

Agenda of Israeli-Palestinian Negotiations on Permanent Status
The Re'ut Institute – "Policy Product"

Abstract

The premise of this paper is that different agendas may lead to different negotiated outcomes. Therefore, revisiting the current agenda may prove conducive for Israel's quest to create a stable two-state solution.

The paper argues that the current agenda of Israeli-Palestinian negotiations on Permanent Status - namely borders, settlements, refugees, Jerusalem and security – was framed in 1949. Its organizing logic was the resolution of the 1948 conflict. This agenda, adapted and expanded, has been the basis for the political process related to the Israeli-Palestinian conflict up to the negotiations on the Permanent Status Agreement in 1999-01.

However, some of the underlying assumptions of this typology have significantly changed over the years. First and foremost, in 1949, the Palestinian people were not represented by an independent and legitimate representative body. Furthermore, Israel and the Palestinians did not recognize each other's right of self-determination in an independent state. Today, the establishment of an independent Palestinian State alongside Israel is a pillar of Permanent Status.

Hence, this paper suggests an alternative agenda for Israeli-Palestinian negotiations on Permanent Status. The suggested alternative organizing logic is securing the stability of Israeli-Palestinian state-to-state relations in Permanent Status.

Initial systemic analysis of Permanent Status identifies four possible clusters of issues that will shape state-to-state relations in Permanent Status, which can be framed as an alternative agenda: "Historic Issues" covering issues presently at the core of the conflict; "Intrusive Issues" covering Israel and Palestine's respective intrusions into each other's sovereign space; "Movement and Personal Security Issues" covering anti-terrorism, freedom of movement and law-enforcement; and "Conventional Issues" covering ordinary state-to-state relations.

The purpose of the suggested agenda is to focus decision-makers on enhancing the stability of Permanent Status instead of resolving the 1948 Conflict. The suggested agenda has other advantages: it decreases the all-or-nothing dynamics that is embedded in the existing agenda and creates the institutional infrastructure for state-to-state relations in Permanent Status.

Finally, it should be noted, that an attempt to reframe the agenda of negotiations on Permanent Status may require internal realignment and diplomatic efforts to counter resistance.

The Typology of Issues for Israeli-Palestinian Negotiation **The Re'ut Institute – "Policy Product"**

Acknowledgment

For their comments and contributions to this paper, we would like to thank:

[Adv. Gilead Sher](#) – Bureau Chief and Policy Coordinator of the PM of Israel; Former co-chief negotiator (1999-01)

[Moty Cristal](#) – Conflict Analyst; Deputy Head of the Negotiation Management Center in the PM Office (1999-01);

[Udi Eiran](#) – Assistant Foreign Policy Advisor to PM Barak (1999-00)

Scope

1. This paper focuses on the issue of the agenda of Israeli-Palestinian negotiations on Permanent Status (hereinafter "the agenda").
2. Generically, an agenda is based on a typology of the issues that are the subject of the negotiations. Typology is defined as "study, analysis or classification based on types or categories"¹.
3. Typology of issues and subsequent agenda for negotiations represent one area in the wider academic sphere that deals with structural aspects of negotiations. Other related areas include the design of the process or of decision-making mechanisms. However, the impact of typology on the outcome of negotiations seems to be a relatively unexhausted academic domain².

¹ Merriam-Webster Online Dictionary - <http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=typology>.

² See:

Watkins M., "Negotiating in a Complex World", **Negotiation Journal**, July 1999, 245-270.

Watkins M., "Strategic Simplification: Towards a Theory of Modular Design in Negotiations", **Negotiation Journal**, Vol. 8 (1), 2003, 149-167.

Zartman William, (1994) *International Multilateral Negotiations: Approaches to the management of Complexity*, San Francisco, CA: Jossey-Bass, 1994.

4. This paper is a "[Policy Product](#)" of the Re'ut Institute. Its purpose is to create a debate around the agenda and typology of issues of Israeli-Palestinian negotiation. It argues that such a debate is valuable as a different agenda may impact the outcome of the negotiation process, and may be used for enhancing the prospects of reaching a stable Permanent Status.

Document Structure

5. This document consists of four parts:
 - **"Background of existing agenda"** describing the context within which the current typology was created.
 - **"Negotiation challenges"** providing a brief overview of challenges of complex negotiations.
 - **"Alternative Agenda"** presenting a possible model for framing future Israel-Palestine state-to-state relations in Permanent Status and suggesting an alternative agenda for the negotiation based on that model.
 - **Summary.**

Background of Existing Agenda

6. The "[Typology of Issues for Israeli-Palestinian negotiations](#)" refers to classification and clustering of issues that comprise the relationship between the parties, hence creating the agenda of negotiations. The agenda then impacts the structure and mandate of the working-groups established to address these issues. For example, at the "[2000 Camp David Summit](#)" (7/00) the agenda and corresponding working groups were: Territory (and border regime), Settlements, Refugees, Security, Jerusalem, Water, Economics and Civic Affairs.³
7. The current typology may be seen as an outcome of a "mindset" created following the 1948 conflict. Its origins may be found in the agenda of the "[Lausanne Conciliation Commission](#)" (5/49). This agenda comprised of the issues of territories, refugees and the status of Jerusalem, which were perceived as the key issues for the resolution of the Israeli-Arab conflict. This typology was endorsed and expanded by "[United Nations Security Council Resolutions 242 and 338](#)" (11/67, 10/73 respectively), "[1978 Camp David Accords](#)" (9/78), the "[Madrid Peace Conference](#)" (10/91), the "[Oslo Process](#)" leading up to the "[Taba Talks](#)" (9/93-1/01), as well as by non-governmental efforts such as the "[Geneva Initiative](#)" (10/03).
8. This typology was shaped in an era where several implicit assumptions prevailed. Over time, these assumptions have consolidated into a "mindset"⁴. This assumptions may be framed as follows:

³ Sher, Gilad, **Just Beyond Reach, The Israeli-Palestinian Peace Negotiations 1999-2001: A Testimony**, Tel Aviv: Miskal (2001) P. 168, 161 (in Hebrew).

⁴ The concept of "mindset" refers to an organizing logic used to analyze and prioritize information. It is used in the context of the concept of "[Fundamental Surprise](#)" (defined by Dr. Zvi Lanir).

- a. **An Israeli-Arab Conflict rather than an Israeli-Palestinian Conflict** – The parties to the 1948 War were Arab States and the Palestinian population in Mandatory Palestine, on the one hand, and the State of Israel, on the other. The participants in the Lausanne Conference (5/49) were primarily Arab states and Israel;
 - b. **No Palestinian Statehood** – There was no agreement on a legitimate accepted Palestinians leadership that had the mandate to negotiate Palestinian statehood on behalf of the Palestinian people;
 - c. **State-to-State Negotiation** – The premise of the existing typology was that the conflict would be resolved through a symmetric state-to-state between Israel and Arab States, primarily Egypt and Jordan;
 - d. **Backward-facing** – This typology seems to have been framed primarily by the issues that were the reason for and the outcome of the 1948 conflict i.e. territory, refugees and Jerusalem. It is focused on “solving” the past rather than “shaping” the future.
9. Over time, a “relevancy gap”⁵ has developed between the aforementioned mindset and reality:
- a. **An Israeli-Palestinian Conflict rather than an Israeli-Arab Conflict** – Today, different from 1948-49, the subject of negotiation is the Israeli-Palestinian conflict while Israel has peace accords with Egypt and Jordan;
 - b. **Toward Palestinian Statehood** – In the “Rabbat Summit” (10/74) Arab states recognized the “PLO” as the sole legitimate representative of the Palestinian people. In 1993 Israel recognized the PLO as well. In negotiations of 1999-01, Palestinian Statehood was a central issue on the agenda of bilateral negotiations;
 - c. **A-symmetric Negotiations** – De facto, the negotiations between Israel and the Palestinians are a-symmetric in nature as the State of Israel negotiates with the non-state entity of the PLO on the creation of a future Palestinian State;
 - d. **From Backward-Facing to Forward-Facing** – During negotiations on the “Permanent Status Agreement”, the forward-facing issues associated with creating a stable two-state solution were addressed within the confines of the existing typology, which was in the mindset of resolving past grievances rather than “shaping” the future.

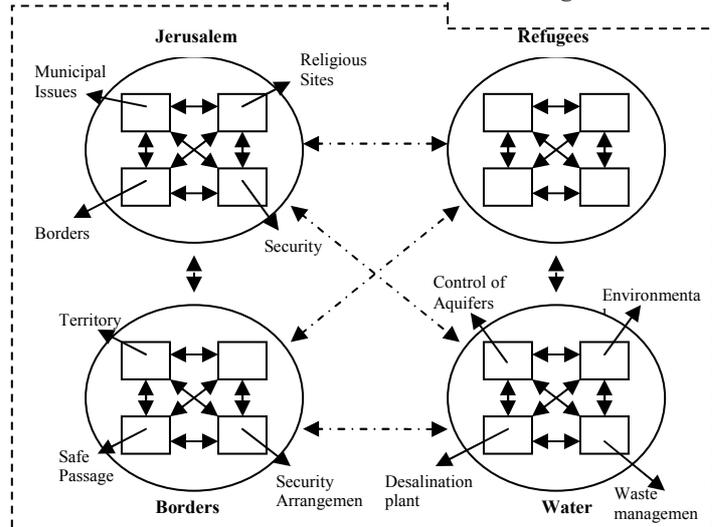
Negotiation challenges

10. In complex, multi-issue negotiations, in which multiple working groups negotiate simultaneously, the management challenge of a chief-negotiator is to reach a systemically optimal set of trade-offs and balance of interests.

⁵ The concept “Relevancy Gap” refers to an acute gap between the current “mindset” or perception of the world and the actual reality. It is used in the context of the concept of Fundamental Surprise (defined by Dr. Zvi Lanir).

11. However, it may be inevitable that group members tend to focus on reaching intra-group agreements. This tendency, which stems from psychological and bureaucratic reasons, hinders the capacity of the chief-negotiator to see the systemic nature of issues and reach an optimal outcome.
12. Furthermore, bureaucratic structures and other institutional arrangements, as well as informal institutional behavior such as norms and mindsets, tend to “stick” beyond their original intent or usefulness and become self reinforcing mechanisms.⁶ Stickiness locks-in existing arrangements, creates rigidity, limits possibilities of institutional reform, and constrains creativity.

Current Typology Diagram 1



13. Hence, as typology of issues predetermines the division of labor among working groups of the negotiations, it may have significant impact on the outcome of negotiations.
14. There is a linkage between the challenges of management of inter-group trade-offs, on the one hand, and the number of working groups and bureaucratic agencies involved, on the other.
15. Diagram⁷ 1 represents an example of the current typology. For example, the Jerusalem working group may tend to “trade” between itself on intra-group issues (solid arrows) such as municipal issues or religious sites instead of inter-group issues (dashed arrows).

Alternative Agenda based on a Model of Future State-to-State Relations

16. This paper presents an alternative agenda for Israeli-Palestinian negotiations. It argues that the organizing concept for the agenda should be future relations between Israel and a future Palestinian State rather than past grievances.
17. An analysis of future relations between Israel and the future Palestinian State in “Permanent Status” reveals that state-to-state relations can be framed around four “clusters”:
 - a. “Historic Issues” – In Permanent Status, after the Agreement on Permanent Status has been signed, a primary challenge will be to implement the

⁶ This phenomenon exists across many fields. In international Relations see: G. John Ikenberry, **Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars**, Princeton: Princeton University Press: 2000. Regarding the European welfare state see: Paul Pierson (Ed.) **The New Politics of the Welfare State**, Oxford: Oxford University Press, 2001

⁷ Adopted from Mnooking, Peppet and Tulumello, **Beyond Winning**, Cambridge Massachusetts: The Belknap Press of Harvard University (2000) P. 312

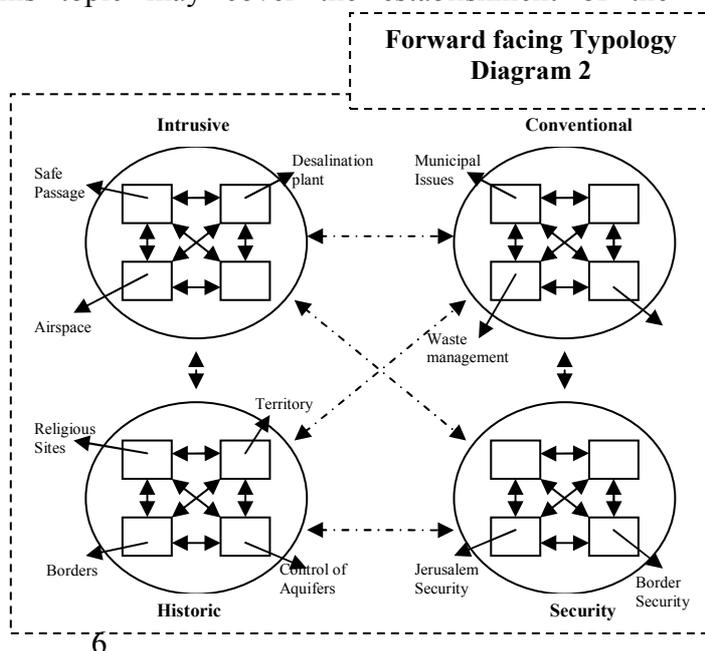
provisions relating to the issues that were the subject of the historic conflict such as Jerusalem or refugees;

- b. **“Intrusive Issues”** – this cluster includes issues where Israel and Palestine will intrude into each others’ sovereign space. For example, whereas the “safe passage” may constitute a Palestinian intrusion into Israel, the usage of the Palestinian airspace may constitute an Israeli one;
- c. **“Movement and Personal Security Issues”** – This cluster will include agreements and understandings regarding the war on terror, movement of persons, services and goods and law enforcement;
- d. **“Conventional Issues”** – this cluster contains ordinary state-to-state relations governed by internationally accepted norms and procedures, as well as by normal state-to-state agreements. Examples include postal relations, telecom, diplomatic exchanges etc.

18. Each of these clusters may be characterized by a different logic. For example, the conventional issues may need constant day-to-day adaptation. Alternatively, the agreements pertaining to the historic issues may be more static and difficult to change.

19. An agenda that is forward-looking may be framed around the four aforementioned clusters. In other words, the agenda for the negotiations may consist of the following (see annex for further details):

- a. **“Conventional Issues”** – this topic may cover most of the issues presently under the topic of Civic Affairs, as well as issues such as the municipal arrangements in the Jerusalem Area;
- b. **“Intrusive Issues”** – this topic may cover all intrusions of Israel and Palestine into each other’s sovereign space including, for example, safe passage (traditionally under the topic of “territory”), the usage of Palestinian airspace by Israel and de-militarization of Palestine (under “security”), Israeli clearance of Palestinian revenues and Palestinian access to the Israeli labor market (under “economics”) and desalination site (under “water”);
- c. **“Historic Issues”** – this topic may cover the establishment of the Palestinian State and the realization of the Palestinian right of self-determination; borders and division of sovereignty including in Jerusalem and regarding water rights; rights of access to and worship in holy sites; and the refugee issue;
- d. **“Movement and Personal Security Issues”** – this topic



may cover the fight against terrorism including hot pursuit (traditionally under “security”); law enforcement; arrangements for movement through the entry and exit points to Israel and the Palestinian entity; the Israeli-Palestinian border regime; and special arrangements in the Holy Basin (under “Jerusalem”), special roads (under “territory”) and holy sites.

20. Within the new typology (Diagram 2), the tendency to “close” within the working group is leveraged to achieve a different systemic outcome, balanced around the topics identified within the framework of a forward-facing model focused on future state-to-state relations. For example, within the intrusive issues, Israeli intrusion into Palestinian sovereign airspace and the Palestinian safe passage which is an intrusion into Israeli sovereign territory can be linked to create a balance of interests, which may lend itself to greater stability.
21. This new agenda has several different characteristics:
 - a. **Forward-facing** – The new agenda may shift the focus toward creating stable future arrangements rather than "solving" past grievances;
 - b. **Less of the “all-or-nothing dynamics”** – The new agenda may decrease the all-or-nothing dynamics embedded in the existing agenda. It provides for a space for progress on issues pertaining to future state-to-state relations parallel to negotiations on the historic issues. The traditional typology made the former a captive of the latter. Hence, the new agenda decreases the legal and declaratory significance of issues such as “Finality of Claims” or “End of Conflict”;
 - c. **Bureaucratic implications** – The new agenda may require restructuring of existing bureaucratic structures on the part of Israel, as well as on the Palestinian side. At the same time, this realignment establishes the institutional and bureaucratic foundations for state-to-state relations in Permanent Status.

Implications

22. This initial analysis indicates that a shift of the agenda of negotiations may not only be good for Israel but also to the prospects of a stable two-state solution in Permanent Status.
23. However, a revisit of the agenda may encounter opposition by the Palestinian side, by the international community, and even in Israel. Furthermore, a different agenda will mandate a new bureaucratic realignment that may require political capital of the Top Executive.
24. Therefore, an Israeli decision to embrace a new agenda for the negotiations with the Palestinians on Permanent Status has strategic, as well as diplomatic and political fallout that needs to be taken into account.

Summary

25. This paper calls for a debate around the current typology. It argues that past decade may have rendered it irrelevant to the challenges of creating a stable two-state solution.
26. This paper suggests considering a typology that is framed around challenges of future state-to-state relations rather than on the past grievances and that such typology may lead to different and possibly improved outcomes.

End.

Agenda of Israeli-Palestinian Negotiations on Permanent Status
Demo of Existing vs. Forward-Facing Typology

Existing Typology		Forward-Facing Typology			
Subject	Issues	Intrusive Issues	Ongoing Issues	Movement & Personal Security	Historical Issues
Framework					"Finality of Claims"; "End of Conflict"
Jerusalem and Holy Sites	Distribution of sovereignty; Temple Mount – law enforcement; worship, security and access arrangements; national symbols; municipal authority; international status as capital city/cities.	Special transportation agreements such as bw Ramallah and Bethlehem Joint municipal arrangements for issues such as sewage and electricity.	Area of Jerusalem – municipality-to-municipality issues	Arrangements for movement and access to holy basin.	Distribution of sovereignty; Temple Mount and in Holy Basin; use of symbols; international status as capital city/cities; issues relating to access, worship and religious status (including access to Hebron) at the holy sites.
Territory and Borders	Permanent borders; Safe passage; Settlements.	Safe Passage; Special roads for joint use;			Permanent Borders; Sovereign status of safe passage.
Security	War on terror; border regime; De-militarization and military and policy forces of Palestinian state; military alliances; regime in entry and exit points to Palestine 3 rd party – monitoring and verification;	Israeli early warning facilities; use of airspace; electromagnetic sphere. Demilitarization – 3 rd party monitoring and verification in entry points to Palestine;		War on terror; Border security between Israel and the Palestinian state Regime at entry and exit points to Palestine.	

Existing Typology		Forward-Facing Typology			
Subject	Issues	Intrusive Issues	Ongoing Issues	Movement & Personal Security	Historical Issues
	Israeli early warning stations; use of airspace and electromagnetic sphere.				
Refugees	Declarative aspects (right of return, responsibility, 194); Permanent place of residence; Legal aspects (class action and individual claims); Civil aspects (Political-Legal status); Rehabilitation - final place of residence, economic and social aspects.				The refugee issue is a historical issue.
Relations with the Palestinian State	Palestinian Statehood vs. PLO/PA, Palestinian right of self-determination. Incitement.		Diplomatic relations.	Incitement.	Status of the Palestinian state – Right of self-determination; Status of PLO/PA;.
Economy	Agreements on trade, taxes, etc. Damages for occupation/terror; Access to Israeli labor market; clearing arrangements.	Access to Israeli labor market; Clearing arrangements; Pier in Ashdod Port; Terminal in an Israeli airport.	Agreements on trade, taxes, etc.		Claims for damages for occupation/terror;

Existing Typology		Forward-Facing Typology			
Subject	Issues	Intrusive Issues	Ongoing Issues	Movement & Personal Security	Historical Issues
Water	Development of water resources – desalination of seawater and waste water; Water rights. Operation of water sources	Desalination site of seawater and waste water in Israel;	Operation of water sources	Protection of water sources.	Water rights (Sea of Galilee basin – Jordan – Dead Sea) and related aquifers.
Other Bilateral Issues	Civil issues – agriculture; archeology; planning; cooperation programs; education and culture; electricity; environment; fuel and gas; health; holy sites; industrial parks; postal services; communications; tourism and traffic. Legal – criminal and terror. Legal – civil. Civil aviation between the West Bank and Gaza	Archeology; Israeli electricity for Palestinian state; holy sites;	Agriculture; planning; cooperation programs; education and culture; environment; fuel and gas; health; holy sites; industrial parks; postal services; communications; tourism and traffic.	Legislation and end to incitement, terror and violence; Legal cooperation on fighting crime; criminal jurisdiction;	

End.