

---

---

## MEMORANDUM

---

---

**TO:** PALESTINAIN DRAFTING TEAM

**FROM:** NSU

**RE:** THE PRECONDITION OF RECOGNIZING ISRAEL AS A “JEWISH STATE”

**DATE:** 13 NOV 2007

---

Following what has been reported about Israel’s demand from the PLO for recognition as a “Jewish state” prior to any negotiations on permanent status issues; below please find our preliminary advice.

**Process:**

- No precondition should be imposed by one of the parties prior to negotiations. The recognition of Israel as a “Jewish state” was never a precondition to any of the previous negotiations between the parties.
- All agreements signed between the PLO and Israel thus far did not include such reference and the recognition of Israel as a “Jewish state” was never accepted as a precondition to signing those agreements.
- Recognition of Israel as Jewish state has substantial implications on several of the permanent status issues that will be negotiated between the parties in the framework of negotiations on permanent status issues, namely the issue of Palestinian refugees and territory. Therefore, as a matter of process recognition of Israel as a “Jewish State” would in fact negate the right of return for Palestinian refugees, in principle and practice prior to agreement following negotiations. On the territorial aspect, recognizing Israel as a Jewish State without having agreed that borders of that state, would strengthen the Zionist movement argument that Jewish have a right of self determination over all of historic Palestine, including Jerusalem and its holy sites.

**Substance:**

- Recognizing Israel as a “Jewish State” would be an explicit recognition of Israel’s demographic objections to the right of return. This would make it legally and practically harder to insist on recognition in principle for the right of return and negotiating the implementation of that right with Israel.

- Recognizing Israel as a “Jewish State” would amount to recognition of an inherently discriminatory characterization of the state of Israel against its Palestinian population, which constitutes approximately 20% of the population, and other non-Jewish populations in Israel, unless that recognition is accompanied by agreement on what it means to be Jewish.
- As a matter of international law, the characterization of the state of Israel is an internal matter. From the point of international law and treaty law suffice it to say that Israel, in an agreed border, will be recognized as a sovereign state. All previous treaties signed between Israel and other states do not include a provision which amounts to recognizing Israel as a “Jewish State”. In particular, peace treaties signed between Israel and Arab countries do not address this issue at all and include only recognition of Israel as a state. This is supported by general practice of states and international organizations, in particular the UN. Israel was accepted to the UN as a state and not a Jewish state just like China was admitted to the UN as state and not a communist state and just like Egypt is a member of the UN as a state and not a Muslim state.
- The term a “Jewish state” is not clearly defined and is the subject of a fierce debate inside Israel. This debated is raging between Israel and Palestinians living inside Israel who oppose the definition of the state as a Jewish state being inherently discriminatory. Another ongoing debate also ranges between orthodox Jews and secular Jews as to what the term “Jewish state” exactly means and what it warrants. There is also an ongoing debate among non-Jewish populations (beyond only Palestinians) living in Israel as to exclusivity of the term and its implications over its rights.
- As regards to the argument that the UN partition plan (UNGA RES 181) envisaged a Jewish state and an Arab state, that resolution should be read in its entirety and in light of its own rational. Namely, the partition plan did not allow for population transfer and drew a boundary based on demographic considerations that is markedly different as a border than what is being discussed today.

**Position:**

- For all of the above reasons, it is advised not to recognize Israel as a Jewish state. Any treaty or agreement should, if at all, recognize Israel as a state. If Israel insists then, a fall back position could be developed. For instance, it may be possible to recognize Israel as a state for its *peoples* or alternatively Israel as the realization of the right of self determination of the *Israeli* people. Other alternative language would be to base recognition of the Jewish character of Israel in line with Resolution 181 with all of its parts. These alternatives can be further developed upon request. It is important not to define the Israeli people by religious or other terms.