

TERMS OF REFERENCE

Study on Recognition of Israel's responsibility

Background

As part of their rights for reparations, Palestinian refugees are entitled to have Israel recognize for its responsibility regarding the creation and perpetuation of their plight.

According to international law, Israel's liability would stem from the following acts:

1. the expulsion of a large component of the Palestinian indigenous population from its original homeland;
2. Israel's failure to provide Palestinian refugees Israeli citizenship when it assumed sovereignty over the 1948 territory;
3. its confiscation of Palestinian refugee property;
4. its continuous refusal to allow Palestinian refugees to return to their homes.

To date, (1) remains an extremely sensitive issue as it touches the narrative of Israel's war of independence, while (2), (3) and (4) are undisputed facts which cannot be challenged by the Israeli Government. The PLO may therefore be inclined to insist on Israel's acknowledgement of the latter subsequent actions taken by the State of Israel, rather than on 1948 events, in order to force Israel's recognition of responsibility.

It is expected that Israel's recognition of responsibility or apology:

- will be essential to facilitate the endorsement of the resolution proposal that will be submitted to the refugees:
- will be subject to intense and difficult negotiations between the Palestinians and the Israelis in consideration of the sensitiveness and emotional aspect of the matter.

It is therefore important to prepare for the Palestinian negotiation team different proposals of drafts for Israel's recognition of responsibility and suggest different modalities according to which this statement could be delivered. In our view, relying on past international precedents will be very helpful to prepare efficiently.

Parameters of Study

Issues

Ideally, the first draft of the study should be around 15 to 20 pages. It should respond to two different queries:

- 1) What are the relevant precedents of state recognition or apology for the Palestinian case?
- 2) What proposed language options and delivery scenarios could be offered for a statement of recognition of responsibility from Israel?

More precisely, the external consultant is asked to:

- a) Identify relevant precedents of explicit State acknowledgement, recognition or apology for past wrongs including (a) information about what kind of wrongs the state committed as well as those it recognized and (b) the exact language of the statement and/or form of acknowledgement. In this regard, the paper should also provide analysis on whether explicit or implicit statements of recognition were made in resolving other refugee crisis.
- b) Provide background analysis of the political and discursive context within which the statements of recognition were made (e.g., opposition, sentiments against recognition, demands of the harmed population), and
- c) Consequences of or fallout from the statement of recognition (e.g. prelude to a peace agreement, riots, lawsuits, or revision of narratives).
- d) The study should conclude by proposing language options for a statement of recognition or acknowledgement from Israel, as well as for the modalities of such recognition (an article or a preamble inserted in the Peace Treaty and/or an official oral declaration by Israel's Government etc.). Close coordination with the NSU might be needed more specifically for this last part of the study.

Precedents to Draw on

Based on her expertise in international practice relating to recognition of State's responsibility, the external consultant will determine and present the most relevant precedents. Among others, there are at least two historical examples which might be of particular interest where victims of mass atrocities refused compensation because it was not accompanied by an apology or a statement accepting responsibility: the Rettig Commission for violations of the Pinochet regime in Chile and Korean comfort women.

The consultant may also want to consider the terms of the debate on Israel's recognition during the talks held at Taba and the proposals exchanged between the Palestinian and Israeli delegations there.

Deliverable & timeline

A draft study answering to the questions outlined above should be delivered to the NSU in word format by 30th of December 2008.

This task should represent 10 days of work. The consultant will then be asked to respond to NSU comments in a second draft to be delivered within a reasonable amount of time from receipt of the comments as determined by the consultant and the NSU.

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