
MEMORANDUM

TO: PALESTINIAN DRAFTING TEAM

FROM: NEGOTIATIONS SUPPORT UNIT

RE: STRATEGY AND TALKING POINTS FOR RESPONDING TO THE
PRECONDITION OF RECOGNIZING ISRAEL AS A “JEWISH STATE”

DATE: 16 NOVEMBER 2007

Recommended Approach

We recommend that the Palestinian negotiators maintain their position not to recognize or otherwise characterize the state of Israel as “Jewish”. Any recognition of Israel within a treaty or agreement should be limited to recognizing it as a sovereign state. It should not recognize Israel as a “Jewish state”, “state for the Jewish people”, “homeland for the Jewish people” or any similar characterization.¹

In response to Israeli demands for recognition of Israel as a Jewish state and/or as a state of the Jewish people, the Palestinian negotiations team should refuse to engage on the issue and assert that the traditional terms of reference of the peace process and existing agreements serve as the basis of peace. These terms of reference and agreements do not contemplate Palestinian recognition of Israel as a Jewish state as a basis for peace or at all. They are based on the model of two sovereign states living side-by-side in peace and security and a just settlement of the refugee issue (Resolution 242, 338, [194] and Road Map). In addition, the Jewish state as currently constituted formally discriminates against the non-Jewish population. Palestinians cannot recognize a situation which violates basic norms of international law.

If Israel insists on recognition of the demographic character of its state, then the Palestinian team may insist that the whole status of Mandate Palestine should be opened for discussion because the demand to base the agreement on two ethnically-defined national entities subverts the traditional terms of reference. The Israeli approach is closer to Resolution 181, which called for the partition of Palestine into two national units.

The talking points below set out the arguments for refusing to recognize the Jewish state. An annex with a brief analysis on the implications of recognizing Israel as a Jewish state for permanent status is also included below.

¹ There are other formulations for recognition that may be less damaging to Palestinians interests. The NSU can provide such language in the event that the Palestinian team decides to engage on the matter.

Talking points:*Process*

- At the start of the process, both parties agreed that there would be no preconditions imposed by either of the parties prior to negotiations. The recognition of Israel as a “Jewish state” was never a part of any of the previous negotiations between the parties. Continuing to insist on it now will be seen as imposing yet another obstacle to peace.
- Israel is globally recognized, including by the PLO, as a sovereign state. Your statehood is not in doubt. It is *our* statehood and the end of occupation and conflict that need to be resolved in our talks.

State Practice

- No peace treaty concluded with Israel characterizes the state as “Jewish”.
 - Peace treaties concluded between Israel and Arab countries do not address this issue at all and include only recognition of Israel as a state.
 - None of the agreements signed between the PLO and Israel have included any such reference to Israel as a “Jewish state”. Nor has Israel previously insisted on it as a precondition to establishing peace in our prior talks.
- There is no state practice of recognizing the demographic character of states. What you are asking for is out of line with how states behave.
 - Israel was admitted to the UN as a “state”, not a “Jewish state, just as China is a member of the UN as a state and not as a communist state, and just as Pakistan is a member of the UN as a state and not a Muslim state.
 - The US, and other states, recognized the State of Israel, not the Jewish State.

Legitimacy

- As you have seen from the press analysis of your new demand to recognize Israel as a Jewish state, there is a serious question about the legitimacy of defining the state based on demographics, ethnicity or religion. Defining Israel as a Jewish state is exclusionist and means that Jewish citizens of Israel and Jews world wide which are not even citizens in Israel are entitled to privileges that are denied to non-Jewish citizens, including the indigenous Palestinian population (e.g., land ownership and access). Obviously, this contravenes your obligations under international human rights law.
 - How can we agree that non-Jewish citizens should be treated to second-class status?
 - Sovereign democratic states are states for all their citizens.

- Who is defined as a “Jew” in Israel has been the subject of fierce debate inside Israel since its inception. This debate is not only limited to Palestinian citizens of Israel but includes other non-Jewish groups. There is also a debate between secular and orthodox Jews as to what this definition actually entails. We do not want to enter into this debate.
- Israel was established following Resolution 181. Resolution 181 did not include population transfer nor did it establish that Jewish citizens be given privileges over the minority inhabitants. It sought to protect the civil and political rights of all citizens within each nation.
- The proposed approach of two national homelands would take us back to Resolution 181. 181 drew a boundary taking into account demographic considerations (e.g., where the majority of Jews were residing in the country) that is markedly different than the border that is being contemplated today. If Israel wishes to revisit this issue, then the status of Historic Palestine as a whole will have to be renegotiated.

ANNEX

Recognition of Israel as a “Jewish state” has substantial implications for many permanent status issues. The most serious implications are:

- 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.
- Recognizing Israel as a “Jewish state”, particularly in advance of agreeing to the final border between Israel and Palestine, could also strengthen Israel’s claims of sovereignty over all of Historic Palestine, including the OPT. Recognizing the Jewish state implies recognition of a Jewish people and recognition of its right to self-determination. Those who assert this right also assert that the territory historically associated with this right of self-determination (*i.e.*, the self-determination unit) is *all* of Historic Palestine. Therefore, recognition of the Jewish people and their right of self-determination may lend credence to the Jewish people’s claim to all of Historic Palestine.
- Recognizing Israel as a “Jewish State” would also give impetus to the view which is becoming increasingly popular that land swaps should be based on demographic considerations and include populations. Namely, the view that Palestinians living inside Israel would be swapped with Jewish settlers living in the occupied Palestinian territory. Therefore, if Palestinians recognize Israel as a Jewish state the next demand at negotiations may be to accept inhabited land swaps and/or Israel may use this recognition to move toward denationalizing Palestinian citizens of Israel.