

## Policy Product

# Upgrading the Palestinian Authority to the Status of a State with Provisional Borders

### Executive Summary

This document analyzes the option of upgrading the Palestinian Authority (PA) to a Palestinian state with provisional borders through a systematic transfer of powers and authorities from Israel to the PA, up until its recognition as a state. Such a process should be based on three phases:

- **Phase 1** – The systematic transfer of powers and authorities coupled with trust-building steps and the redeployment of the IDF;
- **Phase 2** – Recognition by Israel and the International Community of the Palestinian state;
- **Phase 3** – Renewal of the political process and its division into two channels: In one, the two states will hold negotiations on issues such as water, economy, environment and security. In the other, Israel will negotiate with the PLO over the historical outstanding issues such as permanent borders, Jerusalem, etc.

This document does not discuss the advantages or disadvantages<sup>1</sup> of upgrading the PA to the status of a state compared to the other alternatives currently facing the State of Israel.

<sup>1</sup> Among the disadvantages of such a process are:

- **A complex political process** – even if simpler than negotiations on a Permanent Status Agreement (PSA), unilateral recognition remains a complex process of transferring powers, authorities and territory to the PA under international supervision.
- **The inherent rights of the Palestinian state** according to international law - such as a sovereign state's immunity, diplomatic immunity, and territorial integrity - will limit Israel's military and political room to maneuver.
- **IDF's limited freedom of action** within the territory of a sovereign Palestinian state in comparison to the current reality.
- **No End of Conflict or Finality of Claims** will be reached with the Palestinian state without a PSA. Such a state may thus be hostile to Israel.
- **The Palestinian state might be a "failed state"** without the ability to enforce its authority and fight terror.
- **The Palestinian state might be a hostile state** with Hamas likely to seize control of it.
- **The Israeli-Arab Issue** – Establishing a Palestinian state is likely to raise new issues on Israel's political agenda, such as the relations between Israeli-Arabs, the State of Israel and the Palestinian state.

However, there are also a number of advantages:

- **Eroding the One State Threat** between the Mediterranean Sea and the Jordan River. The Disengagement from Gaza eroded this threat. Establishing a Palestinian state would render this threat irrelevant for many years.
- **Simpler process than negotiations on Permanent Status** due to the sides' deep disagreement over the core issues as well as the carrying capacity of their political systems.
- **Alleviating the Palestinian structural deadlock** – the Palestinian system is currently in constitutional crisis, which may increase after January 2009 or if a PSA is reached and needs to be ratified. Transferring authorities and establishing a state based on international recognition however, will assuage this crisis.
- **Changing the Negotiation Agenda** to relate to the relationship between the two states. Such an agenda could concentrate on each party's intrusion into the other's legal, sovereign or functional

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## Upgrading the Palestinian Authority

1. The 'Interim Agreement' (9/95)<sup>2</sup> and the Palestinian Constitutional Structure<sup>3</sup> determined that the PA would be subordinate to the PLO, and thus its powers, authorities and sovereignty are limited.

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space, on the passage of people and goods, the fight against terror or 'Conventional Issues' such as a civil affairs.

- **New possibility for fragmenting Permanent Status** into a number of agreements, which together will constitute sections of Permanent Status. In this way the sides can dismantle the 'All-or-Nothing' dynamic of the Oslo process based on negotiations on a comprehensive PSA.
- **Using the Palestinian state to 'dilute' the Refugee issue before Permanent Status.** This can be achieved by promising full equal rights to refugees in the Palestinian state, transferring UNRWA's authorities to the Palestinian state or opening a direct channel to compensate the refugees.
- **Leveraging Israel's military and economic advantages** will allow Israel to force the Palestinians to give something in return for benefits such as a safe passage, access to its sea and airports etc.
- **Preserving Israel's security interests** by maintaining control of the essential powers for Israel's security based on self-defense. In a PSA, the Palestinians are likely to reject Israeli demands to control Palestinian airspace.
- **International legitimacy** – after three decades of demanding a state, the Palestinians will be hard pushed to object to a process that grants them powers, authorities and territories as well as to convince the world that they are not a state.

<sup>2</sup> According to the Interim Agreement, the PA is not allowed to conduct independent foreign affairs. Instead it is the PLO that is authorized (in certain cases) to reach agreements with other states and international organizations **on behalf of the PA** (see Article IX-5-B) as well as being responsible for political contacts with Israel. The Agreement further stipulates that the PA does not possess the capacity to conduct foreign affairs, including the establishment of diplomatic missions abroad, or allowing the establishment of foreign diplomatic missions within its territory (see Article IX-5-A).

<sup>3</sup> The political restrictions on the PA in the **Palestinian constitutional structure** subordinate it to the PLO:

- a. The PLO is the official Palestinian negotiator with Israel and has the authority (even if it is sometimes restricted) to sign agreements with states and international organizations **in the name of the PA** according to the Interim Agreement (See Article 5)
- b. The PA is considered to represent the Palestinian residents of the West Bank and Gaza, while the PLO is the representative of the Palestinian people in its entirety
- c. The 'Basic Law' which serves as the PA's temporary constitution determines that the PLO is the sole legitimate representative of the Palestinian people and that the future Palestinian state will be under its administration.

Upgrading the PA is intended to build the PA's powers and authorities to bring it closer to that of a sovereign state. This can be achieved through strengthening the PA's institutions followed by Israel unilaterally giving up some restrictions imposed on the PA by the Interim Agreement.<sup>4</sup> Upgrading the PA can be coordinated with the Palestinians, with third parties, or carried out unilaterally.

2. The Reut Institute distinguishes between three concepts related to the process of the Palestinian state building:
  - a. **Gestures to the PA** - Actions aimed at solidifying the position of Abu-Mazen and the moderate forces *within* the Palestinian political system, **without necessarily strengthening the PA's institutions**. Examples include releasing Palestinian prisoners.
  - b. **Strengthening the PA** - Actions aimed at enhancing the authority and governing capacity of the PA, **without breaking the political constraints imposed** on it by existing agreements between Israel and the PLO. Examples include the training of PA's police forces by General Dayton.<sup>5</sup>
  - c. **Upgrading the PA** - Actions aimed at building the powers and authorities of the PA, while **rescinding restrictions imposed** upon its political status by existing agreements between Israel and the PLO during the Oslo process. The objective is to bestow the PA with attributes of sovereignty leading to its recognition as a state.

The key to *upgrading* the PA's political status lies with Israel, as the donor countries can only act within the logic of *strengthening* the PA in the framework of existing agreements.

The logic of upgrading requires rescinding the restrictions imposed on the PA in its international political status while strengthening its political-judicial status so as to bring it closer to that of a sovereign state according to international law. Examples include Israel lifting its opposition to the issuing of Palestinian currency, creating a Palestinian tax authority, establishing foreign embassies in the territory of the PA, and PA membership in international organizations.

## Process of Upgrading the PA: Agenda

3. The process of upgrading the PA should take the following points into consideration:
  - **Transferring Powers, Authorities and Territory** – a systematic mapping of the powers, authorities and territory to be transferred to the PA is required to enhance the PA's political status.
  - **The PA's Border Regime** – Israel should analyze the future of economic, civil and security border policy between the Palestinian entity and Israel. Moreover, Israel should review the possibility of establishing a 'kissing point' with Jordan in light of the precedent of the Rafah Crossing;
  - **Gestures aimed at strengthening the PA capacity to govern** such as easing movement or economic aid;
  - **Future of the Settlements** – Israel should consider withdrawing from territories that are expected to be part of the Palestinian state in any political arrangement and passing an evacuation/compensation package for those Jewish settlements living east of the security fence;

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<sup>4</sup> The Interim Agreement includes a number of restrictions on the symbols of sovereignty of the PA such as: forbidding it to conduct foreign relations; restrictions on economic independence (even after the PA's establishment, Israel continued to control its external perimeter and crossings) and issue currency.

<sup>5</sup> In addition, it was announced that Israel will help with rebuild the judicial, finance and health offices in the PA that were initially established through agreement with Israel.

- **International Involvement** – financial and technical support for building the state's institutions as well as security arrangements;
- **The structure of the process of recognizing the Palestinian entity as a state** according to international law through recognition from Israel, US, the Quartet and the UN;
- **The structure of the political process following the establishment of the Palestinian state** which may require a new agreement on agenda, principles or outline of Permanent Status.

## Transferring Powers and Authorities

4. The idea of transferring powers and authorities refers to a systematic process by Israel, based on the logic of upgrading the powers and authorities of the PA to those of a fully fledged state. It includes four clusters:

	<b>Issue</b>	<b>Powers &amp; Authorities that can be transferred</b>	<b>Inherent Rights for future negotiations</b>
<b>Political Cluster</b>	All powers and authorities deriving from the status of the state as the representative of its citizens and inhabitants.	All powers and authorities for managing foreign relations, such as the power to establish diplomatic delegations abroad, and to receive the accreditation of foreign ambassadors.	
<b>Territorial Cluster</b>	The right to control its territory, water and airspace, as well as utilizing its natural resources.	The provisional borders of the Palestinian state will most probably include (at least) the Gaza Strip and major parts of the West Bank – including areas A and B, the territories in Northern Samaria evacuated by Israel during the Disengagement, and parts of area C.	It is unclear whether the Palestinian state will: <ol style="list-style-type: none"> <li>1. Include Safe Passage;</li> <li>2. Control its electromagnetic space;</li> <li>3. Be empty of settlements;</li> <li>4. Possess territorial contiguity.</li> <li>5. Control its border crossings.</li> </ol>
<b>Security Cluster</b>	The right to possess a monopoly over the use of force in its own territory, the right to build and maintain an army and police force, and the right to self-defense.	Expanding the jurisdiction the Palestinians currently have over security in Area A to more areas.	The Palestinian state will not control its airspace nor fully control its external perimeter; it will not have an army.
<b>Economic Cluster</b>	The right to ratify trade agreements, become a member of international economic organizations, issue currency and design independent monetary and fiscal policy.	<p>Palestinians will be able to ratify free-trade agreements, issue their own currency, design an independent monetary and fiscal policy and establish a customs regime.</p> <p>Unless it demands the continuation of the current economic agreements with Israel, the Palestinian state is likely to have full-fledged economic authorities.</p>	The criticism towards Israel will focus on the question of whether the Palestinian state is "viable." Despite its meaning being unclear, the term 'viability' has become a prerequisite for the establishment of the Palestinian state.

5. Upgrading the PA will provide the Palestinian entity with less powers and authorities than those of a fully-fledged Palestinian state in Permanent Status. While the Palestinian State with Provisional Borders will have almost all the political and economic powers and authorities, its security and territorial sovereignty will be limited due to Israel's right for self-defense.
6. The more powers and authorities transferred to the PA - the greater its territory, territorial contiguity and / or direct link with Jordan - the greater the Palestinian entity's status of statehood.

## Recognizing the Palestinian State

7. Following a continuous effort to upgrade the PA, and under certain circumstances,<sup>6</sup> Israel may find it in its interest to promote the actual establishment of a Palestinian state without an agreement, by going as far as recognizing the PA as a state. Such a move would combine:
  - a. **An official declaration by Israel** that it considers the PA to be a sovereign state through and through and will thus relate to it as such regarding its obligations and rights which derive from this status.
  - b. **Simultaneous recognition from the US and other leading countries** which will validate the Israeli declaration.

The success of this process will be apparent if the status of the Palestinian representative to the UN is upgraded from that of observer status (on behalf of the PLO) to that of an ambassador (on behalf of the Palestinian state).

## Establishing a Palestinian State without an Agreement

8. So far, there is no precedent in international law for turning a political entity into a state against its will. However, there have been a number of unsuccessful attempts by 'external actors' who tried to advance independence of political entities, such as the Turkish Republic of Northern Cyprus<sup>7</sup> and the South African Bantustans.<sup>8</sup>
9. However, some of the characteristics of the Palestinian issue are unique and increase the prospects of such a recognition to be successful:
  - a. **The agreed 'end game' of the political process includes establishing a state<sup>9</sup>** - Both the Oslo process and the Roadmap to which the Palestinians are committed, were based

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<sup>6</sup> See the document "[The Roadmap and the Future of a Palestinian State](#)".

<sup>7</sup> After occupying Northern Cyprus, Turkey claimed that the island was an independent republic. In 1983, North Cyprus declared independence. Despite the fact it acted like a state, no country (other than Turkey) recognized it as a sovereign state.

<sup>8</sup> Attempts by the white South African government to turn heavily populated black areas into Bantustans were unsuccessful. Despite the fact these 'states' had attributes of sovereignty (including a flag and stamps) and provided some services to their residents, they were not considered 'sovereign states' as they did not conduct independent foreign affairs, were completely dependent on South Africa and were not recognized by the international community.

<sup>9</sup> It is possible to claim that the **PA is a nascent state**. This concept, which was common in international law at the end of the 19<sup>th</sup> and beginning of the 20<sup>th</sup> century, describes a legal status of a political entity which is not a sovereign state but one that aspires to independence and recognition of its statehood; and whose entitlement to a fully sovereign status has been recognized by the international community.

The final status of the PA as a state seems assured. The Roadmap explicitly states that a 'Palestinian State with Provisional Borders' will be established in parts of the West Bank and Gaza leading up to the establishment of a fully sovereign state. Therefore, it is possible to say that the Roadmap turned the PA into a nascent state. This idea of the Roadmap was later anchored in UN resolutions.

- on the assumption a solution to the Israeli-Palestinian conflict includes the establishment of a Palestinian state;
- b. **The Palestinians' objection is perceived as tactical** – in other words, the Palestinians disagree with the conditions and circumstances under which their state would be established rather than its actual establishment per se;
  - c. **The Palestinian state fulfills the will of the Palestinian people**, even if it does not reflect that of the PLO;
  - d. **The International Community is sold on the idea of a Palestinian state** – the establishment of a Palestinian state is anchored in UN Resolutions while the 'Blair-Fayyad Axis' which is essentially devoted to building the PA into a state reflects the international community's objectives.
10. Israel's recognition of the Palestinian state will probably be criticized by different and diverse actors for the necessary restrictions on the PA's upgraded sovereignty. This criticism will be based on three basic arguments:
- a. **Gap between the rights of the Palestinian state and the inherent rights of sovereign states** according to international law (See the table above);
  - b. **Threshold created by the Disengagement from Gaza** – Israel intends to withdraw from less territory (relatively) and to demand more than during its Disengagement from Gaza: Disengagement involved the full withdrawal from the entire territory captured in 1967 coupled with the partial release of its full control over the external perimeter with the aim to reach the 'end of practical responsibility'; in the West Bank meanwhile, Israel will not withdraw to the '67 borders yet will aim to establish of a Palestinian state;
  - c. **Gap between principles and reality** - The reality in which the Palestinian state is established will be different to the principles of Permanent Status as demanded by the Palestinians or as were defined by different models for a Permanent Status Agreement (such as the Clinton Plan or Geneva Initiative).
- In other words, Palestinian claims against Israel will focus on those outstanding issues that remain unsolved after Israel's unilateral declaration, i.e. Jerusalem, the refugees, permanent borders and settlements.

## Focusing on the Permanent Status

11. The establishment of a Palestinian state will fundamentally change the relationship between Israel and the Palestinians, and could be far more 'dramatic' than previous events such as the agreements of the Oslo process, the establishment of the PA, the failure of the negotiations in 2001 or the victory of Hamas. The establishment of the Palestinian state with Provisional Borders will create a new era, but it will be one in which Permanent Status will be designed gradually over a long-term period of agreements between both states.
12. **Two track negotiations** – the establishment of the Palestinian state will facilitate two simultaneous and separate (as much as is possible) political channels.
  - a. **Negotiations with the Palestinian state on its Inherent Rights** – the establishment of the Palestinian state will allow the creation of a new agenda, which will be appropriate to the relationship between two states. These negotiations will focus on 1) the a priori inherent rights of the Palestinian state which Israel's unilateral recognition will limit due to security considerations; 2) the cluster of relations between the two states regarding economy, water or the environment;
  - b. **Negotiations with the PLO on the outstanding issues** – such as permanent borders, refugees or Jerusalem.

13. **A political outline for reaching Permanent Status is necessary for obtaining support from the US and the International Community** – The support of a critical mass of the international community is a necessary condition for the success of the process of recognition. This support will be apparent by the international community recognizing the PA as a state and by taking corresponding steps such as establishing embassies within the territory of the PA or inviting it to establish diplomatic representations instead of the current representations of the PLO. However, it will not be possible to force the Palestinians to become a member of the UN.

End.