

Palestine Papers and the Clinton Parameters

By Staff, Christians for Fair Witness on the Middle East
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Executive Summary

Earlier this year Al Jazeera released the “Palestine Papers” -- nearly 1,700 files of documents authored by Palestinian negotiators and advisors, memorializing a decade of Israeli/Palestinian peace talks.¹ Christians for Fair Witness on the Middle East has carefully reviewed the Palestine Papers, including those documents concerning the “take it or leave it” deal that U.S. President Bill Clinton proposed to both Israeli Prime Minister Ehud Barak and Palestinian Authority President Yasser Arafat in December 2000, the so-called “Clinton Parameters.”

The Palestine Papers reflect a seeming lack of interest in President Clinton’s proposals for a final status agreement on the part of the Palestinians.

I. Prior to the Clinton Parameters, the Palestinians Did Not Present a Settlement Proposal or Counter-Offer at Camp David

An April 22, 2001² Palestinian Negotiations Support Unit (“NSU”) memo entitled “Possible Questions and Answers to Camp David,” anticipates questions the international community might ask the Palestinian leadership about Camp David and provides suggestions for possible responses. <http://transparency.aljazeera.net/en/document/67>; <http://transparency.aljazeera.net/files/67.pdf>.

The memo poses the question:

Why did the Palestinians never present a comprehensive permanent settlement proposal of their own in response to Barak’s proposals at Camp David? (Id.)

¹ The “Palestine Papers” as published by Al Jazeera represent only a relatively small number of the Palestinian Authority (“P.A.”) documents that exist on the peace process. As Khaled Elgindy (an advisor at the Palestinian Negotiations Support Unit from 2004 to 2009 and a key participant in the Annapolis negotiations) stated when he spoke at the Palestine Center in Washington D.C. on February 11, 2011, “it is a useful but limited snapshot of what actually occurred.” <http://sabbah.biz/mt/archives/2011/02/17/the-palestine-papers-fallout/>.

² The date April 22, 2001 is written on the document itself. A November 30, 2000 date on the Al Jazeera summary appears to be an error. The memo refers also to events at Taba in January 2001, so it was clearly at least edited at a later date.

But it does not offer a direct answer. The memo lists what the NSU apparently saw as the different approaches each side took to the peace negotiations. For example: “Israel seeks broad concessions from the Palestinians: it wants to annex Palestinian territory, including East Jerusalem; The Palestinians, on the other hand, seek the right to establish a viable, sovereign State on their own territory, to provide for the withdrawal of Israeli military forces . . .” (Id.)

The memo also takes the position that “Israel’s proposals in the initial stages of negotiations offered Palestinians very little hope that a just solution would be reached.” (Id.)

None of this, however, really explains why the Palestinians did not put their own counter-proposal on the table at Camp David.

II. **President Bill Clinton Presented the Clinton Parameters in December 2000 After the Breakdown of Negotiations at Camp David**

The Palestine Papers memorialize the proposal President Clinton presented to the Israelis and the Palestinians in Washington D.C. on December 23, 2000 -- five months after Camp David. <http://transparency.aljazeera.net/en/document/48>; <http://transparency.aljazeera.net/files/48.pdf>. The “Clinton Parameters” are set forth in a memo entitled “Meeting with President Clinton [sic] White House, 23.12.2000.” (Id.) This memo makes clear that the Palestinians had the same substantial understanding of the proposal that the Israelis, Dennis Ross and Bill Clinton had,³ and that there was no confusion about the terms. (Id.)

The memo states that Bill Clinton proposed an “agreement [that would] clearly mark the end of the conflict and its implementation put an end to all claims.” (Id.) According to the memo, President Clinton’s proposal included:

[A] Palestinian state [consisting of] 94-96% of the West Bank territory [in] contiguity The land annexed by Israel should be compensated by a land swap of 1-3% in addition to territorial arrangements such as a permanent safe passage [between Gaza and the West Bank] the state of Palestine will have sovereignty over its airspace [With regard to] Jerusalem The general principle is that Arab areas are Palestinian and Jewish ones are Israeli. This would apply to the Old City as well. . . . The Israeli side could not accept any reference to a right of return that would imply a right to immigrate to Israel in defiance of Israel’s sovereign policies on admission or that would threaten the Jewish character of the

³ See Clinton, Bill, *My Life* (Vintage Books. 2005) at pp. 936- 937 ; Dennis Ross, *A Missing Peace: The Inside Story of the Fight for Middle-East Peace* (Farrar, Straus and Giroux - June 2005) at pp. 809- 813.

state . . . return to the West Bank, Gaza Strip, and areas acquired in the land swap would be a right to all Palestinian refugees . . . rehabilitation in host countries, resettlement in third countries and absorption into Israel will depend upon the policies of those countries. (Id.)

The Palestine Papers record President Clinton as having noted that his plan would:

. . . give[] the Palestinian people the ability to determine their own future on their own land, a sovereign and viable state recognized by the international community, Al Quds as its capital, sovereignty over the Haram, and new lives for the refugees. It gives the people of Israel a genuine end to the conflict, real security, the preservation of sacred religious ties, the incorporation of 80% of the settlers into Israel, and the largest Jewish Jerusalem in history recognized by all as its capital. (Id.)

They also indicate the Palestinian understanding that President Clinton told the Palestinian and Israeli negotiators to whom he was presenting his proposal that “This is the best that I can do” (id.) and instructed them to:

Brief your leaders and tell me if they are prepared to come for discussions based on these ideas. If so, I would meet them next week separately. If not, I have taken this as far as I can. These are my ideas. If they are not accepted, they are not just off the table, they also go with me when I leave office. (Id.)⁴

III. The Palestine Papers Reflect a Lack of Interest in the Clinton Proposal

The first memo in the Palestine Papers subsequent to the presentation of the Clinton Parameters on December 23 is a memo dated December 29, 2000 entitled “General Situation.” <http://transparency.aljazeera.net/en/document/49>; <http://transparency.aljazeera.net/files/49.pdf>. The memo discusses several things, including President Clinton’s initiative. According to the memo, however:

There are no visible signs of development on the political front

⁴ On December 27, 2000, Israeli PM Ehud Barak obtained authorization from his cabinet to accept the Parameters. According to President Clinton, “It was historic: an Israeli government had said that to get peace, there would be a Palestinian state in roughly 97 percent of the West Bank, counting the swap, and all of Gaza, where Israel also had settlements. The ball was in Arafat’s court.” (See Clinton, Bill, *My Life* (Vintage Books. 2005) at p. 938).

and peace talks remain deadlocked. Apparently, the Palestinians would like to restructure the process completely and return back to the basic framework and principles of the Madrid Conference. They argue that any diplomatic progress is possible only in the strict framework of resolutions 242 And 338. (Id.)

A January 2, 2001 memo prepared by the Legal Unit of the NSU (with “President Clinton’s Proposals” written on the “Re” line) appears to be an advisory memo, counseling Chairman Arafat to turn down President Clinton’s proposal. It states that:

We believe that the proposals in general are too vague and unclear to form an acceptable framework for an agreement. In addition, certain points are in direct contradiction with the Palestinian positions in the negotiations.

<http://transparency.aljazeera.net/en/document/120>

<http://transparency.aljazeera.net/files/120.pdf>

According to the Palestine Papers President Clinton had stated that his Parameters were an: “outline of a fair and lasting agreement” and that if Prime Minister Barak and Chairman Arafat accepted the outlines they should then be “prepared to come for discussions based on these ideas.” (<http://transparency.aljazeera.net/files/48.pdf>).

But according to the January 2 NSU memo, one reason for rejecting the Parameters was that:

As we have insisted from the beginning of the negotiations, a permanent status agreement should not be a document that declares general political principles. Rather, it must be a comprehensive instrument that spells out the details, modalities, maps and timetables of ending the Palestinian-Israeli conflict.

<http://transparency.aljazeera.net/files/120.pdf>

The January 2 memo essentially consists of a long list of reasons why the Clinton Parameters were not acceptable to the Palestinians. A few of these are:

- “It is impossible to agree to **a proposal that punishes Palestinians while rewarding Israel’s illegal settlement policies.**” (emphasis in original)
- “**It is best to proceed from discussing needs on a map rather than from predetermined percentages.**” (emphasis in original)
- “**The percentages presented cannot be reconciled with the goal of Palestinian contiguity.**” (emphasis in original)

- **“No Palestinian interests will be served by a swap of leased land** since the Palestinian side has no territorial needs in Israel.” (emphasis in original)
- **“In the first formulation regarding the Haram, accepting that the Western Wall is a part of either ‘the space sacred to Judaism’ or the ‘Holy of Holies’ will amount to implicit recognition that the Temple lies under the Haram.”** (emphasis in original)
<http://transparency.aljazeera.net/files/120.pdf>

There are no other documents in the Palestine Papers that reflect any discussion or consideration of the Clinton Parameters. After the January 2, 2001 memo, the record in the Palestine Papers on the Clinton Parameters falls silent.

A. **The “Right of Return” May Have Been a Factor in the Palestinian Rejection of the Clinton Parameters**

In the April 22, 2001 memo (drafted several months after Camp David and less than one month before President Bill Clinton put forth his proposed parameters for a final status agreement) entitled “Possible Questions and Answers to Camp David,” the Palestinian NSU answers a potential question about Israel’s concern with the impact of the Right of Return on its “demographics” by stating:

The Right of Return is not a Palestinian DEMAND [*sic*] it is a Palestinian RIGHT [*sic*] guaranteed under United Nations Resolution 194 (December 11, 1948 and reaffirmed every year since) and the Universal Declaration of Human Rights. But recognition of the Palestinian right of return does not mean that all refugees will in fact return. Many may opt for (i) resettlement in third countries, (ii) resettlement in a newly independent Palestine (though they originate in that part of Palestine that became Israel) or (iii) normalization of their legal status in the host country where they currently reside. In addition, the right of return may be implemented in phases so as not to threaten Israel’s demographics. At recent negotiations in Taba, Israel agreed to the concept of the right of return, the question remaining is only with respect to how many refugees may return and how quickly.⁵

<http://transparency.aljazeera.net/en/document/67;>

⁵ The Israelis deny agreeing to accept the concept of the right of return at Taba. E.g. <http://prn.mcgill.ca/prn/papers/beilin.html>.

<http://transparency.aljazeera.net/files/67.pdf>

The same memo offers the fact that Israel seeks to “limit the implementation of Palestinian refugees’ right of return . . . [while] The Palestinians, on the other hand, seek . . . to secure the right of Palestinian refugees to return to the homes they fled in 1948,” as some of the reasons why the Palestinians did not present a counter-offer to Israel’s proposals at Camp David (Id.)

With specific regard to President Clinton’s proposal in December 2000, the January 2, 2001 advisory memo prepared by the Legal Unit of the NSU notes in relevant part, that:

- “It is important to recall that Resolution 194, long regarded as the basis for a just settlement of the refugee problem, calls for the return of Palestinian refugees to ‘their homes,’ wherever located -- not to their ‘homeland’ or to ‘historic Palestine.’”
- **“Both formulations presented by the President negate Resolution 194, which calls for the return of refugees to their *homes* rather than their homeland.”** (emphasis in original)
- **“The essence of the right of return is choice: Palestinians should be given the option to choose where they wish to settle, including return to the homes from which they were driven.** There is no historical precedent for a people abandoning their fundamental right to return to their homes whether they were forced to leave or fled in fear. We will not be the first people to do so. Recognition of the right of return and the provision of choice to the refugees is a pre-requisite for the closure of the conflict.” (emphasis in original). <http://transparency.aljazeera.net/en/document/120>; <http://transparency.aljazeera.net/files/120.pdf>

Moreover, myriad documents in the Palestine Papers drafted after the Clinton proposal reflect a continuation of the demand for the Right of Return. E.g. <http://transparency.aljazeera.net/en/document/437>

B. In the Months Leading up to the Clinton Proposal, the Palestinians May Have Been Looking for a One-State Solution where Israel Would Ultimately Not Exist

In a pre-Camp David memo “Prepared by the Legal Unit of the Palestine Liberation Organization Negotiations Affairs Department, 13 June 2000,” warning of the risks of entering into a “brief,

general framework agreement, rather than a longer, more detailed agreement,” the distinctions between Israel’s framework agreements with Egypt and Jordan are noted. <http://transparency.aljazeera.net/en/document/9;> [http://transparency.aljazeera.net/files/9.pdf.](http://transparency.aljazeera.net/files/9.pdf) According to the memo, these distinctions include:

Neither Egypt nor Jordan was dependent upon its economic relationship with Israel - or territorially bisected by Israel - in the way that that [*sic*] Palestine will be (at least for the short term). (Id.)

The reference to Palestinian territory being “bisected by Israel” appears to be a reference to the fact that geographically the West Bank and Gaza are located on opposite sides of the state of Israel. It is unclear whether “at least for the short term” refers to the economic dependency on Israel or the territorial bisection or both. If the territorial bisection was seen by the Palestine Liberation Organization (“PLO”) Negotiations Affairs Department as existing possibly only “for the short term,” this would indicate that a long-term vision held by the PLO as of 2000, may have included the state of Israel potentially coming to an end entirely or being drastically diminished territorially such that it would no longer bisect the two Palestinian Territories.