
MEMORANDUM

TO: DR. SAEB ER~~A~~AKAT
FROM: NEGOTIATIONS SUPPORT UNIT
RE: “TWO STATES FOR TWO PEOPLES”
DATE: 3RD MAY 2009

Recently, the “two states for two peoples” formula ~~to the solution of the Israeli-Palestinian conflict~~ has been proposed as a solution to the Israeli-Palestinian conflict, following in unsuccessful relation ~~to~~ Israeli demands for recognition of Israel as a “Jewish state” ~~and/or as a~~ “state of the Jewish people”. ~~Accordingly,~~ This memorandum analyzes whether this formulation implicitly amounts to recognition of Israel as a Jewish state or as the state of the Jewish people, or whether it can serve to secure Israeli ~~conversely avoids such recognition while gaining recognition from Israel~~ of the Palestinian people’s right to statehood, without prejudice to other Palestinian interests or rights.

Previous usage

The formula “two states for two peoples” ~~as such,~~ was never used ~~before~~ in previous agreements between Israel and the PLO. However, reference to the goal of two states and a reference to a ~~mention of~~ “two peoples” or “the Israeli and Palestinian peoples” were made separately in previous agreements, understandings or initiatives accepted by Israel and the PLO, as detailed in the Annex to this memorandum. Generally, references to “two peoples” were made in relation to the People-to-People programs and to culture of peace in the Interim Agreements. ~~No r~~Neither references to “two states for two peoples” ~~nor~~ to “two peoples” or to “Israeli and Palestinian peoples” ~~was~~ ere ever made in relation to the permanent comprehensive status settlement resolution of the Israeli-Palestinian conflict. In that context, reference was only ever made ~~only~~ to two states, Israel and Palestine.

Common usage of “people” in Israel

The formula of “~~t~~Two state for two peoples” raises the question: ~~w~~Which people is referred to in Israel? Is it the Jewish people or the Israeli people? And if it is the latter, does “Israeli” refer to all Israeli citizens, including Palestinian citizens of Israel, as one people, or it is a synonymous term for the Jewish pPeople as a whole, which is usually how the term is understood in Hebrew “Am Yisrael”.

It should be noted that the ~~common~~ popular understanding in Israel ~~offer~~ the term “Israeli people” (from the biblical Hebrew “Am Yisrael”) is ~~a~~ synonymous with ~~to~~ the “Jewish pPeople”.

Furthermore, while Israeli law recognizes “Israeli” as a nationality for the purposes of citizenship, it does not recognize the “Israeli pPeople” as a *nation*-. Rather, it recognizes ~~maintains~~ ~~mainly~~ two categorizes ~~offer~~ nationality under the Israeli population register: Jewish and Arab.

“People” under international law

From an international law perspective, the meaning of the term “pPeople” varies, ~~dependings~~ on ~~what interpretation will be given to it in light of~~ the objectives and context of the treaty, agreement or resolution in which it is ~~used~~included. If the context is a permanent status settlement of the Israeli-Palestinian conflict and the term “two states for two peoples” is used, then the most likely interpretation and understanding of the term “people” is likely will to be in relation to the right of peoples to self-determination.

The right of peoples to ~~self-determination~~self-determination forms part of positive international law. However, the acceptance of ~~self-determination~~self-determination as a general political principle into the realm of international law and legal norms has been selective and limited. The principle is mentioned in article 1(2) of the UN Charter as one of the purposes of the United Nations and enshrined in article 1 of both the UN Covenant on Economic, Social and Cultural Rights and the UN Covenant on Civil and Political Rights¹. [N1]

While there have been many efforts and attempts to clarify the meaning of the word ‘people’ in the context of ~~self-determination~~self-determination, a conclusive or agreed definition ~~h~~was never been reached. However, state practice and historical evidence provides some general contours for the notion of “people” as bearers of the right to ~~self-determination~~self-determination as including the following: 1. Entire populations living in independent and sovereign states; [N2] 2. Entire populations of territories that have yet to attain independence (colonial territories), and 3. Populations living under foreign military occupation.

The first category, ~~self-determination~~self-determination of populations of sovereign states, touches upon several diverse situations including: the internal ~~self-determination~~self-determination of the whole people of sovereign states, that is to have a representative government; the rights of racial, ethnic or religious groups living in states which grossly discriminate against them; the rights of ethnic groups, linguistic minorities, indigenous populations, and national peoples living in states. [N3] Thus, from an international law perspective, it can be argued that the most likely interpretation for the term “people” on the Israeli side is as a reference to the whole population of the citizens of Israel. As such, this reference does not present the same ~~distinct~~ problems from a permanent status

“1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”

perspective as reference to the Jewish people ~~from a permanent status perspective~~, and limits “people” to those Israeli citizens inside Israel, as opposed to “the Jewish pPeople”, members of which ~~presumably~~ exist both inside and outside of Israel ~~without a direct link to citizenship~~. [N4][N5]

Nonetheless, reference to the right of the two peoples to ~~self-determination~~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~~to return in conjunction with their right to ~~self-determination~~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~~to return of the Palestinian refugees is likely to be realized only in the context of the establishment of a Palestinian state alongside Israel.² This risk is ~~exaggerated~~operated in light of the Israeli refusal to recognize responsibility for the creation of the refugee problem or the right of return for Palestinian refugees as an individual legal right.

Therefore, referring to “~~t~~Two states for two ~~p~~Peoples” in the context of a permanent status ~~agreement~~settlement for the Israeli-Palestinian conflict embodies similar risks to those associated with the recognition of Israel as the state of the Jewish people concerning the rights of refugees and the historical narrative concerning Israel’s responsibility for the creation of the Palestinian refugee problem. This risk is ~~highlighted~~tened given the context in which this demand is being presented by Israel, as a prelude or an alternative to the recognition of Israel as the state of the Jewish people. Furthermore, previous experience teaches that Israel always used ambiguity in agreements with the PLO to the ~~deter~~eriment of Palestinian rights and as a basis to ~~erode them~~argue their erosion. [N6]

Recommendation:

In light of the foregoing, we recommend that the Palestinian ~~Leadership~~negotiators maintain and continue to state their position of insisting on the principle of two states living side-by-side in peace and security and a just settlement of the refugee issue, in accordance with international law, as a solution for the Israeli-Palestinian conflict, without ~~reference to~~mentioning “two states for two peoples” or “two states for the Israeli- and Palestinian peoples” ~~or any similar formulations in conjunction~~. Furthermore, it is recommended to maintain the position against any recognition in a permanent status agreement that characterizes the state of Israel as “Jewish” or as a “state of the Jewish people”.

² Lex Takkenberg, *The Status of Palestinian Refugees in International Law* (Oxford: Clarendon Press, 1998), p.250.

ANNEX

Previous agreements and understandings:Reference to Two States:

- Reference to the goal of two states was made in the **Annapolis Joint Understanding on Negotiations** of 27 November 2007 which stated: “... *the goal of two states, Israel and Palestine, living side by side in peace and security.*”
- Similarly the **Road Map**, adopted in UNSC 1515, refers to two states as follows:
 1. The title of the roadmap: “*a performance based roadmap to a permanent two-state solution to the Israeli-Palestinian Conflict*”
 2. “*A two state solution to the Israeli-Palestinian conflict will only be achieved through an end to violence and terrorism...*” (paragraph 2)
 3. “*A settlement, negotiated between the parties, will result in the emergence of an independent, democratic, and viable Palestinian state living side by side in peace and security with Israel and its other neighbors.*” (paragraph 3)
 4. “*Israeli leadership issues unequivocal statement affirming its commitment to the two-state vision of an independent, viable, sovereign Palestinian state living in peace and security alongside Israel*” (phase I of the RM)
 5. “*Parties reach final and comprehensive permanent status agreement that ends the Israel-Palestinian conflict...and fulfills the vision of two states, Israel and sovereign, independent, democratic and viable Palestine, living side-by-side in peace and security.*” (phase 3 of the RM)

Reference to “Two Peoples” or “Israeli and Palestinian peoples” in previous agreements:

- **The Annapolis Joint Understanding on Negotiations of 27 November 2007** states in the preamble “*we express our determination to bring an end to bloodshed, suffering and decades of conflict between our peoples*”
- The Israeli-Palestinian **Interim Agreement** of 28 September 1995 states in paragraph 2 of article XXII on relations between Israel and the Council as follows: “*Israel and the Council will ensure that their respective educational systems contribute to the peace between the Israeli and Palestinian peoples and to peace in the entire region, and will refrain from the introduction of any motifs that could adversely affect the process of reconciliation.*”
- Furthermore, article XVI of the **IA** on Confidence Building Measures states: “... *in order to facilitate the anticipated cooperation and new relations between the two peoples, both Parties agree to carry out confidence building measures as detailed herewith*”

- **Annex VI of the IA**, the Protocol concerning Israeli-Palestinian Cooperation Programs, stipulates in article II: “*e. cooperation in enhancing the dialogue and relations between the two peoples through a people-to-people program.*”
- Article VII of the same annex on People-to-People Program states: “*1. The two sides shall cooperate in enhancing the dialogue and relations between their peoples.... 2. The two sides shall cooperate in enhancing dialogue and relations between their peoples, as well as in gaining a wider exposure of the two publics to the peace process, its current situation and predicted results.*”
- Likewise, article XII of the **Gaza Jericho Agreement** (Agreement on Preparatory Transfer of Powers and Responsibilities of August 29, 1994) concerning mutual contribution to peace and reconciliation states that “*....Israel and the Palestinian Authority will ensure that their respective systems contribute to the peace between the Israeli and Palestinian peoples and to peace in the entire region...*”