

Fundamental Early Warning

Shelf Agreement: Attempt to Anchor the Two State Solution may Bury it

Essence of Warning

In this document, the Reut Institute contends that a Shelf Agreement may actually accelerate the collapse of the Two State Solution. This is because the negotiations – even if concluded in an agreement – will bring Israel and the Palestinians to a moment of truth towards the Two State Solution when it seems that the time is not ripe.

The current political process is based on a series of questionable assumptions including the idea that it is easier to achieve a Shelf Agreement than a 'real' agreement for implementation, that it is preferable for Israel to reach a comprehensive agreement rather than an interim one and that a signed agreement between Israel and the Palestinians has great importance even without significant changes on the ground.

This document complements other work by the Reut Institute that has dealt with Israel's security dilemmas and the consequences of a possible failure of negotiations. The conclusion drawn from all these documents is that Israel is stuck between a rock and a hard place. Whether negotiations succeed or fail, Israel will face difficult consequences such as a Hamas take-over of the West Bank or the collapse of the Palestinian Authority (PA) and the renewal of full Israeli responsibility over the West Bank.

Therefore Israel should create a safety net by systematically transferring powers and authorities to the PA while simultaneously re-assessing the agenda of the political process.

Introduction and Contents

1. Since the Annapolis Summit, Israel and the Palestinians have been engaged in negotiations over a Permanent Status Agreement to be completed by the end of 2008. In light of Hamas' control over Gaza and other obstacles, the sides agreed to work towards a 'Shelf Agreement' whose implementation would be delayed until conditions improved.
2. From the outset, the negotiations were subject to criticism because they dealt with the core issues and because the Palestinian leadership was considered to be unable to serve as a "real" partner due to Abu Mazen's weakness¹ and Hamas' control in Gaza.²
3. **Despite these problems, Israel continues to negotiate a Shelf Agreement in order to anchor the principle of Two States.** This assumption is based on a 'judicial' perspective that sees great importance in the written and signed word regardless of the reality on the ground.
4. **In this document, the Reut Institute contends that achieving a Shelf Agreement may actually accelerate the collapse of the Two State Solution.**³

¹ The weak status of Abu Mazen derives from the weakness of the Emergency Government in the West Bank which is weak and incapable of fighting terror and ensuring law and order, divisions within Fatah and the challenge to the PLO's authority to negotiate with Israel without being reformed in line with the Mecca Agreement (2/05).

² Hamas is able to foil the political process through strategic terror against Israeli targets, violence against the PA in the West Bank, Challenging the legitimacy of Abu Mazen to represent the Palestinians and conduct negotiations with Israel, blaming Abu-Mazen for preventing a Palestinian unity, thus, making it harder for him to negotiate with Israel and foiling the ratification process of the agreement.

Working Assumptions Regarding the Current Political Process

The goal of reaching a Shelf Agreement is based on a number of assumptions.

5. **It is easier and less dangerous to achieve a Shelf Agreement, as its implementation will be discussed only when the Palestinians are able to carry out their obligations** – In the past, the Palestinians demanded fulfillment of agreements based on pre-arranged 'target dates'. Israel meanwhile, demanded a 'performance based' and phased fulfillment. It seems that in the Annapolis Process the Palestinians agreed to the Israeli demand, thus removing a significant obstacle to the process, especially in light of the PA's weakness and Hamas control in Gaza.
6. **It's preferable to agree on the establishment of a Palestinian State rather than actually trying to build one** – Due to security considerations, Israel prefers to focus its efforts on achieving a Shelf Agreement, whose practical influence on the living condition of the Palestinians will be minimal. Israel is also systematically avoiding upgrading the status of the PA in the West Bank which could de facto bring it closer to that of a sovereign state.
7. **Even a diluted agreement will serve Israel**⁴ - the main working assumption of Israel is that a signed agreement between official representatives of Israel and the Palestinians:
 - a. **Will anchor the principle of the Two State Solution**⁵
 - b. **Will anchor Israel's security interests**⁶ including demilitarization of the Palestinian state⁷, special arrangements for the border regime,⁸ the prohibition on military treaties, control over the Palestinian electromagnetic spectrum and air space, arrangements for emergency IDF deployment⁹, and early warning stations (For this topic, see: [Can a Shelf Agreement Anchor Israel's Security Demands?](#)).

³ According to the Reut Institute, a "Failure" of the political process is one of the following scenarios: one or both sides announcing their inability to reach an agreement, both sides formulating an agreement but the ratification and implementation process failing, or an external event such as a Hamas takeover of the West Bank or the assassination of Fayyad or Abu- Mazen which foils the political process.

⁴ See the address of the Foreign Minister Tzipi Livni from the Jerusalem conference on this issue ([Ha'aretz](#), 20/2/08): "I know that they (the Palestinians) are not capable yet of implementing agreements... However there is a need to carry on with the negotiation process in order to anchor Israel's interests... The national interest in maintaining Israel's existence as a nation state requires an agreement on the principle of two states for two peoples".

⁵ See Livni's speech at the Herzliya Conference ([MFA](#) website, 22/1/07): "I think that even in a situation where future implementation fails, the paper, the agreement, if we get there and I hope we do, will be worth something, if it affixes the strategic Israeli interests in writing. It will have value if the solution agreed upon is the only one on the table, anchored and supported by the international community as well".

⁶ See Livni's speech *ibid.* ([MFA](#) website, 22/1/07): "In the context of conducting the peace process, we have to determine the goals, delineate Israel's national and security interests, understand what the deal-maker is on the Palestinian side, what the deal-breaker is on our side, and identify the common denominators... All in all, entering negotiations is not a gift we are giving the other side... but an attempt to ground and anchor the State of Israel's interests with the pragmatic elements on the Palestinian side."

⁷ This issue has three elements to it: (1) Limitations on the security capabilities of the Palestinian entity and the arrangement of the scope and abilities of the police force, including the issue of compulsory enlistment into the Palestinian Army, (2) Entrance of foreign forces into Palestinian territory, (3) Import and export of weapons to and from Palestine, (4) The IDF's use of Palestinian territory.

⁸ This issue includes: (1) The arrangements around the external envelope of the Palestinian entity (the border with Egypt and Jordan as well as the entry points to the Palestinian entity by land, water and sea), (2) The security arrangements along the border with Israel, (3) The nature of the border between Israel and the Palestinian entity.

⁹ This issue has a number of aspects: (1) Military sites for the preparation of the IDF in the Jordan Valley and other important routes during emergencies, (2) Designated Routes which are vital for IDF mobility.

Re-Evaluating the Working Assumptions

Some of these aforementioned assumptions may be irrelevant:

8. **A Shelf Agreement is no easier to achieve than any other agreement on Permanent Status** – Any agreement on Permanent Status will confront the political leadership with the need to take historic decisions regarding the outstanding issues between Israel and the Palestinians. Moreover, the Israeli Foreign Minister defined the goal of the current negotiations as achieving an 'End of Conflict', thus setting a very high bar for the process' success.
9. **Palestinian positions are likely to be less flexible than in 2000** due to the fact that:
 - The current Palestinian leadership does not enjoy the same level of legitimacy as in the days of Arafat.
 - A growing number of Palestinians are undermining the assumption that the establishment of a Palestinian state is a Palestinian interest. This is also due to the fact that a Palestinian state is presented as an existential Israeli need which stands as a top priority of the Bush administration. The significance of this is that Palestinian readiness to agree to concessions in return for the establishment of a state is decreasing.
10. **The opposition will have time to prevent implementation** – Postponing the implementation of the agreement will allow forces opposed to historic compromise with Israel to organize themselves and foil the chances to implement the agreement in the future.
11. **Even if an agreement is achieved, ratification remains a problem** – The aim of the current political process as defined at the Annapolis Summit is to achieve a Shelf Agreement by the end of 2008. However, the Summit made no mention of the complicated issue of the agreement's ratification:
 - a. **On the Palestinian side: No agreed and legitimate ratification process** – All the apparent options to ratify an Agreement suffer from serious weaknesses. The legitimacy of the PLO's Palestinian National Council will remain in doubt until it integrates representatives of Hamas; the PA's Palestinian Legislative Council is controlled by Hamas and many of its members are in Israeli jails; finally, it is difficult to imagine a reality in which a referendum takes place in the West Bank, Gaza and the Diaspora. Therefore it is reasonable to assume that the Palestinian side will have difficulty ratifying a Shelf Agreement in a way that will provide it with legitimacy.
 - b. **On the Israeli side: Who will ratify first?** – Israel will not rush to ratify the agreement as it would suspect the Palestinians may reject it, and thus the agreement will then become the start off point for the next round of negotiations after Israel has shown its flexibility.

Furthermore, the idea that an agreement with the Palestinians could be a 'winning card' in an Israeli election is not problem free. The parties' agenda for the elections usually include more than one central issue. Therefore, it cannot be assumed that the results of the elections would indicate the Israeli public's ratification of the agreement. Moreover, calling elections is a process which takes several months.
12. **The paradigm of the Two State Solution may collapse before the agreement is brought to ratification** – In light of the expected constitutional crisis on the Palestinian side, the agreement may be left for a long time without ratification. The opposition may successfully foil the agreement in this period due to:
 - a. **Their relative strength** – After the publication of the Geneva Initiative, Palestinian forces opposed to compromise with Israel proved their ability to organize themselves and muster support for their struggle against moderate Palestinians who supported compromise.

- b. **The weakness of the PA** – Signing a Shelf Agreement will pose a huge challenge to the PA in terms of enforcing law and order. In light of its performance so far, it is doubtful whether the PA will succeed in this challenge.

13. Therefore, rather than anchoring the Two State Solution, the signing of a Shelf Agreement is likely to accelerate its collapse.
14. As a result, Israel finds itself between a rock and a hard place in the current negotiations.
- On the one hand, **failure to reach an agreement is likely to constitute a mortal blow to the Two State Solution.** Failure of the 'dream team' to negotiations will increase Palestinian doubts whether the Two State Solution is a viable solution at all. Therefore, failure may bring about the collapse of the PA, the disappearance of Abu Mazen from the political map and the strengthening of Hamas.
 - On the other hand, as has been claimed in this document, **reaching an agreement may actually bring about the collapse of the Two State Solution.**

Policy Options

15. **Avoid a "moment of truth"** – In light of the trap between the consequences of failure of negotiations and the latent danger in achieving an agreement, Israel should consider refraining (as much as possible) from reaching a 'moment of truth', such as an "Annapolis B Summit" that could be defined as a "success" or "failure". Moreover, the fewer declarations there are regarding the nature of the process or agreement (timetables, contents or finality of claims), the greater the negotiators' room to maneuver.
16. **Create a safety net in case negotiations fail** – Although the Government of Israel is aware of the potential dangers of the possible failure of the political process,¹⁰ it has yet to formulate a strategy to deal with failure. A possible strategy might include:
- a. **An agreed 'Plan B' for the political process** – Israel should aim to get the agreement of the US, the Quartet and the PLO (to the extent possible) to fix an agreed mechanism to change the agenda of the political process in case negotiations or the ratification process fails. As an example, the sides might agree that the failure of negotiations will lead to negotiations over the establishment of a Palestinian state with provisional borders in conjunction with the second phase of the Roadmap.¹¹
 - b. **Strengthening and upgrading the PA** may prevent its collapse if the political process fails. In previous documents, the Reut Institute contended that the keys to upgrading the PA lie in the hands of Israel as only Israel can upgrade the PA's status by the systematic transfer of powers and authorities.
 - c. **Strategy to 'freeze' the process** – Israel may prefer to freeze negotiations until after elections in Israel, the PA or the US. Israel should coordinate these steps with the US in order not to create the impression that negotiations have failed.

End.

¹⁰ See Akiva Eldar in [Ha'aretz](#) (22/8/08): "The talks with the Palestinians are being conducted in the shadow of growing fear in Jerusalem for the fate of the two-state solution... Olmert and Livni know that if the 'Annapolis process' goes the way of the 'Camp David process,' son of the 'Oslo process,' the Palestinian Authority will fall in their wake."

¹¹ See an article by Jerome M. Segal which offers a political layout for the establishment of a Palestinian State within the framework of an agreement that is "better than a Hudna and less than the finality of claims" (Jerome Segal, "Palestinian State within a Year", [Ha'aretz](#), 28/7/07).