degree of such trust, then institutional mechanisms can be put in place to restrain behaviour, further reduce fear and reinforce trust. The much more modest positive-sum strategy of the *sceptical* realist school tries to develop an institutionalized impartial system of constraints on all parties as they pursue their individual self-interest so that the rules of the game are developed, penalties and incentives put in place and institutional arbitrators assigned to perform roles that, in the best situation, discourage the parties from resorting to negative sum games by the clear constraints on the parties if they do resort to such destructive behaviour. For sceptical realists, what counts is not style, but how the antagonist will perform when 'push comes to shove' and what constraints on irrational responses will be in place. The underlying geo-political and geo-strategic constants will come to the fore during a crisis, but what counts is the institutionalized constraints put in place to control and limit behaviour during the bad times. Confidence building is not about the subjective feeling of trust but about the objective conditions that engender trust, that is, controlling the factors which produce legitimate fear, both the underlying unchanging realities and the rules or norms according to which the conflict is waged. Confidence building is not about building credit during the good times, but preparing for instability when it inevitably rears its ugly head. This article is about Confidence Transformational Dynamics and differs from CBM theory which is much more appropriate to state-state conflict situations.

antagonistic parties to cooperate in rational ways.[11] The basis for a solution was in place when the Soviet Union dissolved as a reality so that the Syrians were left on the losing side in the world power bloc rivalry. The Gulf War provided the opportunity for the Syrians to realign themselves. This set the essential conditions for concluding an Israeli-Syrian peace even if it is not yet concluded at the time of this writing.

The more difficult central component of the struggle could then be addressed - the Palestinian-Israeli conflict. The Palestinians required recognition that they were a people, that they would have the power of self-legislation, that the PLO were the de facto interim legislators (since they were the only Palestinian political body to endorse recognition of their rival) and that the de jure selection of the legislators would come about through elections. These were the essential conditions. The drawing of boundaries, particularly the allocation of East Jerusalem, directly affected how the steps leading to real negotiations would end up, but was not the central impediment to peace as it was often made out to be, though it might be to the effort to conclude an agreement. The members of both communities had to come to recognize the other community as a self-legislating body politic.

Ironically, in order for this to take place, the Palestinians had to stop depending on outsiders for their salvation and right to self-determination. The shift began when the PLO in Lebanon took on the primary mantle of the armed struggle. But by then, after so many years, the Palestinians in exile were also outsiders. With the defeat of the PLO in Lebanon, the initial depression that permeated the Palestinians in the occupied territories was overturned and inverted with the intafada, for the carriage of the struggle finally shifted to the shoulders of the people in the occupied territories. The PLO had first to assert some modicum of authority over this uprising by the people and then posture as negotiating on their behalf rather than on behalf of the military and political groups in the diaspora.

A major issue in the struggle was the right to return. On the one hand, if the PLO was truly sincere in recognizing Israel as a sovereign state in the Middle east region, the Palestinians had to surrender the principle that the refugees would be returning to

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[11] The Prisoner's Dilemma, is a special case in game theory of Newcomb's problem, formulated by the physicist William Newcomb and brought to the attention of the philosophical world by Robert Nozick, where if each party in a conflictual situation behaves rationally, each chooses an outcome which is almost as bad as if they made no choice at all. though there is an opportunity to ensure a prison sentence of only one year for both parties, each acts in such a way that each gets nine years in jail to avoid the possibility of a ten year sentence. Cf. Richard Campbell and Lanning Sowden, eds., *Paradoxes of Rationality and Cooperation: Prisoner's Dilemma and Newcomb's Problem*, Vancouver: University of Columbia Press, 1985.

Israel as this was now the sovereign territory of another people with its own self-legislated government whose essential sovereignty was the right to control who could and who could not become a member of the body politic. On the other hand, the Israelis, if they were truly ready to recognize the Palestinian people as a self-legislating body, had to allow the right of return of Palestinians who had been exiled from the West Bank and Gaza, particularly if they were political activists leading the struggle for self-determination. Further, "the recent floods of Jews are perceived by the Palestinians as a direct threat to any possibility of solving the Palestinian people's right of return from their diaspora to their homeland and birthplace. Ironically, this very influx of Soviets can be used as a logical premises for the Palestinians' right to return."[12]

An essential thesis of this paper is that the refugee issue, and, in particular, the right of return, is an essential *non-discussable* item on the agenda because reformulating the issue as a humanitarian one advances the cause of each side of the Palestinian-Israeli issue recognizing one another as self-determining sovereign peoples.

Whether or not inter-state conflict theory fits into a model of instrumental rational actors whose behaviour need modification by means of self-legislated norms (idealist CBM theorists) or imposed constraints (CBM sceptical realist theorists), inter-ethnic conflicts over land and status do not. For groups willing to sacrifice their lives over turf and recognition of themselves as a self-standing nation with their own right to self-governance, it is the principle of self-legislation itself that is at stake. Both groups are willing to fight and die for their cause. "The dialectic of recognition and the struggle to death...shapes the tragic course of human rationality as a social, historical, and political enterprise."[13]

Instrumental rationality *presumes* the contending parties are self-legislators; the object of negotiations is merely to reconcile the competing interests and norms of legislators whose goals happen to be in conflict. But each party recognizes the other as a legislator of its respective destiny. In intra-ethnic conflicts, this is precisely what is at stake in the conflict. Each party denies the other the right to be a self-legislator.

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[12] Mariam Mar'i, "The impact of immigration and settlement on the Palestinian people," in Cogen 1992, p. 141.

[13] John O'Neill, The Communicative Body: Studies in Communicative Philosophy, Politics and Sociology, Evanston, Ill.: Northwestern University Press, 1989, p. 97.

For every legislated system of law, as an authoritative method of resolving conflicts, must rest upon an ultimate rule of who is recognized as the sovereign authority to make that law. In other words, what is at stake is which group or set of groups is to be recognized as the ultimate authority. When a constitution begins with, "We the people," in opposition to claims that an absolute monarch or the dictatorship of the proletariat as represented by a party and, in Leninism, its leadership, it is critical that recognition be given in the first instance to who the people are. Where one ethnic group fears it will be subordinate to another and will not be accorded any fundamental right to self-determination, then a life and death struggle is instigated between the subordinate and the dominant group. Part of the struggle for recognition is the struggle over the right to determine who is or who is not a member of that self-legislating people. To be sovereign entails at the most fundamental level that the sovereign entity itself determines who is and who is not a member, who represents the people and who does not.

Thus, the refugee issue is one which entails that the refugee issue will **not** threaten the right of self determination of the respective parties and, in fact, will be used as an instrument to enhance mutual recognition.

In order to advance the talks, initially four (eventually a fifth was added) parallel sets of multilateral working groups on various issues were set in place dealing with specific topics on which it was hoped agreements could be forthcoming of mutual interest to all the parties - such as water or the environment - that could help build confidence and trust between and among the parties. The fifth working group was set up as a result of the Palestinian boycott of the Moscow talks and a compromise agreement by the United States as the key co-chair and convenor of the talks. This fifth set of multilateral talks would focus on refugees. And, presumably because the topic of the talks was refugees, the United States agreed that the joint Jordanian-Palestinian delegation could include Palestinians from the diaspora. Canada was invited to "gavell"[14] the first Working Group on Refugees as part of the Middle East Peace Negotiations.

Under the Likud, peace talks began between Israel and the various parties, but it soon became obvious, and Prime Minister Shamir admitted as much after the defeat of his party in the 1992 Israeli elections, that the talks were merely a means to gain time during which the Likud would set up so many Israeli settlements in the occupied (or administered territories as they preferred to

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[14] The United States and the Soviet Union (succeeded by Russia) were the official co-chairs. Japan and the EEC were the official co-hosts of the multilaterals. The specific country asked to actually chair a particular session of a specific set of multilateral talks was referred to as the "gavel".

designate them) that the facts on the ground would make the creation of an alternative sovereign regime impossible. As Shamir was quoted in Maariv after the Israeli election, "I would have conducted autonomy negotiations for 10 years, and in the meantime we would have reached half a million souls in the West Bank."

In spite of the Likud position, in spite of the fact that the PLO had to set aside its 1988 declaration of a state, postponed the issue of the refugees for five years and accepted a back seat to indigenous Palestinian negotiators, the creation of a unipolar world with the end of the Cold War, the estrangement of the PLO from its Saudi finacial supporters and others in the Arab and European world following the PLO stand toward Iraq, and the drying up of remittances to the financial coffers of the PLO with the expulsion of the Palestinians from Kuwait and other Gulf states created a crisis within the Palestinian polis and necessitated that they acceded to these stringent conditions of negotiation. Following the 20th Palestine National Council Meeting from September 23-28, 1991, the PLO approved entering into negotiations on October 17 and Faisal Husseini conveyed this message to Secretary of state James Baker in Jerusalem, clearly indicating both that the PLO still held the reigns in deciding whether or not to enter into negotiations, but also communicating the subtle shift in the centre of gravity of the Palestinian cause from the diaspora to the indigenous population. Faisal Husseini made it very clear that entering the negotiations did not mean that the Palestinians were forfeiting the objective of a sovereign Palestinian state in all of the occupied teritories and Jerusalem or the right of return of the refugees.[15] The accession to the conditions that the delegates could only come from Gaza and the West Bank was represented as a *de facto* arrangement and not a binding condition.

Though Rabin, when he took over, wanted an interim agreement with the Palestinians to be concluded within one year, as indicated above, it was on the basis of trading land for peace not on the recognition between two peoples that each had a right to self determination and the control over membership in their respective soveriegn spheres and over a specific piece of territory. Such a strategy not only made the Palestinians wary because the timetable and the intentions (given the contrary intentions of the Palestinian leadership) were so at odds, but it made the Jordanians wary as well. The editorial in the Jordanian Times of June 27, 1992 expressed it after the Rabin election. "Rabin is wary to advocate a speedy resolution of the conflict with the Palestinians while delaying settlement with Jordanians and Syrians to a second stage." As the editorial continued, "Many Arabs and Muslims are extremely suspicious of Israel and its intentions...nations in this region

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[15] Cf. ^Camille Mansour, "The Palestinian-Israeli Peace Negotiations: An Overview and Assessment," *Journal of Palestine Studies*, XXII:3, Spring, 1993, p. 9.

will continue to suspect every single aspect of Israeli policies." Nevertheless, Rabin indicated a willingness to discuss peace with the Palestinians unlinked to the Jordanian delegation, recognized that the separation of the negotiating team from the PLO in Tunis was a chimera, and denigrated the Likud concept that the autonomy of the Palestinian people could be separated from the territorial issue.

Israelis were also afraid. In the wake of the Gulf War Israelis "feared that the evacuation of these territories will make Israel's borders indefensible; it will expose Israel to great danger from Arab armies that may achieve access to them and from terrorist groups which would be able to hit the most sensitive targets in Israel with ease and impunity; it is also feared that any compromise agreement reached with the Arab side on the future of these territories would be regarded by the Palestinians as temporary only and, in fact, they will never give up their claim for Jaffa and Haifa. The PLO is regarded with considerable wariness; it is suspected that the various moderate statements it has made in recent years are only tactical and the organization remains committed to its maximalist goals."[16] Arafat, after recovering from surgey in Jordan for removal of a brain clot following his plane crash, and welcoming the Rabin victory as an expression that the Israeli people were opposed to war and terrorism, on his return to Tunis stated that he looked forward to a Palestinian state over Jerusalem (not just a state, not just East Jerusalem, but Jerusalem), a statement which was used to exacerbate those fears.

In fact, "Israelis hold opinions which, to a growing extent, contradict those of the parties for which they vote. Thus, for example, 55% of Likud voters are ready for some territorial concessions in the West Bank and Gaza, while 18% of Labour voters support transfer."[17] Thus, there is not only distrust between the two sides focused on the political leaders, but there is also a willingness to make concessions as well as be even more extreme in the general population which is not reflected by party affiliation. There is an assymetry in the positions of the antagonists. The Jews have a sovereign state while the Palestinians do not. The Israelis are the occupiers while the Palestinians are the occupied. Insofar as the peace negotiations are concerned, the results are acute and pressing for Palestinians and less pressing and more historical for Israelis. Finally, "a crucial assymetry exists between the Israeli and Palestinian leaders' ability to control violent actions by

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[16] Shimon Shamir, "The Effects of the Gulf War and its Aftermath on Israeli-Palestinian Relations," Cogan (1992) p. 25.

[17] Shimon Shamir, "The effects of the Gulf War and its aftermath," in Cogen (1992) p. 30.

members of their communities."[18]

The last point is true for the Israelis if the Labour government retains clear majority support for those negotiations. That is one reason why Khalil Hindi is correct in arguing that a resolution is contingent upon a change in the perceptions, attitudes and positions of the two antagonists and calls for "pessimism of the intellect and optimism of the will."[19]

The changing of public perceptions and attitudes was not the role that the Working Group envisioned for itself. No written record was to be kept of the proceedings. There were to be no notes. There were no memoranda. Just a brief press release summarizing an interpretation of the outcome for the media, media which had been banned from attending the talks. Thus, although the refugee issue was one that intimately involved the public, particularly the broad Palestinian, Jordanian and Israeli public, and it was the psychology of the talks that the confidence building measures should address, the talks were run rooted in the principle that increased contacts and communication concerned only elites, and they controlled not only the agenda and the substance of the discussions, but what anyone learned about them.

The contribution made by the Working Group was to be "seen by all sides as constructive and measurably beneficial to the refugees themselves." It had to appear as a positive sum game to everyone, particularly the parties to the conflict, quite aside from whether it really was beneficial, for, after all, no one could know, since we could never know what really was the case since what we knew were appearances. The fundamental rule of law is that justice not only must be done, it must be seen to be done. The fundamental rule of international peace making under the guidance of an idealist is that the peacemaking and confidence building are just matters of appearances, what everyone feels is happening, even if there is no necessary correspondence with reality. Confidence building requires giving the appearance that something is being done, even if nothing is being done about a central issue in the conflict.

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[18] "Palestinians lack courts and police that could enforce order; appeals by individual politicians to reduce violence and focus on non-violent modes of protest, while important, cannot be followed up by effective action. Individuals and political groups opposed to the negotiations or personally aggrieved continue to use violence to attain their ends. In contrast to the very limited forms of control by Palestinian leaders over instruments of police power, the Israeli governemnet has police and military forces under its command. These forces could enforce its will by limiting violence by Israeli settlers or political forces that seek to undermine the Israeli negotiations or political forces that seek to undermine the Israeli negotiations or provoke Palestinians into striking back violently." Lesch (1992) pp. 80-81.

[19] Cf Khalil Hindi. "The Impact of the Gulf War on the Israeli-Palestinian Conflict: The Attitudes of the Two Antagonists," in Cogan, ed. (1192), p. 38.

The model utilized did not ostensibly presume that an attitudinal sea change had taken or needed to take place. The conscious presumption was that one only needed to adopt the tools of instrumental rationality to prevent an existing status quo from being upset by resorting to the use of force. An alternative model posits a dialectical interrelationship between attitudes and behaviour, between consciousness and technical practices, between mental states and communication. A dynamic must take place which can transform the consciousness of the other party. The events, as we shall try to show, combined with the role the Canadians assumed for themselves, transformed the theortical idealistic and pragmatic model of confidence building to a dialectical model of interaction.

The Canadian Role

What is a nice country like Canada doing mixing itself up in the mess of the Middle East? Why did Canada agree to "gavel" the fifth working group in the Middle East peace talks and what role does Canada play in running those talks? The two questions are very different. A fifth stream to the talks may have been initiated to get the Palestinians to participate in Moscow and to deal with an issue that had no obvious forum in the established four streams. Canada may have become involved because Canada was asked to by the United States and/or because Canada was the obvious country to chair a working group on refugees given Canada's past commitments and leading role in this area. Canada has both credibility and expertise. Canada was chosen because of the perception of the superego role Canada plays as a conscience of the international community.

There are three issues with which Canada has been and is identified that make it appropriate that Canada provide some degree of leadership in this area: peace-keeping, refugees and human rights. All are relevant in this context. The refugee expertise seems obvious.

Peace-keeping will likely be an issue as well because security measures may be necessary to protect refugees living in the West Bank and Gaza. Canada may be required to send Refugee Compliance Experts to the Middle East, though it may insist that the terms and conditions for a Compliance Expert to participate be set down clearly and adequately without being hamstrung by political considerations as was the case with UNIFIL where the terms were unacceptable and the situation was too politicized. Canadian peace keeping expertise has also been built up on a knowledge of what is required for confidence building mechanisms between and among antagonistic negotiating partners. The four key conditions essential to such measures are certain to be applicable - transparency, compliance, verification and the designation of appropriate and effective measure that may be required in the face of non-compliance. Though these requirements may emerge way down

the line, they begin to be established early in the game. Further, the work necessary to establish certain factors essential for transparency, such as agreements on numbers, has to begin now. Questions about the role of neutral third parties will have to be faced early, and in fact, that role will be established, in part, by the way Canada "gavels" the sessions.

Human rights are also an issue. Anyone familiar with the intifada over the last three years, and the events in the occupied territories prior to that, know that the human rights protections for the refugees are critical during the process of discussions and during any interim arrangements. Canada has had expertise in ensuring transparency and in establishing compliance and verification mechanisms for such situations before, as in Namibia.

In addition to being identified with issues of critical concern to any discussion of refugees, that is, not only the refugees themselves, but the security of those refugees and the protection of their human rights as well, Canada has also played an international policy role in the past which intertwine three other factors of relevance to this issue. Canada is recognized as being relatively even-handed; Canada is a middle power; and Canada has played the role of honest broker.

In this context, the role Canada projects as a superego and keeper of the conscience of the world may be most relevant to understanding why Canada was chosen but less relevant in understanding and analyzing the role Canada actually played, though that role was certainly consistent with the superego conception of itself played out on the world stage. Canada may appear to be a moralist on the international stage, but it is Canada's artistic skills which came to the fore in the actual negotiations. Canada had not been asked to "gavel" the WGR because it is the birthplace of ice hockey - the Canadian sports version of lion tamers - nor because it is the birthplace of Glenn Gould, the Winnipeg and the National Ballet, nor even because the great Circe du Soleil was born in Québec, let alone because it could play the role of a lion tamer, the first violinist in an orchestra as well as put on a clown act at one and the same time. But it is these set of skills that were crtical to the talks.

Canada is a peacekeeper. Canada is a defender of human rights and the rights of refugees. Canada has no power interests in the Middle East. This is the image Canada projects on the world stage. But the artistic and creative soul is central to understanding Canada as a performer rather than the superego image Canada projects on the world stage.

There is a third factor in the Canadian psyche important for understanding the factors that might allow Canada to sabotage its creative skills in playing the role of "gaveller"of the Multilateral Working Group on Refugees. It is the way the subjective angst of Canada can be projected onto the Middle East

cauldron. In a time of unstable domestic politics, at a time when separatism of one national group in Canada is at centre stage of our domestic political agenda, at a time when indigenous populations who lived in this country long before the arrival of the new settlers who came to dominate the national life of Canada are also front and centre, and at a time when commitments to the resolution of an issue in the Middle East may entail possible further future financial commitments of Canada at a time when the country is fitfully (and hopefully) crawling out of a deep recession, then the underlying conflicts in Canada will inevitably project themselves onto the Middle East refugee situation and Canada's role in and perception of it.

Middle East issues may become stalking horses for domestic debates. Symbolism can easily overwhelm reality. This is now widely accepted as the case with participants in a conflict; it is less often recognized to affect the role of the "brokers' to these conflicts.

We must now analyze the skills Canada brought to the negotiations which were quite different and sometimes appeared quite opposite the reasons Canada was asked to gavel the talks in the first place.

Canada as Principal Violinist

Canada was chosen unanimously in Moscow to "gavel" the fifth section of the Middle East Peace Negotiations, specifically the multilateral Working Group on Refugees. Canada was not asked to "chair" the talks, because Washington was the chair and Moscow, as foil, was the co-chair. Canada was there to facilitate rather than serve in a leading position. Canada was not even a "host" because the co-host positions had been assigned to the EEC and Japan. So Canada was asked to sit at the centre at the head of the table of thirty-five countries participating in the multilateral talks, with Washington and Moscow on either side, and Tokyo and Brussels[20] alongside them, ostensibly to orchestrate the first meetings of the Multilateral Working Group on Refugees (WGR) that would be held in Ottawa in May of 1992 to discuss the refugee issue in the Middle East. It was apparent to everyone that Washington was the leader of the orchestra. It was not clear that Canada had been asked to play the first violinist when asked to gavel the WGR.

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[20] Since the Venice Declaration of 1980, the 12 states in the European Economic Community have given full support to the US-led peace efforts and have offered to assist the US in its role as honest broker and based on the principles of land for peace, the implementation of Resolutions 242 and 338 and the final endorsation of any agreement by the UN. They continually expressed a desire and willingness to fully participate in any peace conference and help ease some compromises required by offering economic incentives, primarily easier access and closer ties to the European community.

Now a gavel is a small mallet which someone uses to rap on the table to bring a meeting to order. I remember when I had the honour of chairing our University Senate for a year, at the **end** of the year, at the **end** of the last meeting, and in all seriousness without any display of the irony of the joke, after having performed the whole year without one, I was given a gavel as a token of gratitude for the service I had performed that year. The irony of the Canadian situation in the multilateral talks was not attached to the timing, but to the role itself that Canada had been asked to perform.

When someone uses a gavel to call a meeting to order, the use of the gavel plays on the equivocal reference that a gavel is not only a wooden mallet, but also refers to a very strong, sharp hammer that sculptors or masons use to chip the rough edges off stones. The function of a gavel is to turn a rough assembly of raucous and sometimes conflicting and warring humans into a semblance of order.

But Canada was **not** given any instrument. Nor did it possess any instrument to induce order in the Middle East. Canada was asked 'to gavel' the meeting without a gavel. Now 'to gavel' as a verb has nothing to do with a mallet used to effect order in a meeting. 'To gavel' refers to the act of distributing something equally according to the tenure of gavelkind. What, you may well ask, is gavelkind? Essentially a feudal system governing land tenure for determining ownership of land. Thus, if an owner died, as Britain did, without a will, the land was distributed equally between or among the sons.

Gavelkind was not only a system of dividing land among the children in an intestate estate. It was also a system for determining that even if a party was convicted of a felony, that party did not forfeit its ownership of the land even if he was sent to prison, or, as we now call them, refugee camps. So the children and grandchildren of Esau, who had now multiplied in numbers to over 2.5 million, most of whom still lived in Gaza and the West Bank parts of the original estate (see Appendix I), wanted to return to their land or, if they chose, accept compensation. The United Nations as the moral authority had endorsed the medieval doctrine of gavelkind as a testament to its fallen mediator assassinated by a bullet from one of the zealots from Israel's camp. The United Nations, with the same lack of legal authority and military force it brought to the table to divide the intestate estate of Palestine, gave Esau's children a right to return to their land, or, if they chose, to accept compensation.

This was the heart of the refugee issue. On one interpretation of gavelkind, the refugees still had the right to their land even if they had refused to accept the moral authority for the division of the land. On another interpretation, the children of Israel, who subsequently seized control of the land, claimed that they did so

legally as an act of self defence. As tenants of land in which there was no legal successor authority, they claimed they were entitled to keep the land. And all this was in a context where the feudal institution of gavelkind was no longer accepted as providing any precedent or legal authority in the modern era.

Into this comic-tragedy, Canada was asked 'to gavel' the refugee talks where the central issue was gavelling according to gavelkind, but no one was allowed to say so. Instead 'to gavel' was presumed to be merely a neologism and a corruption of the noun 'gavel'; it appeared that Canada had simply been asked to bring order to a meeting called to discuss the issue of refugees without even a mallet to silence those participating and issue demands or commands to the meeting, let alone smooth the rough edges off the parties.

The argument here is that peace negotiations are somewhat akin to conducting an orchestra. The percussion instruments in the background haunt the discussions with the reminder of the drums of war and the possibility that one party or the other or both will simply be eliminated. These represent the rejectionists. The brass section trumpets the strengths of each of the warring parties, producing triumphal blasts that demand concessions from the other side, and then produce the careening wails so that we cry at the suffering of their victims. The aim is to produce fear in the other side and sympathy from the by-standers in your own position. These represent the negotiators from the respective sides. The woodwinds are cooler, more detached, sometimes introducing a new melody into the orchestral arrangement. At other times, they blow cold and are indifferent and aloof rather than impartial but involved. These are the academics who provide the facts, concepts and analyses used in the negotiating process. But it is the strings which appeal to a higher order of hope and aspiration even as the violas, and especially the bass fiddles, play on melancholic memories and lament the territory, positions and aspirations that need to be surrendered. Canada had really been asked to play the role of principal violinist for the string section.

The conduct of peace negotiations has a kinship with symphonic orchestration rather than writing music for a brass quintet, a woodwind or a string ensemble on their own, not only because all three section are combined, but because the drum beats of war remind the parties of the consequences of failure.

It is critical that we understand the passions of the conductor and the antagonistic parties if all parties are to be melded into a symphonic whole. For it is playing that is primary in peace negotiations, not games. And at the root of play are passions. If those passions are to be limited in their destructiveness, the passion the conductor brings to the platform are critical. Those passions belonged to the United States of America. But it is the principal violinist who prepares the strings

and sets the pitch at which the negotiations will be conducted. If the conductor is the team manager, the first violinist is the coach. The word of the manager is law, but it is the coach who is present at all the rehearsals to ensure that a true team effort emerges.

Without a mediator, the two antagonists are like two teams in which all the players assume fixed positions as if on a baseball field. The rules of war are well known as are the batting averages, pitching skills, etc., of the various antagonists. The players are divided up between the two teams and play on either team but rarely as a team. And the conflict is repeated and repeated in different versions as an integral murderous ritual of human beings. It is only the changing situation and constellations that provides clues as to how the various players are to perform their tasks.

In an orchestra, the problem of the conductor is to meld antagonistic sections, each with a very different ethos, to play together rather than against one another. The leader of the string section is recognized as crucial to this process. The players must be taught to play the same score and not to score against one another. The conductor must provide that score. To play even adequately, especially when jocks are being transformed into instrumentalists in an orchestra, the process requires endless rehearsals.

If there is to be a transformational dialectic from a negative sum game, then the elements in that negative sum game must be understood and played with rather than believing, as the cynics do, that the rules of a negative sum game count more than the substantive elements that make the game a negative one. The issue is not how to play a negative sum, a zero sum or a positive sum game, but how to move the players from one game to another, and, at the very least, continue to play music together, however dissonant it may first sound, rather than engage in war. To put it another way, noise is sound made by unwanted intruders. Discourse and music are both opposed to noise. Therefore, the role of the mediator is to allow the parties to make music together rather than acting as another source of noise.

The drum beats of war are part of the orchestra. Noise is not. Intercommunal conflict is characterized by 'noise'. Noise is arbitrary, disruptive and intrusive sound. It undercuts both the syntax and order of discursive thought and the symphonic harmonies of an orchestra. The UN peace keeping soldier at a check point in Mogadishu, Somalia, listens for this arbitray noise which might mean death from the gun of a 'soldier' in the pay of a local warlord. Terrorism, intercommunal conflicts and snipers all produce noise rather than the drumbeats of war.

In *Thus Spake Zaruthustra*, Nietzsche depicts man as "a rope stretched between the animal and the Superman." Zarathustra plays

three musical roles in this performance. Zaruthistra is the rope-dancer, the acrobat on the high wire, who teaches each of the parties how to overcome and surpass themselves and live on a higher plane of being. Zarathustra is also the hymm singing preacher, the street evangelist, who addresses the crowd already settled down to watch the performance of the tightrope walker expected shortly. They are a crowd of deformed cripples, not physically handicapped or, even more politically correct, the physically challenged, but those so physically deformed that they could never balance themselves on a tightrope. Finally, Zaruthustra is the conductor of the orchestra that we never really see which provides the pace and ambience for the whole performance.

Canada as a Clown

The second important tactic I want to address is the use of "creative ambiguity". Michael Shenstone, a retired Canadian External Affairs official, enunciated this dictum as a critical byword for the WGR peace process.[21]

We are all aware that words can cause war. Bismarck's editing of the Ems telegram that led (intentionally on the part of Bismarck) to the Franco-Prussian War may perhaps be the most famous example. The quibble over words may also delay peace and cost countless lives because there is inadequate precision given to the words used in diplomacy. Here the use of "pourrait" in Hanoi's

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[21] When Shenstone pressed this point, I couldn't disagree more at the time. I blamed the "creative ambiguity" used by Western diplomats for almost as much of the problem of Palestinian refugees as Bernadotte's belief that he was a god and not just a divine messenger who had the power to deliver repatriation for the refugees against the reality of the conflict and all past experience in dealing with refugees. For "economic integration" was the creation of "creative ambiguity", a slogan which stood for permanent resettlement of the refugees in countries of the Middle East without saying that this was the function of the large scale economic schemes behind the setting up of UNRWA. UNRWA was set up to solve the problem of the refugees permanently, and not as its propagandists would have it, to simply await the outcome of a separate peace process. But the propaganda became the reality, I argued, precisely because "creative ambiguity" was used and the consequent efforts to develop practical solutions leading to permanent settlement were failures. To use the words of Henry Kissinger in his address to the Peace Conference on the Middle East in Geneva on December 21, 1973, "We can make propaganda or we can make progress." The latter, I insisted, called for clear and unequivocal statements and terms, and not ambiguity which is called in doublespeak creative when it most often turns out to be destructive. The weapons of a messenger of the gods or of God are words. The earthly situation provides the opportunities. Semantic precision, not creative ambiguity, I claimed must be the byword of the discussions while we keep in mind the connotations of all terms when they emerge in the public. The problem, I now recognize, is that I was applying this critique to a situation in which there was only a cacophony of voices and sounds and no orchestral leader. Creative ambiguity is the method used to allow equivocal terms to undergo a semantic shift to allow previous antagonists to play music together. For the importance of the words is not the words themselves, but whether they make room for the various antagonists to play music rather than arguing with words or fighting.

offer to negotiate peace with the United States may serve as another example. "Pourrait" was translated as 'could' in referring to possible talks between the Democratic Republic of Vietnam and the Americans, when it, in fact, connoted a virtual certainty and not merely a possibility. The direct consequence of the confusion was mutual misunderstanding and the breakdown in the first Kissinger peace initiative (when he was still an academic) and five more clearly unnecessary years of war and destruction.

But those situations lacked a mediator. Semantic precision not 'creative ambiguity' was required in all aspects of such discussions. Baseball teams in antagonistic games require semantic precision and umpires to render precise judgements. Orchestras require not only rehearsals and lessons in playing together, but distractions so that they remain content to play inside while the sun and the wind becon them to go out and play in the fresh air and fight in the school yard. Semantic precision is not a prerequisite when the effort requires a change in consciousness and atttitudes by the respective parties. In that case, ambiguity is critical to allowing the transformation to take place as long as there is someone in charge who is clear about the process. "What introduces ambiguity into political action is precisely the metamorphoses of truth and justice experienced in putting them into practice without any absolute guarantee that this project will not be attacked, sabotaged, and even undermined from within. It is, in short, the denial of political innocence even at the birth of freedom."[22] Creative ambiguity was a critical tactical principle adopted by the Canadians, including creative ambiguity about its own role as leader of the clowns. As Montaign phrased it, the peace process proceeds as long as "We are always thinking somewhere else."[23]

The clowns provide the distraction which allow baseball players to be converted into musicians.

Comedy is a serious business. And anyone who pursues a comic career must do so in all seriousness, appearing to be a pin-striped diplomat while playing the role of a clown with everyone expecting the individual in charge of building confidence and introducing measures to foster trust, in fact to be a clown and fall flat on his face while, in pleasing everyone, the cause of peace is, in fact, advanced. Confidence tranformational dynamics, at its highest levels proceeds by a series of inversions, using ambiguity, equivocation, doublespeak and all the arts of saying and doing exactly the opposite of what you appear to be doing.

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[22] John O'Neill, The Communicative Body: Studies in Communicative Philosophy, Politics and Sociology, Evanston, Ill.: Northwestern University Press, 1989, p. 121.

[23] Montaigne, Essays, Bk. III, "Of Physiognomy," In *The Complete Essays of Montaigne*, Stanford: Stanford University Press, 1958.

Bertolt Brecht, the famous German dramatist, understood this art very well. When he appeared before the Un-Amaerican Activities Committee in California during the McCarthy witch hunts and was asked, "Are you now and have you ever been a member of the Communist Party," this well known communist queried back asking them who had suggested such a thing and hinted that their committee had been infiltrated with communists spreading subversion in the great land of America. After an hour the committee was apologizing to him without his, in fact, ever answering the question or saying whether he was or was not a communist. And when he returned to East Berlin and the Communist Party appartchniks came around to preview his new play to ensure it was politically correct, and then raised critical questions about some sections or lines, Brecht immediately acknowledged how correct they were, how terrible it was that he had not noticed, how appreciative he was that they had brought it to his attention, and insisted that they return tommorow to preview the sections again to assure that they were "politically correct." Of course, when they returned, the sections were totally altered, but they were also much more subtly and cuttingly satirical, sometimes including satirical bit parts about the "positive" role that apparatchniks play in the development of creative art.

The comic art of confidence transformational dynamics depends fundamentally on understanding how to be adept at doing the unexpected while showing that, even though it is the very opposite of what had been understood to be taking place, it was perfectly appropriate and everyone was invited to applaud and go home pleased with themselves. Further, there has to be roles for the cynics and the sceptics that must be far more powerful and forceful than the idealistic leaders and proponents of positive life forces and positive sum games. In Bernard Shaw's *Major Barbara*, the sinister Undershaft is the Zaharoff, the Krupp-like arms merchant who cynically serves his own ambitions and self-interest by playing on the antagonistic beliefs of the rival parties to encourage the arms race, celebrating each party's principles because his only concern was receiving an "honest price for his arms without respect of persons or principles." It is a role requiring more guts, more integrity and no hypocricy in comparison to any of the others. Cusins is the sceptical realist who thinks one can both pursue peace and supply arms at one and the same time, in fact, pursue peace by supplying arms since better arms are less barbaric and will help both parties realize that the arms race is indeed a suckers game and they had just as well come to some deal. Cusins, the archetypal American cousin to the Brits, believes that every citizen, in being given the god given right to bear arms, will prevent any oligarchy from seizing power and serve the common people or perish. Barbara, the daughter of the British arms cynic, married to her own cousin who has inherited the British international leadership role in the West, is the idealist who might be modelled on Alfred Nobel, the creator of dynamite who uses the riches from his patents to endow the Nobel prizes, believing that "when two armies can destroy each other in one second, all

armed nations will recoil from war and disband their armies." Canada was a country that had lost its faith in Christianity, in militant methodism and found the cause of peace to suit its idealistic temperment.

Canada is akin to the defrocked priest, Peter Keegan, of one of Shaw's other plays, *John Bull's Other Island*. His motto was that, "If we cease to do, we cease to live," while what Canada does best was show that its best actions and efforts was to keep everyone talking, not doing, for doing in this context meant killing and denying life to another. Keegan had said, "my way of joking is to tell the truth." Canada performs the role of confidence building one further ironic turn by asserting that, "my way of avoiding the truth of areas of incompatible conflict is to be a stand up clown."

Clowns give meaning to the Christian dictum to offer the other cheek. They are there to be abused and to amuse, They are not there to trumpet their own horn or to play the role of the detached and impartial spectator.

Any clown worth his or her salt is an equivocator. While scientists seek clarity and precision in meaning, clowns wallow in the ambiguity of their role. The problem was not how to eliminate ambiguity, but how to make it creative.

Canada as a Lion Tamer

A traditional tactic employed in international diplomacy, and elevated to lofty heights by the Canadian External Affairs establishment, has always been to employ quiet diplomacy. Usually this means diplomacy free from the glare of publicity. It also seems to imply that parties in negotiations can take positions in private which depart significantly from their public pronouncements. However, I want to stress a very different aspect of the art of quiet diplomacy by attending to the skills of a lion tamer, the quietist diplomat of all, one who performs in public but never utters a word or engages in dissimulation, one who stands in the public spotlight, but only to throw light on his skill rather than on himself.

A mediator is literally and historically an angel (from the Greek 'angelos' meaning messenger) from heaven. A mediator (Mal'ach in Hebrew) is one sent by God to pronounce the way divine justice will be brought to earth. As the Jerusalem Talmud describes the role, mediators "fill the intermediate space between earth and the infinitely distant realm of the Divine presence." If they get the illusion they are gods themselves and not just messengers, they may end up as Count Bernadotte did, an historical failure as a mediator who did more to harm the cause of refugees and peace that he was so dedicated to helping. Mediators must be grounded in the dirt and sand of the Middle East while attached to a sense of justice that

recognizes in advance that divine justice is never applicable on earth. The best that can be accomplished under the circumstances is the least injustice.

The role of the mediator is particularly crucial in the Middle East. My own model has always been Ralph Bunche. An individual of intelligence and integrity, he worked successfully in an arena in which public eloquence was often seen as more important than negotiations, in an area where Hermes, the Greek god of ruse and pretence, is often regarded as the appropriate role for the messenger. Quiet diplomacy is important in two senses. It must be quiet because it eschews public noise and personal aggrandizement for silent successes. It must be diplomatic because it recognizes the need for reticence, privacy and discretion. But if we still believe that we can avoid the intrusion of the media into every phase of the process, we will be mistaken. In addition to the parties at the table, in addition to Canada as head gaveller, in addition to the United States ensuring the table stays together, the media will inevitably be a partner in the process. Not only will Wilson's proclamation, "Open covenants openly arrived at" be the ruling norm, but because of that norm, there will be an unacknowledged partner in the negotiating process. Thus, we must, as Janice Stein warned, integrate a communications strategy as part of the whole process. Public opinion forged by the press will be integral to any results achieved.

The mediator in a peace process is first and foremost a tamer of wild spirits. S/he has to keep the tigers and lions from killing each other and the trainer. A lion tamer without a whip is like a sailor without a compass. S/he has no guide. The whip is not a tool of punishment but something to 'crack' and control the roars and growls that easily whip the animal spirits into a frenzy.

A lion tamer is the opposite of a saint. S/he is not in the lion cage to offer him or herself as a sacrifice. The lion tamer does not come to the parties in a conflict with a burden of guilt, asking to share in the responsibility for the terrible plight in which the adversaries find themselves. The lion tamer is too rich and haughty and proud to offer them bribes to keep the wild animals at a respectful distance from one another. The lion tamer is not like a monk who retires to a cave or a cell to live in solitude devoted to serving a higher being, but enters a cage to show s/he is a superior spirit to an animal, somone to be obeyed, someone who can keep the animal killer instincts in line. The peace broker is not a dreamy idealist enamoured by the good will inherent in all parties to the conflict, but one who is eternally vigilant, one who is alert evry second s/he is in the cage with those wild elemnts, that they can be governed by killer instincts if s/he loses the whip hand. The lion tamer must remain in control.

The lion tamer enters the cage, not because s/he fears the lions and the tigers, but because s/he regards them as noble

figures. S/he loves them and wants them to demonstrate that their animal spirits can express order and discipline. But s/he never forgets that these lions and tigers are capable of great cruelty and can easily tear both the tamer and each other into pieces.

The lions and tigers stalk the tamer warily. They are distrustful. Any stumble will seal the fate of the tamer. The lion tamer is the epitomy of eternal vigilance and acuity. For the lion tamer recognizes that without maintaining his or her position of authority and power at all times, without concentrating the monopoly on the use of coercive force in his/her own hands, while, at the same time, using the whip to signal that force is not to be used lest the cell turn into a jungle.

Herein lies the paradox. If these adversaries in the cage of peace negotiations are truly spirited creatures, then they are quite willing to sacrifice their lives for their collective goals. The goal which propels them is not survival. They are not trained animals willing to cow tow to the tamer just because s/he offers them scraps of food and whips them so that the blows keep them in line. A good animal trainer shares food with the lions and the tigers as if they are at a banquet together; the combatants are not treated as beggars to be offered alms.

Courage for Plato was the spirited horse girded to the wild horse, the only horse that could be guided by reason as the chariot sped its wild way towards heaven through the combined efforts of the double horsepower pulling the chariot. Courage is disciplined energy directed by reason so that wild and uncontrollable passions could be harnessed to a higher cause. For Aristotle, courage was identified with bravery and associated with fearlessness, someone able to stand his ground against what is awe-inspiring. What was most awe-inspiring for Aristotle, was death. Fearlessness in the face of a noble death constituted courage. In Plato, courage was identified with the energy to pursue what is highest in life guided by reason. In Aristotle, courage was the displacement of fear by awe in the face of death.

For both Aristotle and Plato, the spirited aspect of the soul was made up of two different elements - an irrational factor Aristotle called it th vegetative element - *Nichomachean Ethics*, I:13) that could not listen to reason, but in fact resists and opposes taking any direction from reason. The appetitive element - Plato's spirited horse - both listens to and obeys the commands of reason. The biggest joke played on humans by philosophers was convincing the masses that a lion tamer keeps his wild animals under control by reasoning with them. The lion tamer was purportedly a man of influence who could persuade, exhort and offer advice to the contending parties so that, in the end, they would follow the laws of reason.

In a circus we understand that what is fundamental is not what

is noble and virtuous in humans, but what is noble in animals who have no virtue, who are neither good nor bad, but noble nevertheless. For the passions are neither virtues nor vices, and virtue and vice are obsessions not passions. What a lion tamer requires when s/he enters the lions' cage is not reason, but faith, trusting not the lions and tigers, but that s/he can act as an angel of a lord and master and shut the lions mouth so they can neither growl nor eat the lion tamer. (cf. *The Book of Daniel*, 6:16-22) When the lion tamer is faced with Chaldeans on one side and Persians on the other, with Iraquis versus Iranians, the objective is not to demonize the parties as if either or both embody the antichrist or the powerful forces of absolute unreason, but to look at the tigers as Lord Byron did.

> Tyger, Tyger, burning bright
> In the forests of the night
> What immortal hand or eye
> Hath framed thy fearful symmetry.

In actuality, courage entails both a life and death struggle, a struggle to assert life and to struggle against giving into death and despair. Courage is not the mean between being rash and being cowardly, driven by the aspiration for honours and the fear of disgrace to be brave in war and in the face of noble death. The paradigm is not that of the soldier who wins a military cross but of a Daniel thrown into the lion's den by Nebuchadnezzar and who can reemerge from that den to inspire humans because he can interpret dreams and the fears of others.

Daniel is a dreamer himself. But he begins as an interpreter of the dreams of others. A lion tamer must first understand what the lions and tigers specifically fear and what they aspire to be. The confidence and security brought to the den by the lion tamer are not the qualities of the measures proposed but of the lion tamer himself. Not because his fear is not so great that he becomes a coward or so impoverished that he becomes rash. His or her cowardice are not byproducts of the right balance of fear in the face of danger, but the presence of faith when all the evidence indicates we are all doomed to destruction.

Fear, Awe and Laughter

If peace negotiations are to work, the conductor of those negotiations must be confident, secure and, most importantly, be able to engage others in laughter. Peace talks are really a three ring circus. In the centre ring, the Master of Ceremonies directs the whole performance and attends to a series of balancing acts, animal balancing acts, jugglers, high wire and trapeze artists. In one side ring, the animal trainer tries to keep in line the tigers on one side and the lions on the other providing lessons in taming and disciplining fear. In the circus ring on the opposite side, the clowns entertain us.

Thus, in the central arena, the main theme is balance rather than disciplining wild and agressive instincts. In the work of the acrobats and trapeze artists, the stress is on harmonization and synchronization. Though safety nets are provided, the critical factors are discipline and timing to allow the parties to meet at just the right time and place and in the right way. The spectators sit in awe and wonder at the precision, balance and expertise that combine to continually cheat death while the music of the orchestra assures us that everything has been rehearsed and this will be a flawless, if very tense and dramatic, peformance. We are constantly made aware of the costs of losing one's balance and the consequences of ill timing and lack of synchronization.

In the other side arena are the clowns, the most serious aspect of the circus performance. All their tomfoolery, all their tweaking each others' noses and pulling off each others' pants, merely disguises the Shavian skills of an artistic comic performance guided by a belief in a better world among all the pratfalls of humanity. Twenty clowns can and do emerge from a Beetle Volkswagen in spite of common sense and all beliefs to the contrary. The clowns disrupt, distract and deconstruct and make sure that everyone knows that everything is other than it appears to be. The highest art of all serious clowns is the production of Shavian subtleties by means of which seemingly irreconcilable opposites can be balanced in a cooperative enterprise, all the while advocating openness and directness as they practice the arts of gross deception that have been central to noble lies since the beginning of time.

The Paradoxes of Praxis

How, then, can these artistic skills be applied to situations of intercommunal conflict (in contrast to wars between states) without being undercut by the domestic angst of the mediator being projected onto this world stage where it does not belong?

The central issue of the other peace talks is trading land for peace. It could shift. It could, for example, become sharing land in peace, but this is highly unlikely. In either case, it does not matter. The refugee issue can only handicap the other peace talks if they are joined - such as if the issue becomes focused on the *right* of return of the Palestinians. It will exacerbate fears of the Israelis of large numbers (the same reaction as the Palestinians had to the arrival of the Russians) and provide ammunition for more radical Palestinian representatives. On the other side, it will shift leadership from the inhabitants of Gaza and the West Bank back to Tunis, thereby undercutting the authority and role of the indigenous population who have the greatest interest in making a deal. The issue of refugees must be established as one separate from the peace issue, but where its outcome will be critical to the peace talks. That is, it is necessary to establish that the multilateral working group on

refugees is not simply a fifth stream, but a stream belonging to a very different category where progress can be made independently of the progress of the peace talks themselves in a way that reinforces the security and confidence of **both** sides. This means that at the first meeting, the clear point that would have to be made would be a negative one. The story and context developed would have to show how the joining of the refugee and peace issues as necessarily dependent on one another would inhibit progress on either, at least as far as the Palestinian refugees are concerned.[24]

Secondly, if the talks were not to be event driven, they must not get bogged down over the agenda or the participation items. With respect to the former, it would be important to establish that any party's concerns could be included somewhere in the agenda, perhaps not necessarily with the wording and the form desired by the delegation. But how could a "right of return" be excluded lest the talks break down, and, at the same time included lest the participants break up the meeting over debates over the agenda? If it seems paradoxical to operate on an exclusion and an inclusion principle at one and the same time, it is.

With respect to participation, the decision made in Moscow was that diaspora Palestinians had to be included no matter what the Israelis said because a working group on refugees had to include the refugees themselves who were in the diaspora. If Palestinian diaspora personnel are not in attendance, then how can the key issue with respect to refugees - the Palestinian refugee issue be discussed? On the other hand, there was an argument that the refugees should **not** be included because the indigenous Palestinians and the Israelis both had a common interest in not having diaspora Palestinians. This was not only for power reasons, reasons of security and leadership, or economics, but diaspora political Palestinians could be considered the absolutely wrong people to deal with the issue as a refugee issue because they would use the refugee talks as an entrée to usurp the refugee agenda with their own political concern with asserting diaspora, and, in particular, PLO control and establish that the talks were, in reality, with the PLO.[25] More concretely, the Israelis would not attend.

There was a third issue - the participation of the UN and, in particular, UNRWA. After all, UNRWA was the Health, Education and Welfare Ministry of the Palestinian people and had as much if not more expertise in these areas than virtually any other party. How

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[24] This sentence is extracted from a memo provided by myself to the Canadian government gaveller prior to the first session and was originally in the future tense.

[25] I myself held this view until I recognized that this was the real purpose of the talks, to allow the PLO to assume responsibility for the talks while the de facto power did shift to the indiginous population. This will be explicated at greater length later.

could UNRWA not be included?

The next problem was - what should the central issue become? It was self evident that it would be the plight of the Palestinian refugees and not the Kurds and certainly not the return of Jewish refugees from Arab lands. The real issue was whether the focus would be on the humanitarian situation of the refugees - their physical well being - or their lack of membership in a state that would assume responsibility for their protection. The latter would reinforce the need for and recognition of some Palestinian state. But establishing a Palestinian state would not solve the plight of the refugees in the diaspora. Further, the failure to solve their problem might exaggerate irredentism and create a constituency for undermining a settlement dictated by the indigenous population.

An independent Palestinian state for the indigenous residents of Gaza and the West Bank - however it is configured and whatever, if any, state it is linked to - cannot absorb 600,000 to 1,000,000 Palestinians **at the time of a peace settlement.** Does that mean they continue to rot in camps? If so, we will only be witnesses to an upsurge in terrorism that will make the seventies look tame and the intifada look like a picnic. The diaspora Palestinians cannot be left out of the deal. On the other hand, they cannot return immediately to a new Palestine or that Palestine will have great difficulty surviving and developing.

In sum, the Multilateral Working Group on refugees would be burdened right from the start with five paradoxical requirements. First, how could the 'right of return' be made a part of the agenda while also being excluded from the discussion. Secondly, how could the diaspora Palestinians be represented while the effort of the meeting strengthened the role of the indigenous Palestinians politically? Thirdly, how could UNRWA be excluded when UNRWA was, in practice, the major Health, Education and Welfare Ministry of the Palestinian people? Fourthly, how could the focus be on humanitarianism **and** on the right of the Palestinians to be members of a state of their own which guaranteed their protection? Finally, if the Palestinians had a state of their own it would, of necessity , as a sovereign state charged with protecting the Palestinian people, have to give a 'right of return' to Palestinians just as Israel does for Jews, but if that 'right of return' were actualized, certainly at one fell swoop, it would likely undermine the ability of a Palestinian state to provide any protection; the practical difficulties would swamp and undermine the nascent state.

The Sessions of the Multilateral Working Group on Refugees

Basic to all of the issues put on the agenda of the WGR is the issue of step by step incremental takeover which the Palestinians wanted to resist until the fundamental problems of self-determination were resolved. Thus, each move for the Palestinians

was perceived to be an issue of state building - obtaining diplomatic recognition to Palestinian delegates to the multilaterals. The real dynamic of the multilaterals was to facilitate the Palestinian takeover of self-governing institutions and reduce the Israeli presence, but the Palestinians feared being abandoned at this stage while some Israelis fearfed that these were just a preparation for an independent Palestinian state. Moderates saw these talks as a stage in confidence building measures; interim measures are the critical steps to peace and not highways to future conflict (the Israelis) or stopgaps to prevent full self determination (the Palestinians).

The fifth working group was set up as a result of the Palestinian boycott of the Moscow talks and a compromise agreement by the United States as the key co-chair and convener of the talks. The fifth set of multilateral talks would focus on refugees. And, presumably because the topic of the talks was refugees, the United States agreed that the joint Jordanian-Palestinian delegation could include Palestinians from the diaspora. Canada was invited to "gavel"[26] the first Working Group on Refugees as part of the Middle East Peace Negotiations.

Session 1

Syria and Lebanon boycotted the first set of talks in Ottawa in May of 1992, ostensibly until they could see real progress in the bilateral talks. The Israelis also boycotted the talks because they argued that the inclusion of diaspora delegates as part of the Jordanian-Palestinian delegation broke the agreement that Palestinian delegates, who were not known members of the PLO, would only come from the West Bank and Gaza.

What was involved in the dispute over the delegation was not only the conflict over territory, but the fight over legitimacy. The Israelis, in having the Arab states enter into face to face negotiations with the Israelis, had won their long battle for legitimate recognition by the Arab states *de facto* if not yet *de jure*. The Palestinians had apparently lost the battle to be recognized on its own as a legitimate and recognized party to the peace talks, but appearances would prove to be deceiving. Further, the ostensible leadership of the Palestinians, the Palestine Liberation Organization (PLO), also could not attend the talks in any official way, nor could any West Bank delegate who was recognized as a formal official of that organization or who came from Jerusalem. Yet the Palestinians publicly consulted with Arafat and coordinated their strategies through the PLO. Clearly, issues

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[26] The United States and the Soviet Union (succeeded by Russia) were the official co-chairs. Japan and the EEC were the official co-hosts of the multilaterals. The specific country asked to actually chair a particular session of a specific set of multilateral talks was referred to as the "gavel".

of sovereign rights over territory and the political legitimacy of the respective parties were crucial aspects of the Multilateral Working Group on Refugees and would continually upstage the focus on humanitarian issues..

In my analysis of the critical skills needed to overcome the difficulties and the paradoxes indicated above, I indicated three sets of skills. One would require orchestral conducting skills which would enable very disparate sounds and voices and emotive expressions to be combined in a harmonious composition. The second required Shavian wit and irony in the guise of broad slapstick farce rather than the high seriousness of instrumental rationality. The third required the quiet diplomacy of a lion tamer who would have to keep his lions and tigers lined up on different sides of the same cage while respecting and honouring them as noble warriors at the same time as they were being domesticated in the rights of passage into a civil co-operative society.

Ia cannot illustrate how each of the occurrences at the three sessions demonstrated these skills and how they related to overcoming the paradoxes outlined in the previous section. But I will take examples which will indicate the skills alone with virtually no substance, and then show how they were applied to resolving the substantive issues indicated above.

Let me take the last skill first - that of the lion tamer. At the first session, one of the diaspora Palestinian delegates, in a very ardent, impassioned speech, suggested that the organizers were out to squelch his right to speak about the essential rights in dispute and demanded that a paper he had prepared be circulated. A lion had roared and challenged the "gaveller" directly. Tthe "gaveller" had one of the subordinates pick up the long position paper. Within ten minutes, while the lion was still roaring, that paper had been reproduced and was in the hands of every delegation. That was an exercise in disciplined performance which left the delegate non-plussed. It would be that very same passionate delegate who would become an ally of the "gaveller" in the third session and would save that session and ensure that the Palestinian delegation remained part of the process.

Let me now provide an instance of comic art. The "gaveller" had at one and the same time to be a strict disciplinarian and a clown. What is the essence of the art of the clown - to appear in a costume clearly oversized, to wear shoes that are obviously far too large for you to fill and to be assigned the most perilous acrobatic feat when everyone knows your chief clowns lisp, lose their baggage when they travel, make quixotic peace initiatives to ostracized countries in the final minutes of their rule and have, generally, an outstanding record for appearing clumsy, and then, with unfailing artistic skill, prove in the minutiae that, in fact, they are artists of consummate skill who can perform miracles in mundane matters. A clown must receive the grudging acknowledgement

that behind the oversized shoes and costume hides a superb artist.

This was quickly demonstrated in dealing with the subject matter of the talks - refugees. Did refugees refer to those outside their homeland in accordance with international refugee law, excluding displaced persons within a country who are normally called refugees in ordinary language? Were the following included or excluded: Iraqi refugees in Saudi Arabian camps following the Gulf War who refused to be repatriated but whom Saudi Arabia would not allow to settle; Kurdish refugees who had set the first precedent for international humanitarian intervention to protect a group of refugees; Jewish refugees who had fled Arab lands to move to Israel following the War of Independence; Syrians who had fled from the Golan Heights when Israel occupied them in the 1967 war; Lebanese who had fled the internecine struggles in that troubled land or the areas under Syrian military control or the security zone in the south that Israel effectively controlled; or were Palestinian refugees to be the only topic of discussion? If so, which Palestinians? Those defined as refugees following the 1948 war as having lost their homes and their means of livelihood and were registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)? But these originally included 30,000 Jews who fled the territories occupied and controlled by the Arabs in the absolute ethnic cleansing of their side. What about the Palestinians forced to flee after the 1967 war and were not registered by UNRWA? What about the Palestinians kicked out of Kuwait where they had lived and worked for decades and who were forced to return to Jordan where most held citizenship? As individuals who had become citizens of other states, were they entitled to be considered refugees any longer, given the postwar universal definition of refugees governing the United Nations High Commission for Refugees? Since most of the Palestinian refugees still lived **within** mandatory Palestine, were they to be considered refugees? Since about half the Gazans were still in occupation of their original homes and lands, but were stateless, were they to be considered refugees?

No one had told the Canadians which refugees were to be discussed. The Canadians in the planning sessions decided that they would not introduce any restrictions. Any groups in the Middle East that any of the participants considered to be refugees could be discussed. Canada had reversed the traditional circus act of allowing twenty clowns to emerge from a Volkswagen bug. Canada allowed twenty clowns to enter the bug, but only one, in fact, emerged to be discussed, the Palestinians. And when they took the roof off the Volkswagen at the first meeting, everyone could see the car was empty. The other refugees just vanished into thin air.

The form of the meeting played on ambiguity and equivocation. So did the substance of the talks and they demonstrated the third skill of the mediator - that of the orchestral leader as well as a clown and lion tamer. What was the thrust of the first set of

talks? Confidence building. Each player, though totally clumsy in handling their respective instruments, had to be imbued with both a desire and a confidence in themselves that they would one day play well and could become part of an orchestra. Mark Perron, the leader of the Canadian delegation and "gaveller" of the Working Group on Refugees, described this thesis clearly. The goal was to play a positive sum game to engender trust and to set to one side the sources of mistrust. In his public release following the talks, he stated, "The situation of displaced persons in the Middle East carries with it many painful memories and much history; we cannot ignore those memories, or alter that history. But we can try to reshape the future in a positive way." What did that mean? Ignore the memories. Alter history. Try to do what is doable without getting bogged down in the difficulties in mastering the instrument and creating a working orchestra. Most of all, finish the act. This is a dictum that any performing artist would immediately recognize. What is past is past. Get through your gig without messing up. What was said in the conclusion of the talks was doublespeak for the real tactics of the Canadians - keep everyone smiling and happy and delighted most of all with the orchestral conducting.

This skill became particularly appropriate when dealing with a dispute that developed on the last day of the first session, largely arising from the discontent of the Egyptian and Jordanian delegations. The subject of the dispute is not so relevant. The style in which it was conducted and the outcome were. Everyone who described the events of those tense few hours when the meeting appeared to be on the verge of breakdown and the Americans predicted that it would, in fact, dissolve with nothing accomplished, depicted it in comic terms. Delegates were running in and out like a Keystone Kop movie. A crisis was at hand. The delegates were behaving like serious, melancholic clowns instead of unskilled players on their instruments with which they had to develop confidence. It was apparent to all that a serious rehearsal had degenerated into a comic performance. Calling it comic would have betrayed the seriousness with which it was taken and would have undercut the real comic sense that everyone felt in the hyperinflated tension.

The Jordanian concerns were, in fact, very serious. They were burdened with hundreds of thousands of returnees from Kuwait and the Gulf, and no attention seemed to have been given to their problem. The Canadians promised they would give that issue their serious attention in a future session. If the Jordanians were concerned about a substantive issue, the Egyptians were concerned about their role. After all, the whole peace process had begun because of the initiative and creativity of Sadat. The Egyptians expected and demanded a role commensurate with their historic initiative. The Palestinians still suspected the Egyptians and continued to see them as traitors to their cause, ironically refusing still to acknowledge that they were there because Egypt had taken the initiative it did. Egypt was mollified by obtaining

a more prominent role when the delegations returned to the final session and a promise that they would be given higher billing in the future. Corrections to errors about roles and style took place immediately, while substantive issues went on an agenda for future consideration. This was simply because the delegates could not yet play as an orchestra let alone play the instruments they had been handed. Yet they had to be given the confidence that they would master those instruments and that all the delegates would end up making music together.

Were these same methods reflected in dealing with the central substantive issue of the refugees? In true dialectical 'on the one hand', and 'on the other hand' style. Yes we must act right away since "the refugee problem could not and should not await the successful conclusion of bilateral negotiations" since "it would be tragic and irresponsible to put these problems of real and profound human need on hold while waiting for peace to come. At the same time, it was equally clear to all delegations that the refugee problem was essentially political in nature and that the underlying political issues--while extensively discussed during our meeting--can only be addressed definitively through a comprehensive settlement." In other words, the central issue of the refugees was one of rights - right to return, right to compensation, etc. - but what would be dealt with were issues of needs, the identical strategy UNRWA had followed for over forty years in dealing with the Palestinian refugee question. Issues of rights were critical, but the sessions would deal with needs. That was the rhetoric. The reality was otherwise. For under the guise of needs, as we shall see, rights were, in fact, dealt with.

Whose needs? "The human needs of displaced persons." The focus of the discussions would not be on the right to return or on compensation for those in the Palestinian diaspora, but the quality of life issues of Palestinians still in their homeland. The major emphasis was to be on: "human resource development, the development of social and economic infrastructure, vocational training and job creation, child welfare, public health and the compilation of data bases." But a seventh subject touched on a right to return in a humanitarian guise. An item had been placed on the agenda in the first session in the guise of humanitarianism and needs which would address the issue of rights - "family reunification."[27]

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[27] Cf. John Quigley (a Professor of Law, Ohio State University), "Family Reunion and the Right to Return to Occupied Territory," *Georgetown Immigration Law Journal*, 6:2, 1992 and Rex J. Zedalis (a Professor of Law, University of Tulsa College of Law), "Right to Return: A Closer Look," *Georgetown Immigration Law Journal*, 6:3, 1992. See also Ruth Lapidoth, "The Right of Return in International law, with Special reference to the Palestinian Refugees," *16th Israel Year Book on Human Rights*, 103, 114 (1986) and "Public International Law", *24 Israel Law Review* 451, 470-471 (1990) and Candy Whittome, "The Right to Unite: the Family Reunification Question in the Palestinian Occupied Territories", *Law and Practice* 11-12 (1990).

There were four separate categories of persons who could fit into the issue of family reunification. The first referred to the refugees who had fled or been forced to flee in 1948. As indicated earlier, the United Nations General Assembly had voted that those refugees had a right to return or, at their option, the right to compensation for their losses. They had been given a moral, if not a legal claim which had been the basis for the continuing funding of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) for over forty years. Until that moral claim had been settled, the international community maintained its support for the refugees. And those refugees who had been separated from their immediate family members all these years, who had not yet been reunited with their families as a result of previous programs of family reunification, particularly in the period immediately after the 1948 war, were obviously candidates for consideration for family reunification.

The second category were those who left, were forced to flee or were absent from the West Bank and Gaza when the Israelis captured the territories in 1967. The argument for the right to return of these Palestinians is based on international law governing the responsibilities of a belligerent for the civilian population of captured enemy territory. Under such law, everyone has the right to leave *and return* to their own state. But that was the nub of the issue. The law seemed to be applicable to citizens of a state. The issue for many Israelis was, that although the territory was captured, it was not territory belonging to an enemy since it had never been assigned to Jordan by the United Nations, so Jordan did not even have a moral claim on the territory and only two states had recognized Jordanian claims for the territory. In any case, in its rivalry with the PLO Jordan had surrendered any claims for the territory.

Nevertheless, the Israelis did admit it was a territory under military occupation thus making the occupying power responsible for maintaining order in the territories and the public life of the inhabitants. But they claimed that even this responsibility did not extend to the readmission of individuals who were not inhabitants at the time Israel established its military rule. Nevertheless, Israel did readmit 14,000 as humanitarian cases under family reunification.

The third category refers to those expelled or deported by the Israeli Defence Force after 1967 or who went abroad and did not return to renew their residency rights in the one or three year period allowed for such renewals. A few of the latter were allowed reentry under the family reunification program but were otherwise rejected, including stateless Gazans thrown out of Kuwait but who had not returned to renew their residency permits in Gaza while living and working in Kuwait. As for the former group, there have been many condemnations of Israel that such deportations are illegal under the Geneva Civilians Convention of 1948 to which

Israel is a signatory, but the Convention has never been incorporated into Israeli domestic law and, in any case, Israel denies the Convention is applicable to the West Bank since it applies to enemy territory and Israel argues that neither the West Bank nor Gaza were recognized as territories belonging to the enemies from whom Israel captured them. Further, even if the law did apply, the Israel Supreme Court interprets the law as forbidding mass expulsions on the pattern of the "ethnic cleansing" practiced in Croatia and Bosnia-Hercegovina during 1992 rather than to individuals expelled for security reasons.

The fourth category refers to legal residents of Gaza and the West Bank who marry partners who do not have legal residence. Under Jordanian law, if the individual with legal residence is a male, the wife may join him, but a female is required to live in the place of legal residence of the husband. This law is applicable in Jordan currently. Some Gulf returnees originally resident in Gaza, and therefore lacking Jordanian passports, who had married Palestinian wives with Jordanian documents, were not allowed to return with their wives. Israel allowed reunification of such families, but limited the numbers and, after 1983, permitted the reunification for only temporary periods of three months. The Israelis claimed that these efforts at family reunification were politically motivated and the vast majority were not genuine marriages. In 1987 Israel began to follow Jordanian law and registered children only if the father was a legal resident. In 1989, Israel went further and began to forcefully expel the wives of legal residents if the women were not legal residents themselves and, sometimes their children as well, but was forced to back down after receiving widespread condemnation, including a direct criticism from Margaret Tutwiler of the American State Department.

I have gone into a bit of detail to indicate that the Israeli government recognizes the right of family reunification though it is sometimes a recognition without much substance and at other times is administered rather sparingly and sometimes even harshly and cruelly. But there is no dispute about the right, merely about the application of that right. This is in radical contrast to the right of return of refugees which the Israelis do not recognize at all. In other words, the one issue that did effect refugees as refugees, family reunification, was not one with which Israel had any quarrel in principle. Thus, if 200 or 500 or 2,000 cases of family reunification cases could be found that were not considered by Israel to be bogus or a threat to Israel on political or security grounds, then perhaps the reunification of such families could serve as a potential confidence building measure.

Family reunification appeared as a tough issue with serious political repercussions for confidence building, the sense of security for Israel and the sense of self for the Palestinians. To approach the issue indirectly, the stress would be palced on amelioration and concrete practical action rather than any effort

to attend to the fundamental political issue of refugees.

The substantive orchestral skills of the conductor were demonstrated in setting the agenda. The comic art was demonstrated in a substantive way by the dialectic of talk and action. Delegates had to be encouraged to engage in more talk, while talking about the urgency of action. Academics, the epitomy of talkers rather than doers,[28] were hired to prepare intellectual strategy papers, background briefing notes, bibliographies, to provide the semblance that the Master of Ceremonies in the clown costume knew the issues. All the while, the real appeal was to the emotional heartstrings, the fear of war and the hope for peace. Intellectual analyses provided a security blanket, but played no real role in the discussions. The academics would be drawn into discussions with one another.

One thrust to ensure both that talk would continue but **no** action would take place for the participants were not yet ready for action was to enlist players who were superb in the arts of talking while the delegates talked about the urgency of action. In a second thrust, Canada committed itself to consulting with the regional parties, including those who had refused to attend the first session of the Working Group - the Israelis in particular. Only if the regional participants provided no direction, would Canada step into the breach. If they did provide direction and suggested that the right of return of refugees be discussed, Canada would fall flat on its face to demonstrate that following such a clear direction was an impossible topic of conversation since **all** sides had to concur for it to be discussed. In other words, the function of the gaveller was to spend lots of time calling for clear directions and guidelines from the participants to the conflict, but if they presented any such guidelines about the central issues, they were to be obfuscated because they did not fit the format of creative ambiguity and avoiding the central issues that would at this stage prevent the orchestra playing together at all. Talk about action while enlisting expert talkers, having everyone play the role of a talker while the "gaveller" listened, all under the guise of the urgency of action - all these were entertaining distractions to ensure the players continued to practice even though the sounds they made were more screeches than indicating with any semblance that the group would be able to play together

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[28] To quote the medieval historian Ibn Khaldun, "Scholars of all people are those least familiar with the ways of politics." Scholars provide distance and detachment. They cannot be the mediators and negotiators. If an academic becomes a mediator, as Henry Kissinger did, he leaves the refuge of detachment for the hurly-burly and fast track of politics requiring quick decisions. Kissinger recognized the need to have **both** roles filled. Academics, if they are to be useful, must not get so close and intimately involved in the discussions that they lose their sense of distance and their freedom to provide critical commentary on what is being said and done. On the other hand, they can also be used for comic diversion.

one day.

But family reunification had been placed on the agenda. Was this, at least, not a substantive issue dealing with refugees? To understand how the "gaveller" played the role of a lion tamer on a substantive issue, the substance of the issue needs to be explicated in more detail.

Of the seven elements agreed to as the agenda for discussion resulting from the first session of the Working Group on Refugees, one concerned data gathering, five were quality of life issues for residents in the West Bank and Gaza, which certainly included the refugees, and only one touched on the substantive refugee issue, their right to return. That was family reunification. It is that aspect of the discussions that would be a central subject of debate in subsequent sessions.

It is difficult to see how permitting spousal reunification has anything to do with security issues. The discussion of family reunification is a Confidence and Security Building Measure for the delegates, to make them secure, and not a threat to the security of the Israelis.[29] Fundamentally, the issue of family reunification is a problem of ex-communication, of people separated from their land and their loved ones and permitted to communicate in very limited ways. Refugees are always a tale of those who have suffered incommunicable pain and long to be restored to a communicative community where they are not constantly asking, "Who am I? What am I? Where am I?" The focus of refugee discussions, particularly ones on family reunification, is on restoring the broad spectrum of communication between people on the same side, not improving communications between enemies. The issue is not miscommunication and communication but ex-communication and recommunication. Further, communication is normally about words and speech and using them so that behaviour will not be misinterpreted. Communication for refugees comes prior to any speech, rooted as it is in an embodied, historical and specific geographical place.[30] Refugees are broken bodies, trees separated from their roots and souls in search of integration and harmony.

To put the issue in less poetic and more political language, the fundamental issue of family reunification was **perceived** to be an issue which separated the Israelis and the Palestinians, but it

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[29] Salim Tamari told me the issue here was the 2000 or so separated during the 1967 war and that Palestinian leaders saw an agreement over this issue as a confidence building measure between the Palestinians and the Israelis. An Israeli official said that 100,000 had already been repatriated and that those 2,000 refused were either deportees or those refused entry because they were deemed to be a security risk.

[30] cf. Merleau-Ponty, Phenomenology of Perception, London: Routledge and Kegan Paul, 1962, p. 197.

was really an issue to allow the Palestinians to become one body politic, to be a real family, to allow the diaspora and the indigenous population to demonstrate to themselves and the world precisely that fact. If the right of return was central to the political issue of self-determination, family reunification was much more central as it dealt with 'the heart of the matter' in the most literal sense of all, the constituting of the palestinians as a single body politic. Family reunification was an issue which the Palestinians could roar about together and demonstrate they were truly a pride, a people committed to being together.

The other issues on the agenda were supplements to this central theme and indicated that the central issue was not the division between the Palestinains and Israelis on the substantive questions on this agenda, but the divisions between the Palestinians themselves. Let me illustrate by briefly discussing one of the other agenda items - health.

On the health issue, there was a battle in the Palestinian community over priorities such as primary versus tertiary care, the former emphasizing prevention, accessibility, types of services, infectious diseases and high infant mortality, while the latter dealt with medical issues of central concern to hospitals, - hypertension, heart disease and cancer. The primary care system had been used as a device to organize the Palestinian community politically through local organization and control. The central governing institutions for the hospitals were identified with the Israeli occupation. Yet these same hospitals played a role far more important even than the saving of individual lives of those in need of acute care, for they were key institutions in state building. If the Palestinians were to move from self determination in terms of administrative self-governance to self-determination in the form of controlling their own state, a transition would be needed in which hsopital based care was accepted as a central issue as much for political reasons as for any health agenda, while the clinic movement became a central device for delivering preventive health care rather than as a device for political organization. In other words, the traditional institutions of the health care system had to be inverted in their roles - hospital based care shifting to a political role while clinics would assume more medical functions.

Canada ended up congratulating itself after the first session in May as having produced , in the words of an elder statesman from External Affairs, "the greatest diplomatic coup since Suez." And in the round of discussions with the participants, everyone seemed pleased and delighted by Canada's commitment and performance, though some Palestinians expressed some concern about Canadian timidity. Thus, Mark Perron concluded with confidence, quoting his Minister, Barbara McDougall, that, "this process will contribute in an important way to confidence building and reconciliation in the Middle East."

The Second Session

In the second session of the RWG begun in Ottawa on Remebrance Day on November 11, 1992, the main issue was the make up of the Palestinian delegation. The new head of the delegation was a well known PNC member. This was the first session the Israelis were to attend. They had finally agreed to allow diaspora representatives of the Palestinians be present at the talks. The Israelis withdrew as this seemed a direct contravention of the terms of agreement in Madrid. The safe facng formula entailed that the head of the delegation resign and currently declare that he was no longer a memeber of the PNC, though he remarked openly to many of the delegates present that this would not prevent him rejoining on Novemebr 13th.

The effect was that the Palestinians had demonstrated not only the unityb of the diaspora and indigenous populations, but the formal leadership of the PLO even as the centre of gravity had shifted to the indigenous population. By the end of the second session of the WGR, the most important pre-issue had been settled, the reunification of the Palestinian people, although this nowhere appeared as an item on the agenda.

The Third Session

The third session has held in Oslo on the refugee issue has now ended. Canada gavelled those talks. The first session set seven items as agenda topics, items which have now been combined into five areas: Data Bases; Family Reunification; Human Resources Development, Training and Job Creation (a combined one); Public Health and Child Welfare (a combined one); and Social and Economic Infrastructure. By the second session, the Israelis had been induced to attend even though Palestiniand from the diaspora were part of the Palestinian delegation.

By the end of the third talks, the following progress can be said to have been made. First, although the Palestinians are part of the Jordanian delegation, they act and are treated as a separate delegation. Their attachment to the Jordanian delegation is only formal. Secondly, the Palestinians and Israelis are addressing one another directly without any mediators. Thirdly, by the end of the third talks, many of the other countries present assumed different areas of responsibility to help advance the negotiations. For example, the Norwegian have assumed responsibility for shepherding the data base theme on behalf of the Working Group and the European Community has agreed to compile a comprehensive inventory of existing projects now operating to assist refugees for the purpose of identifying both gaps and opportunities for initiatives. The French, in particular, the diplomat, Monsieur Bajolet, has agreed to follow up his first round of consultations on Family Reunification with a second visit and submit his findings to the

Working Group. The Americans took the lead in a training initiative and in shepherding this item on the agenda, Italy agreed to convene an experts group on the health issue and the EC assumed responsibility for the social and economic infrastructure agenda item. Tunisia, followed by France, Austria and Spain, have agreed to host future meetings.

What has been clear from the start is that, other than the issue of representation at the table, the one contentious issue thus far has been family reunification, the issue which is most central to the issue of refugees per se rather than their well being and that of the rest of the population. The Israelis have been suspicious that this issue was a back door to the 'right of return' and a direct challenge to their sovereign control over entry and their security needs. The Palestinians have asserted that family reunification was a critical issue in confidence building.

Bajolet, as a result of his April 26-28 meetings with the Jordanians, Palestinians, Israelis and Egyptians, reported that the Jordanians, Egyptians, Israelis and Palestinians had agreed that the "humanitarian" aspects of this issue should be dealt with in the multilateral talks. In particular, the Palestinians distinguished between the political issue of the right of return under UN resolution 194 and the humanitarian issue of family reunification. Except for the Egyptians, the other three parties saw the two issues as interconnected, the Palestinians and Jordanians stressing that progress on one should not prejudice the outcome of the other, while the Israelis stressed that any developments on the humanitarian issues of family reunification must be subordinate to and finalized in the bilateral discussions, once again emphasizing a fear that humanitarian issues will be used as a back door to political ones.

Before getting into the content of the issue, it is important to stress how significant it has been in bogging down the talks. There was great jockeying by the Palestinians to try to ensure it was the first item on the first day, and only conceded to include it as the first item on the second day with a face saving verbal formula which seemed to allow the Palestinian delegation at the table to get around the strictures set down by the PLO controller from Tinisia who was trying to manage the delegation from the 14th floor of the hotel.

Further, when the final compromise was arrived at and apparently agreed to which made only a very circuitous reference to UN resolution 194 by saying that the political aspects would not be ignored, the Palestinians seemed ready to walk out apparently on the basis of instructions that no progress had been made on this, they were induced to remain by the skill of the "gaveller" who managed to refocus attention on what had in fact been agreed to and its measure of progress.

The substantive issues on family reunification are the following:

1. Recognition desired by the Israelis of the extent to which family reunification has been allowed in the past even though the Israelis claim that under international law for militarily occupied territories they are not obligated to permit family reunification, versus
Recognition desired by the Palestinians of the degree of suffering and hardship caused to many Palestinian families because of the inhumane policies of the Israelis on this issue.

2. Is the issue a confidence building or a threatening issue?

3. The definition of a family as either referring to a spouse, dependent children and parents, or should be more widely cast to refer to siblings as well as first cousins, aunts and uncles.
4. The reference set - families who did not renew or who were unable or unwilling to renew their entry permits after 1967 or, in addition, families separated by the 1967 war or even the 1948 war. The latter issue is particularly accute for those Palestinians who had been long time residents of Kuwait and even saudi Arabia and have recently been evicted.

5. The rules of adjudication for family reunification cases - to what degree they are transparent and generic and to what degree they are security norms confidential to the state authority administering them, in particular, in an apparently arbitrary manner on individual cases without normative guidelines whatsover.

5. The Palestinians, in particular, stressed that family reunification is not only about issues of unting Palestinians outside and within the territories, but to Palestinians within the territories who are separated by restrictions on movements. It is not clear whether this was a refernce to movements within Gaza and within the West Bank, or whether the refernce was to movements between Gaza and the West Bank or even between Israel and the Occupied Territories.

6. There are also procedural issues - costs of permits, frequency of renewal, duration of exit permits, automaticity with respect to children where only one parent has leagal residence.

7. International supervision of the administration of the rules.