AN ANALYSIS OF THE OSLO II AGREEMENT IN LIGHT OF THE EXPECTATIONS OF SHIMON PERES AND MAHMOUD ABBAS

Justus R. Weiner
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INTRODUCTION  

It must be acknowledged that in the brief interval since the signing of the Declaration of Principles (DOP) on September 13, 1993, and with the added impetus of the Rabin assassination on November 4, 1995, the prevailing understanding of the decades-long Israeli-Palestinian conflict has been substantially modified. The inescapable task of reconciling Israeli and Palestinian nationalism, understood as virtually futile, has proceeded further than even the most optimistic peace campaigner could have foreseen. As Rabin observed in his speech on the White House lawn at the September 28, 1995 signing ceremony of the Oslo II interim agreement:

Now, after a long series of formal, festive statements, take a look at this stage: the king of Jordan, the president of Egypt, Chairman Arafat, and us, the prime minister and foreign minister of Israel, on one platform . . .

Please take a good, hard look. The sight you see before you at this moment was impossible, was unthinkable, just two years ago. Only poets dreamed of it; and, to our great pain, soldiers and civilians went to their deaths to make this moment possible . . .

Yes, I know our speeches are already repeating themselves. Perhaps this picture has already become routine.1

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Mahmoud Abbas (hereinafter Abu Mazen), one of the founding members of the Fatah movement, is a figure of senior stature in the PLO, second only to its Chairman, Yasser Arafat. He is a member of both the quasi-parliamentary Palestine National Council (PNC) and the Executive Committee of the PLO. Considered a moderate and a pragmatist, Abu Mazen was among the representatives of the PLO at the Oslo negotiations. Following an approximately two year hiatus from the peace talks, he settled in the West Bank town of Ramallah and was subsequently appointed by Arafat to chair the Central Elections Commission for the recent Council elections. He has reportedly been nominated by Arafat to act as a representative of the Palestinians at the permanent status negotiations, which, pursuant to the DOP, will commence in May 1996. Abu Mazen’s book Through Secret Channels reconstructs numerous meetings that were held between Israeli and PLO officials over the years in an effort to initiate a dialogue and negotiate a solution to the Israeli-Palestinian conflict. He provides a vivid and detailed account of the clandestine talks that were conducted in Oslo and which eventually led to the signing of the DOP on the White House lawn.

While numerous aspects of the Oslo II Agreement and the Israeli-Palestinian peace process as a whole merit examination, this review will focus mainly on those issues that appear prominently as concerns of either of the two authors: human rights, the Palestinian elections, Palestinian claims to sovereignty, the amendment of the PLO Covenant, and the new era and new relationship created between the parties.

I. Human Rights and the Peace Process

The late Prime Minister Rabin started many observers when he stated at the outset of the process that the PLO would be able to enforce security because it had no need to be concerned about criticism from human rights organizations. Nor, Rabin continued, would PLO practic-

8. Most of the PLO leadership assumed a nom de guerre, frequently the name of the eldest son according to the Arab custom.
9. Fatah is the largest faction of the PLO. Headed by Yasser Arafat, Fatah, which literally translates to mean “victory” or “conquest,” is the only major faction within the PLO which supports the current peace process. See Neil C. Livingstone & David Halaby, Making Peace with the PLO: The PLO, Israel, and the Fifteen-Year Road to the Oslo Accord 2 (1996).
12. See B‘ts’lem, supra note 11, at 4, 8.
13. See B‘ts’lem, supra note 11, at 4, 8.
14. Id. at 1–2.
15. Id.
17. Oslo II Agreement, supra note 11, at 4, 8.
18. See B‘ts’lem, supra note 11, at 4, 8.
19. Id. at 1–2.
20. Id. at 1, para. 1.
Beyond these general stipulations, however, the subject of human rights has received scant treatment in Oslo II. Apparently, safeguarding the Palestinian inhabitants' human rights throughout the interim period did not figure among the main priorities of the parties to the protracted negotiations. Israeli security considerations and matters pertaining to Palestinian pride and economic viability were the linchpins of the negotiations. Israel negotiated most energetically to institute alternative arrangements to contain terrorism, understanding that its intelligence gathering efforts and freedom to preempt attacks or arrest perpetrators would be severely handicapped as a result of the withdrawal. The PLO's primary effort was directed at obtaining tangible gains in order to sustain local Palestinian support for the peace process and its Fatah sponsors.\(^{21}\)

Numerous human rights violations perpetrated by PA officials in the areas for which it obtained authority under the Agreements have been protested by both local (Palestinian and Israeli\(^{22}\)) and international human rights organizations.\(^{23}\) Unlawful arrests, by the Palestinian police, of those opposing Arafat\(^{24}\) and the PA's manner of governing, have become widespread since the advent of Palestinian autonomy.\(^{25}\) Brutal torture, sometimes ending in death,\(^{26}\) and prolonged imprisonment without trial of Palestinians suspected of having "collaborated" with Israel are direct violations of the Cairo and Oslo II Agreements.\(^{27}\) Despite this prohibition, illegal detention and torture are routine as the PA gradually assumes control of Palestinian populated centers.\(^{28}\)

The State Security Courts established by Arafat in February 1995 in Gaza and Jericho utterly fail to meet international standards for a fair trial.\(^{29}\) The judges and prosecutors are all military officers of the PLO\(^{30}\) directly appointed by Arafat. They base their decisions on the military legal code that the PLO adopted in Lebanon in 1979.\(^{31}\) Moreover, Amnesty International asserted that "in the first cases held by the court, pre-trial and trial procedures fell far short of international standards for a fair trial."\(^{32}\) Prior to trial the defendant is held incommunicado for

\(^{21}\) See Doug Strook, Deadlines Stirring Action on Middle East Peace, BALTIMORE SUN, May 31, 1995, at 1; see also Beyer, supra note 16, at 44-46.

\(^{22}\) The PA's police and security forces haveEven asserted repressive human rights activists who have criticized Arafat or his administration. See, e.g., Karsten Frager, Hopeless in Gaza, TIMES, Oct. 9, 1995, at 58, Haran Ashrawi, while the head of the official Palestinian Independent Commission for Citizens' Rights, complained, "There is a severe containment of freedom of expression and freedom of the press." The Fate of Jerusalem — and Peace, CHRISTIAN Sci. MONITOR, May 24, 1995, at 18 (interview with Haran Ashrawi) [hereinafter Ashrawi Interview].

\(^{23}\) A study conducted by the U.S.-based Human Rights Watch concluded that human rights under the PA's local rule were in a "pathetic state." Beyer, supra note 16, at 46.

\(^{24}\) During the first 18 months of the PA's control over Gaza and Jericho some 1,500 people, primarily Arafat opponents, were detained, frequently without any formal charges being brought against them. Frager, supra note 22, at 58.


The December 7, 1995 arrest of Dr. Iyad Sarraj, Commissioner General of the Palestinian Independent Commission for Citizens' Rights (PICCR), by agents of the Palestinian Police Criminal Investigation Department in reaction to certain statements he made about human rights conditions in the Gaza Strip elicited widespread protest from within the Palestinian human rights community. Apparentley Dr. Sarraj, Haran Ashrawi's successor as the head of

Arafat's "official" yet "independent" Commission, dubbed the human rights situation under PA rule as "deteriorating" and asserted that he had not received any responses to the 400 complaints and interventions sent to the office of the PA's Attorney General, Khaled Ali-Seh. The failure of the Attorney General even to respond to the PA's own human rights body denotes poorly for its responsiveness to outside organizations and individuals. Furthermore, it is difficult to imagine what reasoning could have been behind the decision to arrest the commission general of a human rights organization, especially one with such intimate ties to the PA authorities. See The Palestinian Independent Commission for Citizens' Rights, Press Statement: Palestinian Security Forces Detain PICCR Commissioner General Dr. Iyad Sarraj for Interrogation (Dec. 8, 1995) (on file with Michigan Journal of International Law); Activist Arrests, supra, at 2.


27. The Oslo II Agreement clearly forbids harming the so-called collaborators:

Palestinians who have maintained contact with the Israeli authorities will not be subjected to acts of harassment, violence, rendition or prosecution. Appropriate ongoing measures will be taken, in coordination with Israel, in order to ensure their protection.

Oslo II Agreement, supra note 17, art. XVI, para. 2; see also Cairo Agreement, supra note 4, art. XX, para. 4.

28. See B'tselem, Press Release: Tortured to Death at Kfar Yitael 1-2 (Dec. 28, 1995) (on file with Michigan Journal of International Law); B'tselem, supra note 13, at 1-5; SHATTERED HOPEs, supra note 25, at 26-28; HUMAN RIGHTS WATCH / MIDDLE EAST, supra note 25, at 22-25. Thirty-one Palestinians suspected of having "collaborated" with Israel have been killed since the PA assumed authority in Gaza and Jericho. Hundreds more face fear for their security as the Israeli military withdraws from parts of the West Bank. See Eytan Rubin, Hundreds of Collaborators and Civil Administration Workers Seek Refuge in Israel in Fear of Their Fate After Withdrawal, H'ARETS (Isr.), July 17, 1995, at A3.

29. SHATTERED HOPEs, supra note 25, at 22-23; see also Hilary Appleman, Palestinians See "No Logic, No Law," JERUSALEM Post, May 17, 1995, at 5; Palestinian/Kennedy Centre Joint Statement, supra note 26, at 5.

30. SHATTERED HOPEs, supra note 25, at 22.

31. Frager, supra note 22, at 58.

32. Id. at 58.
enforcement range from withdrawal of the license to civil or criminal proceedings brought against any or all of the following persons: (a) the owner of the publication, (b) its editor-in-chief, (c) the author, (d) owners of the print and distribution house, and (e) libraries that carry the offending publication. The penalties under the law include publishing an apology, closure of the publication for three months, a substantial fine, and even imprisonment for up to six months. A Palestinian human rights organization expressed its disillusionsment with the law as follows:

The Press Law is an extremely sorry indictment of the period under Palestinian rule. Its 51 articles seek to control the media, fundamentally undermining the freedom of expression. At the same time, it gives the executive sweeping powers and remains silent on the issues of judicial scrutiny and recourse to the courts when rights have been infringed. In Gaza, there was great hope that the onset of autonomy, even in the fragmented and distorted form envisaged in the Cairo Agreements [sic], would offer a reversal of the history of occupation and oppression. Unfortunately the Press Law indicates that the Palestinian Authority has little intention to respect human rights or to establish the framework for democratic civil society.

34. Id.
35. Id. at 8.
36. See Palestinian/Kennedy Centres Joint Statement, supra note 26, at 4–5. In March 1995, the PA invoked a decree, on political assemblies issued in September 1994, in order to cancel a human rights seminar on the Security Courts. Id. at 5; see also Gaza Police, supra note 25, at 2.
38. Articles 7 and 37 of the law include vaguely-worded prohibitions on the publication of materials which are “inconsistent with morals” or which “humper morals, values and Palestinian traditions” of children and teenagers. Id. at 13, 17. Also unclear is the Article 8 requirement to report in an objective, balanced, and accurate manner. Id. at 14.
39. Id. at 4–5.
40. Id. at 5.
41. Id. By comparison, the much criticized Israeli limitations on freedom of the press, even during the peak of the intifada, were benign. Thus, although the international law of belligerent occupation gives Israeli broad authority to impose censorship, prevent circulation, and regulate or prohibit entirely all means of communication in the West Bank and Gaza Strip to prevent incitement, disorder, and hostile activity, in actual practice very little effort has been made to control the mostly antagogistic Arabic language press. In general, Israel only censors passages which offer information of military value to enemy states or incite hatred and disorder, thereby protecting a threat to public order and safety. Violators are very rarely prosecuted or sanctioned by the removal of their press accreditation. For example, during the first three years of the intifada, no member of the press had his press credentials revoked, and only a few brief suspensions were imposed. See Justin R. Weiner, Human Rights in the Israeli Administered Areas during the Intifada: 1987–1990, 10 WM. INT’L L.J. 185, 246–51 (1992).
42. The PA could argue, however, that its Press Law is consistent with the Cairo Agreement, which provides:

Israel and the Palestinian Authority shall seek to foster mutual understanding and tolerance and shall accordingly abstain from incitement, including hostile propaganda, against each other and, without derogating from the principle of freedom of expression, shall take legal measures to prevent any such incitement by any organizations, groups or individuals within their jurisdiction.

Cairo Agreement, supra note 4, art. XII, para. 1. In the author’s opinion, however, this understanding fails to adequately weigh the provision “without derogating from the freedom of expression.” Nevertheless, the PA should seek to balance this critical human right with the real danger of incitement against the peace process.
indeed, the Oslo II Agreement provides for most of the details concerning the setting of the elections as well as the structure of the Palestinian Council and its Chairman that would emerge therefrom. It is interesting to note that, although the DOP did not contain any stipulations on the subject, the Oslo II Agreement specifically provided for the direct election of the Ra‘ees⁵⁶ of the Council. Moreover, following the Agreement, the elected Council was to be composed of eighty-three representatives, including the Chairman. Pursuant to Arafat’s request, however, Israel consented to the addition of a number of seats so that presently the Council comprises eighty-nine members, one fewer than what it believed was the smallest parliament in the world.⁵⁷

In accordance with the Oslo II Agreement,⁵⁸ the PA drafted an Elections Law and put it into effect on December 2, 1995.⁵⁹ Members of both the PLO and the major opposition parties were given a chance to voice their opinion regarding the law prior to its adoption.⁶⁰ In addition
than ten percent of the total vote. Prior to the elections it was suggested that Dr. Haidar Abd Al-Shafi, a member of the Palestinian delegation at the Madrid Peace Conference and vocal opponent of Arafat’s peace diplomacy, might offer his candidacy for the chairmanship of the Council. Al-Shafi chose instead to run for a seat on the Council. He turned out to be a tremendous success at the ballot box, garnering more votes than any other Council candidate in the elections. This achievement is quite remarkable given that, with the notable exception of human rights activist Hanan Ashrawi and a few other significant opposition figures, few candidates in disagreement with Arafat won a seat on the Council.

During the negotiations at Oslo, the subject of Jerusalem was a contentious issue. As Peres wrote, "Throughout the Oslo process, we were determined not to make any political concessions on Jerusalem." Abu Mazen, adopting a similar tone, recollected: "Our delegation ... said that it could not sign any agreement that did not include ... Jerusalem." Consequently, the parties' positions substantially differed on the extent that Palestinian residents of Jerusalem would be allowed to participate in the elections. Israel ultimately accepted that Jerusalem Palestinians could take part in the elections but postponed determining the extent of their participation in both candidacy and voting for negotiation at a later stage. Hence, the following general stipulation appeared in Annex I of the DOP: "Palestinians of Jerusalem who live there will have the right to participate in the election process, according to an agreement between the two sides."

The issue eventually resurfaced as one of the most contentious matters during the negotiations of the Oslo II Agreement, placing a heavy burden on the parties in their peace undertaking. After months of deadlock, the parties finally reached a compromise. The agreement allowed Palestinian residents of Jerusalem to both vote and present their candidacy for a seat on the Council on the condition that they possess a valid address in the self-governed areas. In practice, this limitation could be sidestepped by simply signing a rental contract in any city located in an area under PA jurisdiction. Moreover, Israel agreed to authorize the candidates to conduct campaign activities in Jerusalem.

This arrangement represented an acceptable compromise. Palestinian residents of Jerusalem were not deprived of the right to participate in the Council elections, and Israel's claimed sovereignty over Jerusalem was not formally violated since it could claim that those who ran for election did so at expenses based on their residence outside Jerusalem. As the manager of one of the five Israeli post offices where Palestinians cast their ballots declared, "[A]s far as we're concerned the [Palestinian] voters are just sending mail."

Nonetheless, various hindrances impeded the elections in Jerusalem. At the outset, voter registration was exceptionally low due to unfounded fears that certain Israeli governmental benefits would be denied to those who cast ballots. On the day of the elections, substantial numbers of Palestinians were deterred from appearing at the polling stations because of the heavy presence of Israeli police. Israel had taken stiff security measures in order to prevent Israelis opposed to the peace process or the Palestinian Islamic opposition from obstructing the ballot. As a result, many eligible voters in Jerusalem were reportedly intimidated and did not vote.

Other factors also seriously undermined the democratic nature of the Palestinian elections. Indeed, it is questionable whether there were "direct, free and general political elections" as the DOP called for at the outset of the process. It is therefore debatable whether they were a "major breakthrough" or a "major step forward" as forecast by Robert

96. See Pacific Wins, supra note 81, at 1.
98. Peres, supra note 7, at 287.
100. Peres, supra note 7, at 287.
101. DOP, supra note 3, Annex I, art. 1.
include the right to self-determination. Although the Agreement does not contain any specific references to this right under international law, it is widely accepted that the parties' recognition, initially expressed in the preamble of the DOP, of "their mutual and legitimate political rights," includes the Palestinians' right to self-determination. What is not clear, however, is whether such a recognition entails Israeli acquiescence to Palestinian statehood as the inevitable outcome of the peace undertaking.

It should be stressed at the outset that neither the PLO nor the Palestinian Council meet the prerequisites for independence under international law. Although the PLO was granted permanent observer status at the United Nations in 1974 and the PNC proclaimed creation of a Palestinian State in the West Bank and Gaza Strip in 1988, at this stage of the process no sovereign Palestinian entity exists pursuant to prevailing standards of international law.

Even under the Oslo II Agreement, which considerably broadens the scope of powers transferred to the Palestinian entity, the Palestinian Council clearly lacks the capacity to conduct foreign relations, an essential prerequisite of sovereignty under international law. As Joel Singer, Legal Advisor of the Israeli Ministry of Foreign Affairs and senior official to the negotiations with the Palestinians, clarified:

"In each one of the three main agreements which Israel has concluded to date with the PLO as part of the current peace process, the issue of foreign relations has received special treatment. This reflects the fact that ... the treatment of the sphere of foreign relations has an added effect on the very nature of the autonomous entity itself, because full capacity to conduct foreign relations is one of the accepted indicia of sovereignty and statehood." Furthermore, the Oslo II Agreement stipulates that Israel continues to retain exclusive responsibility for the external security of the West Bank and Gaza Strip.

Moreover, pursuant to the text of the Oslo II Agreement, the Israeli military government will continue to operate in the West Bank and Gaza Strip throughout the interim period. In addition, the Agreement contains several stipulations that the legal status of Gaza, Jericho, and other areas of the West Bank under the local jurisdiction of the Council remains unchanged. It would therefore follow that these regions continue to be under the occupation of the Israeli military, with the Council acting as nothing more than an agent of the Israeli occupation administration.

Thus, a viable argument exists that the sole source of the Council's authority and legitimacy is the accords it concluded with Israel. The first paragraph of Article I of the Oslo II Agreement makes clear that Israel is the source of the Palestinian Council's administrative power and that Israel maintains residual control over functions not expressly transferred to the Council:

Israel shall transfer powers and responsibilities as specified in this Agreement from the Israeli military government and its Civil Administration to the Council in accordance with this Agreement. Israel shall continue to exercise powers and responsibilities not so transferred.

In addition, numerous provisions found in the Agreement stress that the status of the self-governed areas has not been altered. For instance, Article XI of the Oslo II Agreement states, "[t]he two sides view the..."
secret negotiations at Oslo, as the following excerpt from Peres' account of the talks makes clear:

This dispute [concerning the powers and structure of the Council] was linked to several others also stemming from the Palestinians' desire to extend the ambit of self-government so that it would inexorably lead to full sovereignty, and the Israelis' concern to limit it so that the permanent status of the territories would not be prejudiced by the terms of the interim agreement. Thus the Palestinian negotiators pressed repeatedly for the wording "mutual legitimate, national, and political rights" in the preamble to the Declaration of Principles. We eventually agreed, reluctantly, to "political" but refused to accept "national." It was omitted. 143.

Abu Mazen, however, offers a different interpretation of the DOP and the peace process as a whole, by which he endorses the Palestinians' claim to sovereignty:

Soeverignty for the Palestinians should not be seen as a textbook principle of national rights but more as a reflection of a national existence that was not originally recognized . . . . [T]he mechanism by which the terms of the accord will be implemented will eventually give rise to the emergence and crystallization of many features of sovereignty, and this process will go on until complete sovereignty is realized. In this connection, it is well to remember the preamble of the Declaration which calls for mutual recognition of the two parties "legitimate and political rights" and also Article III, paragraph 3, which stipulates that the elections of the Palestinian Council "will constitute a significant interim preparatory step towards the realization of the legitimate rights of the Palestinian people and their just requirements." 144

In the author's opinion the Palestinians are now closer than ever to achieving their aspiration of statehood. This constitutes an integral part of the new reality that has been created in the region as a consequence of the Israeli-Palestinian interim peace efforts.

IV. AMENDING THE PALESTINIAN NATIONAL COVENANT

The dramatic shift in the geopolitical landscape produced by the peace process would not have been possible had the Israeli and Palestinian sides not consented at the outset to certain minimal, but indis-
cant of these incursions was a sea-borne raid on the coast near Tel Aviv which resulted in the United States government suspending the dialogue it had undertaken with the PLO. In addition, the PLO’s alliance with Iraq during the Gulf War provided a further illustration of the organization’s reluctance to forsake its original opposition to the very existence of the state of Israel.

While the preamble of the Oslo II Agreement reaffirms the parties’ “adherence to the mutual recognition and commitments expressed in the letters ... exchanged between the Prime Minister of Israel and the Chairman of the PLO,” this statement cannot be taken at face value given the PLO’s failure to honor one of its fundamental promises as set forth in the aforementioned Letters of Mutual Recognition which had been exchanged some two years previously.

Significantly, the PLO has yet to carry out its commitment to abrogate the provisions contained in its National Covenant declaring the establishment of the state of Israel illegal and calling for its destruction. Articles of the Covenant repudiating the Zionist movement and justifying armed struggle to liberate Palestine also remain in force.

The persistence of these provisions more than two years into the process may be attributed in part to the limited support Arafat’s peace venture has received from major segments of the membership of the PNC. Given that the abrogation of the aforementioned provisions is necessary approval by a two-thirds majority, it is not surprising that Arafat has thus far refrained from convening that forum for a vote on the amendment. Indeed, many members of the Palestinian leadership adopt the view that no concessions should be made to Israel with regard to the Covenant before vital Palestinian interests are secured. Mainstream Palestinian representatives have insisted that Israel fulfill its obligations under the Oslo II Agreement, such as the creation of a safe passage between the West Bank and Gaza Strip and the release of additional prisoners. Opposition figures, on the other hand, have declared that the Covenant should not be altered before Israel accepts the creation of an independent Palestinian state in the West Bank and the world. It is racist and fanatic in its nature, aggressive, expansionist and colonial in its aims, and fascist in its methods. The liberation of Palestine will destroy the Zionist and imperialist presence and will contribute to the establishment of peace in the Middle East.

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160. Palestinian Charter of 1964, supra note 155, art. 20; Palestinian Charter of 1968, supra note 155, art. 33.

161. Professor Said, a vocal opponent of the peace process, denounced Arafat’s promise to amend the Covenant because it did not demand that Israel reciprocally commit to change its Law of Return, that grants every Jew automatic Israeli citizenship and which he departs as “an extraordinary inequity, intolerable to all Palestinians for almost half a century.” SAID, supra note 56, at 106.
Gaza Strip. Most likely, the PLO negotiating team at Oslo also held a similar view, and thereby preferred to bequest the responsibility for amending the Covenant to the PNC. As Abu Mazen stated in his book: "We were careful not to offer the Israelis the kind of recognition that would entail a firm commitment on our part to cancel the relevant articles in the Covenant because the authority to make such a commitment rests with the PNC."  

However, now that the elected Palestinian Council will be presently inaugurated and the Israel Defense Forces (IDF) withdrawal from Palestinian-populated centers is on the verge of completion, perhaps Chairman Arafat will have more success in gathering support to fulfill this threshold promise. In order to avoid confrontation with those opposed to the peace undertaking, it is expected that a newly drafted Covenant will be submitted at the next PNC assembly. The PNC is expected to consider approving the promised changes to the Covenant, as mandated by the Oslo II Agreement. Indeed, since the elections, Arafat has taken various measures in order to increase the likelihood of obtaining the required two-thirds majority at the next PNC session. He amended the Elections Law so that all newly elected members of the Council, the vast majority of whom support the peace process, will be added as members of the PNC. Arafat also secured Israel's consent for the admission to the self-governed areas of PNC members residing abroad, so that they may "see for themselves" the benefits emerging from the peace process. Moreover, the Executive Committee of the PLO has already met in order to discuss the proposed amendment and schedule the upcoming PNC assembly.  

The Covenant amendment is particularly significant since it will serve to demonstrate that, as Israel and the PLO explicitly affirmed in the preamble of the Oslo II Agreement, "the peace process and the new era that it has created, as well as the new relationship established between the two Parties . . . are irreversible, and the determination of the two Parties [is] to maintain, sustain and continue the peace process."  

V. The New Era and Relationship Between Israel and the Palestinians  

The signing of the DOP, and the political breakthrough that it embodied, gave way to momentous changes in the geopolitical landscape of the Middle East. It will be recalled that this mutation in the Arab-Israeli conflict was precipitated by the Gulf War, orchestrated by the United States to oust the Iraqi occupiers of Kuwait. This campaign was conducted under the auspices of the United Nations with the support and assistance of a worldwide coalition. In an effort to undermine the coalition, Saddam Hussein attempted to insinuate a linkage between the Iraqi occupation of Kuwait and the Palestinian problem, which prompted certain governments to call for an international peace conference on the Middle East once the war ended. Although the linkage established between the Israeli-Palestinian dispute and the Iraqi invasion

163. Amira Has, Abdo-Al-Shafi: Recognition of Our National Rights is a Prerequisite for Amending Covenant, HA'ARETZ (IS), Jan. 19, 1996, at A3; Sani Sokez, Ashraf: Israeli Pressure to Amend Covenant May Have Reverse Effect, HA'ARETZ (IS), Jan. 22, 1996, at A4. Following one public opinion poll, close to fifty percent of the Palestinians refused to amend the Covenant before a Palestinian State is established in the West Bank and Gaza Strip. Only six percent of those surveyed accepted to cancel provisions inconsistent with the peace process without the promise of Palestinian statehood. See Amend Covenant Only in Exchange for State: Poll, PALESTINE REP, Feb. 16, 1996, at 13.  

164. Abbas, supra note 12, at 208.  


166. Israeli Prime Minister Peres has conditioned the Israeli military's withdrawal from Hebron upon the PNC amending the Covenant. Arieh O'Sullivan, IDF Clamps Curfew on 465 Villagers, JERUSALEM POST, Mar. 6, 1996, at 1. According to the impartial Peace Watch organization, Israel's linking its withdrawal from Hebron to the amendment of the Palestinian Covenant has no foundation in the Oslo II Agreement. Peace Watch, Legal Opinion: Oslo Does Not Establish a Link Between Israeli Pullout from Hebron and Amending of Palestinian Covenant (Mar. 28, 1996).  


168. Oslo II Agreement, supra note 17, art. XXXI, para. 9. Pursuant to the Oslo II Agreement, the changes to the Palestinian Covenant must be approved by May 7, 1996, that is, within two months of the inauguration of the Council. Id.  

of Kuwait was categorically rejected by both the United States and Israel.\(^{175}\) Israel ultimately did agree to take part in the postwar peace talks initiated in Madrid under the auspices of the United States and the Soviet Union.\(^{176}\) This forum was a product of United States efforts to capitalize upon the momentum of the allied victory in the Gulf War in the hope of brokering peace agreements between Israel, the Palestinians, and other Arab States.

The Madrid conference stalemated and was largely superseded by the secret negotiations in Oslo.\(^{177}\) Far away from the attention of the media and domestic political pressures, the parties succeeded in devising a framework for a future settlement of their long-standing dispute. Engaged in direct negotiations for the first time in the history of their conflict,\(^{178}\) various immediate Israeli and PLO interests were served by concluding the DOP. The then-recently elected Israeli Prime Minister Yitzhak Rabin had promised the voters that within nine months of taking office an agreement with the Palestinians would be reached.\(^{179}\) Peres, his foreign minister at the time, sensed that the collapse of the Soviet Union, a long-time diplomatic patron and supplier of arms to the Palestinians and other Arab States, had removed a key obstacle to reconciliation, giving Israel the upper hand.\(^{180}\) In the aftermath of the Gulf War, Arafat was rebuffed in the West and largely isolated in the Middle East for supporting Saddam Hussein. Moreover, after five years of intifada, the Chairman of the PLO had nothing tangible to show for the sacrifices he had urged upon his people. Intrafada (Palestinian on Palestinian) killings were surging and local support for Hamas and other Islamic organizations was on the rise, particularly among the Palestinian youth.

More than two years after the initial breakthrough realized at Oslo, the dividends Israel and the PLO have enjoyed on the international plane as a result of their commitment to the peace process are numerous. Israel and Jordan have negotiated a full and rather warm peace, bringing tourism, open borders, and the beginnings of economic interdependence.\(^{181}\) Israel has much improved diplomatic and trade relations with numerous European, Islamic, Third World, and even Arab States.\(^{182}\) The PLO has established relations with the United States and gained financial aid for its efforts to finance its local governmental and economic development functions.\(^{183}\) The PLO has also emerged from the diplomatic seclusion brought on by its backing of Saddam Hussein during the Gulf War. In addition, the Palestinians, particularly after the Council elections, have dramatically increased their prospects of achieving statehood, although numerous vexing issues pertaining to the timing, size, and territorial contiguity of the emerging Palestinian state remain unresolved as the parties proceed to the final status talks.

Whether this process is indeed irreversible, as the preamble to the Oslo II Agreement confidently asserts, remains questionable. Upcoming Israeli elections\(^{184}\) constitute the next obstacle. The incumbent Labor Party and its leader Shimon Peres are currently slightly ahead in the polls,\(^{185}\) but its increase in popularity is generally attributable to the
voters' sympathy and outrage resulting from the Rabin assassination. The assassin, a twenty-five-year-old law student, stated that he shot the Prime Minister for giving away Jewish land to the enemies of Israel. Apparently in relation to this unprecedented murder, an additional segment of the public lent its support to the implementation of their late Prime Minister's peace policy. Yitzhak Rabin and his policies have, following his death, taken on elevated prestige and momentum. Moreover, the right wing opposition was practically paralyzed by accusations that its criticisms of Prime Minister Rabin had created the climate in which the assassin committed his crime.

Whether this constellation of factors will persist until the national elections, which are scheduled for May 1996, is doubtful. Israeli support for the peace process, as well as its sponsors, has dimmed as a result of a string of recent deadly Hamas suicide bombings. In four previous national election campaigns the Labor Party led by Shimon Peres has failed to win an outright victory. His lack of electoral appeal is augmented by the intense dissatisfaction discerned among large segments of the polity with both the peace process and its sponsors. Moreover, the popularity of the current government will also be affected by any understanding it reaches in the peace negotiations with Syria. Surely, any agreement concluded before the elections including significant territorial concessions on the Golan Heights would be greeted with widespread opposition among the Israeli public, further limiting the government's leeway in negotiating with the Palestinians.

A victory by the opposition Likud party would definitely have a negative impact on the peace process. Although most of its members do not advocate returning to either Gaza or the Palestinian populated centers recently evacuated in the West Bank, the Likud's leader, Binyamin Netanyahu, has declared that when his party comes to power he will not meet with Yasser Arafat. Former Likud Prime Minister Yitzhak Shamir stated that when his party returns to power it will stop the agreements set in motion by his successor, Yitzhak Shamir, explaining:

Nothing is irreversible. Maybe it's difficult to change something. But I don't know any government existing in the world who adopts a policy that is against its people's conscience and views... Maybe it will take time [but the changes made by Rabin are] not a fact that has to stay for 100 years.

Thus, further territorial concessions to the Palestinians would likely be resisted and the final status negotiations would probably become deadlocked or simply fall apart. Hence, Palestinian fears that the Oslo II Agreement will de facto represent the permanent status agreement may eventually crystallize.

Even in the event of a Labor-Peres victory at the polls, the successful conclusion of the peace process is far from assured. The permanent status negotiations, set to begin on May 4, 1996 according to the
timetable established in the DOP concern a number of key issues where profound differences divide the parties. These essential yet intractable issues include the sovereignty of Jerusalem, the future of Jewish settlements, control of subterranean water resources, the issue of Palestinian statehood, and the repatriation or resettlement of Palestinian refugees from the 1967 and 1948 wars. Given the differences between the two sides, it is not implausible that once the negotiations commence they will become deadlocked, risking implosion of the entire process.

CONCLUSION AND OUTLOOK

Shimon Peres opens the epilogue of his book with the following credo: "I was born an optimist and have remained one throughout my life. Pessimism has always seemed to me a useless frame of mind." He then conveys his outlook regarding the future of the Middle East:

We are ending a decades-long history dominated by war and embarking on an era in which the guns will stay silent while dreams flourish. I feel I have earned the right to dream. So much that I dreamed in the past was dismissed as fantasy but has now become thriving reality. Peace in our region is no longer part of a dreamworld; it has built a permanent place for itself in the realm of reality.

Abu Mazen begins the final chapter of his book with reference to the Palestinians' decades-long struggle for recognition:

The long struggle of the Palestinian people was aimed at regaining their dignity, their rights and their place among the peoples of the world in an independent state. This struggle was a genuine expression of their refusal to submit to the "reality" which had been imposed upon them. It was not vengeance but an expression of their collective will that drove them on. Though many were dispersed, they kept up the struggle under the leadership of the PLO. The intifada in the occupied territories was a natural extension of this struggle, and showed that the Palestinian people were a match for the Israelis who contested their existence and strove to crush them. But they were persuaded otherwise when the decisive hour came.

204. See DOP, supra note 3, at V; Cairo Agreement, supra note 4, at XXIII, para. 3; Oslo II Agreement, supra note 17, slogan, para. 6, at XXXI, para. 9.

205. Id., para. 9.

206. Supra note 12, at 217.
emerging Palestinian entity will be truly democratic in essence will depend on a number of factors. Most importantly, as Abu Mazen himself observed, the Palestinians will have to “move from the mentality of revolution” and cease sacrificing basic tenets of democratic life for what their leaders define as the “national good.” Indeed, Palestinians have always focused on collective conceptions of human rights that are closely interrelated with the principle of self-determination and independence from Israeli occupation. But now that the Council has substantially replaced Israel as the immediate level of governing authority, a new emphasis will have to be placed on individual rights, in derogation of the policies of Yasser Arafat and his administration, within the Palestinian polity.

Moreover, recent developments have strengthened the prospect that a Palestinian state will emerge out of the current peace undertaking. Opposition to Palestinian statehood is slowly fading within the ranks of Israel’s Labor Party. A recently disclosed document, negotiated between Abu Mazen and Israeli cabinet member Yossi Beilin, outlines the main points of a tentative permanent status agreement and provides for creation of a Palestinian state. Although the tentative agreement was allegedly rejected by then-Foreign Minister Peres, it indubitably reflects a significant shift among Israel’s political leadership regarding the eventuality of Palestinian sovereignty over the bulk of the West Bank and Gaza Strip.

The prospects for the realization of Shimon Peres’ vision of peace and prosperity in the Middle East, although dramatically improved in the aftermath of the Rabin assassination, appear less assured in light of more recent events. The resumption of suicide bombings by Hamas against Israeli civilian targets has dramatically undermined Israeli trust in Arafat’s capacity and willingness to combat terrorist elements under the PA’s jurisdiction. The perpetuation of these fatal attacks during the run-up to the Israeli national elections will certainly weaken the Labor Party and Prime Minister Peres’ prospects for re-election and thus endanger the continuance of the peace process. Sensitive to the electoral realities, the day after two such attacks Peres rededicated Israel to both fighting terror and pursuing peace. He accused Hamas of undermining the Palestinians’ desire for peace and prosperity and challenged the PA to confiscate the weapons of Hamas and other paramilitary organizations as is required by the interim agreements.

After Peres’ speech to the Knnesset plenum a member of the Likud opposition party heckled the Prime Minister. The sarcastic taunt was, “[t]his is the new Middle East?” At the same Knesset session the leader of the parliamentary opposition stated:

Shimon, fight them with all your strength and all your might and we’ll support you. We are united. There is no peace and no calm. Israel should strive for peace while recognizing this reality. It cannot count on the Palestinian Army, only on the IDF. The security forces should have freedom of action. Peace can only be achieved when there is security.

Within thirty-six hours of the bombings the Palestinian police had arrested nearly 100 Hamas activists, and the Gaza policy commander

209. Id.
211. See Tal, supra note 195, at 4A.
214. On February 25, 1996, two suicide bombing attacks were carried out against Israeli targets. One of the attacks was particularly deadly, with an initial toll of 24 dead and more than 50 injured. Bill Hutman & Raine Marcus, 25 Killed in Jerusalem, ASHKELEN, ISRAEL Post, Feb. 26, 1996, at 1. In one of his last interviews then-Prime Minister Rabin observed, “There is no deterrent to a person who goes with high explosives in his car or in his bag and explodes himself. . . . Is the peace process reversible? It might be. But only if terror will succeed.” “A Majority of One,” TIME, Nov. 13, 1995, at 64. Additional attacks, including
said that his forces would implement, "intensive new steps" against the planners of violence. The effectiveness of these arrests and the planned steps remains questionable in light of the dedication of Hamas. Persons picked up in previous waves of arrests have generally been released after the political storm has passed. Palestine Radio condemned the bombings but the Palestinian Authority Information Ministry stated that, "the Israeli side carries responsibility for creating an atmosphere conducive to acts like these." Arafat insisted, however, that a shadowy organization of ex-IDF personnel determined to sabotage the peace process had furnished the explosives used in the attacks. When asked about Arafat's claim the Israeli Foreign Minister Ehud Barak responded that it was "nonsense."

The Israeli-Palestinian peace process has thus far shown remarkable stamina. Yet it remains fragile and must, as recent events have forcefully underscored, function in the shadow of the political vicissitudes of the Middle East. Whether the vision of Peres, the moderation of Abu Mazen, or the democratic structures of the painstakingly negotiated Oslo II Agreement will prevail in this environment remains too enigmatic to predict.

225. Id.
226. Id.
227. According to Harold Saunders, "[t]he peace process ... is a series of negotiations embedded in a larger political process that lowered obstacles to agreement and made negotiation possible." Harold H. Saunders, Reconstituting the Arab-Israeli Peace Process, in THE MIDDLE EAST: TEN YEARS AFTER CAMP DAVID (William B. Quandt ed., 1988). "The challenge is to generate a political process that can crystallize, impel and sustain a commitment to negotiate a settlement." Id. at 440.
228. U.S. Special Middle East Coordinator Dennis Ross was modest when he stated, "[t]his [Oslo II] was an immensely difficult negotiation[,]" Fedarko, supra note 193, at 28.