

The Roadmap and the Future of a Palestinian State with Provisional Borders

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Palestinian State with Provisional Borders**

The Re'ut Institute – from Vision to Policy

Greetings,

Please find attached the executive summary of a document originally prepared by the Re'ut Institute for the 6th Herzliya Conference, held in January 2006 under the auspices of the Institute for Policy and Strategy headed by Professor Uzi Arad at the Interdisciplinary Center in Herzliya. This document was adapted and updated in the wake of subsequent developments, specifically the Hamas' electoral victory.

This product of the Re'ut Institute examines the establishment of a Palestinian state with provisional borders within the second phase of the Roadmap. The structure of the Roadmap and the establishment of a Palestinian state are issues that hold far-reaching ramifications regarding Israel's policy vis-à-vis the Palestinians, the US and the international community.

The purpose of this project is to provide a systemic analysis and evaluation of Israel's strategic flexibility with regard to the Palestinians. We address this challenge by framing recent developments in Israel and the Palestinian Authority (PA) in the context of structural and institutional trends that affect the Roadmap, the status of the PA and the "day after" Hamas' electoral victory.

The project also includes a complementary set of documents designed to offer decision making-support to the Government of Israel regarding the Roadmap and the establishment of a Palestinian state. These documents can be found under the title "Re'ut at the Herzliya Conference" at the Re'ut Institute website: www.reut-institute.org.

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The project was carried out by the team of the Re'ut Institute: Jonathan Adiri, Dan Alon, Michal Cohen, Omri Dagan, Noa Eliasaf, Elad Foa, Deborah Housen-Couriel, Yariv Mann, Gady Paran, Dana Preisler, Gabe Ross, Dahlia Shaham and Eran Shayshon.

We take full responsibility for the content of this document, which reflects our views alone.

Sincerely yours,

Gidi Grinstein

Founder and President

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Executive Summary

1. This document deals with the establishment of a Palestinian State with Provisional Borders (PSPB) within the second phase of the Roadmap.
2. The idea of a PSPB is one of the principal innovations of the Roadmap. It inverts the sequence of the political process which was set out in the Oslo process, and calls for the establishment of a Palestinian state prior to the conclusion of a Permanent Status Agreement (PSA).
3. Nonetheless, the Roadmap does not elaborate on the borders of the PSPB, nor on its powers and authorities. It seems to have been assumed that these issues would be determined in bilateral negotiations between Israel and the Palestinians. Still, the Roadmap implies that the PSPB would have more powers and authorities than the PA, but less than those of the Palestinian state in permanent status.
4. In principle, the Roadmap is the agreed framework for the Israeli-Palestinian political process. However, its implementation is yet to begin, and Israel and the Palestinians disagree both on the entry point to this process and on each of its phases. Additionally, the PA appears at present to be unable to dismantle terrorist infrastructure, as required within the First Phase of the Roadmap. Its potential ability to do so is likely to be further eroded following Hamas' electoral victory and its dominance of the Palestinian Legislative Council (PLC).
5. Furthermore, Fatah and Abu-Mazen reject the idea of a state with provisional borders, which is the cornerstone of the Roadmap. This rejection signifies an inversion of Israeli and Palestinian positions: in the past, the Palestinians demanded a state, even with provisional borders, and Israel objected. Now, the Palestinians reject the idea of a PSPB; while Israel remains committed to the Roadmap, which calls for establishing a PSPB.
6. Therefore, unless current trends change, our conclusion is that **the Roadmap has entered a deadlock and the establishment of a PSPB will not be achieved through agreement.** Moreover, these trends prevent progress towards a PSA along the lines of the Oslo process.
7. Hamas' electoral victory and its entry into the PA cabinet exacerbate this deadlock. However, **for humanitarian reasons, Israel may find itself forced to deal with the PA, even given the fact that Hamas controls the PA.**
8. Israel may still find the idea of a PSPB relevant, despite the deadlock in the Roadmap. Hence, Israel may take unilateral steps, in coordination with third parties – mainly the US – to promote the establishment of a PSPB. The

culmination of this effort may be a declarative act of Israeli unilateral recognition of the PA as a state.

9. Given the above, Israel's policy regarding the PSPB must take into account the following considerations:

On the one hand, the PSPB may become a failed state or a Hamas-controlled entity, the inherent rights of which would limit Israel's military and political latitude. In addition, **a PSPB may give rise to a new substantial dispute over Palestinian representation and the realization of the Palestinian right to self-determination**. These issues have far-reaching ramifications for Palestinian refugees, Israeli Arabs and the stability of the Jordanian regime.

On the other hand, establishment of a PSPB weakens the one-state threat; allows for the dilution of the Palestinian refugee problem prior to a PSA; and is likely to bring about a new structure for the political process, based on fragmenting the PSA into a set of agreements to be reached between the two states.

10. Paradoxically, **the Hamas, as opposed to the Fatah, may be willing to accept a PSPB**. A state, not within a PSA, may be consistent with the ethos of Palestinian struggle and with the Phased Plan of the PLO.
11. Unilateral Recognition would be based on the dual premises that according to international law, the PA already meets many of the criteria for statehood, and that its final status as a state has already been formally recognized by a large number of countries.
12. Prospects for success of unilateral recognition will increase should it take place in the context of: (1) upgrading the sovereign status of the PA in the political, civil and economic arenas, prior to the act of recognition; (2) gaining a critical mass of international support, spearheaded by the US, for recognition of Palestinian statehood; (3) creating territorial continuity and assuring appropriate transportation arrangements between Gaza and the West Bank; (4) establishing a border regime between the PA and Jordan based on lessons learned from the Rafah crossing precedent; and (5) presenting an alternative political framework leading from the point of unilateral recognition to that of permanent status.
13. In conclusion, if current trends persist, Israel and the Palestinians will remain in a political deadlock. Hence, Israel may find itself unilaterally recognizing the PA as a state, despite Palestinian objection and Hamas involvement. Establishing a PSPB prior to a PSA would constitute an irreversible and historical change in the structure of the Israeli-Palestinian political process. It may signify the beginning of a new era in which the Permanent Status will be gradually shaped by a series of agreements between the two parties.

The Roadmap and the Future of a Palestinian State with Provisional Borders

Preface: Where is the Roadmap Leading?

1. The "Oslo process" assumed that the Palestinian state would be established through a "Permanent Status Agreement" (PSA).¹ The concept behind this agreement was to settle all "outstanding issues" between Israel and the Palestinians from 1948 on and to bring about an end to the conflict and "finality of claims" between the parties.² Additionally, the PSA was intended to provide the framework for the future civil, economic, military and political relations between the two states. In other words, the Palestinian state was to be established in the context of co-existence, cooperation and possibly peace.
2. The failure of the negotiations on the PSA, between 1999 and 2001, the outbreak of the Palestinian *Intifada* in September 2000 and the Palestinian rejection of the "Clinton Ideas",³ gave rise to a dispute regarding the future of the political process. Some argued that Israel and the Palestinians were close to reaching a historic agreement and therefore should put an end to violence and return to the negotiation table from the point they left off.⁴ Others have reached the conclusion that neither Israel nor the Palestinians are ready at present to make the compromises necessary for a PSA.⁵ Therefore, the establishment of a Palestinian

¹ The term "Permanent Status Agreement" (PSA) first appeared in "UN General Assembly Resolution 194" (12/48) and was reaffirmed in "UN Security Council Resolutions 242 and 338" (10/67 and 11/73, respectively). The "Framework for Peace in the Middle East", signed within the "1978 Camp David Accords", provided a double-phased process for reaching the PSA: establishing Palestinian self-governance and then negotiating on PSA. This program was accepted by Israel and the "PLO" in the "Declaration of Principles" (9/93) and became the agreed framework for the "Oslo Process".

² "End of Conflict" is a **political** demand made by Israel to formally end the conflict with the Palestinian people. "Finality of Claims" is a **legal-political** demand made by Israel, according to which, the PSA would settle *all* "Outstanding Issues" between the two sides, and would become the **only** binding legal document. See Sher Gilead, **Just Beyond Reach**, TA: Miskal 2001, p. 21.

³ See: Ross Dennis, **The Missing Peace: The Inside Story of the Fight for Middle East Peace**, New York: Farrar, Straus and Giroux, 2004, p. 756.

⁴ Yossi Beilin: "The Taba Talks proved to many of the participants that the positions of both sides were very close and that additional extensive work could have enabled their conclusion...". This brought about the Geneva Initiative: "... In order to prove to ourselves and to others that such an agreement is within reach, that there is a partner and there is a plan, and we decided to continue what had been stopped in Taba". (In Hebrew: Beilin Yossi, **From Hachula to Geneva**, Tel-Aviv: Yedi'ot Aharonot 2004, p. 31.

⁵ Shlomo Ben-Ami, Minister of Foreign Affairs in Barak's cabinet: "...The old paradigms on which we relied since the Oslo days are not valid anymore, and a new paradigm is required. ... The solution of the conflict between us and the Palestinians will only come from the outside, with the help of the international community, led by the Americans, of course. Direct negotiations will not lead to an agreement." (In Hebrew: Ben-Ami Shlomo, **A Front Without a Rearguard**, Tel- Aviv, Miskal, 2004, p.16.)

state and the realization of the "[Palestinian right to self-determination](#)" should not be conditional upon reaching a PSA, an "[end of conflict](#)" or finality of claims.

3. "**Bush Vision for the Middle East**" (6/02) = **Choosing a State with Provisional Borders** – President Bush's speech in June 2002 reflected a US strategic decision to establish "[a Palestinian State with Provisional Borders](#)" (PSPB) prior to PSA and to the demarcation of permanent borders. This speech is now known as the Bush Vision for the Middle East.⁶
4. Ten months later, in April 2003, "[the Roadmap](#)"⁷, initiated by the Quartet⁸ was formulated. It translates the Bush Vision into an agreed political framework for ending the Israeli-Palestinian conflict. It specifies the steps that each side must take within a time-frame comprising of three phases:⁹
 - a. Within "[the First Phase of the Roadmap](#)", the "[Palestinian Authority](#)" (PA) should dismantle all terrorist infrastructure, cease violence and undergo comprehensive political and security reforms, including drafting a constitution. Israel should withdraw from Palestinian areas occupied during the Intifada (since 9/28/00) and freeze all settlement activity in "[Gaza](#)" and the "[West Bank](#)".
 - b. "[The Second Phase of the Roadmap](#)" should have commenced after Palestinian elections and end with the establishment of a PSPB. This phase also includes the ratification of a new Palestinian constitution and an international conference in preparation for PSA negotiations.

Dennis Ross, the special envoy to the Middle East at the time, describes the atmosphere after the negotiations failed at the beginning of 2001: "The game was over. For the foreseeable future it would be necessary to switch gears; we would be out of the peacemaking business and back to a preoccupation with crisis prevention and the defusing of conflict. ...it would take years to get back to the point where the existential issues of this conflict could be addressed, much less resolved." (Ross, *Ibid*, pp. 13, 777-778)

For a similar mindset see: Rabinovich Itamar, **Waging Peace**, Or-Yehuda: Dvir, 2004, pp. 173, 273. (In Hebrew) and Meital Yoram, **Peace in Tatters**, Jerusalem: Carmel, 2004, pp. 236-237 (In Hebrew).

⁶ In his speech, President Bush said that the Palestinians are required to undergo internal reforms with the help of the US, the EU, and other countries, only after which the international community and the US will support the establishment of a Palestinian state even before the conclusion of a PSA. See: <http://www.whitehouse.gov/news/releases/2002/06/print/20020624-3.html>

⁷ Its full name is: "A Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict".

⁸ The Quartet is an international framework, founded in April 2002 and aiming to promote the settlement of the Israeli-Palestinian conflict. It is comprised of the US, the EU, the UN and Russia. See Rabinovich, *Ibid*, p. 176.

⁹ According to the original timeframe of the "[Roadmap](#)", the implementation of the "[First Phase](#)" was to be concluded by 5/03; the "[Second Phase](#)" by 6-12/03; and the "[Third Phase](#)" by the end of 2005.

The Palestinians interpreted the Roadmap according to its timeframe, i.e. every phase would end at the deadline stipulated within the Roadmap. Israel, on the other hand, interpreted the Roadmap as performance-based, i.e. progress to the next phase will be conditional upon full implementation of the preceding phase. (See: "[Israel's Reservations to the Roadmap](#)", Article 2 and an interview with Dov Weissglass: Ari Shavit, **Ha'aretz**, 10/8/04).

- c. Within "the Third Phase of the Roadmap", the parties should discuss issues of "Permanent Status" and reach a PSA under the auspices of a Second International Conference.
5. **The legal framework for the Roadmap** includes "Security Council Resolutions 242" and "338",¹⁰ upon which the "1978 Camp David Accords" and the Oslo Process were based. In addition, the Roadmap relies on "Security Council Resolution 1397", which adopts "the Saudi Peace Initiative";¹¹ and, inter alia, calls for the establishment of a Palestinian state.
6. In the following months, Israel¹² and the Palestinians officially affirmed their commitment to the Roadmap.¹³ Formally, the Roadmap is at present the accepted political framework for resolving the Israeli-Palestinian conflict.¹⁴
7. **The innovation of the Roadmap: inverting the Oslo sequence** – The Roadmap fundamentally changes "the sequence of the Israeli-Palestinian political process" which was established in the Oslo Accords by calling for the establishment a

¹⁰ UN Resolution 242 (11/67) was passed after the Six Day War and calls for Israel's withdrawal from territories occupied in that conflict; terminating the state of belligerency and resuming respect for states' right to live in peace within secure and recognized boundaries; and achieving a just settlement of the refugee problem.

UN Resolution 338 (10/73) was passed during the Yom Kippur War. It reaffirms Resolution 242 and calls the parties to begin negotiations between the parties aimed at establishing a just peace in the Middle East.

¹¹ The principles of "the Saudi initiative" were published in the New York Times on February 2002: Full normalization and establishment of diplomatic relations between Israel and the Arab countries in return to a full Israeli withdrawal from all territories in Gaza and the West Bank and the establishment of a Palestinian State. The initiative was accepted by the Arab leaders' summit in Lebanon in March 2002 and became a pan-Arab initiative. The final version of the initiative stipulated that the refugee problem will be settled according to UN Resolution 194.

"UN Resolution 1397" (3/02) affirms the vision of two states, Israel and Palestine.

¹² Israel accepted the Roadmap but added fourteen reservations (5/03) that have no formal binding status. The main reservations are the following: the PSPB's sovereignty will be limited in accordance with Israeli security interests; progress to the next phase will be conditional upon full implementation of the previous phase; the monitoring mechanism will be under American management; the character of the provisional Palestinian state will be determined through negotiations between the Palestinian Authority and Israel; the end of the process will lead to the end of all claims and end of conflict; and the Palestinians will waive any right of return for refugees to the State of Israel.

¹³ The Roadmap was first introduced by the Quartet on 7/15/02 and was presented to Israel and the Palestinians on April 30, 2003. Israel approved the Roadmap on 25 May 2003. At the Aqaba Summit (June 4, 2003), in the presence of King Abdullah of Jordan, President Bush, PM Sharon and PM Abu-Mazen, the Palestinians accepted the Roadmap without any reservations (In Hebrew, see: <http://www.knesset.gov.il/library/heb/docs/sif027.htm>). However, due to the continuation of violence in the region the First Phase of the Roadmap has yet to be implemented.

¹⁴ As of January 2006, the two sides still accept the Roadmap. Abu-Mazen stated that a PSPB before a PSA is a "trap". Yet, he calls for the establishment of back channels to discuss the PSA alongside negotiations on the Roadmap (**New York Times**, 14 February 2005);

PM Sharon continued to declare that the Roadmap is the only political plan supported by Israel. This position is reflected in the political platform of his new party, "Kadima", for the upcoming Israeli elections: "There is a national, regional and international understanding that the Roadmap is the only political plan that will enable progress..." (Il'il Shahar, **Ma'ariv**, December 5, 2005).

Palestinian state *prior to* a PSA.¹⁵ In other words, the Palestinian state will be established without reaching end of conflict or finality of claims, while acknowledging that its permanent borders and sovereign status remain outstanding issues between the parties.

Thus, the Roadmap inverts the sequence of the Oslo Process, according to which a Palestinian state was to be established *following* a PSA that would entail end of conflict, finality of claims and the establishment of permanent borders.

8. **Performance-based, *not* timeframe-based** – Another innovation of the Roadmap stems from its performance-based logic. It requires full implementation of each phase in order to move on to the next. Its dates are not binding.¹⁶ Therefore, the establishment of a Palestinian state will take place only when the Palestinians have met all requirements stipulated in the Roadmap, including dismantling terrorist infrastructure, consolidating their security apparatus, etc.¹⁷
9. **What is the difference between a "state with provisional borders" and a "provisional state"?** – A state with provisional borders is not a provisional state, i.e. a state, the existence of which, is temporary or reversible.

¹⁵ The concept of a "Palestinian State with Provisional Borders" has arisen on several occasions: According to the PLO's "Phased Plan" (June 1974) the Palestinians will employ all means, and first and foremost armed struggle, to liberate Palestinian territory and to establish the independent combatant national authority for the people over every part of Palestinian territory that is liberated. The PLO's "Phased Plan" is based on the assumption that Israel will not be eliminated in the near future` hence, the Palestinians should consider establishing a Provisional "Palestinian Authority" in the territories of "Gaza" and the "West Bank".

Towards May 1999, the deadline for the conclusion of the PSA according to the "Interim Agreement", Arafat threatened to unilaterally declare the establishment of a Palestinian state in area A. (The Jerusalem Post, 4/23/99, 4/27/99). Based on these events, the EU stated it would recognize such a declaration if the political process does not advance.

During the negotiations on the PSA, the idea of an interim agreement that will include the establishment of a PSPB had been raised.

During the second *Intifada*, efforts for reaching a cease fire included the "Peres – Abu-Ala Understandings" (1/02) that called for an Israeli "unilateral recognition" in a Palestinian State on 40% of the West Bank territory and for resuming negotiations on the PSA, due to be concluded within a year and implemented within two years. (Rabinovich, **Ibid**, p.174).

¹⁶ See Dov Weisglass, PM Sharon's advisor, explaining Sharon's mindset: "Since the Roadmap is based on performance and not on a timeframe, he can live with it. He understood that the important thing is the principle. The important thing is the formula according to which progress in the peace process depends upon complete cessation of terror. (In Hebrew, Ari Shavit, **Ha'aretz**, 10/8/04). This principle appears also in Israel's Reservations to the Roadmap, 5/25/03 (see Article 1).

¹⁷ Within the First Phase of the Roadmap the Palestinians are required to:

- Dismantle terrorist infrastructure: "Palestinians undertake visible efforts on the ground to arrest, disrupt, and restrain individuals and groups conducting and planning violent attacks on Israelis anywhere."
- Reform the Palestinian security apparatus: "All Palestinian security organizations are consolidated into three services reporting to an empowered Interior Minister".
- End incitement: "All official Palestinian institutions end incitement against Israel".

However, as a performance-based plan, progress is dependent upon "the good faith efforts of the parties, and their compliance with each of the obligations outlined below".

The words "provisional state"¹⁸ appear in "Israel's reservations to the Roadmap". However, such a phenomenon does not exist under international law. In the modern era, the status of a sovereign state is irreversible and irrevocable, unless the state itself chooses to join a larger political union, or to break into smaller sovereign units.¹⁹

However, a "state with provisional borders" is a well known phenomenon. For many years Israel's borders were based on the 1949 Armistice Lines and not on final peace agreements. Hence, its borders and the borders of its neighboring states were provisional.

10. This document examines the challenge that establishment of a PSPB within the Second Phase of the Roadmap poses for Israel. It aims to identify the principal issues, present them and recommend possible policy options. Therefore, this document relies on the basic assumption that the Roadmap, based on the Two-State Solution, is the framework for a future settlement of the Israeli-Palestinian conflict.

What is a Palestinian State with Provisional Borders?

11. **What are the powers and authorities of a PSPB?** – Although the establishment of a PSPB is the main innovation of the Bush Vision and the Roadmap, these documents offer no specification of its borders, powers and authorities.

The Bush Vision describes the measures that are to be taken regarding the institutions of the PSPB, such as electing a new Palestinian leadership, conducting institutional and political reforms, drafting a constitution, dismantling terrorist infrastructure, consolidating the security apparatus, guaranteeing a free-market economy and establishing an effective and independent judicial system.

The Roadmap only offers a general guideline according to which the PSPB would have attributes of sovereignty²⁰ and maximum territorial contiguity.²¹ In other words, the PSPB would not have all powers and authorities of sovereign states. This mindset was also manifested in Israel's reservations to the Roadmap.²²

¹⁸ "The character of the provisional Palestinian state will be determined through negotiations between the Palestinian Authority and Israel. The provisional state will have provisional borders..." (See: Israel's Reservations to the Roadmap, Article 5.)

¹⁹ For example, Czechoslovakia, the USSR and Yugoslavia were states that disassembled into a number of states; East and West Germany were unified into one state; Eritrea was created as a sovereign state after it was disengaged from Ethiopia.

²⁰ See the Second Phase of the Roadmap: "In the second phase, efforts are focused on the option of creating an independent Palestinian state with provisional borders and attributes of sovereignty, based on the new constitution, as a way station to a permanent status settlement. As has been noted, this goal can be achieved when the Palestinian people have a leadership acting decisively against terror, willing and able to build a practicing democracy based on tolerance and liberty. With such a leadership, reformed civil institutions and security structures, the Palestinians will have the active support of the Quartet and the broader international community in establishing an independent, viable, state."

²¹ See the Second Phase of the Roadmap: "As part of this process, implementation of prior agreements, to enhance maximum territorial contiguity, including further action on settlements..."

²² "The character of the provisional Palestinian state will be determined through negotiations between the Palestinian Authority and Israel. The provisional state will have provisional borders

12. In principle, according to international law, sovereign states have "[inherent rights and duties](#)". These may be divided into four clusters:
- a. **Political issues:** Every sovereign state holds powers and authorities that stem from its status as the representative of its citizens, including the right to join international agreements, establish diplomatic representation and achieve membership in the UN and other international organizations.
 - b. **Territorial issues:** Every sovereign state has the exclusive right to control its territorial land, air and water and to utilize the natural resources within its territory. These rights may be limited by international customary law and by international agreements signed by the state.
 - c. **Security issues:** In principle, every state holds a monopoly on the use of force within its territory, the right to maintain military and police forces and the right to self-defense. On the other hand, states have the duty to prevent the illegal use of force against other states from within their territory.
 - d. **Economic issues:** A sovereign state holds various economic powers and authorities, including the power to enter free trade agreements, gain membership in international organizations, issue currency and independently design its monetary and fiscal policy.
13. **What would be the powers and authorities of the PSPB?** – According to the Roadmap, the PSPB would have more powers and authorities than the PA, but less than those of the Palestinian state in permanent status. However, the Roadmap **does not specify the rights and duties of the PSPB**. It seems that those who designed the Roadmap assumed that these issues would be determined in negotiations between Israel and the Palestinians.

Nevertheless, based on the "[Interim Agreement](#)", the reality on the ground and the Roadmap, it seems that the general outline of the rights and duties of the PSPB will be as follows:

- **Political status:** according to the Interim Agreement and the Palestinian constitutional documents, the PA holds limited political powers.²³ In

and certain aspects of sovereignty, be fully demilitarized with no military forces, but only with police and internal security forces of limited scope and armaments, be without the authority to undertake defense alliances or military cooperation, and Israeli control over the entry and exit of all persons and cargo, as well as of its air space and electromagnetic spectrum" (See Israel's Reservations to the Roadmap, article 5).

²³ The "Interim Agreement", Article IX – "Powers and Responsibilities of the Council", Chapter 5. stipulates that:

- a. The PA will not have powers and responsibilities in the sphere of foreign relations, including the establishment of diplomatic missions abroad or permitting their establishment within its territory;
- b. The PLO is the official Palestinian interlocutor in the negotiations with Israel, and may sign agreements with states or international organizations for the benefit of the PA.
In addition, the "[Palestinian Founding Documents](#)" reaffirm the PLO superiority over the PA;
- c. The PA represents the Palestinians inhabitants of Gaza and the West Bank, while the PLO represents the entire Palestinian people;

practice, since Oslo, the political center of power has gravitated from the "[PLO](#)" to the PA.²⁴ To date, the PA exercises most of the powers that used to be in the hands of the PLO, including the power to negotiate with Israel or to appoint Ambassadors to other nations.

Upon its establishment, the PSPB is likely to have authority over issues of diplomacy and foreign affairs, such as the power to establish diplomatic missions abroad and receive the credentials of foreign diplomatic representatives – powers that at present may not be exercised by the PA.

- **Borders and Territory** – The provisional borders of the Palestinian state are expected to include, at the very least, the Gaza Strip and substantial parts of the West Bank, including Areas A and B, the areas in Northern Samaria evacuated during "[Disengagement](#)", and some of Area C.²⁵

However, it is likely that for reasons of self-defence, Israel would not recognize certain sovereign rights of the PSPB, such as control over airspace. Two contentious issues in this regard are the establishment of a "[Safe Passage](#)" between Gaza and the West Bank, and the Israeli presence on the external perimeter of the Palestinian state.²⁶

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- d. According to the "[Palestinian Basic Law](#)", the PLO is the sole legitimate representative of the Palestinian people wherever they are, and the establishment of the Palestinian state will be under its leadership.

²⁴ Despite the restrictions in the Interim Agreement, the PA has established a diplomatic system and is handling its foreign relations independently. The Ministry of Planning and International Cooperation in the PA has turned into the Palestinian Ministry of Foreign Affairs. The Ministry conducts relations with the international community and supervises the Palestinians representatives abroad. The shift of responsibilities in this field from the PLO to the PA raised several disagreements between the two bodies. (Arnon Regular, **Ha'aretz**, 4/1/05, 5/1/05).

²⁵ Article XI in the Interim Agreement sets three categories of areas: "**Area A**" includes the West Bank cities, besides Hebron, in which the Palestinians hold full civilian and security jurisdictions; "**Area B**" includes smaller villages and towns, in which the PA holds civilian jurisdictions, while Israel is responsible for the security; In "**Area C**" Israel holds full control.

²⁶ The concept "[Safe Passage](#)" refers to a physical connection and a means of facilitating the movement between the West Bank and Gaza, and derives from the principle that Gaza and the West Bank are "[A Single Territorial Unit](#)". The movement arrangements between Gaza and the West Bank were part of the Interim Agreement (9/95) and implemented only for a short period of time. In October 1999 the protocol concerning the Safe Passage was signed, but was hardly implemented. In the "[Rafah Agreement](#)" (11/05) Israel undertook obligations to allow the passage of busses between Gaza and the West Bank. However, as of January 2006 this agreement has not been implemented.

The Safe Passage is mentioned in the following agreements: Declaration of Principles (9/93) – Annex 2, Article 3.g; "[The Gaza-Jericho Agreement](#)" (5/94) – Article IX; The Interim Agreement (9/95) – Annex 1, Article X; "[Wye River Memorandum](#)" (10/98) – Article III.3; "[Sharm el Sheikh Memorandum](#)" (9/99) – Article 5; "[Draft for a Permanent Status Agreement](#)" ("[Camp David 2000](#)", 9/00) – Article 3.25.a; "[The Clinton Ideas](#)" (12/00) – "Territory: A Permanent Safe Passage"; The Rafah Agreement (11/05) – Article 3.

The issue of Safe Passage appears in all drafts for the PSA, although the drafts do not specify the Palestinians' authorities regarding such passage. See the "[Beilin-Abu-Mazen Document](#)" (10/95) – Article II; "[The National Referendum](#)" (7/02) – Article 2; "[the Geneva Initiative](#)" (10/03) – Article 6.

- **Security** – In principle, every state has the right to maintain a military force and join military alliances with other states.

However, "the demilitarization of the Palestinian state" has been one of the premises of every discussion on the PSA. Yet, **in recent years, and more so after "the Rafah Agreement" in which Israel ceded control over the Rafah border crossing, the demilitarization principle has been eroded.**²⁷

Moreover, Israel has already announced that the powers and authorities of the PSPB would be limited in accordance with Israel's right to self-defense.²⁸ This would mean that Israel may continue to exercise control over Palestinian airspace or external borders.

- **Economy** – According to the Interim Agreement, the PA may not enter free-trade agreements, issue currency or conduct independent monetary and fiscal policy, including a customs regime. However, during the negotiations on the Rafah border crossing (11/06), Israel announced that it is willing to cancel the Customs Envelope.²⁹

Hence, it seems that the PSPB would have full economic powers and authorities, unless the Palestinians choose to maintain their economic arrangements with Israel which include the Customs Envelope, coordination of direct and indirect taxation, based on freedom of movement of people, goods and services.

14. The conclusion is that in the areas of diplomacy and economy, the PSPB would have nearly full powers; while in the areas of security and territory, its sovereignty may be limited as a result of the conflict with Israel and in accordance with Israel's right to self-defense.
15. Additionally, the establishment of a PSPB may give rise to new, substantial disputes between Israel, the Palestinians and the international community. **At the core of this dispute would be "the issue of Palestinian representation" and the realization of the Palestinian right to self-determination, i.e. whom would the PSPB represent? What would be the status of the PLO? What would be the status of the refugees within the Palestinian state? What would be the status of the Palestinian right to self-determination following the establishment of the PSPB?**

This issue will have far-reaching ramifications. For example, should the establishment of a Palestinian state end "UNRWA's" presence in Gaza and the West Bank, and could there be Palestinian refugees within the Palestinian state?

²⁷ The principle according to which the Palestinian entity will be demilitarized has appeared in all drafts of the PSA and was one of Israel's main demands in the negotiations on the PSA (1999-2001). The collapse of this principle will cause dramatic changes in Israel's national security with regards to the Palestinians. This change will affect the issues of passage between Israel and the Palestinian state and the rest of the world, the structure of the PSA and its content. See: Re'ut FEW: "A Militarized Palestinian State" at the Re'ut website (www.reut-institute.org).

²⁸ "...The provisional state will have provisional borders and certain aspects of sovereignty, be fully demilitarized with no military forces... without the authority to undertake defense alliances or military cooperation, and Israeli control over the entry and exit of all persons and cargo, as well as of its air space and electromagnetic spectrum." (Israel's Reservations to the Roadmap, article 5).

²⁹ See Aluf Ben, **Ha'aretz**, 8/9/05.

Another example is the effect this issue would have on the relations between Israel, the Palestinian state and Israeli-Arabs, as well as on the relations between Jordan, the Palestinian state and the Palestinian population in Jordan. A third example is the division of authority between the PLO and the Palestinian state. Following the establishment of a PSPB it would be difficult for the PLO to maintain its status as "the **sole** legitimate representative of the Palestinian people".

The Roadmap is Leading to a Deadlock

16. In principle, the Roadmap is the political framework presently accepted by Israel, the Palestinians and the international community. Formally, Disengagement has not changed its status.³⁰ Moreover, Israel reiterates that there would not be additional disengagements or unilateral moves.³¹ In other words, Israel declares that it is committed to the Roadmap, which is based on negotiation with the Palestinians.
17. **The Roadmap has never taken off** – Despite its affirmation in June 2003,³² the official implementation of the Roadmap is yet to begin. Moreover, various events that are mentioned in the Roadmap have taken, and continue to take place regardless of the sequence stipulated in the Roadmap. These events include, for example, the end of Israeli civilian and military presence in Gaza, the Rafah agreement and the elections for the PLC held in January 2006.
18. Additionally, Israel and the Palestinians have fundamental disagreements regarding the entry point to the Roadmap and regarding each of its phases.
19. **The entry point: whose turn is it?** – In the aftermath of Disengagement, it is unclear who should take the next step. In principle, within the First Phase, Israel was supposed to freeze all settlement activity and dismantle illegal outposts. However, following Disengagement, Israel may argue that it has already fulfilled most of its obligations within the First Phase, and the ball is now in the Palestinian court.³³ In contrast, the Palestinians may argue that dismantling of terrorist infrastructure required within the First Phase is conditional upon evacuation of illegal outposts and freezing settlement activity.
20. **Who will dismantle the terrorist infrastructure?** – The First Phase of the Roadmap is also in deadlock. The main obstacle at present is the dismantling of

³⁰ See Letter of PM Sharon to President Bush Regarding the "[Disengagement Plan](#)", 4/14/04: "The Disengagement Plan is designed to improve security for Israel... This initiative, which we are not undertaking under the Roadmap, represents an independent Israeli plan, yet is not inconsistent with the Roadmap"; In his "[Herzeliya Speech \(12/03\)](#)" Sharon added: "The Disengagement Plan does not prevent the implementation of the Roadmap. Rather, it is a step Israel will take in the absence of any other option, in order to improve its security".

³¹ For example, see article by Aluf Ben, **Ha'aretz**, 9/29/05, in which PM Sharon denied the possibility of a second Disengagement Plan, and insisted he will continue to progress in the peace process according to the Roadmap.

³² Following the introduction of the Roadmap (4/14/03), Israel published 14 reservations to it. These reservations have no formal legal status. However, only after the US promised to treat these reservations seriously was the Roadmap accepted by the Israeli government (5/25/03). At the Aqaba Summit (6/4/03) both Abu-Mazen and Sharon declared their acceptance of the Roadmap.

³³ "It seems that Israel and the US see the road ahead eye to eye. The burden of proof has shifted to the other side..." (In Hebrew: Shmuel Rosner, **Ha'aretz**, 8/25/05).

terrorist infrastructure. Abu-Mazen had promised the US that Hamas will be disarmed after PLC elections.³⁴ However, this promise was made based on the assumption that Fatah would win the elections. In the aftermath of Hamas electoral achievements, the PA's ability and will to fulfill this undertaking is in serious doubt.

21. **Deadlock in the Second Phase** – Even if both sides fulfill their obligations within the First Phase, various structural and institutional factors would lead to a deadlock within the Second Phase, which stipulates the establishment of a PSPB:

a. **Contradictory approaches regarding the Second and Third Phases** – The Israeli position is that the PSPB would be established *independently* of arrangements related to PSA. The Palestinian position is that the PSPB would be established *only under guarantees* regarding permanent status.³⁵

b. **Who is the Palestinian interlocutor for the Second Phase** –

1) **The PLO or the PA?** – According to Israel's reservations to the Roadmap, an agreement on the establishment of the PSPB would be signed with **the PA**.³⁶ However, according to "[the Basic Law](#)" of the PA and the Interim Agreement, only **the PLO** has the authority to sign agreements with Israel.³⁷

This issue may hold symbolic, political, constitutional and practical significance for the Palestinians. *On the one hand*, the Second Phase of the Roadmap focuses the political process on Gaza and the West Bank. Its essence is the establishment of a state with provisional borders, while deferring negotiations regarding the Palestinian Diaspora to the Third Phase. *On the other hand*, the PLO represents and is committed to the entire Palestinian people. Hence, it would tend to expand the political agenda to include issues relating to the

³⁴ Apparently the understandings between Abu-Mazen and the US were based on the assumption that Hamas will be disarmed after the Palestinians elections. However, both Resolution No. 575, accepted by the US Congress (12/18/05) and a statement by the EU foreign affairs envoy, Javier Solana (12/15/05), threatened to stop the flow of money to the PA if Hamas participates in a PA government without being disarmed.

³⁵ Abu-Mazen stated that establishing a PSPB **before** a PSA is a "trap", and called for the establishment of back channels to discuss a PSA **alongside** the negotiations over the Roadmap (**New York Times**, 2/14/05); Fatah Central Committee rejected the idea of a provisional Palestinian state, and stressed its desire for the establishment of a fully sovereign Palestinian State. (http://news.monstersandcritics.com/mediamonitor/printer_1027231.php)

³⁶ "The character of the provisional Palestinian state will be determined through negotiations between the **Palestinian Authority** and Israel." (Israel's Reservations to the Roadmap, Article 5)

³⁷ According to the Oslo Process the PLO holds responsibility for representing the PA, established in the Gaza-Jericho Agreement of May 4, 1994 and to sign agreements on its behalf. According to the Gaza-Jericho Agreement (Article VI – Powers and Responsibilities, paragraph 2) and the Interim Agreement (Chapter 1 – The Council, Article IX – Powers and Responsibilities of the Council, paragraph 5; Chapter 3 – Legal Affairs, Article XVII – Jurisdiction, paragraph 1.a):

- The Council will not have diplomatic jurisdiction in the field of foreign affairs, including the establishment of representations abroad and at home.
- The PLO will lead the negotiations and sign agreements with other countries or organizations on behalf of the PA.

Palestinian Diaspora. Therefore, there is a **mismatch between the structure of the Roadmap and the PLO's status as the official Palestinian interlocutor.**

- 2) **Hamas' strategic dilemma** – Following the elections, "[Hamas](#)" controls the PA while Fatah controls the PLO. At present, Hamas is confronted with a strategic dilemma:
- To take advantage of its victory and to drive Fatah out of the leadership of the PLO as well, immediately taking over control of the Palestinian national movement; *or*
 - To leave the PLO under Fatah's leadership, for the present time, and to try to transform the PA into the center of political power of the Palestinian national movement.

Nonetheless, it may well be the case that Hamas' electoral victory is in fact a "strategic mishap" for it. For the first time, Hamas is exposed to direct pressure which is likely to confront it with the tension between its commitment to the Palestinian population and its commitment to ideological principles as they appear in its "[covenant](#)".

Therefore, in the days following the elections there has been a tendency in Hamas to leave Fatah at the political and financial front of the PA, facing the international community; and perhaps even to recognize the PLO status as the authorized Palestinian body to steer the political process. This approach will make it difficult for the international community to put effective pressure on the PA as headed by Hamas.

Parallel to this, the PLO is becoming the last refuge of the moderate elements in Fatah headed by Abu-Mazen that are attempting to revive it on the basis of its status as the sole legitimate representative of the Palestinian people.

In this spirit, Hamas and Fatah may find it to be their mutual interest to place Fatah loyalists at the head to the PA government or to acquiesce to the PLO continuing to lead the political process.

22. **Deadlock within the Third Phase** – Israel and the Palestinians disagree on the principles of the PSA and its structure. Furthermore, the establishment of a PSPB prior to a PSA within the Second Phase of the Roadmap would undermine the logic of **one** comprehensive PSA, and is liable to increase internal Palestinian strife:

- a. **Who will represent the Palestinians in negotiations with regards to Gaza and the West Bank?** – According to international law, the Palestinian state should be the sole representative of its citizens. Yet the PLO's status as the sole legitimate representative of the Palestinian people is founded in the Palestinian constitutional documents, and recognized by the

UN, Arab countries, Israel and the US.³⁸ Following the establishment of a PSPB, Israel may prefer to conduct itself with regard to Gaza and the West Bank vis-à-vis the government of the Palestinian state, and not the PLO.

The Roadmap does not refer to the status of the PLO after the establishment of a PSPB. Therefore, after the Second Phase, there will be two Palestinian representatives: a Palestinian state, which may hold UN membership; and the PLO, whose status as the sole legitimate representative of the Palestinian people will still be intact.

- b. **The structure of the political process** – The basic assumption of the Oslo process was that one comprehensive PSA between Israel and the PLO will settle all outstanding issues and establish future relations between Israel and the Palestinian state.³⁹ Upon the establishment of a PSPB, it would be logical to gradually sign multiple agreements between the two states, which may function as chapters of the PSA.

The fragmentation of the PSA holds structural advantages, especially in light of the weakness of both political systems and the rise of Hamas. Furthermore, this would allow the two sides to adjust the agenda of the political process to fit their respective needs.

The gaps between Israeli and Palestinian positions within the Third Phase inhibit the Palestinians from cooperating with Israel and the US towards the establishment of a PSPB within the Second Phase of the Roadmap.

23. **Inversion of positions regarding the PSPB** – The aforementioned trends have led to an inversion in the Israeli and Palestinian positions regarding the PSPB. In the past, the Palestinians demanded a state, even with provisional borders, while Israel objected.⁴⁰ Presently, Israel insists upon the Roadmap, which calls for the establishment of a PSPB, while the Palestinians perceive the PSPB as a "trap".⁴¹

³⁸ At the "Rabat Summit" (10/74) the leaders of Arab nations acknowledged the PLO as the "Sole Legitimate Representative of the Palestinian People". UN General Assembly Resolution 3210 (10/74) recognized this status and UN General Assembly Resolution 3237 (11/74) gave the PLO observer status.

The Exchange of Letters between PM Rabin and Chairman Arafat, included in the Declaration of Principles (9/93), acknowledged the status of the PLO as the Sole Legitimate Representative of the Palestinian People. It was followed by American recognition of this situation, as well.

³⁹ See below under the title "From the Oslo Paradigm to the Roadmap".

⁴⁰ Towards 5/4/99, the due date for the conclusion of the PSA (as stipulated in the Gaza-Jericho Agreement), Arafat threatened to unilaterally declare the establishment of a Palestinian State in Area A. (**The Jerusalem Post**, 4/23/99, 4/27/99). Israel objected to this declaration and threatened to annex areas B and C and to remove the Customs Envelope. (**New York Times**, 5/5/99). The US pressured Arafat to refrain from such a declaration (**New York Times**, 5/17/99). The EU, in a session held in Berlin (3/25/99), agreed to recognize a declaration of Palestinian independence, should such a declaration be made: "The European Union reaffirms the continuing and unqualified Palestinian right to self-determination including the option of a state and looks forward to the early fulfillment of this right. It appeals to the parties to strive in good faith for a negotiated solution on the basis of the existing agreements, without prejudice to this right, which is not subject to any veto".

⁴¹ Abu-Mazen stated that a PSPB **before** a Permanent Status Agreement is a "trap", and called for the establishment of back channels to negotiate a PSA **alongside** the negotiations over the Roadmap

The inversion of positions regarding the PSPB is a fundamental change in Israeli-Palestinian relations and may have far-reaching ramifications. It is possible that in the near future Israel will be in the position of promoting the establishment of a Palestinian state through unilateral steps, in the face of Palestinian objection and international criticism (see below).

24. This analysis leads to the conclusion that without a fundamental change in current political trends, **the Roadmap is currently leading to a deadlock and a PSPB will not be established through negotiations.**

Hamas Exacerbates the Deadlock

25. **Vision: Islamic-Palestinian national movement** – Hamas has challenged the secularism of Fatah and has presented an Islamic alternative, which rejects any recognition of the State of Israel and the Jewish right to self-determination.⁴²
26. **Mission: The PLO - The PA is only a milestone** – Hamas' goal is to lead the Palestinian national movement by taking over the PLO and seizing its status as the "sole legitimate representative of the Palestinian people".⁴³ Achieving this goal requires replacing Fatah in the leadership of the PA and the PLO.⁴⁴ Therefore, Hamas' victory in the PLC elections is but a milestone in realizing its vision.

Since the inception of the Oslo Process, Hamas has refused to acknowledge the PA, which was established through agreements with Israel. Its participation in the PLC elections constitutes a transformation in Hamas' policy and reaffirms the shift of the political center of gravity from the PLO to the PA.

27. **Strategy: gaining influence, avoiding responsibility** – Hamas' policy has been based on terror aimed at obstructing the political process, avoiding responsibility for its collapse, while placing responsibility on the PA and the Fatah. Moreover, institutional corruption in Fatah, as opposed to Hamas' responsiveness to the

(**New York Times**, 2/14/05); Fatah Central Committee rejected the idea of a provisional Palestinian state, and stressed its desire for the establishment of a fully sovereign Palestinian state.

⁴² The Palestinian "**Ethos of Struggle**" strives for the annihilation of Israel and the establishment of a Palestinian State in the entire territory of Mandatory Palestine. The Ethos of Struggle negates the "Jewish Right to Self-Determination" and stipulates that the refugee problem will be settled by the fulfillment of the Palestinian "Right to Return" to their homes. Accordingly, Hamas declares that "there is no solution to the Palestinian problem, but Jihad".

⁴³ Ismail Haniya, a prominent "**Hamas**" leader in the Gaza Strip, stated that Hamas wishes to enter the PA government and create a "New PLO" (Arnon Regular, **Ha'aretz**, 6/15/05). Mahmoud Al-Zahar, one of Hamas' leaders, said that the organization wishes to join the PLO "but on the basis of a new program, not of the Oslo program and the agreements. ... Right now the PLO is a dead body ... but we will revive this organization by means of new programs and methods." See **MEMRI**, 11/14/05.

Despite the decrease in the status of the PLO in the Palestinian internal political system, (supra, note 24), it has maintained its formal status as the "Sole Legitimate Representative of the Palestinian People" (supra, note 38). Thus, the PLO has become a "political shell company": whoever gains controls over it, gains the status of the official representative and the authority to sign agreements concerning national interests. (See Re'ut Point of View No. 19: "**The PLO and Hamas – Hostile Takeover of a Shell Company?**").

⁴⁴ For example, publications regarding the re-opening of the PLO embassy in Beirut, were followed by Hamas' warning that whoever represents the Palestinians in Lebanon must take into account all Palestinian factions. (**Daily Star**, 1/9/06).

social and humanitarian needs of the Palestinian population have increased support for Hamas and undermined Fatah's position.

28. **Is the electoral victory a "strategic mishap"?** – In the past, it seemed that Hamas was not interested in joining the PA cabinet. However, in the wake of its electoral success, Hamas' leaders are considering appropriate ways to assume executive powers.⁴⁵ This fundamentally impacts Hamas' strategy, as it forces it to confront the tension between its ideological principles and responsibility for the wellbeing of Palestinian society, emanating from its newly won institutional power. Hence, significant electoral achievement may have been a strategic mishap for Hamas.
29. **Heading towards a constitutional-political crisis** – The PLC elections are likely to bring about institutional, ideological and political transformation on the Palestinian side.⁴⁶ Hamas' success may substantially detract from the PA's ability to design and carry out policy. This future crisis stems from the division of powers and ideological orientation among the President, on the one hand; and the Prime Minister and the PLC, on the other hand. This structural mismatch weakens the "[carrying capacity](#)"⁴⁷ of the PA.⁴⁸
30. **No Disarmament** – In October 2005, the US endorsed Abu Mazen's proposal to disarm Hamas after the elections, despite Israel's demand to dismantle its terrorist infrastructure prior to elections. The Hamas' achievement decreases the likelihood of its disarmament. This will further impede the implementation of the First Phase of the Roadmap.

⁴⁵ Hamas leader Mahmoud Al-Zahar: "Whether Hamas plans to enter the government or not – people will jump to political conclusions and raise false accusations, about it wanting to stay in power for our own sake. After the elections, we will see the results and decide what to do". (Arnon Regular, **Ha'aretz**, 10/26/05).

⁴⁶ Ideologically, Hamas ascribes to the Palestinian Ethos of Struggle and negates the existence of the State of Israel, while the Fatah accepts the "[Principle of Historic Compromise](#)". Politically, Hamas objects to a PSA, while Fatah declares its wish to negotiate a PSA. Institutionally, the issues to be referred to are: What is the future of the Hamas "Da'awa" system, which includes charity, welfare, education, and health services for the Palestinian population? How will the positions within the PA, held today by the Fatah, be distributed after the elections?

⁴⁷ The Re'ut Institute defines the concept "[Carrying Capacity](#)" as a party's ability to implement the policies it wishes to pursue in a specific context. Regarding the Palestinians and the political process, "Carrying Capacity" refers to the ability of the Palestinian government to implement policies, which demand control over resources, internal and international legitimacy, legal-political jurisdiction and institutional capacity.

⁴⁸ The purpose of the 2003 constitutional reform in the PA was to restrict the powers and responsibilities of Yasser Arafat. However, in the aftermath of his death, the PA's political structure is weak, unable to successfully carry out decision-making processes. Under the current division of authorities, the President, the Prime Minister and the PLC may undermine each other's powers and authorities.

For example, while the President's position is quite stable, his executive jurisdictions are limited. The PM holds most of the executive jurisdictions, but both the President and the PLC can dismiss him or her. (Palestinian Election Law, Chapter 2, Palestinian Basic Law, Articles 37,39,40,45,70,79). This structure creates mutual dependence between the President and the PM. (Yaghi Mohammad, "Empowering Mahmoud Abbas after Disengagement", **Washington Institute Peace Watch** #517, 9/15/05).

31. **No Palestinian Interlocutor** – Hamas' electoral victory is liable to impede the political process. Furthermore, the ideological differences between Hamas and Fatah, the reshuffling of the political system and the constitutional crisis mentioned above will decrease the ability of the Palestinian leadership to negotiate with Israel, much less to sign agreements and implement them. Therefore, the post-election "delivery capability" of the PA appears to be significantly weakened.
32. **Double Deadlock: no PSPB and no Permanent Status** – The institutional realignment will also revolve around the nature of relations with Israel. Currently, Fatah objects to the establishment of a PSPB within the Second Phase of the Roadmap and instead wishes to proceed directly to a PSA within the Third Phase of the Roadmap. Hamas is ideologically opposed to a PSA.⁴⁹ In addition, Israel has refused to conduct negotiations with Hamas before it disarms and amends its covenant.⁵⁰ Hence, the strengthening of Hamas creates a political deadlock in negotiations with the Palestinians on multiple levels.
33. **PSPB as part of "the Phased Plan"** – Paradoxically, **Hamas, as opposed to Fatah, may accept the establishment of a state with provisional borders.** Such a state, which is not established through a PSA, could allow for the continuation of its struggle against Israel, as it is consistent with the Phased Plan of the PLO⁵¹ and the Palestinian ethos of struggle.

What are the Advantages and Disadvantages of a PSPB?

34. An analysis of the merits of the idea of a PSPB is necessary for Israel in its decision whether to pursue its establishment despite the aforementioned Palestinian opposition. The public debate concerning the PSPB points to a number of different factors:
 - **Inherent rights of the Palestinian state** – Once established, the Palestinian state will have inherent rights, such as sovereign immunity, diplomatic immunity for its agents and territorial integrity. Currently, the Interim Agreement limits these and other PA's attributes of sovereignty.
 - **Limitations on the flexibility of action of the IDF** – The establishment of a Palestinian state may limit IDF's latitude in Palestinian sovereign territory, in comparison to the current situation. For example, following Disengagement, Israel claims that its responsibility over Gaza has ended. Although the right to self-defense allows the IDF some leeway even after the establishment of the Palestinian State, its ability to prevent the firing of missiles onto Israeli territory has been substantially limited.

⁴⁹ Prior to the elections, Hamas leader in Gaza Mahmoud al-Zahar stated in an interview with a Palestinian newspaper that Hamas will not conduct negotiations with Israel, and once in the government "will sever all ties" (See *Al-Ayam* 8.1.06).

⁵⁰ Manifestations of Israel's objection to the participation of Hamas in the Israeli media and quotes from public officials are plentiful. One such example is the statement of Prime Minister Ariel Sharon that "Hamas can participate in elections only on the condition that it disarms and annuls its "covenant", which calls for the destruction of Israel." (Aluf Ben, *Ha'aretz*, 17.9.05).

⁵¹ According to the Phased Plan of the PLO (6/74), the Palestinians will use all liberated areas of "historic Palestine" as a base from which to continue their armed struggle against Israel.

- **No end of conflict or finality of claims** – Establishment of a Palestinian state without a PSA means the emergence of a political entity which is in conflict with Israel. According to the Oslo mindset, a Palestinian state was to be established in the context of a PSA, which would then guarantee end of conflict and finality of claims. Due to the provisional nature of the PSPB, Palestinians may raise additional demands which may in turn be legitimized by the international community.
- **Undermining the logic of a PSA** – Some claim that the establishment of a Palestinian state outside of the context of a PSA will undermine the relevance of the model developed during Permanent Status negotiations (1999-2001) and other models created by non-governmental organizations.⁵²
- **Issue of Representation and Israeli-Arabs** – The establishment of a Palestinian state is liable to raise new issues on the Israeli agenda, many of which will stem from the issue of Palestinian representation. The central issue in this context is the relations among Israeli-Arabs, the State of Israel and the Palestinian state.

35. However, the establishment of a PSPB also holds a number of advantages:

- **Undermining the threat of a bi-national state**⁵³ – The establishment of a Palestinian state will substantially decrease prospects for a state for-all-of-its-citizens between the Mediterranean Sea and the Jordan River. Disengagement from Gaza has already eroded this threat, and establishment of a Palestinian state will render the "[one-state threat](#)" irrelevant for years to come.
- **Compatibility with the Carrying Capacity of the Israeli political system** – In contrast to the signing of a PSA, the establishment of a Palestinian state is relatively simple and practical, considering the weakness of the Israeli political system. Furthermore, establishment of a Palestinian state enables the future division of the PSA into multiple smaller agreements that match the carrying capacity of the parties (see below).
- **Bypassing the political deadlock by fragmenting the PSA** – The establishment of a Palestinian state may create new paths for the political process. Israel will be able to negotiate a number of different agreements with the Palestinian state, each constituting a chapter of the PSA. Thus, it will be possible to dismantle the all-or-nothing nature of the Oslo process, which is based on reaching a single comprehensive PSA.
- **Diluting the refugee problem prior to PSA** – The Oslo process defined the issue of Palestinian refugees as an outstanding issue to be negotiated within the PSA. However, the status of refugees may be addressed within

⁵² The four most prominent models for a PSA leading to the establishment of a Palestinian state are the "[Beilin – Abu-Mazen Document](#)" (10/95), the "[Draft Framework Agreement on Permanent Status](#)" (1/01), the "[ICG Paper for Israeli-Palestinian Permanent Status](#)" (7/02), and the "Geneva Initiative" (10/03).

⁵³ The concept of "[One-State Threat](#)" relates to the effort to nullify the Jewish character of the State of Israel by forcing Israel to become a "state for all-of-its-citizens" in which Jews will constitute a minority.

the context of a PSPB prior to a PSA.⁵⁴ This process may consist of ensuring full equal rights to refugees residing in the PSPB; gradual transfer of UNRWA's authorities to the Palestinian state; or the establishment of a direct channel for property compensation.⁵⁵

- **Revisiting the negotiations agenda for a PSA** – The existing agenda of the political process (refugees, borders, Jerusalem and other issues) was in fact shaped in 1949. This agenda focuses on resolving the problems that stem from the 1948 war, and not on nurturing a stable two-state solution.⁵⁶

After the establishment of a Palestinian state, Israel will be able to change the agenda to better address the challenge of state-to-state relations. For example, the new agenda may focus on issues pertaining to daily relations, such as safe passage and arrangements for movements of people and goods.

- **Leveraging Israel's military and economic advantages** – The establishment of a Palestinian state with land links to Egypt and Jordan will shift some of the responsibility over Palestinian economic stability from Israel to the Palestinians and to Arab states. Additionally, Israel will have greater legitimacy to demand a return for allowing the Palestinians privileges within Israel itself, such as use of air and sea ports and other infrastructures.

36. **Israel does not have to give up on the PSPB** – From Israel's point of view, the substantive considerations regarding the establishment of a PSPB are complex. Therefore, it is difficult to clearly state whether the positives of a PSPB outweigh the negatives. However, there are certain **circumstances in which the creation of a PSPB may serve Israel's interests**.

⁵⁴ Dilution of the Palestinian Refugees issue before a PSA is contrary to the Palestinian tendency to prolong the existence of the refugee problem, even after the establishment of a Palestinian state.

Minister of Justice Tzipi Livni has stated that the Issue of Palestinian refugees poses the greatest danger to the principle of Two-State Solution. This principle is based on the assumption that each state will provide a suitable solution for each nation. However, since the Oslo Accords, a dangerous separation has been created between the Palestinian right to statehood and the mindset according to which such a state will constitute a solution to the refugee issue (In Hebrew: Shavit Ari, **Partition**, Jerusalem: Keter, 2005, pp. 134-135).

⁵⁵ Prof. Ruth Gavison has stated that the Issue of Palestinian Refugees will be the most important issue on both sides' agenda, and that it cannot be deferred till after Israel withdraws from the territories. On the contrary, this issue should be dealt with gradually following the Disengagement (Shavit Ari, **Ibid**, p. 81).

⁵⁶ The Re'ut Institute asserts that the current agenda of the Israeli-Palestinian Permanent Status negotiations does not adequately address the issues around which the future relations between the two states will revolve. The present agenda stems from the Lausanne Convention (5/49), which determined that future negotiations should resolve the issues of territories, refugees and the status of Jerusalem. "UN Security Council Resolutions 242 and 338" (11/67, 10/73), the Camp David Accords (9/78), the Madrid Conference (10/91) and the "Oslo Process" (9/93-1/01) were based on this agenda. (See the Re'ut Institute document: "[Agenda for Israeli-Palestinian Negotiations on Permanent Status](#)").

Can Israel Establish a PSPB through "Unilateral Recognition"?

37. The previous analysis leads to the conclusion that the Roadmap is at a deadlock and it may be in Israel's interest that a PSPB be established even without Palestinian consent.
38. The question is therefore whether a PSPB can be established without an Israeli-Palestinian agreement. In other words, can Israel take measures, whether unilaterally or in coordination with third parties such as the US, to "upgrade the political status of the PA" to that of a state, without Palestinian consent (hereinafter "Unilateral Recognition")?
39. According to international law, there are two approaches regarding the role of international recognition within the process of "accession to statehood". According to the Declarative Approach, a state may be established if it is an entity possessing permanent population, defined territory, effective government, and capacity to conduct an independent foreign policy.⁵⁷ According to this approach, the recognition of the entity as a sovereign state by other states is solely declarative and does not influence the legitimacy of the new state's existence. According to the Constitutive Approach, international recognition is a *necessary condition* for the creation of a new state.⁵⁸
40. **Could the PA be considered a state?** – It could be argued that the PA presently meets the criteria for statehood. In terms of the Declarative Approach, the PA has permanent population residing in defined territory; it has some aspects of effective government, such as elected political leadership, legislative, judicial, and executive authorities, and law enforcement forces; and it conducts foreign affairs, albeit under the official auspices of the PLO.⁵⁹ In terms of the Constitutive Approach, 104 states have already recognized the declaration of independence of the Palestinian state in November 1988.⁶⁰
41. On the other hand, the PA still lacks some elements of statehood: its political borders are not definitive; it does not have full and effective control over its territory (its air space and coastal areas for instance); and it is yet to obtain full international legitimacy (e.g. full-fledged UN membership). Moreover, the

⁵⁷ Montevideo Convention on the Rights and Duties of States (1933).

⁵⁸ For an analysis of the two approaches see: Crawford James, **The Creation of States in International Law**, Oxford, 1979, pp. 15-25.

⁵⁹ See "Agreement on the Gaza Strip and the Jericho Area" (5/94): Article IV - "Structure and Composition of the Palestinian Authority"; Article IV - "Structure and Composition of the Palestinian Authority"; Article V - "Jurisdiction"; Article VI - "Powers and Responsibilities of the Palestinian Authority"; Article VII - "Legislative Powers of the Palestinian Authority"; Article VIII - "Arrangements for Security and Public Order".

⁶⁰ See The "Algiers Declaration" (11/88): "...Now by virtue of natural, historical and legal rights, and the sacrifices of successive generations who gave of themselves in defense of the freedom and independence of their homeland; In pursuance of Resolutions adopted by Arab Summit Conferences and relying on the authority bestowed by international legitimacy as embodied in the Resolutions of the United Nations Organization since 1947; And in exercise by the Palestinian Arab people of its rights to self-determination, political independence and sovereignty over its territory, **The Palestine National Council, in the name of God, and in the name of the Palestinian Arab people, hereby proclaims the establishment of the State of Palestine on our Palestinian territory** with its capital Jerusalem (Al-Quds Ash-Sharif, date)".

possible establishment of a Palestinian State was left unresolved during Permanent Status negotiations (1999-2001).⁶¹

42. **The PA is a “[Nascent State](#)”**⁶² – The PA's eventual accession into statehood seems most likely given four factors: its present attributes of statehood; the Roadmap's commitment to the establishment of a Palestinian state; the backing of the Quartet and Israel to the Roadmap, and UN Security Council Resolutions.⁶³
43. **What is the difference between the current political status of the PA and that of a state?** What needs to happen for the PA to be recognized as a state? On a practical level, the PA needs to gain further official powers and authorities, expand its effective control over the West Bank and achieve control over its external borders, such as the border with Jordan. On the declarative and symbolic level, all that may be needed is Israeli, American and international recognition of the PA as a state and the subsequent acceptance as a UN member.
44. The Oslo Process and the Roadmap are based on the assumption that “[upgrading the sovereign status of the PA](#)” will be accomplished by agreement. This agreement was intended to settle all aspects of powers and authorities of the Palestinian state. However, the political deadlock raises the question: Can Israel unilaterally recognize the PA as a state? And if so – how can this be done?
45. **Unilateral recognition is possible** – Theoretically, Israel's Prime Minister or Foreign Minister could declare that Israel views the PA as a full-fledged state. Henceforth, Israel will treat it as a state, possessing all rights and duties inherent to its status, with emphasis given to the maintenance of Israel's right to self-defense. The following measures could increase the chance for successful unilateral recognition:
 - **Upgrading the sovereign status of the PA** – Prior to unilateral recognition, Israel can upgrade the sovereign status of the PA in the political, economic and civil arenas, by unilaterally rescinding restrictions on the PA's attributes of sovereignty⁶⁴ as stipulated in the Interim Agreement.⁶⁵ Any further

⁶¹ “[The political status of the Palestinian Authority](#)” was defined as a “fundamental issue” to be discussed at the end of the political process (See Sher, *Ibid*, p. 69).

⁶² The Re'ut Institute defines the concept “Nascent State” as an entity whose future statehood has been assured by relevant members and organs of the international community primarily the UN. For more information see the concept “[Nascent State](#)” on the Re'ut Institute website.

⁶³ UN Security Council Resolution 1515 (11/03) approved the outline of the “Roadmap”.

⁶⁴ For more information regarding Unilateral processes see Gilead Sher and Uri Sagi, **A Public Policy Paper**, Van Leer Institute, Jerusalem, August 2000. See also the following concepts in the site of the Re'ut Institute: “[Upgrade of the Political Status of the PA](#)”, “[Upgrade of the Sovereign Status of the PA](#)”, “[Israeli Unilateral Recognition](#)” and “[Act of Recognition of Statehood](#)”.

In this context, the former head of Israeli Security Services Ami Ayalon has said: “There is a middle ground: a one that combines between an independent Israeli action – whose essence is [...] a dialogue and momentum leading to a political arrangement... – such a process does not require a partner, an agreement does. Israel needs to activate a unilateral process, whose aim is to encourage bilateral processes which culminate in a viable PSA.” (*Ha'aretz*, 9/9/05).

Acting Prime Minister Ehud Olmert has said: “Israel will not only leave the majority of the West Bank and Gaza Strip, but also the Arab neighborhoods in the Jerusalem municipality. This will come about through a unilateral step, without attempting to gain concessions from the other side in an agreement.” (*Ha'aretz*, 12/5/03).

transfer of territory and authorities to the PA (see below) will stress the need to address its formal political status.

- **Gaining critical mass of international support** – Unilateral recognition, endorsed by the US and other states, will create a critical mass of international support. International recognition could take the form of sending diplomatic missions to the PA, or inviting the PA to designate its own representatives instead of those of the PLO.
- **Territory and contiguity** – Increasing the size and the contiguity of the Palestinian territories will enhance prospects for successful Israeli unilateral recognition.
- **Direct land link to Jordan** – Due to the precedent set by the Rafah Agreement, international support for Israeli unilateral recognition will be contingent upon Palestinian control over its external perimeter. This would mean a direct land link between Jordan and the West Bank.
- **From unilateral recognition to permanent status** – The international community will be more likely to support unilateral recognition if it is framed in the context of the resumption of the political process toward an eventual PSA. The unilateral recognition can be followed by a call for the return to permanent status negotiations in accordance with the Third Phase of the Roadmap. Alternatively, Israel may suggest the fragmentation of the PSA into multiple agreements with the newly established Palestinian state, which will constitute chapters of a PSA.

46. **Palestinian reactions** – Unilateral recognition may be received with Palestinian opposition and international criticism. The Palestinians may claim that they cannot be forced into statehood and that Israeli unilateral recognition does not end de-facto Israeli occupation, which prevents the PA from exercising control and responsibility.

Moreover, the Palestinians may argue that the "Algiers Declaration" from 1988 cannot constitute the basis for unilateral recognition and that establishment of a Palestinian state is the sole prerogative of the Palestinian people and stems from their right to self-determination. Therefore, an additional Palestinian declaration of independence will be required.

Nonetheless, as stated above, **Hamas, as opposed to the Fatah, may be willing to accept a PSPB**. A state, not within a PSA, may be consistent with the "ethos of Palestinian struggle".

47. **Is unilateral recognition desirable?** – Should Israel decide that the establishment of a PSPB serves its interest, it should examine the merits of establishing it without negotiations. Among the disadvantages are:

⁶⁵ According to the Interim Agreement (9/95) the PA is not authorized to conduct foreign affairs (Article IX, section 5 and see also supra note 23). Appendix V of the Interim Agreement establishes a united Israeli-Palestinian customs regime (the "Customs Envelope") and gives Israel control over passage of goods and collection of indirect taxes and customs on behalf of the Palestinians. In addition, Palestinian currency will be issued only in accordance with an agreement between the two sides (Article IV, section 10).

- **The Palestinian state could be a “failed state”⁶⁶** – The PA is currently unable to exercise effective control over its territory. Unilateral recognition could therefore bring into being a failed state, i.e. a state that has no control over parts of its territory and population and is therefore unable to prevent the illegitimate use of force against Israel.
- **The State of Palestine could be an enemy state** – Recognition of the PA as a state could mean recognition of a hostile entity engaged in conflict with Israel. Moreover, after the Hamas electoral victory, unilateral recognition may be interpreted as implicit recognition of an entity that publicly calls for the destruction of Israel.⁶⁷
- **Unilateral recognition = Postponing dismantling terrorist infrastructure** – Unilateral recognition would force Israel to waive its demand to dismantle terrorist infrastructure prior to establishment of a PSPB. However, if Israeli unilateral recognition is endorsed by the international community, pressure may be put on the PSPB to dismantle terrorist organizations as a condition for advancing towards permanent status negotiations.
- **Ceding "bargaining chips"** – Some argue that recognition of a Palestinian state is a potential Palestinian asset that Israel should only concede in return for a negotiated agreement with the Palestinians. This claim is based on the assumption that the Palestinians want a state sooner rather than later.
- **Complicated political process** – Unilateral recognition is a complicated political process that requires a critical mass of international support, as well as transfer of powers, authorities and territory to the PA. Moreover, the culmination of the process – PA membership in the UN – is contingent upon Palestinian will.

48. Among the benefits are:

- **Unilateral recognition is a simple process in comparison to negotiations on the establishment of a PSPB or on a PSA** – The process of upgrading the powers and authorities of the PA may be complicated. However, it is relatively simple in comparison to negotiations on a PSA. It is also simpler than negotiations on a state with provisional borders in which the

⁶⁶ A “Failed State” is a state that is unable to exercise control over most of its territory and is unable or unwilling to provide even the most basic services to its population. For more information see: Daniel Thurer, "The "Failed State" and International Law", **Global Policy Forum** (1999); Robert I. Rotberg (ed.) **When States Fail: Causes & Consequences**, Princeton, NJ: Princeton University Press, November 2003; Robert I. Rotberg, (ed.), **State Failure and State Weakness in a Time of Terror**, World Peace Foundation, 2003; Zartman, I. William (ed.), **Collapsed States: The Disintegration and Restoration of Legitimate Authority**, London, L. Rienner Publishers, 1995.

⁶⁷ Israel originally announced that it would not allow the Palestinian elections to take place within Jerusalem city limits due to the participation of Hamas (Aluf Benn, **Ha’aretz**, 12/28/05). However, in the face of international pressure and Palestinian threat to cancel the elections, Israel decided to allow the elections to take place while re-affirming that it will not allow Hamas candidates to campaign in or appear on the ballot in East Jerusalem (Aluf Benn and Arnon Regular, **Ha’aretz**, 1/11/06).

Palestinians are expected to expand the agenda to include issues relating to the permanent status.

- **Maintaining a security regime** – Unilateral recognition will enable Israel to maintain control over areas and authorities that are essential for its own security, such as control over airspace. These arrangements are unlikely to receive Palestinian consent in a negotiated agreement.
 - **International legitimacy** – Palestinian opposition to Israeli unilateral recognition will force the Palestinians to explain why they are not a state. Expanding the PA's territory and powers would make it harder for them to argue against their own statehood, especially considering the fact that they have been lobbying for such recognition over the past three decades.
49. **Unilateral recognition is feasible, but ...** – Israel may be able to lead a process culminating in unilateral recognition of the PA as a state. However, this action is not without risks and may ultimately prove to be unsuccessful and without significant impact.

Prospects for success will increase should Israel transfer more powers and authorities to the PA; expand the PA's territory and allow for territorial contiguity and a land link with Jordan; and gain international support.

Israel and Hamas – Between a Rock and a Hard Place

50. The increasing power of Hamas may transform Israeli-Palestinian relations, including with regard to the establishment of a PSPB.
51. Hamas is a terrorist organization, loyal to the ethos of Palestinian struggle, which strives for the annihilation of Israel. At present, Hamas rejects negotiations with Israel, which it perceives to be synonymous with recognition of Israel. While some factions of Hamas pledge to hold on to this ideological position,⁶⁸ other voices do not rule out negotiating with Israel.
52. **Dominance at the grass root level** – Prior to the elections, Hamas built its power base on a network of grass roots organizations offering the Palestinian society a nexus of services in health, education and welfare, as well as certain policing and dispute resolution functions. This infrastructure is known as the *Da'awa*.
53. **Majority at the municipal level** – In addition to its achievement of political dominance in the PLC, during 2005 Hamas garnered electoral victories at the municipal level. At present, more than a million Palestinians live in municipalities governed by mayors affiliated with Hamas compared to some seven hundred thousands who live in municipalities governed by mayors who are associated with Fatah.⁶⁹

⁶⁸ In an interview for the **New York Times** (1/12/06) Hamas leader Mahmoud al-Zahar stated that Hamas will not recognize Israel or disarm even if it wins the PLC elections. Hamas will also “Not recognize agreements between Israel and the Palestinian Authority”.

⁶⁹ Four rounds of municipal elections have resulted in Hamas control over 81 districts serving a population of 1.3 million Palestinians. In contrast, Fatah won 121 districts with a combined population of only 700,000 Palestinians. (Arnon Regular **Ha'aretz**, 12/18/05).

54. **The appeal of "the Hizbullah precedent" to Hamas** – Prior to the elections, Hamas leaders aimed at a new equilibrium based on the precedent created by the policy of the international community towards the participation of the terrorist organization, Hizbullah, in the Lebanese government. Hamas may wish to rely on the "Hizbullah precedent" and maintain its military wing alongside its majority in the PLC and its likely control over the government.
55. **No willingness to assume responsibility for humanitarian crisis** – Hamas entry to the PLC, cabinet and the bureaucracy of the PA exacerbates Israel's dilemma. An Israeli policy which will sever all direct and indirect contacts with Hamas may lead to a functional disengagement and an unwanted humanitarian crisis.
56. **Between a rock and a hard place** – While Hamas is still a terror organization which rejects Israel's right to exist, Israel is unlikely to sever all relations with the PA, since such a step which may lead to a humanitarian crisis and the PA's possible collapse. Therefore, sooner or later, Israel may find itself conducting direct or indirect contacts with Hamas or with those affiliated with it.
57. **Timing of the crisis** – Entry of Hamas into the PA is likely to accelerate the crisis over disarmament of the terror infrastructure and a change of its covenant. Israel may choose to create the crisis in the near future. Alternatively, Israel may choose to create a balance of power with Hamas without demanding its immediate disarmament and ideological transformation.
58. **Division within Hamas?** – As stated above, the achievement of Hamas in the recent elections may prove to be a strategic mishap, as it will force Hamas to deal with the tension between its commitment to the armed struggle and its civic duties.⁷⁰ This tension might cause strife between the radicals and pragmatists within Hamas which may lead to a division.⁷¹ The actions of Israel and the international community may then have significant affect on Hamas' internal affairs.
59. **Between a Failed State and Hamastan** – Israel's dilemma may increase if the capacity of the PA for effective governance continues to deteriorate, while Hamas seems to be the only body capable of delivering public order and stability. Hence, Israel may face a choice between a failed state headed by Fatah and a hostile state headed by Hamas.

To date, Israel has avoided direct contacts with mayors who are associated with Hamas. The Israeli Civil Administration carried on indirect contacts with the representatives or emissaries of these municipalities and with relevant PA ministries. It seems that this policy serves both sides: Israel can claim that it does not deal with Hamas, while the latter could hold its positions of power and serve the Palestinian population without having to conduct direct contacts with Israel.

⁷⁰ For example, Hamas leader Mahmoud Al-Zahar said recently that the Israeli-Palestinian customs envelope should be removed and replaced by an independent Palestinian custom regime. Such an act is in accordance with Hamas stand against Israel, but can badly hurt Palestinian trade, as 90% of the Palestinian trade is with Israel. (**New-York Times**, 1/12/06).

⁷¹ In the past year, power struggles between extremists in Hamas, such as Mahmoud Al-Zahar and the moderates, such as Ismail Haniya, have become public. (Ravid Barak, **NRG**, 10/20/05).

From the Oslo Paradigm to the Roadmap

60. **The Oslo Paradigm** – The logic of the Oslo process was coherent. Its goal was to achieve an end to the conflict with the Palestinian people.⁷² The official interlocutor was the PLO – the sole legitimate representative of the Palestinian people. Its sequence was based on the establishment of a PA for an interim period of five years (5/94-5/99), at the end of which a PSA should have been concluded. The PSA was to have put an end to the conflict, finalize all mutual claims and bring about the establishment of a Palestinian state in *permanent* borders. The logic of this outline emanates from the systemic and intertwined nature of the outstanding issues that require a comprehensive and all-embracing resolution.
61. The Interim Agreement (September 1995), also known as "Oslo B", was designed according to the logic of the Oslo process. It was to regulate the relations between the two sides during the Interim Period, until the conclusion of a PSA in May 1999 and the establishment of a Palestinian state. Hence, the authorities and powers of the PA were limited by Israel and the PLO, the designated interlocutor on behalf of the PA.⁷³ This logic manifested itself in the Customs Envelope⁷⁴ and in the limitation on the PA in the sphere of foreign affairs.⁷⁵
62. **The Roadmap: a new paradigm** – The sequence of the Roadmap inverts that of Oslo: a Palestinian state is to be established before reaching a PSA and the logic of the entire process is performance-based. Thus, both the end of the conflict and

⁷² **The UN General Assembly Resolution 194** (12/48) – the idea of a single comprehensive agreement is first mentioned in this resolution;

The Declaration of Principles (9/93) further developed this idea: "It is understood that these negotiations (between Israel and the PLO, RI) shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders..." (Article V.3);

Framework Agreement on Permanent Status (Draft) – Camp David 2000 (9/00): Article 1 – 1) "Framework Agreement on Permanent Status... symbolizes the end of conflict between the parties." 4) "The parties will conclude arrangement to ensure that any other claims, that are part of the conflict, and caused by events occurred before the framework agreement, will not be raised by individuals from one side against the other." 5) "The framework agreement describes the principles, mechanisms and timetables to resolve each of the outstanding issues." Article 6 – 78) "The purpose of the committee and the fund is to ensure for a final and comprehensive solution to the Palestinian refugee problem, regarding all aspects." 94) "Israel will have no further obligations regarding the refugee problem, besides those obligations that are mentioned in this agreement." 95) "The implementation of this article and the completion of the committee work... shall permanently solve the Palestinian refugee problem";

"The Arab (Saudi) Initiative" (3/02) calls for a just solution to the Palestinian refugee problem based on UN Resolution 194 and for the establishment of a Palestinian state, in return to a full normalization of the Israeli and the Arab states relations; **"UN Resolution 1397"** (3/02) welcomed the Saudi initiative.

⁷³ See supra 37.

⁷⁴ The **"Paris Protocol"** (4/94) established the "Custom Envelope" regime, according to which Israeli and Palestinian custom rates will be identical (with special exceptions), the VAT will be similar, Israel will supervise the entrance and exit of goods and collect indirect taxes and customs.

⁷⁵ According to the Interim Agreement (Article IX.5.a), "In accordance with the DOP, the Council will not have powers and responsibilities in the sphere of foreign relations, which sphere includes the establishment abroad of embassies, consulates or other types of foreign missions and posts or permitting their establishment in the West Bank or the Gaza Strip, the appointment of or admission of diplomatic and consular staff, and the exercise of diplomatic functions."

finality to claims are deferred. Other interim goals are the dismantling of the terrorist infrastructure and establishment of Palestinian national institutions. Therefore, the Palestinian counterpart for the First and Second Phases of the Roadmap is the PA and *not* the PLO.

63. **Non-coherence between the Interim Agreement and the Roadmap** – As the Interim Agreement reflects the logic of Oslo, some of its articles are inconsistent with that of the Roadmap.⁷⁶ Hence, Israel, which supports the Roadmap, may consider revisiting its positions with regard to such articles as those denying PA membership in international organizations, preventing entry of refugees to the PA or restrictions over powers and responsibilities of the PA in foreign affairs.⁷⁷
64. This incoherence challenges Israel, especially with regards to the political status of the PA. This dilemma is likely to be exacerbated should Israel decide to pursue upgrading the political status of the PA or even unilateral recognition of "[Palestinian statehood](#)". For example:
- **Economic Arrangements** – Israel could rescind few of the limitations on PA powers in the Interim Agreement, such as with regard to restrictions on Palestinian currency and membership in the World Trade Organization. In addition, in light of the Rafah Agreement, Israel may revisit its position with regard to the Customs Envelope and consider allowing the PA to impose its own customs and collect them.⁷⁸
 - **The status of the PLO Mission in Washington DC** – In accordance with the Anti-Terrorism Act in 1987, PLO bureau in Washington was supposed to cease its activity. Under pressure of National Security Council, U.S. Presidents have since issued biannual "[waivers](#)" to postpone the imposition

⁷⁶ The evolution of the logic behind the establishment of the Customs Envelope is an example of the irrelevance of agreements formed in the Oslo era to the current reality. The working assumptions, as prescribed by PM Rabin to the Israeli economic negotiating team were as follows: (1) There will be no physical border between Gaza, the West Bank and Israel; (2) Free movement of goods, labor and capital must be obtained, in accordance with security interests; (3) The economic arrangements with the Palestinians are temporary, until the conclusion of a PSA (due at the end of the interim period, around May 1999); (4) The attributes of sovereignty of the PA will be limited (including economic attributes of sovereignty as the right to sign agreements with third parties or issuing currency); (5) Gaza and the West Bank are a single territorial unit, and hence under a mutual economic regime. See "[Report of the Advising Team to the Economical Negotiations](#)" (July 1993), according to which the custom envelope regime was formed. Nonetheless, these assumptions are not valid anymore: (1) A physical border is being built between the West Bank, Israel and Gaza is already surrounded by a fence; (2) The movement of goods, people and services between Gaza, the West Bank and Israel has been substantially reduced; (3) A PSA, or a comprehensive economic agreement seem impossible in the foreseeable future; (4) The PA gained many attributes of sovereignty with the support of the state of Israel; (5) After the disengagement, the political status of Gaza is different from the political status of the West Bank. (See Re'ut documents: "[Is the Custom Envelope Still Relevant?](#)"; and "[The End of an Era of the Israeli-Palestinian Custom Envelope](#)").

⁷⁷ For further details regarding the refugee problem see point of view: "[The Disengagement – An Opportunity to Dilute the Refugee Problem](#)" at the Re'ut website.

⁷⁸ See Ami Segal: "The Custom Envelope in Difficulties", **The Israeli Export and International Cooperation Institute**, 12/25/05, (http://www.export.gov.il/_News/Item.asp?CategoryID=12&ArticleID=4857). Also see Re'ut documents: "[The End of an Era of the Israeli-Palestinian Custom Envelope](#)" (9/29/05); "[Is the Custom Envelop Still Relevant?](#)"

of this act on the PLO. The next decree is expected next April. This may be an opportunity to switch the Palestinian diplomatic mission in Washington from that of the PLO to that of the PA.⁷⁹

- **The status of the American consulate in Jerusalem** – In the Interim Agreement, Israel refused to allow the PA attributes of statehood prior to the PSA. Accordingly, diplomatic missions could not be established in the West Bank or Gaza.⁸⁰ Hence, consulates and diplomatic missions in Jerusalem provide consular services to Palestinians and residents of Jerusalem, and have even become quasi-embassies to the PA.

Hence, Israel may consider withdrawing its opposition to the establishment of diplomatic missions in Ramallah or Gaza. This act could be part of a more comprehensive policy aimed at upgrading the political status of the PA, as well as be coherent with Israel's position regarding the "[end of its responsibility over Gaza](#)".

Conclusions

65. The dilemma regarding the establishment of a Palestinian state has occupied Israel since its inception. Upon the conclusion of the Interim Period in 1999, it seemed that Palestinian statehood was imminent. However, the failure of the negotiations on the PSA (1999-2001) and the outbreak of the Palestinian *Intifada* have deferred its establishment.
66. The Roadmap calls for the establishment of a Palestinian state prior to a PSA, but the target date – 2003 – has already passed. Disengagement from Gaza has raised the issue of the powers and authorities of the PA, particularly since it controls an area that Israel claims that it is no longer responsible for.
67. Establishment of a Palestinian state will constitute a historic and irreversible milestone in Israeli-Palestinians relations. It will signify the beginning of a new journey toward a Permanent Status, which will be designed gradually, over a long period of time, by a set of agreements between the two states.
68. The challenge that Israel faces is the consolidation of a coherent strategy aimed at addressing the deadlock in the Roadmap. This strategy must address the political status of the PA, taking into account the weakness of the PA and Hamas' electoral victory.
69. Paradoxically, Hamas, as opposed to the Fatah, may be willing to accept a PSPB. A state, not within a PSA, may be consistent with the ethos of Palestinian struggle.
70. The conclusion of this project is that, all things considered, Re'ut believes that it is more likely that a Palestinian state will come into being due to an Israeli initiative and unilateral recognition or tacit understandings between the two sides, rather than as a result of an agreement between Israel and the Palestinians.

⁷⁹ In 1987 the Anti-Terrorism Law was legislated in the US, aimed at ending the activity of the PLO office in Washington. The NSC votes every six months on a "[presidential waiver](#)" on the application of this law on the PLO. The next waiver is expected in April 2006.

⁸⁰ See Article IX of the Interim Agreement