

The Palestine Papers and the Right of Return

February 22, 2011

Executive Summary

Earlier this year Al Jazeera released nearly 1,700 files of Palestinian Authority documents memorializing a decade of Israeli/Palestinian peace talks. Christians for Fair Witness on the ¹ Middle East has carefully reviewed these documents which have become known as the “Palestine Papers.” Included in the “Palestine Papers” are numerous documents concerning the “Right of ² Return.”

There has been a good deal of “hype” and sensationalism surrounding the media coverage of the Palestine Papers. Therefore, it is important for the public to read the documents for themselves and make their own assessment.

With regard to the “Right of Return,” the Palestine Papers reveal that the Palestinian leadership perceives the issue of refugee rights as central to both the creation of the Israeli/Palestinian conflict and to its resolution. And while there have been claims in the media that the Palestinian Authority was willing to offer great compromises on refugees, the Papers reveal that this was not the case.

While Palestinian negotiators spoke publicly about compromise on refugees, privately they spoke of the “Right of Return” as a matter of individual choice that would have to be extended to each of over seven million “refugees.” They anticipated the potential “return” of millions of Palestinians ³ to the State of Israel, with Palestinians retaining the open-ended right to try to negotiate additional “returns” beyond any number initially agreed upon in a peace treaty.

It was subsequently revealed that the documents had been obtained from the office ¹ of former Chief PLO negotiator Saeb Erekat, who resigned in the aftermath.

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Under the United Nations Convention Relating to the Status of Refugees, ³ refugees are defined as those people who themselves are outside the country of their origin, not their descendants. (See http://www.unhcr.org.ua/main.php?article_id=8&view=full). In the case of the Palestinians however, an exception was made. In 1948 the United Nations created a new organization, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). UNRWA’s definition for refugee is different from that of any other group of refugees; it is expanded to include not only Palestinians who became refugees themselves, but

also “The descendants of the original Palestine refugees . . .”

<http://www.unrwa.org/etemplate.php?id=86>.

I. Palestinians Perceive the Issue of Refugee Rights as Central to Both the Conflict and to its Resolution.

It is clear from the body of documents in the Palestine Papers that the Palestinian Authority (“P.A.”) considers the plight of Palestinian refugees to be one of the root causes of the Israeli/Palestinian conflict. It is also clear that the P.A. deems the recognition and implementation of the “Right of Return” as central to a resolution of the conflict and that the failure to achieve what they would consider a “just” resolution will result in the failure of any peace negotiations.

For example, a December 23, 2001 internal memo on resolution of the refugee problem states in the introduction:

The issue of the Palestinian refugees is central to Israeli Palestinian relations. Its comprehensive and just resolution is essential to creating a lasting a morally scrupulous [sic] peace.
<http://transparency.aljazeera.net/en/document/113>

And a more recent memo states:

On the other hand, if refugees’ rights are not duly recognized, and if the adequate legal remedies are not provided to them, the refugee issue may lead to the failure of the whole process. (March 26, 2008) (<http://transparency.aljazeera.net/en/document/2370>)

A. General Formulations

A general formula for dealing with the refugee issue that is seen repeatedly in the Palestine Papers is:

Refugees:

ToRs are UNGA Resolution 194 and UNSC Resolution 242. ⁴

Establishment of an international mechanism to implement the agreed solution on refugees, including return and resettlement of refugees and all individual and collective claims for restitution and compensation. The claims program will follow up on all restitution and compensation issues,

Terms of reference. ⁴

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including the revenues collected by the Custodian of Absentee Property.

[Agreed number] refugees annually will be allowed to exercise their right of return to Israel for [agreed number] years, renewable thereafter with the consent of both sides.⁵

Israel acknowledges its responsibility for the displacement and dispossession of Palestinian civilians.

Return or resettlement of refugees to the State of Palestine is an internal Palestinian matter, not subject to negotiations/ discussions with other parties.

Host countries will be compensated. (“Palestinian Response to US Proposals - Permanent Status Negotiations” October 18, 2009)(<http://transparency.aljazeera.net/en/document/4891>) (emphasis added).

There are repeated references to United Nations General Assembly (“UN GA”) Resolution 194 throughout the internal documents.

For example, a September 2009 Negotiations Support Unit (“NSU”) internal document ⁶ states that “Under international law, civilians fleeing a war are entitled to return to their homes. In the specific case of Palestinian refugees, the right of return was acknowledged in UNGA Resolution 194, passed the day after the UDHR was adopted and proclaimed. ⁷ UNGA Resolution 194 has been repeatedly reaffirmed since its original passing.” (<http://transparency.aljazeera.net/files/4810.pdf>)

In virtually every formulation seen in the Palestine Papers there is a reference to ⁵ an agreed number of years during which an initial wave of refugees would be resettled in Israel in specified annual numbers. However, this initial wave is not the final number. Rather, the implementation of the Right of Return is left open, with future negotiations to take place between the Palestinians and the Israelis after the first “return” wave is completed. E.g. <http://transparency.aljazeera.net/en/document/2412> . See also Section V, below.

The European funded NSU was founded in 1998 following a Palestinian request ⁶ to the U.K. for assistance in the final-status talks with the Israelis. With offices in Ramallah, until recently it consisted of some twenty legal and other experts offering advice to the PLO on various final status issues. The NSU had a representative on the Palestinian negotiating team. In

February 2011 in the aftermath of the leak of hundreds of “Palestinian Papers” to Al Jazeera , the PLO Executive Committee decided to restructure and place it under the direct supervision of Palestinian President Mahmoud Abbas. (AFP February 14, 2011).

Universal Declaration of Human

Rights. ⁷

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B. The P.A. Understands Both U.N. Resolution 194 and the Arab Peace Initiative to Endorse the Right of Return

Documents found in the Palestine Papers make clear that the P.A. considers UNGA Resolution 194 synonymous with or in essence a “code” for the “Right of Return.” A March 26, 2008 NSU memo, for example, states that:

reference to UN GA Resolution 194 could be used as an indirect mention of the right of return. This resolution is in fact an affirmation of Palestinian refugees’ right of return, and reparation as found im [sic] international law.
<http://transparency.aljazeera.net/en/document/2370>

A 2002 document is entitled “FAPS Based On Arab Peace Initiative.” In this document, ^{8 9} notes that were added to Section 2(II) of the Arab Peace Initiative (“API”) (which states “Further calls upon Israel to affirm . . . Achievement of a just solution to the Palestinian refugee problem to be agreed upon in accordance with U.N. General Assembly Resolution 194,”) make clear that the P.A. understands both 194 and the API to endorse the “Right of Return”:

The Parties shall recognize the [rights] [right of return] [right to return to their homeland] of Palestinian refugees under UNGAR 194, UNSC Resolution 242[, and the Arab Peace Initiative (Article 2.ii.)]. The number and modalities of return shall be agreed between the Parties [with consideration to maintaining the demographic balance in Israel] [consistent with the two-state solution].

Refugees will have the right to choose between:

Framework Agreement on Permanent

Status. ⁸

In a March 24, 2009 memo memorializing a meeting between Abbas and NSU ⁹ Advisers, it is stated that “The API represents close to a universal consensus. The whole world

is talking about it. Even some in Israel speak positively about it. The focus should be on explaining it, as many don't understand it fully, for example that it includes not only Arab states, but the Islamic ones as well. Also, many people either understate or exaggerate the article on refugees: either say it is not enough, or interpret it to mean that 5 million refugees will return. Neither is correct. The language is correct in stating "just and agreed upon." Therefore I recommend that you focus on the API. It is being raised by Obama, Kerry, the British, French, even Peres. You need to explain it to all audiences. It has been translated and published in many languages. So it is important to clarify it to the whole world, so that when negotiations are resumed it will be the basis." (<http://transparency.aljazeera.net/en/document/4507>)

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return to the state of Palestine

return to the state of Israel

return to areas in Israel being transferred to Palestine

remain in the host states, subject to the latter's decision

resettle in third countries, subject to the latter's decision

<http://transparency.aljazeera.net/en/document/1641>

C. Expectations of the Palestinian People May Be Driving the Refusal of the P.A. to Relent on the Right of Return

There is indication in the Palestine Papers that at least part of the reluctance of the Palestinian leadership to give up the Right of Return is their belief that the Palestinian people expect it to be part of any final status agreement. See, for example, footnote 15 in "The End Game" Proposal for Treaty - NSU Comments," April 17, 2008 which states in relevant part:

The relocation options will be ultimately subject to refugee choice. Therefore, it is important that all options be presented to them after the availability of options is agreed upon (otherwise it will reinforce the impression that the return to Israel is not indeed a real option). For any resolution of the issue to succeed, it must be sufficiently comprehensive and be properly "marketed" to refugees.

<http://transparency.aljazeera.net/en/document/2458>

D. The Palestinians Make an Effort to Claim That Israel Has Accepted the Principle of the "Right of Return"

Israel is portrayed in the Palestinian Papers as having accepted the "principle" of the Palestinian Right of Return. The introductory paragraph of a September 23, 2007 internal

NSU memo entitled “Palestinian Refugees Absorbed into Israel Since 1948 ” states:

This memo outlines those estimates that have been identified of the numbers of Palestinians that Israel has offered to absorb or has absorbed since 1948. It is assumed that the purpose of this exercise is to establish a precedent whereby it can be argued that Israel (1) has accepted the principle of return for the refugees and/or (2) has the capacity and/or willingness to absorb a substantial number of refugees.

<http://transparency.aljazeera.net/en/document/1930>

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E. The “Right of Return” is at the Heart of the Palestinian Refusal to Recognize Israel as the Jewish State

A November 16, 2007 memo entitled “Strategy and Talking Points for Responding to the Precondition of Recognizing Israel as a “Jewish State” lists what the NSU saw as the most serious and substantial implications that recognition of Israel as a “Jewish state” would have for permanent status issues. The first on the list was:

Recognizing Israel as a “Jewish state” would likely be treated by Israel and third states as Palestinian recognition of Israel’s demographic objections to the right of return and, by extension, an implicit waiver of the right of return. This would undermine the legal rights of the refugees and make it practically even more difficult to negotiate a resolution of the refugee issue. <http://transparency.aljazeera.net/en/document/2021>

An advisory memo to Saeb Erekat from the NSU dated May 3, 2009 warns that the “two states for two people” formulation presents “similar risks to those associated with the recognition of Israel as the state of the Jewish people concerning the rights of refugees,” and “may have an adverse impact on refugee rights, namely the right of return . . .” The memo therefore advises the Palestinian leadership to use the “principle of two states living side by side in peace” instead. <http://transparency.aljazeera.net/en/document/4555> This same advice is reiterated in a June 3 2008 NSU memo entitled “Recommendations on Refugees Issues.” <http://transparency.aljazeera.net/en/document/2685>

II. Publically, the Palestinians Have Indicated That They Are Willing to Compromise on the Number of “Returning Refugees”

While internal Palestinian communications continue to call for a broad implementation of the “Right of Return” (see especially sections V & VI below), the Palestinians have recently told U.S. officials that they will accept return of a “symbolic number of refugees.” (See, e.g., “Minutes of Meeting between Amb. David Hale and Saeb Erekat, dated January 15, 2010”, <http://transparency.aljazeera.net/en/document/5012>).

Other statements have been less clear. A 2009 memo states that President Abbas told President Obama that “On refugees . . . we need a credible number, not 5 million but not 1,000.” (June 2, 2009

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memo on meetings with U.S. officials, <http://transparency.aljazeera.net/en/document/4625>). This¹⁰ is unclear - it could indicate that Abbas would accept 1,000 a year for 5 years for a total of 5,000 or it could indicate that he required 500,000 or 2,000,000. There is, in that same memo however a reflection of a conversation between Abbas and Olmert (recounted by Saeb Erekat) where Abbas said “are you kidding”? to Olmert’s figure of 1,000 over 10 years. (*Id.*)

According to a 2009 memo: “The official Palestinian position on the right of return is that a distinction should be drawn between recognition of the right of return and its implementation. While the former should not be compromised, the scope of the latter is subject to negotiations.” The memo further states “Naturally, the scope, details and logistics of any return/resettlement/integration programme will have to be agreed upon and coordinated with the state/s [sic] concerned. In the case of Israel, President Abbas has stated publicly that he seeks the return of a ‘reasonable number’ to Israel.” “Reasonable number” is not defined in this memo. (September 6, 2009 NSU Paper entitled “Refugees: Issue Overview and Guidelines,” <http://transparency.aljazeera.net/files/4810.pdf>)

However, by noting that “While a plan for the return of Palestinians to Israel may not directly involve the Palestinian Government, **if significant numbers of Palestinian refugees currently residing in the oPt choose to return to Israel, and are able to exercise that choice**, this may¹¹ impact upon the planning of the Palestinian Government.” (*Id.*) (emphasis added). The memo thus clearly indicates that Palestinian thinking assumes that there may be a “significant” (as opposed to a “symbolic”) return.

III. The Palestine Papers Are Filled With Numerous Indications that the Palestinians Are in Fact Not Willing to Compromise on the Refugee Issue

A. The Palestinians Understand the “Right of Return” as Extending to Each Individual Refugee

Repeated internal documents make reference to the requirement that any solution to the refugee problem “respect refugee choice” (see e.g. August 5, 2009 PLO Presentation

Sharif Hamadeh (a former Communications Advisor on the Palestinian¹⁰ Negotiations Support Unit) was apparently concerned about the use of 5,000,000 as a figure and said “AM used the figure 5 million refugees? This is not what we use. We will prepare a memo on terms and methodology for counting refugees so we can coordinate.”
(<http://transparency.aljazeera.net/en/document/4625>)

Occupied Palestinian Territories.¹¹

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(<http://transparency.aljazeera.net/files/4758.pdf>) (emphasis in original) and “The right of return is in essence *a right of choice*.” <http://transparency.aljazeera.net/en/document/2344>. (emphasis added).

Repeated internal documents also make reference to the requirement that “The solution should dispense *individual justice*” with “return/resettlement/integration based on free choice.” (E.g. <http://transparency.aljazeera.net/files/4758.pdf>) (emphasis in original). And “The PLO will pursue the recognition of all refugees’ rights and their satisfaction with particular care, especially since these are **individual** rights.” (<http://transparency.aljazeera.net/en/document/2370>) (emphasis added). Also that the right of return must be “based on free choice” and that resettlement of refugees will be “in their chosen destination. (Israel, Palestine, third countries)” <http://transparency.aljazeera.net/en/document/2439>.

This indicates that under the Palestinian formulation, each “refugee” (there are over seven million Palestinian “refugees” under the UNWRA formulation and the Palestinians consider that “today the majority of the Palestinian population” are all refugees.”) must have the right to choose his or her¹² option, including return to Israel which clearly negates the option of a merely “symbolic return.”¹³

A June 3, 2008 memo expressly negates the possibility of compromise::

“This question is an individual right of the refugees (no compromise possible).” <http://transparency.aljazeera.net/en/document/2685>

And, while it is also stated repeatedly that the implementation of the Right of Return would take into account Israel's concern over demographics and that "it is understood that the return to Israel will be in lesser numbers than in the other options [return to Palestine or to third countries]." (<http://transparency.aljazeera.net/en/document/2451>) nowhere in these documents is it explained

¹² <http://transparency.aljazeera.net/files/4758.pdf>;

E.g.

<http://transparency.aljazeera.net/en/document/2370>)

A September 6, 2009 NSU Paper entitled "Refugees: Issue Overview and ¹³ Guidelines," states that "Any peace agreement reached between Israel and the Palestinian Liberation Organisation that addresses the issue of Palestinian refugees should specify the persons entitled to the rights and remedies enumerated in the agreement. This is particularly important in the Palestinian case where the numbers of displaced persons is so high and fragmented. Some basic statistics on the Palestinian refugee population are available from the NSU upon request." (<http://transparency.aljazeera.net/files/4810.pdf>) This indicates a serious interest in using the actual number of persons considered "Palestinian refugees" (approximately 7 million) in any negotiation and/or final status agreement.

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how exactly the Palestinian leadership can be certain of this, given that the "Right of Return" cannot be compromised and would be exercised as a free choice given to some seven million "refugees."

In fact, the Palestine Papers reveal, that it *is* only an assumption that fewer refugees will choose return to Israel than will choose settlement in Palestine or third countries. (See "The End Game" Proposal for Treaty - NSU Comments," April 17, 2008 <http://transparency.aljazeera.net/en/document/2458>) ("While this may appear to be a reasonable assumption as to the end result of the return/resettlement issue, making such a statement explicitly at this stage is potentially damaging to the Palestinian position, as well as to Arab host states' interests, for at least two reasons.") Thus, the Palestinians recognize that even the very substantial numbers (see Section V *infra*), that the Palestinians foresee "returning" to Israel may be lower than the numbers that would actually "return" if the Right of Return was ever recognized and implemented.

IV. The Palestine Papers Reveal That While Contemplating and Planning for the "Return" of Extremely Large Numbers of Refugees, the Palestinians May Be Intentionally Vague About Actual Numbers

A March 19, 2008 internal memo entitled “Notes on Refugee Calculation,” which was summarized as containing “Notes describing strategy and calculation methods regarding acceptable refugee figures (Israeli absorption, etc.)”, clarifies that part of the Palestinians’ approach to implementing the Right of Return involves calculating “the numbers [of refugees that would return to Israel] according to a methodology that better conforms to Palestinian interests and needs.” <http://transparency.aljazeera.net/en/document/2364>.

Using a Palestinian calculation of “Israel’s actual absorption capacity” the memo concludes that Israel has “the capacity to settle 1,016,511 million persons over a 10 year period,” and further notes that “This methodology can be developed and rationalized further upon instructions.” Id.

The memo then offered the following recommendation:

“Only specify the formula by which an agreed solution will be achieved in the Treaty. **This approach is obviously the best political strategic option for the Palestinians, as it does not require relinquishing the option of return for millions of Palestinians,** but it is also the most practical approach.” (Id.) (emphasis added).

V. A Palestinian Assessment of “Israel’s Capacity To Absorb Palestinian Refugees”

It appears to be a very significant part of the Palestinian approach to portray Israel as having the demographic capacity to absorb very large numbers of Palestinians refugees. An internal memo explains that Israel has historically refused to accept the Right of Return and has sporadically only agreed to very limited numbers of “repatriations” because of Israel’s need to preserve its Jewish identity “which, allegedly, could be threatened by massive returns.” Id. Therefore the use of an “external consultant” was recommended to produce a study of Israel’s “absorption capacity” based on projected immigration and demographic patterns. The purpose of this study is summarized as:

provid[ing] Palestinian leadership with a scientific approach of the issue which could support their position in the debate over the returns to Israel. These 'Terms of References' are meant to set a rational analysis supporting Palestinian demands for the return of refugees, in consideration of Israel’s past immigration history and absorption

capacities. (April 2, 2008 internal memo entitled “Terms of Reference: Israel’s Capacity to Absorb Palestinian Refugees”) <http://transparency.aljazeera.net/en/document/2392>

This same April 2, 2008 internal memo expresses the projected or hoped for outcome of the study:

it is our understanding that Israel’s absorption capacity based on its past immigrant absorption is at least 60,927 per year (average number of immigrants over 20 year period). They also have proven their capacity to absorb 1,016,511 million persons over a 10 year period (from 1990- 2000). <http://transparency.aljazeera.net/en/document/2392>

An April 6, 2008 NSU document entitled “Negotiating Refugees, A Strategic Approach Based on International Law,” refers further to a:

demographic study [which] will be soon available on this to advocate for a more substantial number of returns. <http://transparency.aljazeera.net/files/2403.pdf>

An NSU memo dated May 7, 2008 summarizes the “Absorption Capacity” study noting

that: **Even if some more work still needs to be done on the study, we**

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think some of its findings can be already used in the scope of the discussions between President Abu Mazen and PM E. Olmert on the issue and/or be presented to the US Administration. <http://transparency.aljazeera.net/en/document/4428>

According to the memo, the main conclusion of the Absorption Capacity study was that:

Israel s [sic] concerns relating to the impact of Palestinian returns on its demographics is largely irrational. (Id.)

The “Absorption Capacity” study was conducted and the results are reflected in a July 28, 2008 internal memo from the NSU to Saeb Erekat entitled “Israel’s Capacity To Absorb Palestinian Refugees.” This memo seems to reflect the most detailed and most specific ideas regarding what

the Palestinian leadership anticipates with regard to implementation of the “Right of Return,” and reveals that the Palestinians anticipate the “return” of extremely large numbers of refugees. <http://transparency.aljazeera.net/en/document/3028>.

The memo starts with the basic assumption that “According to international law, all Palestinian refugees have a right to return to their original homes, most of which are located in what has become Israel.” (Id.)

It then asserts that “The PLO has made a historical compromise by accepting to negotiate the implementation of the Right of Return and adapt to some legitimate interests and concerns Israel may have. One of these legitimate concerns is Israel’s capacity to absorb future streams of immigration, which would be composed of Palestinian ‘returnees’ to Israel.” (Id.)

A. The “Absorption Capacity” Study Anticipates an Initial Wave of 500,000 to 2,000,000 Palestinian Refugees “Returning” to Israel

The study contemplates three different scenarios, based on various “assumptions” about Jewish and Palestinian birth rates, past trends of Jewish immigration into Israel, and the impact that these factors would have on maintenance of a Jewish majority in Israel. The first scenario envisions that: ¹⁴

However, among other factors, the “assumptions” the consultants rely on do not ¹⁴ take into account the significantly higher Arab/Muslim and Palestinian birth rate, which combined with the very large “return” numbers anticipated by the study would clearly threaten to reverse the Jewish character of the state within decades or likely sooner. See, Israeli Central Bureau of Statistics, Population Data, 2010; United Nations World Population Prospects report, 2008 revision.

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41,000 Palestinian refugees would return annually to Israel during 15 years from 2013 until 2028, a total of 600,000. (Id.)¹⁵

After the initial 15 year period:

Israel and Palestine could then possibly agree a new returns.
[sic] (Id.)

The second scenario envisions the return of:

**38,000 . . . Palestinian refugees [annually] from 2013 to 2028,
thus a total of 570,000 returns. (Id.)**

Again, after the initial 15 year period:

**Israel and Palestine could then possibly agree a new returns. [sic]
(Id.)**

The third scenario looks at the case of “selective returns, which are adjusted to account for the living situations of Palestinians living in countries where they are more vulnerable because of economic and political risks (Gaza and Lebanon are often mentioned). Under this scenario an estimated 2 millions [sic] would return.” Id.)

**(1) Under the Scenarios in the “Absorption Capacity” Study Palestinian Claims For
Additional Returns Could Continue Into Perpetuity**

The reference to Israel and Palestine possibly agreeing to new returns after the initial fifteen year “return” period may at first glance seem innocuous. However, this open-ended approach indicates that, under these proposed scenarios, any initial agreed upon number of refugees returning to the

The number of Palestinians “returning” in each scenario seems to have
been ¹⁵

chosen somewhat randomly -- by taking the amount of “net” Jewish immigration into Israel over a certain time period and then “assuming” the same amount of Palestinian refugees could be absorbed over a similar time period in the future.

<http://transparency.aljazeera.net/en/document/3028>

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state of Israel would not necessarily end the Palestinian claims or the conflict. Rather, the Palestinians would have the right -- seemingly into perpetuity -- to go back to the Israelis and attempt to negotiate additional returnees. If those negotiations did not prove fruitful or satisfactory from their perspective, presumably the conflict would continue, in spite of whatever territorial and other concessions Israel had made in a “final status” agreement.

B. The Absorption Capacity Study Appears to be the Basis Upon Which the Palestinians Intend to Negotiate the “Right of Return” in a Final Status Agreement With the Israelis

In a September 22, 2008 internal memo drafted in response to the Olmert Package Offer it states:

Regarding the 1000 returnees annually for 5 years: while we agree to negotiate the number of returnees in consideration of Israel’s capacity of absorption, this particular offer cannot be taken seriously.”

<http://transparency.aljazeera.net/en/document/3328>

The memo also states:

The right of return, protected by International Law, should be implemented in a reasonable manner according to refugee choice and practical factors such as Israel’s absorption capacity and legitimate national interests, as well as the absorption capacity of the future Palestinian state. (Id.)

The memo is clearly a draft as certain things are left blank and others are in brackets. It consists of general, frequently vague requirements the Palestinians would require for a final status agreement in addition to many positions they would need clarified from the Olmert proposal. While there is no document in the Palestine Papers indicating that the memo was ever finalized and it does not appear to have been sent to the Israelis, it does seem to reflect a Palestinian understanding that the “Absorption Capacity” Study they commissioned would serve as the basis for negotiating the “Right of Return.”

VI. The International Mechanism

There are repeated calls in the “Palestine Papers” for the “Establishment of an International ¹⁶ mechanism to implement the agreed solution on refugees, including return and resettlement of

As late as January 14, 2010 (the Papers go up to September 2010). ¹⁶ 13

refugees and all individual and collective claims for restitution and compensation.” (see, e.g. <http://transparency.aljazeera.net/en/document/5010>).

The “International mechanism” was “developed with the assistance of international experts &

with reference to international best practice” and is described as a “a tool to implement a just, comprehensive and definitive agreement on refugees.” (See e.g. July 2009 PLO Presentation (<http://transparency.aljazeera.net/files/4758.pdf>))

A September 10, 2008 memo authored by Veijo Heiskanen, entitled “Research Study: Proposal¹⁷ for International Mechanism - Palestinian Refugees; Draft 13” and marked “CONFIDENTIAL” describes the “International mechanism” in some detail.

The international community in general and Israel specifically are charged with the responsibility for the refugee situation. The international community is, therefore, seen as a necessary participant in the “mechanism” of achieving justice for the refugees:

The participation of the international community in the establishment and administration of the international mechanism is required not only because the international community bears a shared responsibility, together with Israel, for the creation of the Palestinian refugee issue in the first place. (<http://transparency.aljazeera.net/files/3311.pdf>)

In addition to other remedies (e.g. restitution, compensation) the memo discusses the “scope and modalities of the right of return:”

The principal function of the return process is to organize and manage the return of the Palestinian refugees to Israel and Palestine and possibly to third countries. (Id.)

There appears to be no limit on the number of Palestinian refugees that Israel would be forced to absorb under this proposed “International Mechanism,” where each refugee would get to choose whichever country he or she wanted to settle in:

More specifically, the return process involves:

(a) The identification of refugees who wish to return and their

Heiskanen is a Swiss lawyer, specializing in international law.¹⁷ 14

chosen destination;

(b) The organization, management and operation of the repatriation process;

(c) The resettlement of refugees at their chosen destination;

- (d) The rehabilitation of the returnees by way of humanitarian and medical assistance and other types of support, including housing, education and professional training; and**
- (e) Reporting to the policy-making body on the status of the return process. (Id)**

“The return process will be a major management, operational and logistical exercise, take years to complete and require substantial funds, particularly at the rehabilitation stage.” (Id.)

VII. The “Right of Return” Appears to Have Been a Major Factor in Yasser Arafat’s Rejection of the Clinton Parameters

In a November 30, 2000 Memo (drafted several months after Chairman Arafat had walked out of 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 the Right of Return would have on its “demographics” by stating:

The Right of Return is not a Palestinian DEMAND it is a Palestinian RIGHT 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; (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

An internal Palestinian memo memorializing President Clinton's final "take it or leave it" offer to both Palestinians and Israelis on December 23, 2000 in Washington DC makes clear that the Palestinians had the same understanding of the "Clinton Parameters" that the Israelis, Dennis Ross and Bill Clinton had, and that there was no confusion about the terms of the proposal. ¹⁹ <http://transparency.aljazeera.net/en/document/48>

The Legal Unit of the NSU drafted an eight page memo dated January 2, 2001 entitled "President ²⁰ Clinton's Proposals." The NSU concludes 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>

This memo appears to be an advisory memo, counseling Chairman Arafat to turn down the Clinton Parameters, in part based on the Right of Return. The memo does not recommend or outline any parameters for compromise on this issue.

With specific regard to the refugees the NSU memo 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 Israelis deny ever agreeing to accept the concept of the right of return, ¹⁸ including at Taba and there is no documentary or other evidence that they did.

See Clinton, Bill, *My Life* (Vintage Books. 2005) at pp. 936- 937 ; Dennis Ross,

A ¹⁹

Missing Peace: The Inside Story of the Fight for Middle-East Peace (Farrar, Straus and Giroux - June 2005) at pp. 809- 813.

Ten days after the Clinton Proposals were presented to the Israelis and ²⁰ Palestinians.

- **“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.” [Id.] ²¹

Moreover, myriad documents after Arafat walked away from the Clinton proposal, show the Palestinians continuing with their demand for Right of Return. E.g. <http://transparency.aljazeera.net/en/document/437>

VIII. In Addition to Recognition of the “Right of Return” and its Implementation, the Palestinians Seem to Require an Admission of Guilt by the Israelis

Repeated documents throughout the Palestine Papers refer to the need for Israel to accept full blame for the Palestinian refugee situation. For example, an April 8, 2008 draft proposal for resolution of the refugee issue states in the preamble that:

Israel acknowledges its moral and legal responsibility for the forced longstanding displacement and dispossession of the Palestinian civilian population stemming from its actions during and subsequent to the war of 1948. <http://transparency.aljazeera.net/en/document/2412>

The memo further states that this language is:

expected by the refugees and what is therefore needed to secure the implementation of a settlement of the issue. (Id.)

What this statement is in effect saying is that for resolution of the conflict,

Israel ²¹

must accept that seven million Palestinian “refugees” (the descendants of the original Palestinian refugees all fall under UNRWA’s definition of Palestinian refugee), each individually have the right to “return” to Israel and become citizens, and Israel has to essentially just hope that not “all refugees will in fact return.” (<http://transparency.aljazeera.net/en/document/67;>

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

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An October 25, 2000 NSU memo entitled “Palestine-Israel Comprehensive Agreement on Permanent Status” is an earlier draft final status agreement for the conflict. Article 10, which deals with the issue of refugees, requires “Recognition of Israel’s responsibility for the creation of the refugee problem.” <http://transparency.aljazeera.net/en/document/43>

The January 2, 2001 “NSU Memo Re: President Clinton’s Proposals” states that “Israel must acknowledge *its* responsibility ” f o r t h e r e f u g e e s situation.” <http://transparency.aljazeera.net/en/document/120> (emphasis in original)

More recently, a June 2009 internal memo entitled “Summary of Palestinian Refugee Rights,” speaks of the Palestinians’ “right to gaining recognition from Israel of its responsibility in the creation and perpetuation of their displacement and dispossession.” The memo further states that:

Israel’s responsibility is an established historical fact which cannot be challenged, especially for the acts subsequent to 1948 war which prevented the Palestinian refugees from returning to their homes;

Only such recognition will enable refugee forgiveness and permit both parties to move forward towards a ‘just and lasting’ peace;

(<http://transparency.aljazeera.net/en/document/4682>)

VIII. Is Exercising the Palestinian Right of Return a Prelude to Turning Israel into a Palestinian State?

It can clearly be argued that by taking the position that the Palestinian/Israeli conflict can only be resolved if Israel accepts the Palestinian Right of Return as an individual choice of each of seven million refugees, the Palestinian leadership envisions exercising an alleged “right” that by its very terms at least has the potential (because of the demographics) to turn the Jewish state into a second Palestinian state.

But there is at least one memo in the “Palestine Papers” which may be more overt in describing this vision. A May 3, 2008 (or 2009) memo (marked “confidential and “not for distribution”) from the ²² NSU to Saeb Erekat describes the “risks” of using the “two states for two people” formulation in the context of the two-state solution:

both dates are cited for the same document on the Al Jazeera website.²² 18

Nonetheless, reference to the right of the two peoples to self-determination in two states may have an adverse impact on refugee rights, namely the right of return, as it suggests that the Palestinian refugees will only be able to exercise their right of return in conjunction with their right to self determination. Further, **a recognition of the principle of two states for two peoples as a solution to the Israeli-Palestinian conflict confirms that the PLO no longer envisages Palestinian self-determination within the territory of the state of Israel.** Accordingly, the implementation of the right of return of the Palestinian refugees is likely to be realized only in the context of the establishment of a Palestinian state alongside Israel.
<http://transparency.aljazeera.net/en/document/4555> (emphasis added).

