



Memorandum

To : Dr. Mahmoud Abbas (Abu Mazen)
From : Legal Unit, Negotiation Support Unit
Re : President Clinton's Proposals
Date : 2.1.2001

Below are our remarks regarding President Clinton's proposals. 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.

The memorandum analyses the proposal as it stands. *It does not imply acceptance of any of the positions presented therein.*

General:

- Any resolution of the Palestinian-Israeli conflict must be in **accordance with UN Security Council Resolutions 242 and 338, General Assembly Resolution 194, and international law.** We cannot accept a proposal that secures neither the establishment of a viable Palestinian state nor the right of Palestinian refugees to return to their homes.
- **The United States proposals were couched in general terms that in some instances lack clarity and detail.** As we have insisted since 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.
- **The permanent status agreement must be a truly final agreement rather than an agreement to negotiate.** Israel's aims in the negotiations are mainly political, namely a normalization of its international position through peace with the Palestinians. This can be achieved in a short, political agreement. The Palestinian aims, on the other hand, relate to specific steps on the ground. This can only be achieved if the agreement spells out all the necessary details. Otherwise, we will be faced with a situation similar to the post-Interim Agreement one during which we will have to renegotiate every clause, under the mercy of Israel's "good-will".

- **The Permanent Status Agreement must be backed by clear, effective international implementation guarantees in order to be effective.**

Territory

- It is impossible to agree to a **proposal that punishes Palestinians while rewarding Israel's illegal settlement policies**. A proposal involving annexation of 4 to 6 percent (not to mention 10 percent) of the land would inevitably damage vital Palestinian interests.
- **It is best to proceed from discussing needs on a map rather than from pre-determined percentages.** This follows from the fact that Israel has demands in Palestinian territory, and must, therefore, justify each of these demands as they arise in a manner that does not jeopardize Palestinian interests. Starting from a percentage means that a specific Israeli right to the agreed percentage becomes established and must be accommodated even if Israel has no reasonable needs in the territory in question.
- **The total area from which the percentages are calculated is not defined.** This is especially worrisome in light of the fact that the Israeli side continues to insist, and the United States has never questioned, that Jerusalem, as defined by Israel, the "no-man's land", and the Dead Sea are **not** part of the total area from which the percentages are calculated. A combination of the above means that the actual area that could be annexed will approach the 10% proposed in Camp David.
- **The percentages presented cannot be reconciled with the goal of Palestinian contiguity.** The US proposal, taken together with the map presented by the Israeli side in the most recent round of negotiations in Washington (see attached map), provides Israel with control over large swaths of land in key development areas such as Jerusalem and Bethlehem, destroying the territorial contiguity of the State of Palestine. In addition to compromising Palestinians' freedom of movement within their own state, this would also have serious ramifications for the state's development potential.
- **Any such large-scale annexation will inevitably prejudice Palestinian water rights.**
- **It is best to proceed from the position that no Palestinians will be affected by the annexations.** If we accept the United States' proposal to "minimize the number of Palestinians affected", we implicitly establish a rule that some Palestinians will, in principle, be affected. If we establish a general rule that no Palestinian will be effected, then Israel will be under the burden of proving the opposite on a case-by-case basis, and will have to pay in return for any departure from this rule.
- **The use of "settlement blocs" as a guiding principle as recommended by the United States proposal is unacceptable.** Since the term "blocs" is undefined, any acceptance of it as a guiding principle will leave it up to Israel to define its parameters. The use of this criterion subordinates Palestinian interests in the contiguity of their state and control over their natural resources to Israeli interests regarding the contiguity of settlements, recognized as illegal by the international

community. It also contradicts the United States proposal's criteria concerning minimizing annexed areas and the number of Palestinians affected. It is important to bear in mind that *all* of the settlements in the West Bank (including roads and facilities) currently occupy approximately 1.8 percent of the West Bank.

- Without prejudice to our refusal to maintain any settlement presence on Palestinian land, we need to know exactly which settlements Israel is proposing to annex.
- **The United States proposal does not identify which areas within Israel are to compensate for the annexed Palestinian land in a “land swap”.** Any annexed land must be compensated with land of equal size and value. No argument has been presented as to why this should not be the case. The United States proposal explicitly rejects the principle that compensation of land must be of equal size and remains silent on the issue of the location and quality of the compensated land.
 - All previous Israeli and United States proposals concerning compensated land have referred to land near the Gaza Strip in exchange for valuable real estate in the West Bank. In addition to being desert areas, the lands being offered near the Gaza Strip are currently being used by Israel to dump toxic waste. **We cannot accept trading prime agricultural and development land for toxic waste dumps.**
- **No Palestinian interests will be served by a swap of leased land** since the Palestinian side has no territorial needs in Israel. This concept could lead to an additional 10% under Israeli control pursuant to ill-defined security arrangements. As for the corridor linking the West Bank and the Gaza Strip, it is a Palestinian right implied in the fact that the West Bank and the Gaza Strip are a single territorial unit. A corridor under Palestinian sovereignty could be covered in a land swap.

Jerusalem

- **The United States proposal recognizes Israeli sovereignty under the Haram** by implying that it has a right, which it voluntarily relinquishes, to excavate *behind* the Western Wall (i.e., the area under the Haram.) This violates Palestinian sovereignty over the Haram since sovereignty in international law is vertical rather than horizontal (i.e., applies to the territory and the land beneath it, not behind it).
- 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.**
- In the second formulation, **“shared functional sovereignty” is undefined and leaves Israel too much room for interpretation.** In this phrase, the operative word is “sovereignty.” If excavation is the issue, the same *practical* results can be achieved by identifying arrangements to prevent digging under the Haram.
- **The “Western Wall” extends to areas beyond the Wailing Wall.** As the attached map demonstrates, the Wailing Wall extends for 58 meters, while the “Western Wall” extends to 485 meters. Moreover, the latter includes the tunnel opened in

1996 by Israel's former Prime Minister Benjamin Netanyahu, which caused widespread confrontations.

- **The Principle that “what is Arab is Palestinian and what is Jewish is Israeli” violates the June 4th borders and legitimizes Israel’s settlement activities in Jerusalem.**
- As the attached map shows, as a result of Israel’s internationally-condemned settlement policy in occupied East Jerusalem, **the United States’ formulation “that Arab areas are Palestinian and Jewish ones are Israeli” will be impossible to reconcile with the concept of “maximum contiguity for both”**, presented in the proposal. Rather, the formulation will inevitably result in Palestinian islands within the city separated from one another. Israel, however, will be able to maintain contiguity. Therefore, the proposal actually calls for “maximum contiguity for both” translates in practice into “maximum contiguity for Israel”.
- **The United States proposal is unclear regarding the status of “green areas”**, which are areas in East Jerusalem in which Palestinians have not been permitted to build since the beginning of the Occupation.
- **Israel continues to demand sovereignty over a number of geographically undefined “religious sites”** in East Jerusalem (the cemetery, Mount Zion, the City of David, etc...). The United States is unclear regarding the status of these claims.
- **Any solution that will be acceptable by the Palestinian side must guarantee the contiguity of Palestinian areas within the city as well as the contiguity of Jerusalem with the rest of Palestine.**
- A key element of the Palestinian position on Jerusalem is its status as an **Open City** with free access for all. This status is imperative not only to ensure access to and worship in all holy sites for all those who hold the city sacred, but also to guarantee free movement through the State of Palestine. The United States proposal makes no reference to this essential concept. **The absence of any mention of the Open City is equivalent to killing the idea.**

Palestinian Refugees

- **The United States proposal reflects a wholesale adoption of the Israeli position** that the implementation of the right of return be subject entirely to Israel’s discretion. 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.”
- **Acknowledging “the moral and material suffering caused to the Palestinian people as a result of the 1948 war” maintains Israel’s claim of Arab responsibility for the refugee problem.** Israel must acknowledge *its* responsibility.

- **Defining Israel's role as merely "assisting the international community in addressing the problem" means that the responsibility for the solution is international and that Israel has no special duty in this regard.**
- **Proposing a comprehensive international commission is a positive starting point.** However, what matters are the details.
- **We cannot, in our legal recognition of Israel, define it as "the homeland of the Jewish people".** How Israel chooses to define Israel itself ethnically or religiously is an internal Israeli matter that is not subject to recognition in an international treaty.
- **We cannot accept for the Palestinian state to be defined as a "the homeland of the Palestinian people."** The nature of the Palestinian state is an internal matter that should not be the subject of an international agreement. In addition, this nullifies the right of return.
- **Both formulations presented by the President negate Resolution 194,** which calls for the return of refugees to their *homes* rather than their homeland.
- **The thrust of the US proposal is that Israel will have full discretion in deciding if it will take any refugees, and then how many, who, and when.** The language used by the President negates even the slightest obligation on Israel to allow any refugee back. It only obligates it to consider "admitting" some refugees as immigrants rather than returnees.
- Regarding the five options:
 - **Return to the state of Palestine is an internal sovereign Palestinian decision.** Including it in the agreement means that we accept that our immigration policy is subject to external interference.
 - **"Areas in Israel being transferred to Palestine in the land swap" is meaningless.** Resolution 194 calls for return of refugees to their homes. Once refugees have returned to their homes, they have the right to reside anywhere they wish within that state. If the refugees return before the land is swapped, they will then have the right to reside anywhere they wish in Israel. If they return after the swap, they should have the right to reside anywhere in the state of Palestine.
 - **"Rehabilitation in host country" and "resettlement in a third country" will be dependent on the will of the countries involved and will not create any specific right for the refugees.**
 - **"Admission to Israel". The term admission implies full sovereign discretion as opposed to a matter of right.**
- Giving priority to the refugees in Lebanon in this context is legally meaningless since no rights for the refugees are established to start with.
- As to agreeing "that this implements Resolution 194", this means that we actually give up all aspects of 194 including the refugees' *right* to compensation and return.

- **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 refugees is a pre-requisite for the closure of the conflict.
- **The Palestinians are prepared to think flexibly and creatively about the mechanisms for implementing the right of return.** In many discussions with Israel, mechanisms for implementing this right in such a way so as to end the refugee status and refugee problem, as well as to otherwise accommodate Israeli concerns, have been identified and elaborated in some detail. The United States proposal fails to make reference to any of these advances and refers back to earlier Israeli negotiating positions.
- **The United States proposal does not offer any guarantees that the refugees' right to compensation and restitution will be implemented.**

Security

- **It must be clarified that the international presence will guarantee the implementation of the entire agreement, rather than just the security aspects of it.**
- **There is no reason why Israel would require three years to withdraw from the West Bank and Gaza Strip.** In view of the fact that Israel resettled more than one million immigrants from the former Soviet Union in a few years, one year is more than enough time to resettle mere thousands of Israeli settlers.
- **It is unclear from the United States proposal that the withdrawal period relates to both soldiers and settlers,** both of whom are considered part of the occupation forces in the Palestinian Territories.
- **A protracted withdrawal process could jeopardize the peaceful implementation of the agreement** and would create a continued source of friction.
- **Israel has absolutely no need for a standing force in the Jordan Valley.**
- **Israel has yet to make a persuasive case regarding why it would require emergency deployment rights in the Jordan Valley.** This is especially the case given that international forces will be present in these areas.
 - Without prejudice to the point above, the definition of emergency, "activation of a national state of emergency" gives Israel too much latitude to reoccupy Palestine absent a real threat to its security. **If we decide to discuss the concept of emergency deployment, this definition should be replaced with "full enlistment of Israel's reserve forces."**
- Regarding early warning stations:

- If early warning stations are accepted, **it is critical that the location of these stations be defined in advance.** The current locations – near Ramallah, adjacent to Nablus, and on Mount Scopus – will seriously restrict Palestinian development. It is worth noting that **Israel requires no more than one early warning station,** and that such a station could be based within Israeli territory.
- **A “Palestinian liaison presence” is insufficient.** We should demand international administration of the stations or, at minimum, routine and surprise inspections of the stations to ensure that Israel is using them for its stated purposes.
- **Israel should not be given veto power in the review that will be conducted after 10 years.** Any renewal of the period must be subject to Palestinian approval.
- The United States proposal’s suggestion that **special arrangements be made for Israeli training and operational needs in Palestinian airspace is problematic.** Without specific clarification, this might be used to defend a right for Israel to use Palestinian airspace for military training exercises with all the accompanying dangers to the Palestinian civilian population and the environment while sparing Israeli citizens from any similar infringement. Palestinians remain committed to working out regional agreements concerning aviation in line with commonly accepted international regulations. Any arrangement to the contrary would infringe on Palestinian sovereignty and harm relations with neighboring countries.
 - **Palestine should extract concessions from Israel for the right to conduct air operations and training in its air space.**
 - Palestine should not, under any circumstances, give Israel power over **civil aviation arrangements** in Palestine.

Other Issues

- **The United States proposal remains silent on a number of issues that are essential for the establishment of a lasting and comprehensive peace.** Specifically, the proposal does not address:
 - **Water,** even though the differences between the two sides are wide, with Israel still insisting that international law is inapplicable.
 - **Compensation for damages resulting from over thirty years of occupation,** including, but not limited to, compensation for natural resources, revenues, environmental damage, land use and human resources.
 - **Environment,**
 - **Future economic relations,**
 - **Other state-to-state issues.**

End of Conflict

- **The end of conflict can only be achieved once the issues that have caused and perpetrated the conflict are resolved in full.** This in turn can only be achieved by a comprehensive agreement that provides detailed modalities for the resolution of the issues at the core of the conflict.
- **In reaching a settlement between Israel and, respectively, Egypt and Jordan, the end of conflict came only after the final, detailed peace treaty.**
- **The United States' proposals - unless clarified to take into account the above concerns - do not even allow for a pragmatic resolution of the conflict.** If no such solutions are reached in practice, we believe that any formalistic pronouncement of the end of conflict would be meaningless.