

The peace that nearly was at Taba

In the current reality of terror attacks and bombing raids, it is hard to remember that Israel and the Palestinians were close to a final-status agreement at Taba only 13 months ago.

The daily chronicle of exchanges of fire between IDF soldiers and Palestinian fighters, F-16 bombing raids and missile firings, terror attacks and assassinations, has turned negotiations on a final-status agreement into a distant memory. Anyone who reads the European Union's account of the Taba talks, prepared by EU envoy Miguel Moratinos and published here for the first time, will find it hard to believe that only 13 months ago, Israel and the Palestinians were so close to a peace agreement. This document, whose main points have been approved by the Taba negotiators as an accurate description of the discussions, casts additional doubts on the prevailing assumption that [former prime minister] Ehud Barak "exposed [Palestinian Authority Chairman] Yasser Arafat's true face." It is true that on most of the issues discussed during that wintry week of negotiations, sizable gaps remain. Yet almost every line is redolent of the effort to find a compromise that would be acceptable to both sides. It is hard to escape the thought that if the negotiations at Camp David six months earlier had been conducted with equal seriousness, the intifada might never have erupted. And perhaps, if Barak had not waited until the final weeks before the election, and had instead sent his senior representatives to that southern hotel earlier, the violence might never have broken out.

The "Moratinos Document," as it is called by the Taba negotiators, is a summary of the opening stages of negotiations that took place in good faith. The main difference between Taba and Camp David is that in the United States, Israel presented its offers, but the Palestinians merely responded with criticism. At the Egyptian resort of Taba, however, the Palestinian delegation also presented its proposals. Ideas were exchanged and plans and even maps were presented. Based on the progress achieved between Camp David and Taba, it is possible that the next meeting between Barak's and Arafat's envoys, or perhaps the one after that, would have ended in a peace agreement.

The EU's special envoy to the peace process, Miguel Moratinos, and his aides were the only outsiders at the Taba Hotel. Moratinos interviewed the negotiators after every working group session and recorded their reports. During the six months after the Taba talks ended, he sent his document to both sides again and again for their comments. The version published here is the final version accepted by both sides last summer.

But Yossi Beilin, one of Israel's chief negotiators, did not hide his annoyance at the document's leak. He said the dry words do not convey the positive spirit that reigned in the hotel, nor do they accurately present either the understandings reached or the gaps that remain. Beilin pointed out that the document reflects both sides' desire to convince their own publics that they protected their peoples' interests. Moreover, he said, this is a midpoint document: It sums up where things stood at an arbitrary point in time.

Beilin stressed that the Taba talks were not halted because they hit a crisis, but rather

because of the Israeli election. At the time, the two sides were discussing arranging a Barak-Arafat meeting in an effort to close the gaps; they had also discussed continuing the talks the day after the election, independent of the outcome. Beilin himself continues to talk with the Palestinians about ways to solve the various issues that remain open. From his perspective, the basis for negotiations was, and remains, the proposals made by former U.S. president Bill Clinton.

Taba, January, 2001

Introduction

This EU non-paper has been prepared by the EU Special Representative to the Middle East Process, Ambassador Moratinos, and his team after consultations with the Israeli and Palestinian sides, present at Taba in January 2001. Although the paper has no official status, it has been acknowledged by the parties as being a relatively fair description of the outcome of the negotiations on the permanent status issues at Taba. It draws attention to the extensive work which has been undertaken on all permanent status issues like territory, Jerusalem, refugees and security in order to find ways to come to joint positions. At the same time it shows that there are serious gaps and differences between the two sides, which will have to be overcome in future negotiations. From that point of view, the paper reveals the challenging task ahead in terms of policy determination and legal work, but it also shows that both sides have traveled a long way to accommodate the views of the other side and that solutions are possible.

1. Territory

The two sides agreed that in accordance with the UN Security Council Resolution 242, the June 4 1967 lines would be the basis for the borders between Israel and the state of Palestine.

1.1 West Bank

For the first time both sides presented their own maps over the West Bank. The maps served as a basis for the discussion on territory and settlements. The Israeli side presented two maps, and the Palestinian side engaged on this basis. The Palestinian side presented some illustrative maps detailing its understanding of Israeli interests in the West Bank.

The negotiations tackled the various aspects of territory, which could include some of the settlements and how the needs of each party could be accommodated. The Clinton parameters served as a loose basis for the discussion, but differences of interpretations regarding the scope and meaning of the parameters emerged. The Palestinian side stated that it had accepted the Clinton proposals but with reservations.

The Israeli side stated that the Clinton proposals provide for annexation of settlement blocs. The Palestinian side did not agree that the parameters included blocs, and did not accept proposals to annex blocs. The Palestinian side stated that blocs would cause significant harm to the Palestinian interests and rights, particularly to the Palestinians residing in areas Israel seeks to annex.

The Israeli side maintained that it is entitled to contiguity between and among their

settlements. The Palestinian side stated that Palestinian needs take priority over settlements. The Israeli maps included plans for future development of Israeli settlements in the West Bank. The Palestinian side did not agree to the principle of allowing further development of settlements in the West Bank. Any growth must occur inside Israel.

The Palestinian side maintained that since Israel has needs in Palestinian territory, it is responsible for proposing the necessary border modifications. The Palestinian side reiterated that such proposals must not adversely affect the Palestinian needs and interests.

The Israeli side stated that it did not need to maintain settlements in the Jordan Valley for security purposes, and its proposed maps reflected this position.

The Israeli maps were principally based on a demographic concept of settlements blocs that would incorporate approximately 80 percent on the settlers. The Israeli side sketched a map presenting a 6 percent annexation, the outer limit of the Clinton proposal. The Palestinian illustrative map presented 3.1 percent in the context of a land swap.

Both sides accepted the principle of land swap but the proportionality of the swap remained under discussion. Both sides agreed that Israeli and Palestinian sovereign areas will have respective sovereign contiguity. The Israeli side wished to count "assets" such as Israelis "safe passage/corridor" proposal as being part of the land swap, even though the proposal would not give Palestine sovereignty over these "assets". The Israeli side adhered to a maximum 3 percent land swap as per Clinton proposal.

The Palestinian maps had a similar conceptual point of reference stressing the importance of a non-annexation of any Palestinian villages and the contiguity of the West Bank and Jerusalem. They were predicated on the principle of a land swap that would be equitable in size and value and in areas adjacent to the border with Palestine, and in the same vicinity as the annexed by Israel. The Palestinian side further maintained that land not under Palestinian sovereignty such as the Israeli proposal regarding a "safe passage/corridor" as well as economic interests are not included in the calculation of the swap.

The Palestinian side maintained that the "No-Man's-Land" (Latrun area) is part of the West Bank. The Israelis did not agree.

The Israeli side requested an additional 2 percent of land under a lease arrangement to which the Palestinians responded that the subject of lease can only be discussed after the establishment of a Palestinian state and the transfer of land to Palestinian sovereignty.

1.2 Gaza Strip

Neither side presented any maps over the Gaza Strip. It was implied that the Gaza Strip will be under total Palestinian sovereignty, but details have still to be worked out. All settlements will be evacuated. The Palestinian side claimed it could be arranged in 6 months, a timetable not agreed by the Israeli side.

1.3 Safe passage/corridor from Gaza to the West Bank

Both sides agreed that there is going to be a safe passage from the north of Gaza (Beit Hanun) to the Hebron district, and that the West Bank and the Gaza Strip must be territorially linked. The nature of the regime governing the territorial link and sovereignty over it was not agreed.

2. Jerusalem

2.1 Sovereignty

Both sides accepted in principle the Clinton suggestion of having a Palestinian sovereignty over Arab neighborhoods and an Israeli sovereignty over Jewish neighborhoods. The Palestinian side affirmed that it was ready to discuss Israeli request to have sovereignty over those Jewish settlements in East Jerusalem that were constructed after 1967, but not Jebel Abu Ghneim and Ras al-Amud. The Palestinian side rejected Israeli sovereignty over settlements in the Jerusalem Metropolitan Area, namely of Ma'ale Adumim and Givat Ze'ev.

The Palestinian side understood that Israel was ready to accept Palestinian sovereignty over the Arab neighborhoods of East Jerusalem, including part of Jerusalem's Old City. The Israeli side understood that the Palestinians were ready to accept Israeli sovereignty over the Jewish Quarter of the Old City and part of the American Quarter.

The Palestinian side understood that the Israeli side accepted to discuss Palestinian property claims in West Jerusalem.

2.2 Open City

Both sides favored the idea of an Open City. The Israeli side suggested the establishment of an open city whose geographical scope encompasses the Old City of Jerusalem plus an area defined as the Holy Basin or Historical Basin.

The Palestinian side was in favor of an open city provided that continuity and contiguity were preserved. The Palestinians rejected the Israeli proposal regarding the geographic scope of an open city and asserted that the open city is only acceptable if its geographical scope encompasses the full municipal borders of both East and West Jerusalem.

The Israeli side raised the idea of establishing a mechanism of daily coordination and different models were suggested for municipal coordination and cooperation (dealing with infrastructure, roads, electricity, sewage, waste removal etc). Such arrangements could be formulated in a future detailed agreement. It proposed a "soft border regime" within Jerusalem between Al-Quds and Yerushalaim that affords them "soft border" privileges. Furthermore the Israeli side proposed a number of special arrangements for Palestinian and Israeli residents of the Open City to guarantee that the Open City arrangement neither adversely affect their daily lives nor compromise each party sovereignty over its section of the Open City.

2.3 Capital for two states

The Israeli side accepted that the City of Jerusalem would be the capital of the two states: Yerushalaim, capital of Israel and Al-Quds, capital of the state of Palestine. The Palestinian side expressed its only concern, namely that East Jerusalem is the capital of the state of Palestine.

2.4 Holy/Historical Basin and the Old City

There was an attempt to develop an alternative concept that would relate to the Old City and its surroundings, and the Israeli side put forward several alternative models for discussion, for example, setting up a mechanism for close coordination and cooperation in the Old City. The idea of a special police force regime was discussed but not agreed upon.

The Israeli side expressed its interest and raised its concern regarding the area conceptualized as the Holy Basin (which includes the Jewish Cemetery on the Mount of Olives, the City of David and Kivron Valley). The Palestinian side confirmed that it was willing to take into account Israeli interests and concerns provided that these places remain under Palestinian sovereignty. Another option for the Holy Basin, suggested informally by the Israeli side, was to create a special regime or to suggest some form of internationalization for the entire area or a joint regime with special cooperation and coordination. The Palestinian side did not agree to pursue any of these ideas, although the discussion could continue.

2.5 Holy Sites: Western Wall and the Wailing Wall

Both parties have accepted the principle of respective control over each side's respective holy sites (religious control and management). According to this principle, Israel's sovereignty over the Western Wall would be recognized although there remained a dispute regarding the delineation of the area covered by the Western Wall and especially the link to what is referred to in Clinton's ideas as the space sacred to Judaism of which it is part.

The Palestinian side acknowledged that Israel has requested to establish an affiliation to the holy parts of the Western Wall, but maintained that the question of the Wailing Wall and/or Western Wall has not been resolved. It maintained the importance of distinguishing between the Western Wall and the Wailing Wall segment thereof, recognized in the Islamic faith as the Buraq Wall.

2.6 Haram al-Sharif/Temple Mount

Both sides agreed that the question of Haram al-Sharif/Temple Mount has not been resolved. However, both sides were close to accepting Clinton's ideas regarding Palestinian sovereignty over Haram al-Sharif notwithstanding Palestinian and Israeli reservations.

Both sides noted progress on practical arrangements regarding evacuations, building and public order in the area of the compound. An informal suggestion was raised that for an agreed period such as three years, Haram al-Sharif/Temple Mount would be under

international sovereignty of the P5 plus Morocco (or other Islamic presence), whereby the Palestinians would be the "Guardian/Custodians" during this period. At the end of this period, either the parties would agree on a new solution or agree to extend the existing arrangement. In the absence of an agreement, the parties would return to implement the Clinton formulation. Neither party accepted or rejected the suggestion.

3. Refugees

Non-papers were exchanged, which were regarded as a good basis for the talks. Both sides stated that the issue of the Palestinian refugees is central to the Israeli-Palestinian relations and that a comprehensive and just solution is essential to creating a lasting and morally scrupulous peace. Both sides agreed to adopt the principles and references which could facilitate the adoption of an agreement.

Both sides suggested, as a basis, that the parties should agree that a just settlement of the refugee problem in accordance with the UN Security Council Resolution 242 must lead to the implementation of UN General Assembly Resolution 194.

3.1 Narrative

The Israeli side put forward a suggested joint narrative for the tragedy of the Palestinian refugees. The Palestinian side discussed the proposed narrative and there was much progress, although no agreement was reached in an attempt to develop a historical narrative in the general text.

3.2 Return, repatriation and relocation and rehabilitation

Both sides engaged in a discussion of the practicalities of resolving the refugee issue. The Palestinian side reiterated that the Palestinian refugees should have the right of return to their homes in accordance with the interpretation of UNGAR 194. The Israeli side expressed its understanding that the wish to return as per wording of UNGAR 194 shall be implemented within the framework of one of the following programs:

A. Return and repatriation

1. to Israel
2. to Israel swapped territory
3. to the Palestine state.

B. Rehabilitation and relocation

1. Rehabilitation in host country.
2. Relocation to third country.

Preference in all these programs shall be accorded to the Palestinian refugee population in Lebanon. The Palestinian side stressed that the above shall be subject to the individual free choice of the refugees, and shall not prejudice their right to their homes in accordance with its interpretation of UNGAR 194.

The Israeli side, informally, suggested a three-track 15-year absorption program, which was discussed but not agreed upon. The first track referred to the absorption to Israel. No numbers were agreed upon, but with a non-paper referring to 25,000 in the first three years of this program (40,000 in the first five years of this program did not appear in the

non-paper but was raised verbally). The second track referred to the absorption of Palestinian refugees into the Israeli territory, that shall be transferred to Palestinian sovereignty, and the third track referring to the absorption of refugees in the context of family reunification scheme.

The Palestinian side did not present a number, but stated that the negotiations could not start without an Israeli opening position. It maintained that Israel's acceptance of the return of refugees should not prejudice existing programs within Israel such as family reunification.

3.3 Compensation

Both sides agreed to the establishment of an International Commission and an International Fund as a mechanism for dealing with compensation in all its aspects. Both sides agreed that "small-sum" compensation shall be paid to the refugees in the "fast-track" procedure, claims of compensation for property losses below certain amount shall be subject to "fast-track" procedures.

There was also progress on Israeli compensation for material losses, land and assets expropriated, including agreement on a payment from an Israeli lump sum or proper amount to be agreed upon that would feed into the International Fund. According to the Israeli side the calculation of this payment would be based on a macro-economic survey to evaluate the assets in order to reach a fair value. The Palestinian side, however, said that this sum would be calculated on the records of the UNCCP, the Custodian for Absentee Property and other relevant data with a multiplier to reach a fair value.

3.4 UNRWA

Both sides agreed that UNRWA should be phased out in accordance with an agreed timetable of five years, as a targeted period. The Palestinian side added a possible adjustment of that period to make sure that this will be subject to the implementation of the other aspects of the agreement dealing with refugees, and with termination of Palestinian refugee status in the various locations.

3.5 Former Jewish refugees

The Israeli side requested that the issue of compensation to former Jewish refugees from Arab countries be recognized, while accepting that it was not a Palestinian responsibility or a bilateral issue. The Palestinian side maintained that this is not a subject for a bilateral Palestinian-Israeli agreement.

3.6 Restitution

The Palestinian side raised the issue of restitution of refugee property. The Israeli side rejected this.

3.7 End of claims

The issue of the end of claims was discussed, and it was suggested that the implementation of the agreement shall constitute a complete and final implementation of UNGAR 194 and therefore ends all claims.

4. Security

4.1 Early warning stations

The Israeli side requested to have 3 early warning stations on Palestinian territory. The Palestinian side was prepared to accept the continued operations of early warning stations but subject to certain conditions. The exact mechanism has therefore to be detailed in further negotiations.

4.2 Military capability of the state of Palestine

The Israeli side maintained that the state of Palestine would be non-militarized as per the Clinton proposals. The Palestinian side was prepared to accept limitation on its acquisition of arms, and be defined as a state with limited arms. The two sides have not yet agreed on the scope of arms limitations, but have begun exploring different options. Both sides agree that this issue has not been concluded.

4.3 Air space control

The two sides recognized that the state of Palestine would have sovereignty over its airspace. The Israeli side agreed to accept and honor all of Palestine civil aviation rights according to international regulations, but sought a unified air control system under overriding Israel control. In addition, Israel requested access to Palestinian airspace for military operations and training.

The Palestinian side was interested in exploring models for broad cooperation and coordination in the civil aviation sphere, but unwilling to cede overriding control to Israel. As for Israeli military operations and training in Palestinian airspace, the Palestinian side rejected this request as inconsistent with the neutrality of the state of Palestine, saying that it cannot grant Israel these privileges while denying them to its Arab neighbors.

4.4 Time table for withdrawal from the West Bank and Jordan Valley

Based on the Clinton proposal, the Israeli side agreed to a withdrawal from the West Bank over a 36-month period with an additional 36 months for the Jordan Valley in conjunction with an international force, maintaining that a distinction should be made between withdrawal in the Jordan Valley and elsewhere.

The Palestinian side rejected a 36-month withdrawal process from the West Bank expressing concern that a lengthy process would exacerbate Palestinian-Israeli tensions. The Palestinian side proposed an 18 months withdrawal under the supervision of international forces. As to the Jordan Valley the Palestinian side was prepared to consider the withdrawal of Israeli armed forces for an additional 10-month period. Although the Palestinian side was ready to consider the presence of international forces in the West Bank for a longer period, it refused to accept the ongoing presence of Israeli forces.

4.5 Emergency deployment (or emergency locations)

The Israeli side requested to maintain and operate five emergency locations on Palestinian territory (in the Jordan Valley) with the Palestinian response allowing for

maximum of two emergency locations conditional on a time limit for the dismantling. In addition, the Palestinian side considered that these two emergency locations be run by international presence and not by the Israelis. Informally, the Israeli side expressed willingness to explore ways that a multinational presence could provide a vehicle for addressing the parties' respective concerns.

The Palestinian side declined to agree to the deployment of Israeli armed forces on Palestinian territory during emergency situations, but was prepared to consider ways in which international forces might be used in that capacity, particularly within the context of regional security cooperation efforts.

4.6 Security cooperation and fighting terror

Both sides were prepared to commit themselves to promoting security cooperation and fighting terror.

4.7 Borders and international crossings

The Palestinian side was confident that Palestinian sovereignty over borders and international crossing points would be recognized in the agreement. The two sides had, however, not yet resolved this issue including the question of monitoring and verification at Palestine's international borders (Israeli or international presence).

4.8 Electromagnetic sphere

The Israeli side recognized that the state of Palestine would have sovereignty over the electromagnetic sphere, and acknowledged that it would not seek to constrain Palestinian commercial use of the sphere, but sought control over it for security purposes.

The Palestinian side sought full sovereign rights over the electromagnetic sphere, but was prepared to accommodate reasonable Israeli needs within a cooperative framework in accordance with international rules and regulations.

Dispute over Ma'aleh Adumim

The importance of Israel's recognition of the June 4, 1967 border is that since 1967 (and even today), Israel's official position has been that UN Security Council Resolution 242 mandates withdrawal from "territories" conquered in the Six Day War. The Arab position, in contrast, is that the resolution requires withdrawal from "the territories." Israel's official refusal to recognize the June 4, 1967 borders is currently an obstacle to Foreign Minister Shimon Peres in his efforts to reach an agreement with the chairman of the Palestinian Legislative Council, Ahmed Qureia (Abu Ala). There is no Palestinian confirmation of Peres' claim that the Palestinians have accepted the formulation that a final-status agreement will be based on Resolution 242.

Israel agreed to recognize the June 4, 1967 border as the basis for the border between Israel and Palestine after the Palestinians agreed in principle to discuss territorial swaps in the West Bank, as proposed by Clinton, that would enable Israel to annex parts of the West Bank adjacent to the Green Line (but not parts of Gaza). The maps presented by the Palestinians at Taba gave Israel 3.1 percent of the West Bank. That is less than the lower

limit proposed in the Clinton plan (under which the Palestinians would receive 94 to 96 percent of the West Bank). Israel demanded 6 percent - the upper boundary of the Clinton plan - plus an additional 2 percent in the context of a leasing agreement. The Palestinians also rejected Israel's demand that the "no man's land" around Latrun not be considered part of the West Bank.

According to the document, Israel gave up all the Jordan Valley settlements, focusing instead on its security interests in that area. The dispute centered around the large stretch of territory between Ma'aleh Adumim and Givat Ze'ev, which contains both a fairly large Palestinian population and East Jerusalem's most important land reserves. The Palestinians retracted their earlier readiness to include these two settlements in the settlement blocs to be annexed to Israel after realizing that Israel also insisted on annexing the large tract that joins them - which would mean that Palestinian citizens would suddenly find themselves in sovereign Israeli territory. Barak instructed his chief negotiator, Gilad Sher, to tell the Palestinians that the map presented by then foreign minister Shlomo Ben-Ami, which reduced the area of the settlement bloc (including the Ma'aleh Adumim-Givat Ze'ev tract) to only 5 percent of the West Bank, had no validity.

Another dispute that remained unresolved stemmed from Israel's refusal to accept the Palestinian demand for a 1:1 ratio between the area of the West Bank annexed to Israel and the parts of Israel that would be given to the Palestinians in exchange. Israel proposed a ratio of 1:2, in its favor. In addition, the Palestinians rejected Israel's proposal that the Halutza Dunes in the Negev, the area of the "safe passage" between the West Bank and Gaza, and the part of Ashdod Port that would be set aside for Palestinian use all be considered part of the land swap. They insisted that the land they received be contiguous with either the West Bank or Gaza, and that it not include any land that was merely set aside for their use, over which they would not have sovereignty. (Akiva Eldar)

How long is the Western Wall?

The Clinton proposal paved the way for understandings in Jerusalem, but it also created the principal dispute between the two parties.

An agreement was reached that East Jerusalem, which would be called Al-Quds, would be the capital of Palestine. Understandings were also reached regarding a division of East Jerusalem's neighborhoods such that Jewish neighborhoods would remain under Israeli sovereignty (other than Har Homa, which the first Jewish families are just moving into now, and Ras al-Amud), while Arab neighborhoods would be transferred to Palestinian sovereignty. In addition, it was agreed that parts of the Old City - the Muslim Quarter, the n Quarter and part of the Armenian Quarter - would be to the Palestinians.

But the Clinton proposal did not help the parties to draw mutually accepted borders between the Open City - to which both sides agreed - and the surrounding Palestinian areas, on one side, and Israeli areas, on the other. The Open City is territory that citizens of both countries can enter without passing through any checkpoints. The Palestinians wanted it to encompass all of Jerusalem, while the Israelis wanted it limited to the Old City only.

And the Clinton proposal complicated negotiations on the most sensitive issue: the Western Wall. Clinton had referred to "the holy parts" of the Wall, thereby creating an opening for the Palestinian claim that only the exposed part of the Wall (the Wailing Wall) is considered holy to the Jews, and therefore only this part should be left under Israeli sovereignty. Palestinians claimed the Western Wall tunnels were part of Haram al-Sharif (the Temple Mount).

Since the Taba talks ended, many meetings and seminars have taken place in an effort to close the gaps, attended by politicians and experts from both sides and from other countries as well.

Symbols of sovereignty

Israel insisted that it retain sovereignty over the "safe passage" between Gaza and the West Bank, with the Palestinians receiving only usage rights to the land. With respect to air space, however, Israel adopted a more generous approach to the sovereignty issue. Nevertheless, it demanded rights to the use of Palestinian air space, including for air force training exercises.

The document reveals that the Palestinians expressed a willingness to accept the principle of limitations on their armaments and even took Israel's security needs into account (they agreed to three early warning stations and two "emergency locations," compared to the five "emergency locations" Israel had sought in addition to the early warning stations).

But in all matters relating to the symbols of sovereignty, the Palestinians took a harder line. They therefore insisted that an international force man the "emergency locations," rather than an Israeli one. And the issue of control over Palestine's international border remained unresolved for the same reason: the question of who would man the border control posts.