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## CO-EXISTENCE WITHOUT CONFLICT: THE IMPLEMENTATION OF LEGAL STRUCTURES FOR ISRAELI-PALESTINIAN COOPERATION PURSUANT TO THE INTERIM PEACE AGREEMENTS

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## I. INTRODUCTION

The status of the small area between the Jordan River and the Mediterranean Sea has been hotly contested for millennia by disparate religions, competing cultures, empires and migrations. Over the last hundred years, Jews and Arabs have repeatedly fought wars over what some call Israel and others call Palestine. Foreigners are surprised by the fact that on maps of the Middle East, the area in question is so small that the country name is printed in the Mediterranean Sea. A smaller area still, the West Bank and Gaza strip, with zones under Palestinian, joint Palestinian-Israeli and Israeli local civil governance, reveals a great deal about the difficulties of implementing the interim agreements of the Oslo peace process. The enmeshed populations, intertwined economies and tangled infrastructures clearly constitute formidable obstacles to cooperation. This would be true even without the very real internal and external security concerns.

Proponents of Israeli and Palestinian nationalism have been locked in conflict over essentially the same land for a century. The tempo of this conflict and its modes of expression have mutated over time. With the Declaration of Principles ("DOP") in 1993, hopes blossomed that within less than six years an era of trust could write a new page of history,[1] resulting in an enduring permanent status agreement, and thereby resolving all dimensions of the conflict. However, the fact that both sides have not abided by numerous stipulations of the interim accords demonstrates that while they were able to overcome differences to negotiate the ensuing agreements, compliance is an entirely separate issue. The strategy that brought Israel and the PLO into diplomatic relations no longer

1. In the words of Professor Aaron Klieman:

> it is quite apparent . . . that people like Francis Fukuyama, George Bush and Charles Krauthammer were far off the mark in 1990-1991 in hastily pronouncing "the end of history," the advent of a "new world order" and a "uni-polar moment" inaugurating a peaceful age under benevolent American hegemony. If anything, in the aftermath of the Cold War, the larger systemic reality underscores the recurrent historical pattern of disorder, a warring and re-dividing world, and the renewed quest for global equilibrium through the balancing of power.

AARON S. KLIEMAN, APPROACHING THE FINISH LINE: THE UNITED STATES IN POST-OSLO PEACE MAKING 7 (1995).

will be effective, as their political pact appears only to have been skin deep. Resolving conflicts between the two populations requires a degree of mutual trust and cooperation in the operational sphere rather than in the political sphere.

In the past, there have been numerous unsuccessful and/or incomplete efforts to secure Israeli-Palestinian or Arab-Israeli peace agreements. They include the 1949 Armistice Agreements,[2] the Jarring mission of 1967,[3] the United Nations Security Council Resolution 242 of November 1967,[4] the Allon Plan of 1967,[5] Johnson's Five Point Plan of June 1968,[6] the

2. "The 1949 Armistice Agreements," THE ARAB-ISRAEL CONFLICT AND ITS RESOLUTION: SELECTED DOCUMENTS 74-99 (Ruth Lapidoth & Moshe Hirsch, eds. 1992). In retrospect it is interesting to highlight some of the provisions in these agreements that were not observed. For example, the Egyptian-Israeli agreement states the objective of "facilitat[ing] the transition from the present truce to a permanent peace in Palestine" (Egyptian-Israeli General Armistice Agreement, *id.* at 80), *and* that "[t]he right of each Party to its security and freedom from fear of attack by the armed forces of the other shall be fully respected." *Id.* at 75. Members of the Israeli delegation to the armistice agreements viewed peace as imminent since the Arab states had no reasonable alternative but to accept the reality of Israel's existence. *See* AARON KLIEMAN, ISRAEL AND THE WORLD AFTER 40 YEARS 18 (1990). This optimism was quickly dispelled, however, as the Arab leaders refused to reconcile themselves with Israel's existence and no progress was made toward peace in the following years. *Id.*

3. Gunnar Jarring, a UN mediator, attempted to work out a *modus vivendi* under which Israel would withdraw from the territory captured in the 1967 War in return for an Arab commitment to peace. When the Arab states were unwilling to give the kind of commitments upon which Israel insisted, such as a peace agreement, the mediation effort failed. Thereafter Israel became more reluctant to exchange land for promises. *See* RICHARD B. PARKER, THE POLITICS OF MISCALCULATION 128 (1993).

4. Passed in the aftermath of Israel's stunning victory in the 1967 War, this landmark resolution enshrined the notion of Israel relinquishing captured Arab lands in exchange for peace and agreements on secure and recognized borders. Article 1, sections i and ii, call for the removal of Israeli forces from territory occupied during the war in exchange for "respect and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area." The Arab states and the Palestinians rejected Resolution 242 and at the subsequent 1967 Arab League Summit Conference in Khartoum, where they proclaimed they would not recognize, negotiate with or sign peace treaties with Israel. DAVID MAKOVSKY, MAKING PEACE WITH THE PLO 3-4 (1996).

5. The Allon Plan called for Israel to withdraw from the densely populated Palestinian areas comprising approximately 60 percent of the West Bank, but to annex strategic military positions around Jerusalem and the Jordan Valley. *See* CONOR CRUISE O'BRIEN, THE SIEGE 459-60 (1986). Never fully adopted by Israel's government, the Allon Plan was considered inconceivable to Jordan's King Hussein. *See id.* Hussein turned down an Israeli proposal for a comprehensive settlement based on the Allon Plan several years later. *See* NADAV SAFRAN, ISRAEL: THE EMBATTLED ALLY 537 (1981).

6. This general plan, which was presented by President Lyndon Johnson to



USSR's Three Point Plan of September 4, 1968,[7] Rusk's Seven Point Plan of November 2, 1968,[8] the Soviet Peace Proposal of December 1968,[9] the U.S. 12-Point Counterplan, January 15, 1969,[10] the Rogers plan of 1970,[11] the 1973 Geneva Peace

Soviet Chairman Kosygin, proposed recognizing the right of national life for Israel and the Arab states, justice for the Palestinian refugees, limits of the arms race and political independence and territorial integrity for all states in the region. *See* PARKER, *supra* note 3, at 127, 132. These principles were the basis for a draft resolution presented to the UN General Assembly but it was never brought to a vote. *See id.*

7. This plan proposed that the Arabs and Israelis would accept Resolution 242, a timetable would be devised for Israeli withdrawal and both sides would sign a multilateral document committing them to respect all the provisions of Resolution 242. PARKER, *supra* note 3, at 131. Yitzhak Rabin, then the Israeli Ambassador to the United States, urged the U.S. to reject the proposal, restating Israel's insistence on a bilateral, contractual peace agreement. *Id.* The U.S. rejected the proposal on the ground that it preferred to follow the original principles articulated in the Johnson Five Point Plan. *Id.*

8. Secretary of State Dean Rusk met informally with Egyptian President Riad in New York. After a drink, Rusk "fished out of his pocket a piece of paper that came to be known as Rusk's seven points," although it actually included eight points. *Id.* at 132. Most of the points articulated a new understanding of what a peace between Israel and Egypt should entail. The proposal also included, however, finding an answer for the Palestinian refugees on the basis of personal and secret choice of where to live. *Id.* The plan was rejected by Egypt, which did not want to make a separate peace with Israel without the other Arab states. Although unthinkable in 1969, isolating Egypt from other Arab nations was "exactly what happened" at Camp David ten years later. *Id.*

9. The Soviet Union, disconcerted by the lack of progress made in the peace negotiations, decided to restart deliberations with its own formal initiative. In another formal note, it proposed a plan which included provisions for formal recognition of UN Security Council Resolution 242, commitment of Israel to withdraw from the captured territories in exchange for an Arab declaration of readiness to reach a peaceful settlement, and a just solution to the Palestinian refugee problem. Israel would withdraw to the pre-1967 lines and these borders would be guaranteed by the U.S., the USSR, Britain and France. LAWRENCE L. WHETTEN, THE CANAL WAR: FOUR-POWER CONFLICT IN THE MIDDLE EAST 68-69 (1974). This Soviet proposal was met by the 12-Point U.S. Counterplan announced two weeks later. *See* PARKER, *supra* note 3, at 133.

10. The U.S.'s 12-point counterplan called for, *inter alia*, cessation of Arab terrorism, the Arab belligerents to clarify their position on Resolution 242, Israel withdrawal from the occupied territories, the boundaries not to conform to the pre-June 1967 lines, Resolution 242 not to be construed to state that Israeli troops must be withdrawn from all the occupied territories, and peace to be agreed upon and not imposed. *See* WHETTEN, *supra* note 9, at 70.

11. Secretary of State William Rogers' plan, which involved a secure international frontier between Egypt and Israel and a formal state of peace, was "so watered down in the name of realism that there was not enough in it for either side." PARKER, *supra* note 3, at 138. *See also* O'BRIEN, *supra* note 5, at 495. Although in retrospect the plan appears favorable to the Arabs, at the time Egypt was not ready to consider real peace with Israel and rejected it.

Conference,[12] the 1978 Camp David Accords and the ensuing Israel-Egypt Peace Treaty of 1979,[13] the Reagan Plan of 1982,[14] the Arab League's Fez peace plan of 1982,[15] the abortive May 17, 1983, Israel-Lebanon peace agreement,[16] the

12. The "first ever" Middle East Peace Conference opened in Geneva in December 1973. Initiated by the United States after the 1973 War, the Palestinians were represented by Jordan. After the initial speeches, the conference devolved into bilateral Israeli and Egyptian negotiations on disengagement and never resumed its plenary session. The United States proposed a separate scheme for Israel to cede Jericho to Jordan, but Israel rejected this. The failure of the American effort to appease the joint Jordanian-Palestinian delegation angered the Arab League, and served as the basis for its 1974 declaration that henceforth the PLO would be the only legitimate representative of the Palestinian people. *See* MAKOVSKY, *supra* note 4, at 4.

13. The Israel-Egypt peace treaty, long the shining example of what could be achieved in Middle Eastern peacemaking, is part of this list, given its failure to facilitate a more comprehensive peace and the low ebb of bilateral Israeli-Egyptian relations in recent years. *See, e.g.,* Steve Rodan, *Camp David: Is There Life 18 Years Later?*, JERUSALEM POST, Sept. 20, 1996, at 8. At Camp David, the goal was to establish a "self-governing authority" for the Palestinians as an interim arrangement, pending a final resolution of the issues of peace and territory. Camp David Agreements, Sept. 17, 1978, Egypt-Isr.-U.S., 17 I.L.M. 1466 (1978). This autonomy was to have been negotiated by Egypt, Israel, and representatives of the Palestinians. Under pressure from the PLO, prospective Palestinian participants boycotted the negotiations from the outset. Egypt initially participated in the negotiations, but then walked out before an agreement could be reached. Subsequently, Israel, of its own accord, took a major step toward creating autonomy by replacing the military government with a Civil Administration in an effort to normalize the daily life of the Arab residents of the Administered Areas by diminishing their interaction with the Israel Defense Forces. *See* Justus R. Weiner, *Human Rights in the Israeli Administered Areas during the Intifada: 1987-1990,* 10 WIS. INT'L L.J. 185, 185-192 (1992). Israeli-Egyptian relations have been very troubled in recent years. *See* Steve Rodan, *US-Egyptian Ties Under Growing Strain*, JERUSALEM POST, Apr. 18, 1997, at 14; *see* Ian Black, *Nails Hammered Into Coffin of Peace*, THE GUARDIAN, Apr. 2, 1997, at 7.

14. After the Israeli invasion of Lebanon, U.S. President Ronald Reagan proposed his vision for "the peaceful and orderly transfer of authority from Israel to the Palestinian inhabitants of the West Bank and Gaza." WILLIAM B. QUANDT, PEACE PROCESS 480 (1993). Reagan stated the U.S. would not support "annexation or permanent control by Israel" or an independent Palestinian state. *Id.* at 481. Reagan also proposed a freeze on the building of Israeli settlements in the occupied territory and stated, "We base our approach squarely on the principle that the Arab-Israeli conflict should be resolved through negotiation involving an exchange of territory for peace." *Id.* at 476-83. This plan failed primarily because Israel viewed it as pro-Arab and contrary to Israeli security. *See id.* at 334. *See also* O'BRIEN, *supra* note 5, at 637-38.

15. The idea of a Palestinian state, then completely unacceptable to Israel, was central to the Fez Plan. *See* O'BRIEN, *supra* note 5, at 647. *See* HAROLD H. SAUNDERS, RECONSTITUTING THE ARAB-ISRAELI PEACE PROCESS 422-23 (1988).

16. This peace agreement between Israel and Lebanon never entered into force because it was not ratified by Lebanon. Lebanon, weakened by a long civil war



1987 London Agreement Between Israeli Foreign Minister Peres and Jordanian King Hussein,[17] the Shultz Initiative of 1988,[18] the Cairo Dialogue of May 1989,[19] and the 1991 Ma-

and shocked by the assassination of president-elect Bashir Gemayel, froze the U.S. brokered agreement due to intimidation by Syria. *See* PARKER, *supra* note 3, at 189, 195.

In light of the dominant U.S. involvement in the current peace process, it is interesting to note one of the clauses of this earlier agreement: "Having delegated their undersigned representative plenipotentiaries, provided will full powers, in order to sign, in the presence of the representative of the United States of America." Draft Agreement Between Israel and Lebanon, *in* THE ARAB-ISRAEL CONFLICT AND ITS RESOLUTION: SELECTED DOCUMENTS 299 (Ruth Lapidoth & Moshe Hirsch eds., 1992).

17. Israeli Foreign Minister Peres and Jordan's King Hussein conducted secret meetings in April 1987. They arrived at a vague understanding that embodied the following seven points: (1) an international conference (attended by the permanent members of the UN Security Council and the Middle Eastern states in the conflict) would convene but would not impose a solution and would not veto any agreement reached by the sides; (2) that negotiations would be conducted in bilateral committees in a direct manner; (3) that the Palestinian issue would be discussed in a meeting of the Jordanian, Palestinian, and Israeli delegations; (4) that the representatives of the Palestinians would be included in the Jordanian-Palestinian delegation; (5) that participation in the conference would be based upon the renunciation of violence and terror; (6) acceptance of UN Security Council Resolutions 242 and 338 by the sides, and; (7) that each committee would conduct negotiations independently and that other issues would be resolved through mutual agreement between Jordan and Israel. Israeli Prime Minister Shamir, who opposed even indirect negotiations with the PLO, rejected the understanding, and Peres was publicly accused of negotiating "behind the back" of the government and of conducting his own "private, independent foreign policy." KLIEMAN, *supra* note 2, at 129. Conversely, Peres blamed U.S. Secretary of State George Shultz for the failure of the London Agreement. *See* QUANDT, *supra* note 14, at 334.

18. In March of 1988, U.S. Secretary of State George Shultz proposed a modified version of the Camp David Accords to attract the participation of the Palestinians, who under pressure of the PLO, had boycotted the autonomy talks. *See* Justus R. Weiner, *Human Rights in the Israeli Administered Areas During the Intifada: 1987-1990*, 10 WIS. INT'L L.J. 185, 193-94 (1992). Shultz sought to allay Palestinian fears that their acquiescence to the Camp David Accords would enable Israel to forestall final status talks indefinitely by delaying the implementation of the autonomy period. Shultz therefore suggested interlocking the two phases: final status talks would begin shortly after an autonomy agreement regardless of whether it was fully implemented. The initiative was premised on Palestinian acceptance of UN Security Council Resolution 242 and envisioned a joint Jordanian-Palestinian delegation to represent the Palestinians. Prime Minister Shamir rejected the initiative on the grounds that it invalidated the autonomy phase and "would predetermine a territorial compromise" which he opposed. MAKOVSKY, *supra* note 4, at 8. The PLO objected to having its delegation linked with the Jordanians. *See* QUANDT, *supra* note 14, at 366-67. Likewise, the USSR was unenthusiastic about the concept of an international conference. *See id.* The foundations of the plan collapsed when King Hussein relinquished his legal claim to sovereignty in the West

drid conference.[20] The Oslo peace process introduces a new angle to the persistent, Biblical conflict between the two populations, and their stakes in the land they consider their ancestral home. International negotiations and shared administrative control are nothing new to the issue, nor to the script of international relations. However, as distinct from these earlier attempts at negotiating a Middle Eastern peace, the Oslo interim agreements have developed a comprehensive institutional structure and shared administrative control within the framework of federal solutions. Most importantly, this structure addresses practical concerns, primarily the welfare and security of both sides, but it also deals, *inter alia*, with the distribution of resources, control of holy sites, economic development, airports, harbors, tourism, ecology and archaeology. The accords provide for the establishment of over sixty joint bilateral Israeli-Palestinian committees (see Appendix for relevant abbreviations), approximately thirty of which have begun to function. In the most recent agreements, the Wye River Memorandum ("WRM" or "Memorandum") and the Sharm el-Sheikh Memorandum, additional committees were created, four of which were formed as trilateral entities. This was unprecedented as, for the first time during the Oslo peace process, Israelis and Palestinians, whose political leaderships had lost faith in each other, inserted the United States as a third party presumably trusted by both sides.

Bank. *See id.*

19. In 1989 the question, "Who will represent the Palestinians?" remained unresolved. Prime Minister Shamir favored holding independent elections in the West Bank and Gaza Strip to choose a Palestinian delegation to negotiate an autonomy arrangement with Israel on the basis of Camp David. Egyptian-Israeli relations had improved and at the time Egyptian President Hosni Mubarak proposed a 10-point peace plan, formulated by two of Shimon Peres' aides. Eager to advance Israeli-Palestinian peacemaking, Egypt agreed to be the sight of what became known as the "Cairo Dialogue." The PLO, however, wanted several members of the Palestinian National Council to participate in a meeting with Israeli officials in Cairo in order to demonstrate that Israel was actually dealing with the PLO. Prime Minister Shamir was unwilling to recognize or negotiate with the PLO, and the Cairo Dialogue floundered. *See* MAKOVSKY, *supra* note 4, at 9, 10.

20. The Madrid Conference, under the joint chairmanship of President Bush and Premier Gorbachev, was attended by all of the major states in the region, as well as a joint Palestinian-Jordanian delegation. Although bilateral and multilateral meetings followed the plenary session, no agreements were reached, perhaps because the parties expected the U.S. to take a more active role. *See* QUANDT, *supra* note 14, at 404-06.



The committee structures created are not limited to diplomatic and political officials around the negotiating table, but involve high ranking military and civilian personnel and, perhaps more significantly, on duty officers working together.[21] They bring together former enemies in new roles, and (at least in theory) an equal environment, seeking to develop pragmatic solutions to the challenges they face.[22]

Similar to the joint committee structure, federalism is predicated on a combination of unity and diversity.[23] Specifically, it relies on the premise that two populations with different, often opposing goals, may effect a working compromise through joint governance of territory. This normally requires some institutional structure within which the two sides coordinate their responsibilities and resolve their everyday differences; but cooperation also depends on a desire of each side to promote the interests of both populations.

The implications of a federal solution are far reaching politically, territorially and historically. In the interim agreements, the Palestinian Authority ("PA") was conferred powers and responsibilities over ninety-nine percent of the Palestinian population and a significant portion of the West Bank and Gaza Strip. However, the remaining responsibility and residuary power that were retained by Israel mean that unless and until a permanent status agreement is reached, there is no Palestinian sovereign entity. The institutional structure of the Oslo peace process introduces a sense of legitimacy, a frame of

21. *E.g.* - the Joint Patrols ["JPs"]. *See* Agreement on the Gaza Strip and the Jericho Area, May 4, 1994, Isr.-Palestinian Liberation Organization, 33 I.L.M. 622 (signed at Cairo) [hereinafter Cairo Agreement].

22. Political cooperation can produce mutual trust and good will beyond that of the diplomats directly involved with negotiation. The effect of collaboration at the administrative, bureaucratic level involves a degree of public awareness and media coverage. Its main effect may be to create a working relationship between officials on both sides which testifies to both populations that relations could be readily established and mutually beneficial. However, similarities are more likely to be recognized at this level outside the spotlight of media coverage. Cooperation at this level is likely to create a model for positive relations in everyday functions and to greatly improve the efficiency of operations concerning both populations, a notable example being the JPs and Joint Mobile Units ["JMUs"]. The success of the JPs and JMUs would be beneficial towards peace only if media portrayal emphasized that the Palestinian and Israeli forces were indeed working together, and that this teamwork was the reason for their effectiveness.

23. *See* DANIEL J. ELAZAR, TWO PEOPLES ONE LAND 38 (1991).

reference, and a design for cooperation, as well as functioning as a negotiating forum. This article will analyze the establishment and development of these structures in the main areas of concern, i.e. security, civil affairs, economic cooperation and development, the relationships of the legal systems, and the promotion of general dialogue.[24] Section II considers the progress of the peace agreements and the crystallization and development of an institutional structure. Section III seeks to compare the development of the structure through the treaties with its practical functioning. Section IV analyzes the major structures with reference to a federal perspective of the peace process. Conclusions are drawn from these observations in relation to the continuing struggle for peace.

## II. Interim Agreements of the Oslo Peace Process

Each agreement has incrementally advanced the peace process; as the only stated objective is peace and a limited degree of autonomy. The development of the treaty provisions and the institutional structure has not been focused and linear, but rather, has been heavily influenced by the underlying policy objectives of the two sides, those of third parties involved, and above all, by security considerations.

At this time only the DOP, Oslo II, the Hebron Protocol, the WRM, and the Sharm el-Sheikh Memorandum are relevant, since the other agreements have been superseded.[25]

### *A. The Declaration of Principles*

The first agreement of the Oslo peace process was the DOP, which was signed on the White House lawn by the late Israeli Prime Minister Yitzhak Rabin and PLO Chairman Yasser Arafat.[26] It brought about the mutual recognition of

24. *See* Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Sept. 28, 1995, Isr.-Palestinian Liberation Organization, 36 I.L.M. 557 [hereinafter Oslo II].

25. The Interim Agreement superseded the Cairo Agreement, the Erez Agreement and the Further Transfer Protocol. *See id.*

26. Declaration of Principles on Interim Self-Government Arrangements, Sept. 13, 1993, Isr.-Palestine Liberation Organization, 32 I.L.M. 1525 [hereinafter DOP].



Israel and the PLO, and established a framework of deadlines for further interim agreements[27] and ultimately a permanent status settlement.[28]

The DOP contains nascent provisions for the establishment of various committees.[29] The concessions that each side was willing to make did not allow for a comprehensive structure, as the drafters recognized that more extensive provisions would have created unrealistic and unattainable goals, setting each side against the process at the outset. This method has been relatively successful in that the agreements have not provoked wide scale opposition, though they have apparently failed to reduce existing opposition to the process as a whole. The absence of cooperation in civil affairs suggests that the importance of security has overshadowed other areas, affecting the negotiations behind the DOP.

The DOP required the parties to pursue negotiations via interim agreements. This resulted in the agreements leading up to, and culminating in, Oslo II. The DOP also required the parties to pursue negotiations towards a permanent status agreement, the deadline for which was set for May 1999. The negotiations are the only forum capable of quasi-governmental function in that the parties may not amend the agreements through their respective administrative or governmental legislatures. The parties are also responsible for producing the

27. *See id.* at arts. 1, 7, and Annex II.

28. *See id.* at art. 5.

29. Structures of cooperation established in the DOP include: the Arbitration Committee, DOP, *supra* note 26, at art. 15; the Joint Liaison Committee ["JLC"], DOP, *supra* note 26, at art. 10; a Joint Coordination and Cooperation Committee for mutual security purposes, DPO, *supra* note 26, at Annex II; the Protocol on the Withdrawal of Israeli Forces From the Gaza Strip and Jericho Area, DOP, *supra* note 26, at para. 3(e) (which in the Cairo Agreement became the Joint Security Committee ["JSC"] - *see* Cairo Agreement, *supra* note 21, art. 8 and Annex I, art. II); a Joint Economic Cooperation Committee ["JEC"], DOP, *supra* note 26, at art. 11; a Joint Continuing Committee of Economic Cooperation, DOP, *supra* note 26, at Annex III (Protocol on Israeli-Palestinian Cooperation in Economic and Development Programs); and, a recommendation as to the establishment of multilateral working groups to promote regional development programs (with the assistance of the G-7), DOP, *supra* note 26, at Annex IV. No reference is made to the establishment of a committee for cooperation in civil affairs, such as the Joint Civil Affairs Coordination and Cooperation Committee ["CAC"], established in the Cairo Agreement. *See* Cairo Agreement, *supra* note 21, at art. 3, para. 5, and Annex II, art. 2. However, in other areas, such as cooperation in the legal field, mention is made of the need to cooperate. *See, e.g.*, DOP, *supra* note 26, art. 9, para. 2 (regarding joint review of laws and military orders presently in force).

drafts of the peace agreements, and the parties involved are responsible for the implementation of, or the failure to implement, existing agreements. In addition, they may be accountable to the other for a failure to do so, though this operates only at the political level. The provisions of the DOP were largely adopted, and were first implemented, by the Cairo Agreement.

### *B. The Cairo Agreement*

The "Cairo Agreement," signed in the Egyptian capital, provided for the partial redeployment of Israeli administration and military forces in the Gaza Strip and Jericho area, and empowered the newly created PA to assume most functions of local governance in those areas as a first stage of self-rule.[30] The Cairo Agreement brought Yasser Arafat, his administration, and a police force from abroad to rule in parts of the homeland they aspire to govern as the independent state of Palestine. Therefore, it had to establish the initial framework of cooperation so as to maintain the necessary Israeli involvement in the territories.

The Cairo Agreement itself has been superseded entirely.[31] It provided for a Joint Liaison Committee ("JLC"), as required by the DOP,[32] to coordinate the implementation of the agreement and to be responsible for dispute resolution. Unlike Oslo II, it did not specify that the JLC should form an overarching structure.[33] This suggests that the parties did not have such an institutional structure in mind, or that if they did, they did not believe it could, or should, be implemented at that stage. As a result, the Joint Coordination and Cooperation Committee for Mutual Security Purposes, the Joint Civil Affairs Coordination and Cooperation Committee ("CAC"), and Joint Economic Committee ("JEC") were created.[34]

30. *See generally* Cairo Agreement, *supra* note 21.
31. *See* Oslo II, *supra* note 24.
32. *See* Cairo Agreement, *supra* note 21, at art. 17.
33. *See id.*
34. The JSC was based on the principle in Annex II to the DOP (Protocol on the Withdrawal of Israeli Forces from the Gaza Strip and Jericho Area Agreement, DOP, *supra* note 26, at Annex II, para. 3(e)), as established in the Cairo Agreement. *See* Cairo Agreement, *supra* note 21, art. 8 and Annex I, art. 2. The CAC is established in art. 3 of the Cairo Agreement. *See* Cairo Agreement, *supra* note 21, at para. 5 and Annex II, art. 2. The Legal Committee is established in art. 5, para. 6. *See* Cairo Agreement, *supra* note 21, at art. 5, para. 6. The JEC is established by Annex IV [the Protocol on Economic Relations]. *See* Cairo Agreement, *supra* note 26, at Annex IV, art. 2.
35. *See* Cairo Agreement, *supra* note 21, Annex I, art. 17.



The agreement moved towards establishing the mechanisms that, under the supervision of these committees, would carry out the day to day functions involved in coordinated activities, and provide for the supervision required after redeployment and the transfer of authority.[35] Under the Joint Security Committee ("JSC"), the District Coordination Offices ("DCOs") were created, and under these, Joint Patrols ("JPs") and Joint Mobile Units ("JMUs") were established.

At this stage, the recognition of the need for cooperation within civil authority was illustrated by the creation of the civil affairs subcommittees (later the Regional Civil Affairs Subcommittees ("RCACs")) and the various Specialist Committees. While this necessity was acknowledged, the lack of district level committees or inclusion of Legal and Legislative subcommittees under the CAC, (despite their importance and far ranging responsibilities), attested to the underemphasis of this issue.

Other committees, under the same Annex as security but not formally under the JSC, included the Maritime Cooperation Center, Joint Aviation Committee, and the Committee on Passages and Safe Passage. The Joint Liaison Bureaus ("JLBs"), created as part of the provisions of passages, initially held the unique position of being under the DCOs and the CAC, but this was altered by Oslo II. However, this is not necessarily significant since, in practice, there is a great deal of overlapping staff between committees.

The Cairo Agreement did not just create a framework which could be adopted with the transfer of further authority to the PA or further redeployment, but employed a structure which simply could be extended to cover the greater responsibility created by further developments.

*C. The Erez Agreement and the Further Transfer Protocol*

The third agreement, commonly know as the "Erez Agreement" because it was signed at the Erez checkpoint between Israel and Gaza, allowed for the transfer of authority to the PA in certain limited spheres, such as health, social welfare, direct taxation, tourism, education, and culture in the parts of the West Bank outside of the Jericho area.[36]

Thereafter, a relatively concise agreement known as the Further Transfer Protocol assigned powers in the West Bank to the PA in the following civil spheres: labor, industry and commerce, gas, petroleum, agriculture, local government, statistics and postal services.[37] Unlike Oslo II, neither of these created new structures, but the agreements did update them in relation to the increased responsibility that arose with the transfer of authority.[38]

*D. Oslo II - The Interim Agreement*

The fifth agreement,[39] generally referred to as Oslo II, comprehensively structured the Israeli-PA relationship for the duration of the interim period.[40] This lengthy agreement was, like the DOP, signed at the White House under President Clinton's auspices. Its major provisions included establishing a process for electing Palestinian executive and legislative authorities, scheduling a phased redeployment of Israeli forces out of the Palestinian populated areas (which to date has placed 99 percent of Palestinians in Areas A and B), releasing several thousand Palestinian prisoners held by Israel and reiterating the PLO's commitment to cancel provisions in its National Charter that call for the destruction of Israel. As well as adding the Monitoring and Steering Committee ("MSC") comprised of the heads of the main committees established in the Cairo Agreement (providing a coherent link between the JLC responsible for coordination at the highest level below arbitration and dispute resolution),[41] Oslo II added committees in areas particular to security and civil affairs. This allowed for an increase in workload with the transfer of authority over the West Bank to Palestinian authorities, compensated for insufficient provisions in the earlier agreements and emphasized the importance of these organs of cooperation.[42] It introduces Regional Security Committees ("RSCs") and relabels the RCACs, in addition to creating District Civil Liaison Offices ("DCLs") at the same level as the DCOs created in the Cairo Agreement under security provisions. These same reasons may have been responsible for the merger of the Legal and Legislative subcommittees of the CAC to form the Legal Committee and its promotion to the level of the JSC, CAC and JEC.

Most of the committees have met, as will be discussed below, but the proposed structure has been deviated from, and the MSC now represents a high level subcommittee in its own right responsible for direction of the other committees, rather than just a meeting of their heads. The committees, apparently under the MSC's direction, may include more specialist committees, including the Joint Aviation Committee[43] and Committees on Passage and Safe Passage,[44] as well as those specified in Oslo II.

In creating the Standing Cooperation Committee[45] ("SCC"), Oslo II makes the first significant attempt to increase support among the respective populations by creating a committee for this purpose within the institutional structure of the agreement. The broader issues remaining after Oslo II are reflected by the committees that were (and continue to be) the least successful, such as the Legal Committee. Generally though, difficulties have been more local, in areas where even temporary solutions were not found for Oslo II.

36. Agreement on Preparatory Powers and Responsibilities, Aug. 29, 1994, Isr.-Palestinian Liberation Organization, 34 I.L.M. 455 (signed at the Erez checkpoint between Israel and the Gaza Strip, Aug. 29, 1994) [hereinafter Erez Agreement].
37. Protocol on Transfer of Powers, Aug. 27 1995, Isr.-Palestine Liberation Organization (on file with the author) [hereinafter Transfer Agreement].
38. *See* Oslo II, *supra* note 24 and accompanying text.
39. *Id.*
40. *See id.* at art. 1.
41. *See id.*
42. *See id.*
43. Cairo Agreement, *supra* note 21, at Annex I, art. 12.
44. *Id.* at Annex I, art. 9.
45. Oslo II, *supra* note 24, Annex VI, art. 3.

*E. The Hebron Protocol*

The Hebron Protocol was the sixth interim agreement,[46] and was intended to settle implementation issues that had been problematic since the negotiation of the earlier Oslo II Agreement.[47] In addition, it was to facilitate a partial Israeli redeployment from Hebron, thereby dividing the city into areas designated H-1 and H-2, respectively the Palestinian and Israeli-controlled sectors.[48]

Implementation of the Hebron Protocol, in particular, necessitated cooperation between Israel and the PA on a variety of levels and in less than ideal circumstances, given the manifest political and religious tensions existing in Hebron. In this context, a multi-national civilian peacekeeping force, the Temporary International Presence in Hebron ("TIPH") has been empowered to act as a facilitator and intermediary.[49]

46. Ministry of Foreign Affairs, State of Israel, Protocol Concerning the Redeployment in Hebron and Related Documents, Jan. 17, 1997, Isr.-Palestinian Liberation Organization, 36 I.L.M. 650 [hereinafter Hebron Protocol or Protocol].

47. *See* Oslo II, *supra* note 24.

48. The Hebron Protocol contains a map of the city indicating the boundaries of H-1 and H-2, the Palestinian and Israeli controlled sectors, as well as police stations, checkpoints, and the routes for the Joint Patrols. The Palestinian Police are assigned public order responsibilities in H-1, while Israel retains responsibility for the overall security of Israelis as well as all powers and responsibilities for internal security and public order in H-2. Palestinian Police stations or posts, staffed by a total of up to 400 police, with enumerated weaponry, are established in H-1. The Hebron Protocol situates Palestinian Police checkpoints in H-1, forming a buffer zone adjacent to H-2 "to enable the Palestinian Police, exercising their responsibilities under the Oslo II, to prevent entry of armed persons and demonstrators or other people threatening security and public order, into the above-mentioned area." *See* Hebron Protocol, *supra* note 46.

49. Agreement on the Temporary Int'l Presence in the City of Hebron, Jan. 21, 1997, Isr.-Palestine Liberation Organization, 36 I.L.M. 547 [hereinafter TIPH2 Agreement. The TIPH2 Agreement outlines the tasks of TIPH2 personnel as follows:

a. to promote by their presence a feeling of security to the Palestinians of Hebron;

b. to help promote stability and an appropriate environment conducive to the enhancement of the well-being of the Palestinians of Hebron and their economic development;

c. to observe the enhancement of peace and prosperity among Palestinians;

d. to assist in the promotion and execution of projects initiated by the donor countries;

e. to encourage economic development and growth in Hebron;

f. to provide reports as set out in paragraph 7 [TIPH2 Agreement]; and

g. to co-ordinate its activities with the Israeli and Palestinian authorities in accordance with paragraph 7 [TIPH2 Agreement].



The agreement added a sub-office to the DCO in Hebron, created the Joint Coordination Committee for Hebron ("JCC" or "JHC"), and added an additional JP to the area. The emphasis was squarely on security issues, with regard to the specific difficulties faced in the city. Additional joint committees for civil affairs were also created in respect to Transportation and Municipal Inspectors operating in the city.[50] The JCC is under the immediate direction of the MSC in practice, though this was not specified in the provisions of the Protocol.[51]

Since the Interim Agreement, Oslo II, could not even temporarily resolve the limited issues it did address, the Hebron Protocol, like the Wye River Memorandum, was necessary to fill in the cracks in a process that would otherwise undermine it.

*F. The Wye River Memorandum*

The Wye River Memorandum ("WRM")[52] recognizes that the parties agree to continue or reactivate all standing committees established in Oslo II.[53] The idea that these could be abandoned is a clear illustration of how shallow the roots of the institutional structure and the will to cooperate generally are. If the Memorandum can successfully prolong their exis-

50. *See* Hebron Protocol, *supra* note 46, at arts. 13, 14.

51. Interview with Daniel Taub, Legal Advisor to Israel Ministry of Foreign Affairs, in Jerusalem, Israel (Jan. 3, 1999).

52. The Wye River Memorandum, Oct. 23, 1998, 37 I.L.M. 1251 (signed Oct. 23, 1998 at Wye River, Maryland by Prime Minister Netanyahu, Chairman Arafat and witnessed by President Clinton [hereinafter WRM or Memorandum]. The introduction to the WRM states that King Hussein of Jordan participated in the ceremony. The Preamble to the Memorandum states that it consists of steps to facilitate the implementation of the Interim Agreement, Oslo II and other related agreements so that the Israeli and Palestinian sides can more effectively carry out their reciprocal responsibilities, including those relating to further redeployments and security. Steps are to be carried out in a parallel phased approach in accordance with the Memorandum and time line attached to the Memorandum. They are subject to the relevant terms and conditions of the prior agreements and do not supersede their other requirements. Thus far the parties have not been entirely compliant.

53. Including the most basic Monitoring and Steering Committee, the Joint Economic Committee, the Civil Affairs Committee and the Legal Committee as well as the Standing Cooperation Committee. *See* WRM, *supra* note 52, at Part III 1.

tence, it is possible that more cooperation could come from these imperfect beginnings.

The agreement established three or four additional types of committees, though there was no attempt to relate these to the existing structure or to bring together committees previously created.[54] A committee for negotiating third phase redeployment was formed,[55] implying the existence of some kind of joint committee which came to an agreement on earlier redeployment, in addition to higher level, less specific negotiations. Trilateral security committees[56] were devised, introducing another new element into the peace process, although the change really represented a shift from more ad hoc involvement to incorporation into an institutional structure. The Ad Hoc Economic[57] Committee and other economically significant committees[58] suggest that joint economic issues have arisen that are too much for one economic committee to deal with, and indicate continued emphasis on economic issues, being less controversial than other matters. Provisions relating to areas in which responsibility was conferred to a committee in an earlier agreement bear no reference to those committees, either indicating that they are not operative or implying that the relevant committees will be involved.[59] The committees on

54. Examples of this are: the committee relating to the Outlawing and Combating of Terrorist Organizations created in the Memorandum at Part II A. 1 (c); the committee to review and evaluate information pertinent to decisions on prosecution, punishment, or other legal means which affect the status of individuals suspected of aiding and abetting or perpetrating acts of violence and terror, created in the Memorandum at Part II A. 1. (e); the committee relating to the prohibition of illegal weapons, created at Part II A. 2.; and the committee relating to the prevention of incitement, created at Part II A. 3. Memorandum, *supra* note 52, at Part IIA. These bear no relation to each other. The bilateral, forensic and trilateral committees created in Part II B, which bear no stated relationship to each other, nor to the above committees, nor to the existing structure recognized in Part II.C.1.(c) and Part III 1. of the Memorandum.

55. WRM, *supra* note 52, at pt. I B.

56. *Id.* at II A, B.3.

57. *Id.* at III 6.

58. *Id.*

59. Examples of this include: WRM Part II on security which bears no reference to the Joint Security Committee referred to in the DOP Annex II 3.e. and created in the Cairo Agreement art. 7 (2); the WRM Part III 2, relating to economic developments which contains no reference to the cooperation required by the DOP Article, the Cairo Agreement and Oslo II, and provides for the establishment of the Gaza Airport without mentioning the possible role for coordination through the Joint Aviation Committee established in the Cairo Agreement Annex I art. 12; and, in Part III 4., provisions relating to the Port of Gaza make no reference to



future redeployment, the Gaza Port Committee[60] and the Ad Hoc Economic Committee may be directly responsible to the MSC.

According to the time-table set out in the DOP, arrangements for the interim period are to be replaced by those established in the permanent status accords no later than May 4, 1999. The six interim agreements postponed the most critical points of contention.[61]

The WRM, the most recent agreement, is a response to the deadlock in implementing the provisions of Oslo II and the DOP in line with the prescribed schedule. It primarily deals with two central issues: further redeployment,[62] and a revision of measures relating to security.[63] In addition, it reemphasizes and deals with issues that required attention in matters of Economic and Civil cooperation.[64] Further, a new time

the Maritime Coordination Committee created in the Cairo Agreement Annex I art. 11. The most striking omission is the Joint Liaison Committee, created in the DOP art. 10, which was responsible for general cooperation including security, whilst the new bilateral and trilateral committees established in the WRM Part II B. are created to exercise similar functions, albeit limited to issues relating to security, like the JSC.

60. WRM, *supra* note 52, at pt. III, para. 4.

61. These include the allocation of scarce fresh water sources, the custody of religious sites holy to two or more faiths, the future of the Jewish settlements, the desire of many Palestinian refugees (from the 1948 and 1967 Wars) to return either to the Palestinian entity or to Israel, Palestinian aspirations to statehood, and the future sovereignty of Jerusalem.

62. Including the transfer of thirteen percent of Area C to Palestinian control, 1 percent as Area A, the remaining area to become Area B. The Palestinian side, it is noted in the agreement, has pledged to retain three per cent of the thirteen as a nature reserve. In addition fourteen (point two) percent of what is currently Area B is to become Area A status territory. A committee is to be established to consider further redeployments, the progress of which is to be reported to the United States regularly. *See* WRM, *supra* note 52, at pts. I (A)-(B).

63. *See id.* at II. The Memorandum strongly emphasizes the need to cooperate to prevent terrorism and acts of hostility. Details are laid down as to how the Palestinian Police and Israeli authorities should deal with outlawing and combating terrorist action, to prohibit illegal weapons and to prevent incitement. Bilateral, forensic and trilateral cooperation is called for. Bilateral cooperation implicitly involves some form of committee not specified. In addition there is to be forensic cooperation, i.e. exchange of forensic expertise, training and other assistance, and trilateral cooperation involving a high-ranking US-Palestinian-Israeli committee and as other specific U.S.-Palestinian Committees for security purposes. The Palestinian Police are also required to present a list of its policemen to the Israeli side.

64. *See id.* at III. In civil and economic issues, the agreement specifies issues relating to the Gaza Industrial Estate, the possibility of an International Airport in the Gaza Strip, Safe Passage, the Port of Gaza and to the resolution of unre-

line is attached to the Memorandum, and the accelerated permanent status negotiations maintained the May 4, 1999 deadline.[65] The Memorandum reiterates the more symbolic, than practically significant requirement, that the Palestinian Council formally revise the PLO Charter to bring it in line with the policy presented in entering the peace process.[66]

The need for the Memorandum emphasizes the primary difficulties the peace process seeks to circumvent: the creation of a vacuum in areas of redeployment, the chance of serious delays in and limitations on the assumption of responsibility by the Palestinian Police and the refusal to carry out redeployments until security arrangements are settled. It also emphasizes two ways of dealing with the problem. The first, through international involvement, which has been pursued for nearly a century. Secondly, the Memorandum utilizes the institutional structure, and creatively adds to it.

### *G. The Sharm el-Sheikh Memorandum*

Signed on November 4, 1999, the Sharm el-Sheikh Memorandum on Implementation Timeline of Outstanding Commitments of Agreements Signed and the Resumption of Permanent Status Negotiations ("Sharm el-Sheikh Memorandum")[67] marginalized American intervention, established a new basis of trust between the Israeli and Palestinian leaderships and established a new time frame for negotiating final status issues. The Sharm el-Sheikh Memorandum was drafted with the aim of facilitating the implementation of the long-stalled WRM by renegotiating major issues previously addressed by that agreement.

The Sharm el-Sheikh Memorandum recognizes that the parties must commit themselves to full and mutual implementation of the Interim Agreement and all other agreements concluded since September 1993. In an attempt to refine the

solved legal issues. Economic dialogue is called for with institutional support, and the need to enhance international donor assistance is addressed.

65. *See id.* at IV.

66. *See id.* at II (C), para. 2.

67. Sharm el-Sheikh Memorandum on Implementation Timeline of Outstanding Commitments of Agreements Signed and the Resumption of Permanent Status Negotiations, November 4, 1999 (hereinafter the Sharm el-Sheikh Memorandum).



existing structure, the Memorandum makes four specific demands concerning committee action.[68] These demands reflect a direct progression of committee action based on original structuring of these entities as defined by all previous agreements. The Memorandum establishes specific deadlines for the Monitoring and Steering Committee, all Interim Committees, as well as Wye River Memorandum committees.[69] The Third Further Redeployment Committee is required to commence its activities by a given date.[70] The Memorandum makes reference to Article XXVII of the Interim Agreement, in its request that the Continuing Committee on displaced persons shall resume its activity.[71] Lastly, in this section, the memorandum reiterates Article III-6 of the WRM. It calls for the two sides to implement the recommendation of the Ad-hoc Economic Committee.[72]

The Sharm el-Sheikh Memorandum is not intended to be innovative in addressing committee issues. Rather, the Memorandum's reiteration and reassessment of committees already established by the WRM indicates the failure of those committees to fulfill their obligations. Therefore, the need to readdress these failures in a new agreement does not call for innovation, but rather for persistence and firmness. Ultimately, the Sharm el-Sheikh Memorandum only will be successful if it can push implementation from the grassroots committee level.

The need for the Sharm el-Sheikh Memorandum emphasizes the difficulties the peace process is facing in implement-

68. Examples of this include: the committee relating to the Outlawing and Combating of Terrorist Organizations created in the Sharm el-Sheikh Memorandum at Part II A. 1 (c); the committee to review and evaluate information pertinent to decisions on prosecution, punishment, or other legal means which affect the status of individuals suspected of aiding and abetting or perpetrating acts of violence and terror created at Part II A. 1. (e); the committee relating to the prohibition of illegal weapons created at Part II A. 2.; and the committee relating to the prevention of incitement created at Part II A. 3., which bear no relation to each other; the bilateral, forensic and trilateral committees created in Part II B. which bear no stated relationship to each other nor to the above committees, nor to the existing structure recognized in Part II.C.1.(c) and Part III 1. of the Memorandum.

69. *See* The Sharm el-Sheikh Memorandum, *supra* note 67, at pt. IV (B).

70. *See id.* at IV (A).

71. *See id.* at IV (C).

72. *See id.* at IV (D).

ing prior agreements. These difficulties include, the creation of a vacuum in areas of redeployment, the chance for serious delays in, and limitations on, the assumption of responsibility by the Palestinian Police and the refusal to carry out redeployments until security arrangements are settled. There seems to be a trend with agreements that require implementation, reach standstills, and are replaced by new agreements. With the Sharm el-Sheikh Memorandum there is hope that the reiteration of the need for committee activity in a federally structured implementation process will bring this trend to a higher and more effective level of peace making.

## III. INSTITUTIONAL STRUCTURE CREATED BY THE PEACE AGREEMENTS

The treaties adopt structures that are meant to be temporary, insofar as they pave the way for a final status agreement, although these ephemeral structures, if effective, may be used as a model for the final settlement. While federal systems aim to promote individual and mutual goals, the security interests of Israel, coupled with the Palestinians' desire for self-determination, produces serious difficulties for both. The interim system has been structured in the hope of reconciling these interests and promoting mutual ones through the development of bilateral and trilateral structures, and currently shows signs of developing a coherent framework of coordination.

While apparently desirable both in the short and long term resolution of the conflict, cooperation is necessary and unavoidable on a pragmatic level. Pursuant to the DOP, a transfer of local governance authority over the disputed territory (or parts of it) is intended to grant a degree of self-rule for the Palestinian population, though explicitly less than statehood.[73] This involves Israeli redeployment which carries the risk of creating a vacuum into which unknown forces (i.e.- Hamas) could assert control with predictable consequences for national security and public safety.[74] Under the DOP, Israel retains residual responsibility for defending against external

73. *See* DOP, *supra* note 26, arts. 1, 5.
74. *See e.g.*, Oslo II, *supra* note 24, Annex I, art. 1 a and c.; art. 1, para 5.



threats as well as the overall security of Israelis.[75] This is limited in order to give maximal autonomy to the PA.

The structure created in the interim agreements for cooperation in security matters consists of a Joint Coordination and Cooperation Committee for Mutual Security Purposes responsible to the JLC, RSCs and DCOs.[76] In addition, the WRM established three committees to monitor and deal with terrorism, illegal arms and incitement,[77] and calls for bilateral cooperation and a Trilateral Committee; a U.S.-Palestinian-Israeli Committee, primarily to arbitrate and assist in security issues.[78]

The DOP establishes a high level Joint Liaison Committee ("JLC") to provide for the smooth implementation of the DOP and subsequent agreements.[79] A Joint Security Coordination and Cooperation Committee for Mutual Security Purposes ("JSC") based on the principle in Annex II to the DOP,[80] a Joint Civil Affairs Coordination and Cooperation Committee ("CAC"),[81] a Joint Economic Committee ("JEC")[82] and a parallel Legal Committee ("LC")[83] initially under the CAC (but which became responsible to the Joint Liaison Committee in

75. *See* DOP, *supra* note 26, at art. 8.
76. Oslo II, *supra* 24, at Annex I art. 3.
77. *See* WRM, *supra* note 52, at pt. II A.
78. *See id.* at II. B.
79. A Joint Security Coordination and Cooperation Committee for Mutual Security Purposes ["JSC"] based on the principle in Annex II to the DOP, Protocol on the withdrawal of Israeli forces from the Gaza strip and Jericho Area agreement para. 3(e) was established in the Cairo Agreement, art. 3 and Annex I, art. 2, a Joint Civil Affairs Coordination and Cooperation Committee ["CAC"] was established in the Cairo Agreement, Annex II, art. I. A parallel Legal Committee ["LC"] was created in the Cairo Agreement art. V, para. 6, under the CAC and became responsible to the Joint Liaison Committee in its own right under Oslo II arts. 17 and 18. A Joint Economic Committee ["JEC"] was created in the Cairo Agreement, Annex IV Protocol on Economic Relations, art. 2. The somewhat broader Standing Cooperation Committee ["SCC"] was only established in Oslo II Annex VI Protocol Concerning Israeli-Palestinian Cooperation Programs, art. 3. Oslo II brought these committees under the supervision of the Monitoring and Steering Committee of the Joint Israeli-Palestinian Liaison Committee. *See* Oslo II, *supra* note 24, at art. 26.
80. Protocol on the Withdrawal of Israeli Forces from the Gaza strip, and Jericho Area agreement para. 3(e), and established in the Cairo Agreement. *See* Cairo Agreement, *supra* note 21, at art. 8 and Annex I, art. 2.
81. Cairo Agreement, *supra* note 21, at art. 3, para. 5 and Annex II, art. 1.
82. *Id.* at Annex IV, art. 2.
83. *Id.* at art. 5, para.6.

its own right under Oslo II)[84] were created in the Cairo Agreement. The somewhat broader Standing Cooperation Committee ("SCC") was only established in Oslo II Annex VI Protocol Concerning Israeli-Palestinian Cooperation Programs, Article III. Oslo II brought these committees under the supervision of the Monitoring and Steering Committee of the Joint Israeli-Palestinian Liaison Committee.[85] The structure as well as the individual committees do exist to some extent. This may be true by virtue of the fact that the MSC has met, and for a time after its establishment, sentiments about future meetings were positive, at least on the Israeli side.[86] However while the MSC was initially active, as of mid to late 1997, it ceased convening entirely. As perhaps the most significant coordinating body within the institutional framework, the MSC obstructs the ability of other committees to meet their goals when it is inoperative. However, the structure does not hinge completely on the MSC, and the committees under it have continued, in most cases, to function at least until the onset of the Al-Aqsa intifada in late September 2000.[87]

The development and degree of implementation of each committee will be considered within the major fields of cooperation. The basic questions that must be addressed here are: (1) Is there an identifiable structure? (2) How does it relate to the institutional arrangement? (3) What are the committees' frequency and composition in practice? (4) What are their functions and what issues have they dealt with? Most importantly,

84. Oslo II, *supra* note 24, at art. 17, 18.

85. *Id.* at art. 26.

86. The committee met on November 16, 1995 at the headquarters of the Palestinian Economic Council for Development and Reconstruction outside Jerusalem to discuss the progress of IDF redeployment and preparation for the Palestinian elections. It was headed by Foreign Ministry Director-General Uri Savir, and Palestinian Authority Economics Minister Ahmed Qreia. Savir is reported as having said "there is every intention to keep the schedule as agreed." Jon Immanuel, *News in Brief*, JERUSALEM POST, Nov. 17, 1995, at 1.

87. Interview with Mordechay Cristal, Civil Negotiator for Coordination of Government Activities in the Territories, in the Ministry of Defense in Tel Aviv, Isr. (June 14, 1999). Palestinian sources have dubbed the current disturbances the "Al-Aqsa intifada." Al-Aqsa is the mosque in Jerusalem which observant Moslems regard as their third holiest site, after Mecca and Medina. The word "intifada" means "uprising" or "shaking off." The current violence should not be confused with the earlier intifada which began in December 1987 and ended with the launching of the Oslo peace process in mid-1993. *See* Lamia Lahoud, *Fatah Calls For Intifada Despite Summit*, JERUSALEM POST, Oct. 17, 2000 at 2.



(5) How successful have the committees been in furthering the purpose of the peace process, both individually and within the given framework?

## A. *Security*

### 1. Redeployment

In matters of security the DOP required the two sides to come to an agreement on the redeployment of Israeli military forces from the Gaza Strip and Jericho area. This was to include comprehensive arrangements to apply subsequent to the withdrawal,[88] resulting in the Cairo Agreement.

The Cairo Agreement states that Israel shall implement an accelerated and scheduled redeployment of Israeli military forces from the Gaza Strip and from the Jericho area, to be completed within three weeks.[89] However, redeployment was necessary to maintain their responsibility over external and internal security, as well as the public order of settlements.[90] Arrangements for the deployment of the Palestinian Police[91] had to be included in a general plan for coordination, to facilitate a smooth transfer of responsibility so that no vacuum in authority would be created by the redeployment.[92] The Cairo Agreement also states that Israel should continue to carry the obligation for defense against external threats, (including the responsibility for protecting the Egyptian border and the Jordanian line, and for external threats from the sea and from the air), as well as responsibility for the overall security of Israelis, (having all the powers to take the steps necessary to meet this responsibility).[93] In arrangements set out regarding the Gaza-Egypt and Jericho-Jordan passages, and other international crossings, it is stated that there should be maximum cooperation and joint review of procedures after a year.[94]

Oslo II provides for the transfer of responsibility to the

88. *See* DOP, *supra* note 26, at Annex II, para. 1.

89. Cairo Agreement, *supra* note 21, at Annex II, art. 2(1).

90. *See id.* at art. 2(3).

91. *Id.* at art. 2(6).

92. *See id.* at Annex I, art. 1(2).

93. *Id.* at art. 2.

94. *Id.* at Annex I, art. 10.

Palestinian Police in phases,[95] and withdrawal of the Civil Administration after the inauguration of the Palestinian Interim Self-Government Authority ("Palestinian Council" or "Council").[96] The first stage of redeployments was set prior to the elections for the Council; the next phase of redeployments was to be gradually implemented with the assumption of responsibility for public order and internal security by the Palestinian Police (to be completed within eighteen months). The Palestinian Police were to assume responsibility for areas A and B after complete redeployment, with coordination and residual Israeli responsibility.[97] While the transfer of Area C and international security responsibility in Areas B and C was to be phased over eighteen months following the inauguration of the Council, exceptions remained as to the areas left for permanent status negotiations.[98] Ten days before each stage of redeployment, commanders of each side were to acquaint the respective commanders of the different echelons of the Palestinian Police with the respective area and its specific problems.[99] Again, enduring accountability for external security and the overall security of Israelis remains with Israel, which is to have all necessary powers to fulfill these duties.[100] Arrangements regarding passages are updated and generalized to cover agreed seaports, airports and other international crossings; the main aim being to maintain the dignity of persons passing through the border crossings.[101]

The Hebron Protocol states that redeployment should be carried out in accordance with Oslo II and with itself, to be completed no later than ten days from the signing of the protocol.[102] The Palestinian Police are to assume responsibility for areas specified as H-1, with special agreements for areas adjacent to the areas under the security responsibility of Israel in area H-1, in the area between Palestinian Police checkpoints, and the areas under the security responsibility of Israel in order to enable the Palestinian Police, exercising their respon-

95. Oslo II, *supra* note 24, at Annex I, art. 1, app. 1.
96. *Id.* at art. 1.
97. *Id.* at art. 13.
98. *Id.* at art. 13 (2)(b)(8).
99. *Id.* at app. I, art. 1.
100. *See, e.g.*, Oslo II, *supra* note 24, at arts. 1(1), 12(1).
101. *See id.* at app. I, art. 8.
102. Hebron Protocol, *supra* note 46, at para. 1.



sibility under Oslo II, to prevent the entry of persons and demonstrators threatening security and public order into the area.[103] Special provisions are reiterated from Oslo II regarding responsibility for the security of Jewish Holy Sites in Area H-1.[104]

The WRM provides for further redeployment from thirteen percent of "Area C," the agreement referring to the intention to convert three percent of this area into designated Green Areas or a Nature Reserve.[105] Movements of the Palestinian Police force in these Green Areas or the Nature Reserve require coordination and confirmation.[106] In the second phase, certain areas previously regarded as Area B are to be converted to Area A status.[107]

The WRM explicitly establishes a committee to discuss the third phase of redeployments envisioned under the terms of the Memorandum.[108] It is not clear whether such a committee is wholly new or whether it reflects the reality in the negotiations and coordination behind redeployments that have taken place.

103. *Id.* at paras. 3, 4.
104. *Id.* at para. 6. In mid-April 1997, a media report indicated that Arafat had ordered Palestinian security forces to renew cooperation with their Israeli counterparts, ending a one-month break in contacts. Arafat had suspended the contacts in mid-March after construction began at Har Homa. Reports indicated, however, that the PA officially denied any cooperation was taking place and that Dennis Ross was dispatched to the Middle East in an attempt to persuade the Palestinians to resume security ties. *See e.g.*, Hillel Kuttler, *Ross to Present New Peace Proposals*, JERUSALEM POST, May 4, 1997, at 1. Individual Palestinians who do provide information to Israel are branded as 'collaborators' and treated severely by the PA's security apparatus. Thus, when Israel passes on information to PA officials concerning planned attacks, the Palestinian police take action against the intelligence source rather than the terrorists. *See generally* Boaz Ganor, *Israeli Counterterrorism in the Shadow of Oslo*, The Shalem Center, POLICY VIEW, Dec. 10, 1995.

The Head of the Palestinian General Intelligence Amin Al-Hindi told an interviewer, "[i]t is wrong to say that the Israeli side benefited from these arrangements [security coordination], as we have never revealed any piece of information that could harm the Palestinian side. Neither [two leaders of Hamas] . . . a detainee inside a PNA prison, nor any other Palestinian will be handed over to Israel." Interview of Amin Al-Hindi, Head of the Palestinian General Intelligence, *Security Demands*, BILADI THE JERUSALEM REPORT (Jan. 24, 1997) at 6.
105. WRM, *supra* note 52, at pt. I.A.
106. *Id.* at I. A(1).
107. *Id.* at I. A.
108. *Id.* at I. B.

Redeployment has taken place, but as the WRM illustrates most recently,[109] it has not followed the schedule largely because of the reasonably held fear that redeployment would leave behind a form of authority in security matters which is not sufficiently accountable to the more moderate political authority. However, the current redeployments do not appear to have left a political vacuum. In addition, the continuation of violence, without comprehensive measures by the Palestinian Authorities, inhibit redeployment as a result of the reaction of the Israeli public to an attack, and the lack of trust inspired in the diplomats and relevant military personnel when attacks occur. The extent of the difficulties are illustrated by the fact that the WRM has proved difficult to implement. The joint committees are the only arena in which these mutual insecurities can be eradicated, resulting in substantial and effective redeployment.

### 2. The Trilateral Committees

Evidently above the level that the JSC ought to operate on, a high-ranking U.S.-Palestinian-Israeli committee is conceived to meet as required, not less than biweekly, to assess current threats, deal with impediments to effective security cooperation and coordination, and address the steps being taken to combat terror and terrorist organizations.[110] It is also intended to serve as a forum to address the issue of external support for terror.[111]

In addition, the WRM established three more specialized trilateral committees to address the issues of terrorism,[112] illegal arms,[113] and preventing incitement.[114] These appear to overlap with the functions of the JSC. It is not clear how they relate to the JSC, or to the RSCs, DCOs and the other more specialized committees or patrols. These may be concerned with the appraisal and supervision of the work of the JSC. The

109. *Id.* at Preamble and pt. I.
110. *Id.* at II. B(3).
111. *See id.* at II. B(3).
112. *Id.* at II. A(1).
113. *Id.* at II. A(2).
114. *Id.* at II. A(3).



work of any of the joint committees is only worthwhile if there is consensus. That might be easier to achieve at a trilateral committee level which is not also responsible for the implementation of adopted strategies. Alternatively, they may act as working groups within the JSC to address particular areas of its responsibilities in implementing, as well as coordinating, measures to promote security.

The introduction of trilateral committees into the peace process could be beneficial or equally detrimental. In certain cases it could function as an effective mediator, reconciling demands of the two sides. However, there exists the risk that the side opposed to the position of the U.S. would simply accuse the American member of the committee of bias.

### 3. The Joint Security Cooperation and Coordination Committee

The Cairo Agreement established JSC,[115] whose main purpose is to ensure that there is cooperation, and not a vacuum in authority, in the transfer of responsibility. It stated that the JSC shall: (1) recommend security policy guidelines for the approval of the Joint Israeli-Palestinian Liaison Committee, and implement those approved, (2) deal with the security issues raised by either side, (3) provide the proper channel for exchanging information (needed to solve security problems) between the two sides, and (4) provide directives for the DCOs.[116] The Committee was further given the responsibility of developing a plan to ensure full coordination between the Israeli military forces and the Palestinian Police during the withdrawal phases and the entry and deployment of the Palestinian Police.[117] Five to seven members were allocated from

115. The DOP calls for the establishment of a Joint Palestinian-Israeli Coordination and Cooperation Committee for Mutual Security Purposes [DOP Annex II, para. 3(e)] later renamed the Joint Security Cooperation and Coordination Committee in the Cairo Agreement. Cairo Agreement, *supra* note 21, at art. 7(2) (referring to provisions in Annex I, art. 2).
116. Cairo Agreement, *supra* note 21, at Annex I, art. 2.
117. *Id.* at Annex I, art. 1. This clause specifies that the plan should include arrangements for the entry of the Palestinian Police, the introduction of police arms, ammunition and equipment and related matters, as well as arrangements intended to facilitate a smooth transfer of responsibility, including the transfer of

each side,[118] and meetings were provided for every two weeks or within 48 hours of either side's request for a special meeting.[119] The Committee was made responsible for determining its own rules of procedure.[120]

As mentioned above, Oslo II adopts the text of the Cairo Agreement.[121] It additionally introduces Regional Security Committees ("RSCs")[122] through which it is to provide directives to the DCOs and to coordinate Israeli military forces and the Palestinian Police during the interim period.[123] The JSC is intended to develop a comprehensive plan to ensure full coordination during the interim period,[124] very similar to the plan which was to be developed under the Cairo Agreement.[125] In addition Oslo II provides for two regional plans for coordination and cooperation in security matters after redeployment,[126] which are to be reviewed every six months or whenever needed.[127] The JSC maintains five to seven members from each side,[128] and meetings are held once every two weeks or 48 hours after either side requests a special meeting,[129] despite the additional responsibility for cooperation over the West Bank and Hebron. This might suggest that these provisions were sufficiently effective, or that there did not appear to be any feasible arrangement which would be more effective. Despite the optimistic goals set for the committee, the creation of the RSCs was to reduce the administrative burden on the JSC members.

The JSC was established and operates to coordinate security.[130] The staff that preside on the committee may have a

civil authority.

118. *Id.* at Annex I, art. 1, para. 1(d). *Cf.* Oslo II, supra note 24, Annex III, art. 1 [CAC]; *id.* at Annex V, art. 2 [JEC]; *id.* at Annex VI, art. 3 [SCC].

119. Cairo Agreement, *supra* note 21, at Annex I, art. 1, para 1(d).

120. *Id.* at Annex I, art. 1.

121. Oslo II, *supra* note 24, at Annex I, art. 3.

122. As intermediaries between the JSC and the DCOs.

123. Oslo II, *supra* note 24, at app. I, art. 3, paras. 1 (b)(4), 1(g).

124. *Id.* at app. I, art. 3, para. 1(f).

125. Cairo Agreement, *supra* note 21.

126. Oslo II, *supra* note 24, at app. I, art. 3, para 1(i).

127. *Id.* at app. I, art. 3, para 1(j).

128. *Id.* at app. I, art. 3, para. 1(c).

129. *Id.* at app. I, art. 3, para. 1(d).

130. In October 1996 the JSC met in Kalkilya under Brigadier General Herzl Getz and Brigadier General Ziad Atrash to discuss the (at that time) current security situation following riots. Illustrating complications, a request to let Palestinian policemen serving in the West Bank visit their relatives in Gaza was vetoed because of the failure of the PA to take measures against policemen responsible for shooting IDF soldiers. The failure of the joint patrols in the West Bank were to be discussed by the Palestinian Council. Jon Immanuel, *Israel-PA Talks Resume*, JERUSALEM POST, Oct. 10, 1996, at 1.



more significant role than the committee itself because they hold positions in the respective security authorities in addition to their JSC post. Ultimately, they must also encourage the protection of both populations from those opposed to peace by the cooperation of both Israeli and Palestinian security personnel, beyond the committee level. However, this has not been always evident.[131]

As mentioned, the Israeli representative on the JSC is that of the Committee which suggests that at least on the Israeli side, the JSC and Trilateral Committee would seek compatible and complementary goals, although they serve different functions and could be coordinated well. This seems to reduce the diversity and thus the extensiveness of the institutional structure which may be disadvantageous.

### 4. The Regional Security Committees

Two RSCs are created in Oslo II, one in the West Bank

131. In November 1997, Hisham Abdul Razik, a PA official on the JSC condemned the terrorist shooting that killed Ateret Cohanim Yeshiva student Gavriel Hirschberg and wounded fellow student Benny Dil, but assigned the blame for the attack firmly on Israel. In addition he stated that the Preventive Security Apparatus (headed by Colonel Jibril Rajoub) would not cooperate with the General Security Service until two Hamas suspects, seized from PA custody, were returned. Steve Rodan & Liat Collins, *PA Officials Blame Netanyahu For Attack*, JERUSALEM POST, Nov. 21, 1997, at 3.

Herzl Getz, head of the JSC, has had to deal with several cases in which PA officers were said to have systematically intimidated Israeli soldiers legally patrolling through Gaza. They apparently included ambushes in which PA officers would stop IDF jeeps and point their submachine guns at the Israeli soldiers. Steve Rodan, *The PA Leader Can Be Budged But Go Too Far And He'll Break, Israeli Officials Tell Steve Rodan*, JERUSALEM POST, March 1, 1996, at 8.

An urgent meeting of the JSC was called for in March 1995 by the Palestinian security chief Major General Nasser Yusef a month after its establishment in the case of an apparently deliberate attack on a Border Police Jeep by the Palestinian security chief Major General Nasser Yusef to discuss the deterioration in Israeli-Palestinian coordination. Alon Pinkas, Jon Immanuel, Bill Hutman, Amir Rozenblit, *IDF Inquiry: Jeep Ramming No Accident*, JERUSALEM POST, March 31, 1995, at 1.

and one in the Gaza Strip,[132] so as to: (1) guide the relevant District Coordination Offices with security policy guidelines; (2) deal with security issues referred to it by the DCOs; (3) ensure the proper transfer of information and guidelines to the relevant DCOs and to propose to the JSC security policy guidelines, and; (4) forward issues to the JSC for determination.[133] Regular meetings are to be held between the commanders of the Israeli military forces and the Palestinian Police as appropriate, and each side is required to operate a regional security coordination office 24 hours a day, with direct and constant communication links between the two sides. Communication is clearly a top priority, for joint coordination efforts have no foundation without it. However, the extent to which this particular structure is adopted may depend on its practicality compared with any pre-existing or potential alternatives.

### 5. The District Coordination Offices

The functions of the DCOs as set out in the Cairo Agreement are to: (1) to monitor and manage matters requiring coordination, as determined and according to the policy and guidelines it established by the JSC; (2) monitor and manage all matters of a joint nature within the specific district of each DCO, including the coordination of activities by one side which may affect the other; (3) review, investigate and report to the JSC on the overall situation within the DCO's respective district, with special regard to the events, incidents, and activities occurring in the districts; (4) direct JPs and JMUs operating within the DCO's respective district, and (5) direct the JLB in conjunction with the CAC.[134]

The DCOs are to be jointly operated 24 hours a day,[135] staffed by a team of up to six officers from each side comprising one commander and five duty officers,[136] with at least one duty officer from each side present during each eight hour

132. Oslo II, *supra* note 24, at Annex I, art. 3, para. 2(a).
133. *Id.* at Annex I, art. 3, para. 2(b).
134. Cairo Agreement, *supra* note 21, at Annex I, art. 2, para. 2(b).
135. *Id.* at Annex I, art. 2, para. 2(d).
136. *Id.* at Annex I, art. 2, para. 2(c).



shift.[137] Both sides must notify the relevant DCO on the occurrence of any military maneuver, hostile act or other threat to security.[138] Upon such notice, the DCO must inform the relevant Israeli and Palestinian headquarters, the JP operating in the relevant district, and the JMUs operating in the area,[139] in the interests of preventing friction and enabling the two sides to deal with possible incidents. In addition, the DCO must immediately report any injury to Israelis at any location within the West Bank or the Gaza Strip. Though Israel may employ any means necessary for the evacuation and treatment of such injured persons, it must coordinate such activity through the relevant DCO.[140] Under the Cairo Agreement three DCOs were established,[141] each with one or two subordinate JLBs at crossing points.

Oslo II requires the creation of eight DCOs in the West Bank,[142] including one for the Hebron district[143] and one in the Jericho district with their subordinate JLBs,[144] while retaining the two in the Gaza strip with their JLBs. It largely adopts the provisions of the Cairo Agreement.[145] It provides for the introduction of the RSCs in that the RSC is recognized as determining, together with the JSC, the policy to be adopted

137. *Id.* at Agreement Annex I, art. 2, para. 2(d).
138. *See* Oslo II, *supra* note 24, at Annex I, art. 3, para. 3(g) (which is identical to the provision in the Cairo Agreement, *supra* note 21, Annex I, art. 2, para. 2(e)), namely: (1) routine, scheduled or irregular activity or deployment by the Israeli military forces or the Palestinian Police that directly affect the other side. This includes activity or deployment in the proximity of settlements or Palestinian villages, as the case may be; (2) events that pose a threat to public order; (3) activities which disturb the regular flow of traffic on the main roads, including roadblocks and roadwork; (4) incidents involving both Israelis and Palestinians, such as road accidents, rescue of casualties or persons in mortal danger, engagement steps or any incident in which a weapon is used; (5) a terrorist action of any kind and from any source; (6) infiltration between the West Bank, the Gaza Strip and Israel; and (7) all cases in which Israelis are hospitalized in the West Bank or Gaza Strip or in which Palestinians of the West Bank or Gaza Strip are hospitalized in Israel.
139. This is not mentioned in Oslo II. *See* Cairo Agreement, *supra* note 21, at Annex I, art. 2, para. 2(f) (which also required that the JMUs be notified, superseded by Oslo II).
140. Cairo Agreement, *supra* note 21, at Annex I, art. 2, para. 2(h).
141. *Id.* at Annex I, art. 2, para. 2(a) (DCOs located in Gaza, Khan Yunis and Jericho).
142. Oslo II, *supra* note 24, at Annex I, art. 5, para. 1.
143. *Id.* at Annex I, art. 5, para. 1(g).
144. *Id.* at Annex I, art. 5, para. 1(h).
145. *Id.* at app. III, art. 3, para. 3.

by the DCO and the DCO is required to report the situation in its district to the relevant RSC instead of the JSC. It does not mention responsibility for directing the JLBs (and their establishment is mentioned separately).[146] The DCOs all exist in the places in which they were created.

### 6. Joint Patrols and Joint Mobile Units

Cooperation at the most fundamental and clearly most significant level occurs with the JPs and JMUs. The success of the peace process at all levels lies with these groups. Cooperation in other areas will be stymied if joint security needs cannot be attained through Israeli and Palestinian cooperation. The Cairo Agreement provided that these should consist of a combined unit of two patrol vehicles, one Israeli and one Palestinian.[147] The JPs and JMUs are given similar though distinct functions. The former ensures "free, unimpeded movement and secure movement along the roads."[148] The latter was originally intended "to provide [a] rapid response in the event of incidents and emergency situations."[149] The JPs[150]

146. *Id.* at Annex I, art. 3, para. 6. (Art. 8, para. 5(c), app. 5 - Annex I, art. E).

147. Cairo Agreement, *supra* note 21, at Annex I, art. 1, para. 3(b). One can compare the requirement of an officer and three uniformed, armed guards by Oslo II, *supra* note 24, Annex I, art. 3, para. 4(b)., with Cairo Agreement, *supra* note 21, Annex I, art. 2, para. 3(b) (which requires that the unit be comprised of an officer, a signal operator, a driver and a guard).

148. Cairo Agreement, *supra* note 21, at Annex I, art. 1, para. 3(a).

149. *Id.* at Annex I, art. 2, para. 4(a) (which is the same as Oslo II, *supra* note 24, Annex I art. 3, para. 5 (a)), which states that their function is to ensure free, unimpeded and secure movement along their designated routes of activity, (although Oslo II adds, in Annex I, art. 3, para. 5(d)(3), that the JMU may serve any other function on top of those mentioned in the Cairo Agreement, *supra* note 21, Annex I, art. 2, para. c(1) and (2)).

150. *See* Cairo Agreement, *supra* note 21, at Annex I, art. 4 (Security Arrangements in the Gaza Strip), which creates two JPs in the Mawasi Area to be led by an Israeli vehicle (*id.* at art. 4, para. 5(a)), provides for JPs to operate along three lateral roads leading out of the territories from settlements in the Gaza Strip led by Israeli vehicle (*id.* at art. 4, para. 7(a)(2)), one along Central North-South Road (Rd. No. 4) led by Palestinian vehicle (*id.* at art. 4, para. 8), and a JP operated by a JMU at the Nitzanim Junction under direction of DCO (*id.* at art. 4, para. 9(b)); and Cairo Agreement, art. 5 - (Security Arrangements in the Jericho Area) which creates one JP on the main North-South road crossing Jericho (Route no. 90) led by Palestinian vehicle (2). *Id.* at art. 5, para. 2.



patrol 24 hours a day, in vehicles, along the routes of activity, or as directed by the relevant DCO.[151] The JPs are intended to continually monitor movement within their area of operation and to prevent and deal with incidents that may threaten or endanger persons using the roads.[152] They are to report any such incident or threatened incident, as well as any action taken, to the relevant DCO and to the respective Israeli and Palestinian district headquarters.[153] On reaching the scene of an incident the JP is to provide as much assistance as possible, or if the incident is dealt with by the authorities functioning in the area, verify that appropriate measures have been taken and report to the relevant DCO.[154] If the JP becomes aware of the happening of one of the hostile occurrences listed in the agreement,[155] they must report the event to the relevant DCO as well as the respective headquarters of both sides.[156] The agreements show signs of sensitivity to the tensions between the two sides, in that the lead vehicle depends on which party has responsibility for the particular road.[157] Oslo II adopts the text of the Cairo Agreement[158] adding provisions for patrols on foot.[159]

Oslo II, Annex I, art. 6 (Security Arrangements in the Gaza Strip) maintains two JPS in Mawasi Area, along lateral roads: one along central North-South Road and one operated by JMU at Netzarim junction, as established by the Cairo Agreement, *supra* note 21, Annex I, art. 4. Oslo II, Annex I, art. 5 (Security Arrangements in the West Bank) creates 11 JPs in the region along roads crossing Jenin, Tulkarm, Kalkilya, Bethlehem, Beit Jala, and Jericho, two JPs along the roads crossing Nablus, and two along the roads crossing Ramallah, and one on the road crossing Hebron. Oslo II, *supra* note 24, Annex I, art. 7 (Guidelines for Hebron). On the road from Ras e-Jura to the north of Dura junction via E-Salaam road and on Route No.35, Oslo II Annex I art. 7 requires the DCO to consider the reassignment of the JP to other parts of Hebron after the completion of redeployment. *Id.* at Annex I, art. 7.

The Hebron Protocol creates an additional joint patrol to operate in Area H-1 along the same road as the one created in Oslo II to operate in Hebron, thus one is to patrol along the road from Ras e-Jura, and one on Route No.35. Hebron Protocol, *supra* note 46, para. 4(d)

151. Cairo Agreement, *supra* note 21, at Annex II, art. 2, para. 3(a).

152. *Id.* at Annex II, art. 2, para. 3(e).

153. *Id.* at Annex II, art. 2, para. 3(e).

154. *Id.* at Annex II, art. 2, para. 3(f).

155. *See* discussion of hostile occurrences in relation to the DCOs, *infra* note 163.

156. Cairo Agreement, *supra* note 21, at Annex II, art. 2, para. 3(g).

157. *Id.* at Annex I, art. 1, para. 3(d).

158. Oslo II, *supra* note 24, at app. I, art. 3, para. 4.

159. *Id.* at app. I, art. 3, para. 4(c) (generalizing that in each vehicle there

The JMUs[160] are intended to monitor movement along their designated routes of activity from their stationary locations on agreed junctions, from where they may patrol at random, on agreed roads, as directed by the relevant DCO. In such routine cases, their duties are to be the same as those of the JPs. In the event of an incident involving both Israelis and Palestinians, they must reach the site of the incident in order to provide assistance and to investigate.[161] The Hebron Protocol specifies the roughly equivalent weaponry which each side of JMU are to carry.[162]

There is no explicit suggestion as to how the inherent tension between those likely to operate the JPs or JMUs is to be overcome. As mentioned, there is some sensitivity, though they make insufficient provision for dealing with obstacles. It would appear that distrust was intended to be overcome by working together to accomplish a mission.

Even prior to the Al-Aqsa intifada, the Joint Patrols have not operated smoothly altogether. There have been numerous cases of violence and intimidation from the PA police within

must be an officer, and three uniformed, armed guards rather than specifying a signal operator, a driver and a guard).

160. In Cairo Agreement, Gaza Strip - Four JMUs at Nissan, Netzarim, Deir el-Ballah and Sufa-Morag junctions; one JMU at Netzarim to check Israeli vehicles, and operate JP between Netzarim Junction and Wadi Gaza under direction of relevant DOP, Annex V-Jericho-1 at Auja junction (3.a.), 1 at Nahal Elisha junction (3.b.). Cairo Agreement, *supra* note 21, at Annex I, art. 4.

In Oslo II, Gaza Strip - Same four JMUs; West Bank - JMU to operate in vicinity of and on access routes to each Jewish Holy Site in Area A (2.b.(1)(a)), 3 JMUs to operate in Area B located at each DCO, two other in Area B to perform missions led by Israeli vehicle(5.a.). JMU at Auja junction led by Israeli vehicle. JMU at Nahal Elisha junction; Hebron - no JMU. Oslo II, *supra* note 24, at Annex I, arts. 5, 6, 7.

In Hebron Protocol - JMU in Area H-2 to handle incidents that involve Palestinians only. To focus on areas Abu Sneinah, Harat A-Sheikh, Sha'aba, high ground overlooking new Route No. 35. Visitors to Holy Sites in Area H-1; the cave of Othniel Ben Knaz, Elonei Mamre, Eshel Avraham, Maayan Sarah, to be accompanied by a JMU to ensure free, unimpeded and secure access to Holy sites as well as their peaceful use. Hebron Protocol, *supra* note 46, at paras. 4(b)(c), 6(b).

161. *See* Cairo Agreement, *supra* note 21, Annex I, art. 2, para. 4. Oslo II again adopts the provisions in the Cairo Agreement on JMUs, adding the provision (included regarding the JPs in the Cairo Agreement) whereby the leading vehicle in the patrol depends on the authority which controls the particular road [Oslo II, *supra* note 24, at Annex I, art. 3, para. 5(c)] and that the JMU is to perform any other function determined by the relevant DCO [Oslo II, *supra* note 24, at Annex I, art. 3, para. 5(d)(3)].

162. *See* Hebron Protocol, *supra* note 46, at para. 4(e).



the JPs.[163] The JPs also have been abandoned by one side or another many times because of acute security concerns.[164] A

163. Herzl Getz, head of the JSC, has had to deal with several cases in which PA officers were said to have systematically intimidated Israeli soldiers legally patrolling through Gaza. They apparently included ambushes in which PA officers would stop IDF jeeps and point their submachine guns at the Israeli soldiers. *See* Steve Rodan, *The PA leader can be budged but go too far and he'll break, Israeli officials tell Steve Rodan*, JERUSALEM POST, March 1, 1996, at 8.

Complications were created by refusal of the requests by Palestinian Policemen serving in the West Bank to visit their families in Gaza, discussed by the JSC, because the joint patrols were not functioning in the West Bank (therefore policemen would have to be accompanied by soldiers). *See* Jon Immanuel, *Little Headway in Hebron Talks As New Subcommittees are Formed*, JERUSALEM POST, Oct. 10, 1996, at 1.

In July 1998, a case of a PA policeman on the sensitive patrols in the Gaza Strip beat up his Israeli Border Police counterpart. (The joint patrol as taken to the DCO for a clarification of the matter and members were chastised.) Yoram Barak, spokesman for the DCO in the Gaza Strip is reported as having said "it was a small incident, and there is nothing to write about. These are common occurrences, and I am sure they will happen again." Israeli officers now wear ceramic-plated vests as a result of the riots of September 1996 when several members of the JPs were wounded in riots that left 16 IDF soldiers dead. Herzl Getz, head of the JSC, has had to deal with several cases in which PA officers were said to have systematically intimidated Israeli soldiers legally patrolling through Gaza. They apparently included ambushes in which PA officers would stop IDF jeeps and point their submachine guns at the Israeli soldiers. Arieh O'Sullivan, *PA policeman beats up IDF soldier on patrol*, JERUSALEM POST, July 15, 1998, at 1.

164. In March 1997, the IDF halted joint patrols with Palestinian Police due to the suspicions that the general strike called by the Palestinians throughout the territories (to protest plans for Har Homa) would spark rioting. Palestinian policemen enforced the strike in some areas. *See* Jon Immanuel, *Israel-PA Talks Resume*, JERUSALEM POST, Oct. 10, 1996, at 1; Arieh O'Sullivan & news agencies, *Strike shuts down territories*, JERUSALEM POST, March 4, 1997, at 4.

In March 1998, riots resulted in the evacuation of a dozen yeshiva students from Joseph's Tomb in Nablus as a precautionary measure after the Palestinian Police suspended joint patrols. *See* Arieh O'Sullivan & Margot Dudkevitch, *Mordechai moves to ease tensions. Scores of Arab protestors injured*, JERUSALEM POST, March 12, 1998, at 1.

In February 1998, in response to Israeli suppression of a pro-Iraqi demonstration held near Rachel's Tomb, and consequent damage to the property of a high ranking Palestinian officer, the Palestinian officers threatened to discontinue JPs with the IDF. During an ensuing dispute, Palestinian police officers aimed their weapons at IDF troops and fists were raised. Later they agreed to restore the JPs. *See* Margot Dudkevitch & Jay Bushinsky, *IDF Palestinians clash near Rachel's Tomb*, JERUSALEM POST, February 8, 1998, at 2.

In February 1998 riots gave rise to further concern when Palestinian policemen trained weapons on soldiers with whom they carried out joint patrols. *See* Margot Dudkevitch & Mohammed Najib, *Arafat threatens new intifada if talks fail*, JERUSALEM POST, Feb. 13, 1998, at 1. However apparently through restraint, violence was contained in March 1998 after paratroopers shot and killed three Palestinian laborers at the Turkemiya crossing, and in May 1998 during the Nakba

deputy inspector of the JP at the Netzarim junction served in Gaza's joint patrols for four years and spent sixteen hours on duty with his Palestinian counterparts, yet testified that while they share food, drink, and small talk, he felt he could not trust them.[165]

However, there have been events where, without extensive cooperation between Israeli and Palestinian forces, significantly graver consequences would have resulted. On one "Day of Rage," called for by the Palestinian Authority in protest of settlement activity, Israeli Army officials commended their Palestinian parallels for their coordinated efforts in limiting violence and protests. As protests began near Bethlehem, the head Israeli and Palestinian officials shook hands as a symbolic gesture to cooperatively disperse the few thousand Palestinians.[166] That the Palestinian Police were so integral to stopping protests called for by the PA itself attests to the realization by soldiers of the importance of Israeli-Palestinian collaboration, in spite of political propaganda.

### 7. Passages and Safe Passage

JLBs were created in the Cairo Agreement at each crossing point to deal with matters regarding passengers passing through the Palestinian Wing, issues requiring coordination, and differences concerning the implementation of these arrangements, as well as incidents.[167] They are comprised of an equal number of representatives from each side, located inside each terminal.[168] They are stated to be subordinate to the relevant (regional) subcommittee of the CAC,[169] though in the Cairo Agreement the DCO was required to direct the JLBs.[170]

protests when many JPs became dysfunctional for the day when Palestinians refused to participate. *See* Arieh O'Sullivan, *PA policeman beats up IDF soldier on patrol*, JERUSALEM POST, July 15, 1998, at 1.

Conversely, after the arrest of a suspect for his involvement in the murders of collaborators and abduction of two Border Policemen two years ago, reports claimed that the IDF has stopped JPs in the Jenin Area. *See* Itim Margot Dudkevitch & Mohammed Najib, *News in Brief*, JERUSALEM POST, March 5, 1998, at 2.

165. *See* Arieh O'Sullivan, *PA policeman beats up IDF soldier on patrol*, JERUSALEM POST, July 15, 1998, at 1.

166. *See* Margot Dudkevitch & Ben Lynfield, *'Day of Rage' leaves one dead, dozen hurt*, JERUSALEM POST, June 4, 1999, at 1.

167. *See* Cairo Agreement, *supra* note 21, at Annex I, art. 10, para. 5(a).

168. *See id.* at Annex I, art. 10, para. 5(b).



In each border crossing the agreement provided for one terminal consisting of two wings. One of these was for Palestinian residents of the Gaza strip and Jericho, the second for Israelis and others, with special arrangements for VIPs.[171] An Israeli director-general was to be appointed as responsible for the management and security of each terminal, together with two deputies, one Israeli and one Palestinian, each of whom was to have an assistant for security and for administration.[172] Palestinian policemen at the terminals could be armed with handguns, but other Palestinian officials would remain unarmed.[173] Details were given for inspection of documents and identity, as well as personal luggage and persons on entry from, and exit to, Egypt and Jordan.[174] Arrangements for safe passage between the Gaza Strip and Jericho also were set out in the Cairo Agreement.[175]

Oslo II largely adopts these provisions, but provides for a joint committee to decide on the application of arrangements to a particular crossing,[176] reducing the process to two lanes since the distinction between the Gaza strip, Jericho and the West Bank is no longer relevant,[177] and does not mention DCO direction of the JLBs.[178]

Safe passage is extended to cover the West Bank,[179] though Article X adds specific provisions for the denial of use of safe passage by persons who have seriously violated the safe passage provisions.[180] Coordination is referred to the JSC.[181]

The Wye Memorandum calls for the immediate renewal of

169. *See id.* at Annex I, art. 10, para. 5(c).

170. *See id.* at Annex I, art. 2, para. 2(b)(5).

171. *See id.* at Annex I, art. 10, para. 1(f).

172. *See* Cairo Agreement, *supra* note 21, at Annex I, art. 10, para. 2.

173. *See id.* at Annex I, art. 10, para. 2.

174. *See id.* at Annex I, art. 10, paras. 3, 4.

175. *See id.* at Annex I, art. 9.

176. The Damya Bridge crossing. *See* Oslo II, *supra* note 24, at Annex I, art. 7, para. 1(c).

177. *See* Oslo II, *supra* note 24, at Annex I, art. 7, para. 3(d).

178. Compare Oslo II, *supra* note 24, at Annex I art. 3, para. 3(c) and the Cairo Agreement, *supra* note 21, at Annex I, art. 2, para. 2(b)(5).

179. *See* Oslo II, *supra* note 24, at Annex I, art. 10.

180. *See id.* at Annex I, art. 10, para. 2(d)(e).

181. *See id.* at Annex I, art. 7, para. 2(g)(h).

negotiations on safe passage.[182] Agreement about the southern route were to be concluded within a week of entry into force of the Memorandum, and implementation of this Agreement is to start as soon as possible. Negotiations for the northern route are to continue with the goal of agreement and implementation as soon as possible.[183]

A committee on Passages and a separate committee on Safe Passage have been created. However a semi-freeze on the work of the Joint Committee on Safe Passage has been maintained by the PA.[184]

### 8. Other Structures for Cooperation

#### i. The Maritime Coordination and Cooperation Center and the Joint Aviation Subcommittee

Other structures for cooperation under the JSC include the Maritime Coordination and Cooperation Center ("MC") which deals with security issues off the coast of the Gaza Strip[185] and a Joint Aviation Subcommittee ("JAC").[186]

The WRM mentions the importance of the Port of Gaza to the regional economy and calls for the joint committee to resume its work immediately with the aim of producing a protocol within sixty days to allow commencement of building the port. It also recognizes the conclusion by the parties of a "Protocol Regarding the Establishment and Operation of the International Airport in the Gaza Strip During the Interim Period" and their arrangements to permit the timely opening of the Gaza Industrial Estate.

Although the Gaza Airport has been agreed upon, and the airport has opened, the JAC continues to meet. A committee on the Port of Gaza exists. An Ad Hoc committee on the Karni

182. *See* WRM, *supra* note 52, at pt. III. 3.
183. *See id.* at III. 3.
184. Apparently because progress over this issue, and similarly over the ports under the PA, might result in decreased US pressure on Israel. *See* Jay Bushinsky, *Netanyahu Briefs Arafat On Proposal*, JERUSALEM POST, Nov 26, 1997, at 1.
185. *See* Cairo Agreement, *supra* note 21, at Annex I, art. 11, para. 3.
186. *See id.* at Annex I, art. 12, para 2.



Industrial Estate exists. These are under the direction of the MSC.

Oslo II (in the spirit of cooperation) provides for many other joint activities.[187] This may be the basis for the Joint Coordination Center ("JCC") established to assist with the special security situation in Hebron.[188]

#### ii. The Joint Coordination Committee in Hebron

Oslo II provides for the establishment of a high level Joint Coordination Committee (Joint Hebron Committee - "JHC") to deal with the security situation in Hebron after the completion of the redeployment.[189]

In the Hebron protocol, the purpose of the JHC is to coordinate the joint security measures in the City of Hebron.[190] The authorities on each side are required to notify the JHC of demonstrations, and actions taken with respect to demonstrations, and any security activity close to the areas under the responsibility of the other side; including in the areas of the special security arrangements which apply adjacent to the areas under the security responsibility of Israel, in area H-1, in the area between the Palestinian Police checkpoints, and the areas under the security responsibility of Israel.[191] The agreement of the JHC must be sought for activities involving the use of rifles by the Rapid Response Teams (established and stationed in Area H-1, one in each of the police stations) in the Agreed Adjacent Areas, and the JHC must be informed of such activities in the rest of Area H-1.[192]

This reflects the rather limited response of the agreements to the tensions that have remained in spite of negotiation, transfer of authority, redeployment, provisions for cooperation and the multi-tiered structure that is established to promote that harmony.

The TIPH2 agreement institutes changes in the composi-

187. *See* Oslo II, *supra* note 24, at Annex I, art. 3, para. 7.
188. *See* Hebron Protocol, *supra* note 46, at para. 4(f).
189. *See* Oslo II, *supra* note 24, at Annex I, art. 7, para. 8.
190. *See id.*
191. *See id.*
192. *See id.* at para. 5(d)(2), (3).

tion of the JHC.[193] The removal of the Israeli Civil Administration from Hebron under the Oslo II Agreement is reflected in the Israeli representatives to the JHC who are no longer drawn from the Israeli Civil Administration, as was the case under the TIPH1 Agreement, but rather from the Israeli military.[194] The extended role accorded to TIPH2 on the JHC may have led to an increased confidence within the mission to play a more central role as a permanent member on the JHC.[195]

Some[196] do not view the JHC meetings as necessarily a forum for problem solving, but rather as an opportunity for the IDF to receive feedback.[197] To a certain extent, TIPH2 acts as a mediating force in the JHC. Despite fluctuations in the peace process, the Palestinians and the Israelis are forced to sit together with TIPH2 on the JHC, in which discussions are straight forward and productive. Even when Arafat suspended all negotiations with Israel as a protest against Israeli building at Har Homa, and the Palestinians were under pressure from their leadership to cancel the JHC meetings, TIPH2 succeeded in pressuring both parties to continue with the meetings.[198] It could be argued that TIPH2's presence as a mediating party in the JHC reduces the possibility of Israel and the PA developing a direct relationship. Nevertheless, the JHC pressures the Palestinians to come and sit with the Israelis, thereby giving consistency to the dialogue between Israel and the Palestinians. The JHC is officially under the direct direction of the MSC, although this is not suggested in the treaties.

193. In accordance with the new authority of the Palestinian police in the city of Hebron, the Palestinians are represented on the JHC by the Palestinian Police Commander in Hebron rather than the Mayor of Hebron, who is specified as the senior Palestinian representative in the TIPH1 Agreement.

194. Up until Sept. 15, 1997, the IDF was the Israeli representative at the JHC. However, in September this role was been transferred to the Civil Administration.

195. Under the TIPH2 Agreement, a TIPH2 representative is accorded membership on the JHC. The Agreement states in Article 7(b) that the JHC shall meet on a weekly basis or on the request of any of its members, which suggests that TIPH2 can request a meeting of the JHC on its own initiative. Furthermore, the JHC is required "to deal with any issues arising from the [TIPH2] presence and the activity of the TIPH[2] which cannot be dealt with by the DCO [District Coordination Office]." TIPH2 Agreement, *supra* note 49, at art. 7(b).

196. Such as IDF liaison Major Rocky Abramson.

197. For example, TIPH2 may provide reports which show that the IDF is taking too long to carry out security checks on Palestinians wanting to cross Israeli checkpoints. TIPH2 Agreement, *supra* note 49.

198. Herb Keinon, *TIPH Mandate Extended Amid Calls To Resume Talks*, JERUSALEM POST, Jul. 1, 1998, at 4. "If you will not meet, we may as well go home as there is no use for us here." *Id.* Foreign Minister Director-General Eitan Bentsur is reported to have said that the extension of the TIPH mandate is an example of the type of cooperation that will lead to an overall agreement. *See id.*



### 9. Specific Areas

The agreements detail provisions for specific areas based on the structure of the above JSC, RSC and DCOs. The Gaza strip[199] and Jericho were dealt with in the Cairo Agreement,

199. *See* Oslo II, *supra* note 24, at Annex I, art. 6. Two DCOs are created in Annex I, art. 6, para. 10: one for Gaza district, at Erez Crossing point with subordinate Joint Liaison Bureaus at Erez and Nahal Oz crossing points, one for Khan Yunis district, at Nuriya Camp with subordinate Liaison Bureaus at the Sufa crossing points and at the Rajah Terminal. Oslo II adopts this provision at Annex I, art. 6, para. 10. The Palestinian Police are given responsibility for security in the Security Perimeter (*see* Cairo Agreement, *supra* note 21, at Annex I, art. 4, para. 2(b)), and for the enforcement of special security measures aimed at preventing infiltration across the Delimiting Line or the introduction into the Security Perimeter of any arms, ammunition or related equipment except for the arms, ammunition or equipment of the Palestinian Police, authorized through the relevant DCO. *See id.* at art. 4, para. 2(c). The activities of the Palestinian Police inside the Security Perimeter are to be coordinated through the relevant DCO. *See id.* at art. 4, para. 2(d). Security activities in Israel in the vicinity of the Delimiting Line that directly affect the other side are to be coordinated through the relevant DCO. *See id.* art. 4, para. 2(c). Oslo II adopts these provisions. *See* Oslo II, *supra* note 24, at Annex I, art. 6. The interim agreements state that Israeli settlements are to remain under Israeli control. *See* Cairo Agreement, *supra* note 21, at Annex I, art. 4, para. 3; Oslo II, *supra* note 24, at Annex I, art. 6. Control over specified areas in the agreements "the Yellow Area" specified is shared, the Israeli authorities having overriding responsibility and powers for security, and the Palestinian Authority for civil affairs. *See* Cairo Agreement, *supra* note 21, at Annex I, art. 4, para. 4(a); Oslo II, *supra* note 24, at Annex I, art. 6. The entry of Palestinian policemen into the Yellow Area and their activity therein may take place only as agreed upon through the relevant DCO. *See* Cairo Agreement, *supra* note 21, at Annex I, art. 4, para. 4(b); Oslo II, *supra* note 24, at Annex I, art. 6, para. 4(b).

In the Mawasi Area, the Cairo Agreement states in Annex I, art. 4, para. 5 that the Palestinian side is to have responsibility and powers for public order for Palestinians, while Israel is to retain the responsibility and powers for internal security. *See also* Oslo II, *supra* note 24, at Annex I, art. 6, para 5. Palestinian uniformed Civil Police officers are allowed to enter the Mawasi Area after coordination and confirmation of their movement and activity through the relevant DCO for the purposes of exercising Palestinian public order responsibility. *See* Cairo Agreement, *supra* note 21, at Annex I, art. 4; Oslo II, *supra* note 24, at Annex I, art. 6, para. 4(c). Two JPs are to operate in the Mawasi area along the coast

while Jericho is included subsequently in the provisions on the West Bank[200] in Oslo II; which sets out special provisions for

road, led by Israeli vehicle. *See* Cairo Agreement, *supra* note 21, at Annex I, art. 4; Oslo II, *supra* note 24, at Annex I, art. 6, para. 5(a). The agreements allow the PA to operate sections of the Mawasi beach. *See* Cairo Agreement, *supra* note 21, Annex I, art. 4; Oslo II, *supra* note 24, Annex I, art. 6, para. 5(c).

The Egyptian border is to remain under Israeli authority. *See* Cairo Agreement, *supra* note 21, at Annex I, art. 4; Oslo II, *supra* note 24, Annex I, art. 6, para. 6. On three lateral roads to the settlements Israeli authorities are to have the responsibilities and powers in order to conduct independent security activity including Israeli patrols, JPs to operate along the Lateral Roads, to be led by Israeli vehicle. *See* Cairo Agreement, *supra* note 21, at Annex I, art. 4; Oslo II, *supra* note 24, at Annex I, art. 6, para. 7(a). Where Israeli authorities take engagement steps, they are to do so with a view to transferring the continued handling of the incidents falling within Palestinian responsibility to the Palestinian Police. *See* Cairo Agreement, *supra* note 21, at Annex I, art. 4; Oslo II, *supra* note 24, at Annex I, art. 6, para. 7(a). Where Lateral Roads overlap the Security Perimeter, the two sides, in the exercise of their respective powers and responsibilities, to fully coordinate their activity in order to prevent friction. *See* Cairo Agreement, *supra* note 21, at Annex I, art. 4; Oslo II, *supra* note 24, at Annex I, art. 6, para. 7(b).

A JP led by the Palestinian vehicle is to operate on the Central North-South Road. *See* Cairo Agreement, *supra* note 21, at Annex I, art. 4; Oslo II, *supra* note 24, at Annex I, art. 6, para. 8.

JMUs are created at four junctions (Nissanit, Netzarim, Deir al-Ballah and Sofa-Morag), and at the Netzarim Junction, the Israeli side of JMU is to check Israeli vehicles, which are then allowed to continue journey without interference. This JMU is to also operate as JP between Nitzarim junction and Wadi Gaza under the direction of the relevant DCO. *See* Cairo Agreement, *supra* note 21, at Annex I, art. 4; Oslo II, *supra* note 24, at Annex I, art. 6, para. 9(b).

200. Eight DCOs are created for Jenin, Nablus, Tulkarm, Qalqiya, Ramallah, Bethlehem, Hebron and Jericho Districts (in Jericho to maintain a subordinate Joint Liaison Bureau in the Allenby Terminal). *See* Oslo II, *supra* note 24, at Annex I, art. 5, para. 1. The PA will assume powers and responsibilities for internal security and public order in Area A. *See id.* at Annex I, art. 5, para. 2(a). Jewish Holy sites in Area A are to be under responsibility of Palestinian Police, but a JMU is to function in the vicinity and on access routes to each site, as directed by the relevant DCO, to ensure free an unimpeded access, and the peaceful use of such site, to prevent disorder or to respond to any incident. *See id.* at Annex I, art. 5, para. 2(b). Area B is to be under PA responsibility with regard to the public order of Palestinians, overriding responsibility for security for the purposes of protecting Israelis and confronting the threat of terrorism to remain with Israel. *See id.* at Annex I, art. 5, para. 3. The movement of uniformed Palestinian policemen outside places where there is a Palestinian police station or post, may be carried out only after coordination and confirmation through the relevant DCO, though some relaxation of this rule is to be considered after redeployment. *See id.* The Israeli side of the DCO is to give its response following a request regarding the movement of policemen in a normal or routine cases within one day and in emergency cases no later than 2 hours. *See id.* Joint security activities to be carried out on main roads. *See id.*

The Palestinian Police must notify the RSC of details of its police force, and these procedures are to be reviewed within 6 months. *See id.*



Hebron.[201] These are developed in the Hebron Protocol.[202]

Eleven JPs are created in Oslo II. *See id.* at Annex I, art. 5, para 4(a). Each DCO is allowed, within 3 months after the completion of the redeployment in its respective district, to decide that JPs will function on roads crossing areas A, B and C. *See id.* at Annex I, art. 5, para. 4(b). The three JMUs at each DCO in Area B are to be led by an Israeli vehicle, one is to be on 24 hour alert, while the other two perform missions directed by the DCO during daylight hours. *See id.* at Annex I, art. 5, para. 5. The JMU at Aula junction Route No 90 and road to Yitav is to be led by the Israeli vehicle, and may be directed by DCO to deal with certain incidents occurring on the road between Aula and Jericho. *See id.* A JMU is to be located at the Nahal Alice junction on the road from Jericho to the Mousse Alamo project. *See id.*

The movement of Palestinian Police in Area C must be confirmed and coordinated by the relevant DCO and movement between Area A and B to be approved by the relevant DCO. *See id.* at Annex I, art. 5, para. 6.

Israeli guard posts may be located in the Rachel's tomb, without derogation from Palestinian security responsibility. *See id.* at Annex I, art. 5, para. 7.

201. One DCO was created at Har Manoakh. *See* Oslo II, *supra* note 24, at Annex I, art. 7, para. 6(a). Redeployment is required to take place. *See id.* at Annex I, art. 7, para. 1. Palestinian Police to assume responsibilities in Area H-1 similar to those on other cities in the West Bank. *See id.* at Annex I, art. 7, para. 2(a). Any activity or movement by it outside this area may only be carried out after coordination and confirmation through the DCO. *See id.* at Annex I, art. 7, para. 2(d). Following the DOP, Israel continues to carry responsibility for overall security of Israelis for the purposes of safeguarding their internal security and public order. *See id.* at Annex I, art. 7, para. 3. Israel retains powers and responsibilities for internal security and public order in area H-2. *See id.* at Annex I art. 7, para. 4(a). On the completion of redeployment, a JMU was to operate throughout the city, including the Old City, if required to do so by the DCO. *See id.* at Annex I, art. 7, para. 6(b). One JP was to function in Hebron on the road from Ra E-Jura to the north of Dura. *See id.* at Annex I, art. 7, para. 6(c). Three months after completion of the redeployment, the DCO is required consider the reassignment of the JP to other parts of Hebron. *See id.* at Annex I, art. 7, para. 6(d). Measures are to be taken to normalize life in the Old City. *See id.* at Annex I, art. 7, para. 7. A High Level Joint Liaison Committee is established to deal with the security situation in Hebron after the completion of the withdrawal. *See id.* at Annex I, art. 7, para. 8. Finally, since the parties cannot reach agreement on the Tomb of the Patriarchs, they have agreed to keep the present situation as it is. Three months after the redeployment, the High Level JLC is required to review the situation. *See id.* at Annex I, art. 7, para. 9.

202. Redeployment is to be carried out in accordance with Oslo II and the Protocol. *See* Hebron Protocol, *supra* note 46, para. 1. The Palestinian Police are to assume responsibility in area H-1, similar to those in other cities in the West Bank. *See id.* at para. 2(a).

Israel is to retain powers and responsibilities for internal security and public order in Area H-2, and to carry responsibility for overall security of Israelis. *See id.* Both sides are required to reconfirm commitment to main parts of Oslo II. *See id.* at para. 2(b). Special security arrangements are to apply. *See id.* at para. 3. Palestinian checkpoints are to be established to prevent entry of armed persons and demonstrators or other people threatening security an public order, into areas adjacent to areas under the security responsibility of Israel, in area H-1, in the areas between the checkpoints and areas under the security responsibility of Isra-

The Hebron Protocol adds a sub-office to the DCO, a JP in addition to the one allocated in Oslo II, providing for two in Area H-1.[203]

The WRM alters the status of certain areas but does not contain any provisions relating to the particular security arrangements of the individual areas.[204] This might suggest that this (detailed) aspect of the previous agreements was relatively successful, or no better arrangements could be found under the current circumstances at the present time. Despite some difficulties in most areas and severe tension in some areas such as Hebron, the measures taken so far seem not to have incited more opposition and violence than they have managed to prevent.

## 10. Elections

An additional area of cooperation through the DCOs in Oslo II is coordinating security issues regarding rallies and

el. *See id.* at para. 3. The DCO is to establish a sub-office in the City of Hebron. *See id.* at para. 4(a). One JMU is to operate in Area H-2, coordinated by DCO (*See id.* at para. 4(b)), and another in the adjacent areas. *See id.* at para. 4(c). Two JPs are to function in Area H-1. *See id.* at para. 4(d). The Palestinian and Israeli side of the JMU in the City of Hebron are to be armed with equivalent types of weapons (Mini-Ingraham submachine guns the Palestinian side and short M16s for the Israeli side). *See id.* at para. 4(e). As described above, a Joint Coordination Center is to be established. *See id.* at para. 4(f). The Palestinian Police are responsible for protection of Jewish Sites; visits by worshipers and other visitors accompanied by a JMU to ensure free, unimpeded and secure access to the Holy Sites as well as their peaceful use. *See id.* at para. 6. Further provisions for Normalization of Life in the Old City are set out. *See id.* at para. 7.

203. *See* Hebron Protocol, *supra* note 46, para. 4 (a), (d); Agreed Minute, American Plan on Al-Shuhada Street, Related Document to Hebron Protocol, Jan. 17, 1997, [hereinafter Agreed Minute] at 20. This is a plan of infrastructure improvements financed by American aid, on one of the main streets in Hebron. *Id.* Ten days after the signing of the Hebron Protocol, Arafat began criticizing Israel for not immediately reopening Shuhada Street. *Voice of Palestine* (BBC Short Wave Broadcast, Jericho, Jan. 31, 1997) (ME/2833 MED/1). According to the Protocol's terms, Shuhada Street was to be fully reopened within four months. *See* Agreed Minute, *supra* note 203, at 20. Charges and counter-charges of violations have become almost routine. *See, e.g., Voice of Palestine* (BBC Short Wave Broadcast, Jericho, Feb. 1, 1997) (ME/2833 MED/1). PA officials have come to defend their violations by saying that Israel is also violating the agreement in various spheres. *See, e.g., Voice of Israel* (BBC Short Wave Broadcast, Jerusalem, Jan. 29, 1997) (ME/2830 MED/6).

204. *See* WRM, *supra* note 52, pt. I. A.



meetings leading up to elections, under the authority of the Palestinian Police.[205] This raises potential political issues regarding the influence of Israeli participants in the DCO concerned, which are likely to produce a counter reaction whereby they have little influence over these in practice unless a particular threat is posed. In such cases, other political mechanisms may be more active in resolving any dispute that may arise.

## 11. Summary

The committees can inspire confidence in the parties by removing some of the dangers of redeployment and maintaining a degree of security, while promoting peace between the populations in the long term. The determining factor is the extent to which the two parties take their responsibilities seriously. Though there have been high points in the cooperation between the Israeli Government and PA, there on the whole has been tension and reluctance at all levels. Israel reserves the right to conduct hot pursuit and pre-emptive raids.[206] Methods of maintaining security have failed in very serious situations, such as the ongoing Al-Aqsa intifada, because of the reluctance of one side to carry out their responsibilities.[207]

205. *See* Oslo II, *supra* note 24, at art. 4, para. 2.

206. Inside area H-1 in Hebron. Herb Keinon & Alon Pinkas, *IDF Removes 2 Roadblocks in Hebron: Biran Attempts to Reassure Settlers but Presents No Maps*, JERUSALEM POST, Oct. 3, 1995, at 1; *see* Eric Silver, *Hebron Deal Ends Months of Wrangling*, THE INDEPENDENT, Jan. 1, 1997, at 7. *See* Oslo II, *supra* note 24, at Annex I, art. 10, para. 4; *see id.* at Annex I, art. 12, para. 1. Thus far Israel has not made use of these rights in other evacuated cities. *See* Keinon & Pinkas, *supra* note 206, at 1.

207. E.g., Palestinian Police checkpoints in H-1, intended to form a buffer zone adjacent to H-2 "to enable the Palestinian Police, exercising their responsibilities under Oslo II, to prevent entry of armed persons and demonstrators or other people threatening security or public order, into the above-mentioned area," have not proven to be an effective deterrent during the weeks of daily Palestinian rioting that followed the disagreement over Har Homa. *See* Hebron Protocol, *supra* note 46, at art. 3(b); *see* Silver, *Hebron Deal Ends Months of Wrangling*, *supra* note 206, at 7. Indeed the entire structure of security cooperation in the Protocol which is aimed at "preventing any provocation or friction that may affect the normal life in the city" (*see* Hebron Protocol, *supra* note 46, art. 7(a)) appears to have been ignored by the PA in permitting, and according to some reports, encouraging these rioters. *See* Ian Black, *Nails Hammered into Coffin of Peace*, THE GUARDIAN, Apr. 2, 1997, at 7.

Perpetrators of terrorist attacks within Israel often escape punishment by fleeing to the PA self-governed areas, and Israel has had no success persuading Arafat to transfer them for trial in accordance with the Oslo II Agreement.[208] Even before the Al-Aqsa intifada, the PA's ineffectual response to the terrorists' suicide bombings, drive-by shootings, roadside bombs, kidnappings, and knife attacks has contributed to delays in the peace process and has threatened its continuance.[209]

As a result, mutual trust runs thin, threatening the overall prospects for the Oslo peace process.[210] Their commitment and willingness to cooperate can be strengthened by

208. *See* Black, *supra* note 207, at 7.

209. *See* Eytan Rabin, *Two Hikers Murdered in Wadi Kelt; Gang of Terrorists Escaped to Jericho*, HA'ARETZ, Jul. 19, 1995, at A1; Moshe Toubal et al., *5 Killed in Suicide Bombing of Bus in Ramat-Gan*, HA'ARETZ, Jul. 25, 1995, at A1; Serge Schemann, *Bus Bombing Kills Five in Jerusalem; 100 are Wounded*, N.Y. TIMES, Aug. 22, 1995, at A1. *See, e.g.*, Jon Immanuel, *Israel Suspends Talks in Cairo*, JERUSALEM POST, Oct. 12, 1994, at 2; *see, e.g.*, Derek Brown, *Israeli Fears Put Pact With P.L.O. At Risk*, THE GUARDIAN, Dec. 7, 1994, at 14; *see, e.g. A Majority of One*, TIME, Nov. 13, 1995, at 64; Bill Hutman & Raine Marcus, *25 Killed in Jerusalem, Ashkelon*, JERUSALEM POST, Feb. 26, 1996, at 1. Arafat's reluctance to challenge the Islamist opposition is generally understood to be based on his fear of provoking a Palestinian civil war. *See* Guy Bechor, *Between Peace at Home and Peace with Israel*, HA'ARETZ, Mar. 4, 1996, at B3. Even after the most recent suicide bombings in Tel Aviv and the Gaza Strip, Arafat continues to hold meetings with leaders of Hamas (Hamas is an Arabic acronym meaning zeal or fervor). The movement's full Arabic name is *Harakat al-Muquwama al-Islamiyya* which translates as the "Islamic Resistance Movement." *See* Justus R. Weiner, *Israel's Expulsion of Islamic Militants to Southern Lebanon*, 26(2) COLUM. HUM. RTS. L. REV. 357, 380-385 (1995). *See* Arieh O'Sullivan, *Hamas Activists Arrested*, JERUSALEM POST, Apr. 23, 1997, at 2. In the view of one Israeli critic of the peace process, Arafat derives political advantage from *Hamas* terrorism: It allows him to play a "good cop-bad cop" game. The worse *Hamas* looks, the more appealing Arafat is in contrast. Arafat can play the terror card and weaken Israeli resolve by backing *Hamas* in private, while reaping the benefits of Israeli concessions in the public negotiations. Arafat will be able to claim that he is doing his best to control terrorism - after all, even Israel could not block all attacks - and to do a better job he needs more forces, more equipment, and more authority. *See* YECHIEL LEITER, CRISIS IN ISRAEL: A PEACE TO RESIST 57-58 (1994).

210. As regarding security cooperation, Israel is apparently hedging its bets. Following shooting attacks by the Palestinian Police, the IDF has prepared contingency plans and carried out training exercises to prepare for entering the areas under Palestinian self rule. *See* Arieh O'Sullivan, *IDF Training for War with PA*, JERUSALEM POST, Sept. 28, 1997, at 1; *see, e.g., Ha'aretz* (BBC Short Wave Broadcast, Tel Aviv, Nov. 26, 1996) (ME/2780 MED/7)). Although the government rejected their assessment, Israeli Military Intelligence and the General Security Service steadily warned of the likelihood of a new Palestinian uprising characterized by gun battles with Palestinian forces. *See* O'Sullivan, *supra* note 210, at 1.



committees' relations, provided they do in fact meet. Where one side incites the population,[211] even in spite of explicit calls for restraint in the agreements,[212] while refusing to admit that cooperation is taking place,[213] there certainly needs

211. Far from preventing incitement, Arafat has been a major source of it throughout the peace process. A few months after signing the DOP, he was taped during a speech in a mosque exhorting those present to wage a *jihad* with the goal of liberating Jerusalem. *Jihad* is Arabic for to strive or holy war against the non-Muslim. *See* David Pryce-Jones, THE CLOSED CIRCLE 322 (1989). Arafat also likened the DOP to the peace agreement signed by the Prophet Mohammed with the Quraysh tribe, and then abrogated ten years later. *See* P.L.O. Chairman Yasser Arafat, *Speech on Jerusalem to South African Muslims, in Johannesburg, South Africa* (May 10, 1994), *in* 24 J. PALESTINIAN STUD. 131, 132 (1994); David Makovsky, *Rabin: Arafat's Call for Jihad Puts Peace Process in Question*, JERUSALEM POST, May 18, 1994, at 1; *but see* Walid Awad, *Jihad of Peaceful Struggle*, JERUSALEM POST, Oct. 6, 1995, at 7. Arafat has lauded the memory of slain Palestinian terrorists by referring to them as martyrs. *See, e.g.*, Ze'ev B. Begin, *Oslo and Mideast Logic*, JERUSALEM POST, Jan. 17, 1996, at 6. (This reference was to Yihye Ayash, the master bomb-maker whose suicide bus bombings killed scores of Israelis). Despite recriminations, Arafat continued to frequently call for *jihad* and the use of violence against Israel. In November 1996, Netanyahu's office prepared a paper featuring ten such statements that Arafat had made in the previous months. *Voice of Israel* (BBC Short Wave Broadcast, Jerusalem, Nov. 27, 1996) (ME/2781 MED/5).

A new low in inciting propaganda was reached in April 1997 when the Palestinian Representative to the United Nations Commission on Human Rights Nabil Ramlawi accused Israel of "infecting by injection 300 Palestinian children with the HIV virus during the years of the intifada." Uriel Heilman, *UN Won't Counter Palestinian AIDS Allegation*, JERUSALEM POST, Apr. 11, 1997, at 18. Also, the PA's security chiefs organized weeks of low-intensity intifada-type violence after the Har Homa controversy erupted, enabling Arafat to use violence as he condemned it. Ian Black, *Nails Hammered into Coffin of Peace*, THE GUARDIAN, Apr. 2, 1997, at 7.

212. *See, e.g.*, Cairo Agreement, *supra* note 21, at Annex I, art. 18 (the Prevention of Hostile Acts, which follows the stated aim of creating a positive and supportive public atmosphere in art. 20, which regards confidence building measures).

213. In mid-April 1997, a media report indicated that Arafat had ordered Palestinian security forces to renew cooperation with their Israeli counterparts, ending a one-month break in contacts. Arafat had suspended the contacts in mid-March after construction began at Har Homa. Reports indicated, however, that the PA officially denied any cooperation was taking place and that Dennis Ross was dispatched to the Middle East in an attempt to persuade the Palestinians to resume security ties. *See, e.g.*, Hillel Kuttler, *Ross to Present New Peace Proposals*, JERUSALEM POST, May 4, 1997, at 1. Individual Palestinians who do provide information to Israel are branded as 'collaborators' and treated severely by the PA's security apparatus. Thus, when Israel passes on information to PA officials concerning planned attacks, the Palestinian police takes action against the intelligence source rather than the terrorists. *See generally* Boaz Ganor, *Israeli Counterterrorism in the Shadow of Oslo*, The Shalem Center, POLICY VIEW, Dec. 10, 1995, at 124.

The Head of the Palestinian General Intelligence Amin Al-Hindi told an in-

Perpetrators of terrorist attacks within Israel often escape punishment by fleeing to the PA self-governed areas, and Israel has had no success persuading Arafat to transfer them for trial in accordance with the Oslo II Agreement.[208] Even before the Al-Aqsa intifada, the PA's ineffectual response to the terrorists' suicide bombings, drive-by shootings, roadside bombs, kidnappings, and knife attacks has contributed to delays in the peace process and has threatened its continuance.[209]

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210. As regarding security cooperation, Israel is apparently hedging its bets. Following shooting attacks by the Palestinian Police, the IDF has prepared contingency plans and carried out training exercises to prepare for entering the areas under Palestinian self rule. *See* Arieh O'Sullivan, *IDF Training for War with PA*, JERUSALEM POST, Sept. 28, 1997, at 1; *see, e.g., Ha'aretz* (BBC Short Wave Broadcast, Tel Aviv, Nov. 26, 1996) (ME/2780 MED/7)). Although the government rejected their assessment, Israeli Military Intelligence and the General Security Service steadily warned of the likelihood of a new Palestinian uprising characterized by gun battles with Palestinian forces. *See* O'Sullivan, *supra* note 210, at 1.



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212. *See, e.g.*, Cairo Agreement, *supra* note 21, at Annex I, art. 18 (the Prevention of Hostile Acts, which follows the stated aim of creating a positive and supportive public atmosphere in art. 20, which regards confidence building measures).

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Perpetrators of terrorist attacks within Israel often escape punishment by fleeing to the PA self-governed areas, and Israel has had no success persuading Arafat to transfer them for trial in accordance with the Oslo II Agreement.[208] Even before the Al-Aqsa intifada, the PA's ineffectual response to the terrorists' suicide bombings, drive-by shootings, roadside bombs, kidnappings, and knife attacks has contributed to delays in the peace process and has threatened its continuance.[209]

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to be some form of grass roots approach. Instead of focusing on existing structures, or the details of cooperation, the WRM introduces a new element with a very broad scope — U.S. involvement through the Trilateral Committees. However, this largely political factor was introduced through the institutional structure of the agreements. It could represent the failings of a purely structural approach to bringing the parties together, in which case hopes for a permanent, governing situation without a third party might seem problematic, if not impossible, in the future. The changes could be seen as relatively minor, also implying that they are of no concern, that they are effective, or the most effective structure that has been envisioned so far.

### *B. Civil Affairs*

#### 1. General

Cooperation in the civil sphere is structurally similar to that of coordinated security issues established in the agreements. The DOP states that authority over the Gaza Strip and Jericho will be transferred to the PA, and specifies the immediate transfer of authority over education and culture, health, social welfare, direct taxation, and tourism, pending the establishment of the Palestinian Council[214] upon which the Israeli Civil Administration would be completely withdrawn.[215]

Annex II of the DOP states that the Interim Agreement should include an economic development and stabilization pro-

terviewer, "[i]t is wrong to say that the Israeli side benefited from these arrangements [security coordination], as we have never revealed any piece of information that could harm the Palestinian side. Neither [two leaders of Hamas] . . . a detainee inside a PNA prison, nor any other Palestinian will be handed over to Israel. Interview of Amin Al-Hindi, *Security Demands*, BILADI THE JERUSALEM REPORT, Jan. 24, 1997, at 6.

214. *See* DOP, *supra* note 26, at art. 6.

215. *See* DOP, *supra* note 26, at art. 7, para. 5. To the extent that areas of economic concern overlap and come under provisions for civil cooperation it may be noted that the DOP also specifies certain economic measures to be taken by the PA, and that an Israeli-Palestinian Liaison Committee should be established to promote the development of the West Bank, the Gaza Strip and (the rest of) Israel whilst also recognizing that both parties view multilateral working groups as an appropriate instrument for promoting the "Marshall Plan," the regional programs and other programs including special programs for the West Bank and Gaza Strip.



gram.[216] It is also mainly concerned with Israeli-Palestinian cooperation in Economic and Development Programs, as well as providing for the establishment of an Israeli-Palestinian Continuing Committee for Economic Cooperation.[217]

Annex IV to the DOP provides for an Economic Development Program for the West Bank and Gaza Strip,[218] creating numerous multilateral working groups.[219]

The Cairo Agreement[220] requires the Civil Administration to transfer authority in specified areas over the Gaza strip and Jericho[221] to the PA. In doing, it compels the former to provide all the necessary assistance to the Palestinian Council including access to offices, registers, records, etc.,[222] required for the transfer of powers and responsibilities. The Cairo accord also stipulates that Israel transfer offices, equipment, registers, files, and so forth,[223] and immovable property nec-

216. Including the establishment of an Emergency Fund, to encourage foreign investment, and financial and economic aid in support of which both sides are to coordinate and cooperate jointly and unilaterally with regional and international parties. *See* DOP, *supra* note 26, at Annex II, para 3(g).

217. Specifying the fields of water, electricity, energy, finance, transport and communications, trade, industry, labor relations and social welfare issues, human resources development, environmental protection, communication and the media as areas of cooperation as well as any other programs of mutual interest. *See* DOP, *supra* note 26, at Annex III, paras. 1-12.

218. Including a Social Rehabilitation Program, Small and Medium Business Development Program, Infrastructure Development Program (water, electricity, transportation and communications etc), a Human Resources Program, and provision for other programs and a Regional Economic Development Program which may include the establishment of a Middle East Development Fund, a Middle East Development Bank, the development of a joint Israeli-Palestinian-Jordanian Plan for coordinated exploitation of the Dead Sea area, the Mediterranean Sea (Gaza) and Dead Sea Canal, for regional desalinization and other water development projects, a regional plan for agricultural development, including a coordinated regional effort for the prevention of desertification, the interconnection of electricity grids, regional cooperation for the transfer, distribution and industrial exploitation of gas, oil and other energy resources, a regional Tourism, Transportation and Telecommunications Development Plan, and furthermore, regional cooperation in any other spheres.

219. The two sides are to encourage these, coordinate towards their success, encourage intercessional activities as well as pre-feasibility and feasibility studies within the various multilateral working groups. *See* DOP, *supra* note 26, at Annex III.

220. Cairo Agreement, *supra* note 21, Annex II, art. 2, para. A(2).

221. *See id.* at Annex I, arts. 1, 3; *Id.* at Annex II, art. 2.

222. Systems and equipment and all necessary information, data and statistics.

223. Computer programs, reports, archives, records, maps, scientific data, relevant licenses, installations, registers and other movables.

essary for the functioning of the PA. Arrangements were required for the transfer of funds, assets and contracts particularly in regard to the transfer of treasury responsibilities.[224]

The Cairo Agreement further necessitates means of communication to be set up so as to ensure efficient and direct contact 24 hours a day to deal with any urgent matter arising in the civil affairs field[225] (a provision restated in Oslo II).[226]

The Transfer Agreement, which similarly warrants the transfer of specified areas of civil authority over the West Bank,[227] contained a similar provision regarding assistance to the Council.[228] Oslo II, which provides for the complete withdrawal of the Civil Administration in the West Bank after the inauguration of the Council,[229] repeats the words of the Cairo Agreement and includes the provision regarding the establishment of effective means of communication.[230] The Hebron Protocol transfers to the PA certain civil powers and responsibilities.[231] The WRM recognizes the parties agreement to continue to use, or to reactivate all standing committees established by Oslo II, including the Joint Civil Affairs Coordination and Cooperation Committee ("CAC"), though apparently with the objective of promoting economic development.

The provisions for the transfer of civil authority have been better complied with than those requiring redeployment.

224. *See* Cairo Agreement, *supra* note 21, Annex II, art. 2, paras. A(2), B(38).
225. *See id.* at Annex II, art. 1, para. C(1).
226. *See* Oslo II, *supra* note 24, at Annex III, art. 1, para. 4(a).
227. *See id.* at Annex III, arts. 2-5.
228. *See* Transfer Agreement, *supra* note 37, at art. 4.
229. *See* Oslo II, *supra* note 24, at Annex I, art. 9.
230. *See id.* at Annex III art. 3; *id.* at Annex III, art. 39, app. 1.
231. *See* Hebron Protocol, *supra* note 46, pt. 2. For sanitation, health, postal delivery, traffic and education for all residents of Hebron except for the Israelis living in H-2. There specified are limitations on construction in H-1 regarding the height of buildings, which might conceivably be used for sniping into H-2, and limitations on construction of factories that could adversely affect the environment.

Specific responsibility is assigned to the Palestinian Police to protect four Jewish holy sites in H-1, and the visitors to these sites are to be accompanied and protected by a Joint Mobile Unit. The Palestinians shelved their demand to help provide security in the Tomb of the Patriarchs, although the demand was to be reassessed three months after the pullout. In an article entitled "Normalization of Life in the City," both sides "reiterate their commitment to maintain normal life throughout the City of Hebron and to prevent any provocation or friction that may affect the normal life in the city." This end is to be achieved by taking "all steps and measures necessary." Hebron Protocol, *supra* note 46, pt. 7.



### 2. The Joint Civil Affairs Coordination and Cooperation Committee

In the Cairo Agreement, the civilian equivalent of the JSC, the CAC,[232] was established to provide for coordination and cooperation in civil spheres between the PA and Israel.[233] The functions of the CAC were to coordinate between both the PA and Israel, including Israel's remaining Civil Administration in the West Bank. It was to continue to be responsible for everyday civil matters consisting of: (1) the transfer of civil powers and responsibilities; (2) matters arising with regard to infrastructures, requiring coordination as stipulated; (3) questions regarding passage to and from the Gaza strip and Jericho and safe passage between them, including crossing points and international crossings; (4) day-to-day contacts between the two sides; and (5) joint projects, and any other matters requiring coordination and cooperation.[234] The CAC was required to meet at least once a month unless otherwise agreed.[235] With regard to matters of policy and principle, the CAC was required to function under the direction of the JLC.[236]

The Transfer Agreement simply states that the CAC should deal with all issues of mutual concern regarding the Agreement,[237] i.e. issues of cooperation regarding civil administration in the West Bank,[238] and that its operation should not impede the daily contact between representatives of the Civil Administration and the PA in all matters of mutual concern.[239]

Oslo II restates the more detailed provisions in the Cairo Agreement, extending them to cover the West Bank, stating that it should additionally deal with relations between the two sides in civil matters pertaining to issues such as the granting of permits, as well as matters dealt with by the various Profes-

232. *See* Cairo Agreement, *supra* note 21, at Annex I, art. 3, para. 5; *Id.* at Annex II, art. 1(A), para 1.
233. *See id.* at Annex I, art. 3, para 5.; *Id.* at Annex II art. 1(A), para. 1.
234. *See id.* at Annex II, art. 1(A).
235. *See id.* at Annex II, art. 1(A). Like the JSC, the CAC was to determine its own rules of procedure.
236. *See id.* at Annex II, art. 1(A).
237. *See* Transfer Agreement, *supra* note 37, at art. 4, para. 1.
238. *See id.* at art. 2.
239. *See id.* at art. 10, para. 2.

sional Committees established in civil matters in Annex III to Oslo II.[240] Arrangements by the PA for civilian inspectors monitoring compliance with laws and regulations within the powers and responsibilities transferred to it in Area C must be appoved by the CAC.[241] As mentioned, the WRM recognizes the agreement by the parties to continue to use or reactivate the CAC.

The CAC has been created to coordinate cooperation in civil authority through the Joint Regional Civil Affairs Subcommittees ("RCACs") and the established Professional Committees. The CAC attempts to meet an average of two to three times a year as a complete committee, which would include all the heads of both the RCACs and Professional Committees, such as, *inter alia*, electricity, water and transportation. However, contact between the heads of the CAC, General Ya'acov Orr for Israel and Jamil Al-Tarifi for the PA, in addition to the coordinators, generally occurs on a weekly basis. While this explicitly "is not a committee meeting ... it is definitely a mechanism."[242] As mentioned above, the Cairo Agreement did state that the CAC was not required to meet monthly if it deemed it unnecessary, and apparently the frequent contact of committee heads and members has proved somewhat effective in the civil sphere.

### 3. The Joint Regional Civil Affairs Subcommittees

Two Subcommittees, analogous to the RSCs, were established in the Cairo Agreement to deal with the "day-to-day civil affairs" of the CAC, to convene no less than every two weeks.[243] The Subcommittees were permitted to establish ad hoc working groups if and when the need arose.[244] Oslo II adopts these groups, renaming them the RCACs; one for the West Bank and one for the Gaza Strip, specifying that they should deal with the respective regional civil matters referred to them by the District Liaison Offices, while matters of principle and policy not settled within the RCAC should be passed on to the CAC.[245]

240. *See* Oslo II, *supra* note 24, at Annex III, art. 1, paras. 1(c), 4, and 5.
241. *See id.* at Annex III, art. 4, para. 6(a), (b).
242. Interview with Mordechay Cristal, *supra* note 87.
243. *See* Cairo Agreement, *supra* note 21, at Annex II, art. 1, para. B(1)-(4).
244. *See id.* at Annex II, art. 1, para. B(4).



While the RCACs are required to meet no less than every two weeks as stipulated by the Cairo Agreement, these committees meet only once or twice a month as full committees. However, just as in the case of the CAC, the members and heads of these committees are in constant dialogue, handling everyday issues. In some instances where official meetings are not being held, interaction and progress are actually taking place on a daily or weekly basis.[246]

### 4. District Civil Liaison Offices

In addition, Oslo II introduces the equivalent of the DOCs, the DCLs,[247] to assist with the prosaic civil affairs of the CAC.[248] The DCLs are to operate on a daily basis, and representatives of the DCLs are required to meet daily, while the heads of the respective DCLs are to convene official meetings at least once a week.[249] The composition of the DCLs is not specified.

### 5. Hebron

The Hebron Protocol recognizes that civil powers and responsibilities had not been transferred, and states that the transfer must occur concurrently with the beginning of redeployment, which had also not taken place.[250] The Protocol makes the exception in area H-2, in which civil responsibility is transferred, for matters relating to Israelis and their property.[251] Special provisions are established regarding planning,

245. *See* Oslo II, *supra* note 24, at Annex III, art. 1, para. 2.
246. Interview with Mordechay Cristal, *supra* note 87.
247. In Jenin, Tulkarem, Kalkilya, Nablus, Ramallah, Bethlehem, Hebron and Jericho. Oslo II provides for their establishment in the Gaza Strip. *See* Oslo II, *supra* note 24, at Annex III, art. 1, para. 3(a)-(c).
248. *See id.*
249. *See id.* at para. 3(d).
250. *See* Hebron Protocol, *supra* note 46, at para. 10.
251. *See id.* at para. 10.

zoning and building, to be coordinated through the DCL in Hebron.[252] In addition the DCL is to be informed of activity regarding the infrastructure, and may request the municipality carry out works regarding roads or infrastructure.[253]

A traffic regime is established, and further cooperation is to be carried out through the transportation sub-committee.[254] Municipal inspectors are created, and it is acknowledged that they may require the assistance of Israeli Police through the DCL of Hebron to carry out their enforcement activities in area H-2.[255] Municipal services are to be provided regularly and continuously without discrimination.[256]

### 6. Specific Spheres of Authority

As mentioned above, the DOP suggests in which spheres authority is to be transferred.[257] The Cairo Agreement detailed provisions in no less than 38 areas.[258] The Transfer Agreement provided a limited list of areas of transfer.[259]

Most comprehensively, Oslo II sets out areas of authority transferred to the PA,[260] which are more simply laid out in the Cairo Agreement and where cooperation is specifically mentioned.[261] Uniquely in relation to cooperation over water

252. *See id.* at para. 11.
253. *See id.* at para. 12.
254. *See id.* at para. 13.
255. *See* Hebron Protocol, *supra* note 46, at para. 14.
256. *See id.* at para. 16.
257. *See* DOP, *supra* note 26, at art. 6.
258. *See* Cairo Agreement, *supra* note 21, Annex II, art. 2, para. B.
259. *See* Transfer Agreement, *supra* note 37, art. 2 (covering education and culture, health, social welfare, tourism, direct taxation and VAT on local production, detailed in Annexes I through VI of the Agreement (art. 3, para. 1)).
260. *See* Oslo II, *supra* note 24, at Annex III, app. 1, arts. 1-40. The Agreement also states that withdrawal of the military government does not prevent it from exercising the powers and responsibilities not transferred to the PA, whatever these might be. *See id.* at art. 1, para. 5. They are phrased as such to provide as a precaution against the possible creation of a vacuum in administration areas.
261. *See* Oslo II, *supra* note 24, at Annex III, app. 1. Examples include:

(1) a Joint Committee of experts in archaeology which is to be established by the CAC to deal with issues of common interest (art. 2, para. 4);
(2) cooperation between the Bank of Israel and Palestinian Monetary Authority (art. 4);
(3) the provision that the Israel Electric Company continue to supply the electricity in order to meet existing and future expected demand in the West Bank (art. 10, para. 3);
(4) cooperation over environmental protection including an Environmental Experts Committee for environmental cooperation and understanding (art. 12, para. B);
(5) the provision that the health systems of Israel and of the Palestinian side are to maintain good working relations in all matters including mutual assistance in providing first aid, in cases of emergency, medical instruction, professional tracing, and exchange of information (art. 17, para. 7);
(6) the provision that the two sides are to agree on methods of cooperation regarding the protection and preservation of Nature Reserves, through a Joint Committee of Experts from the two sides (art. 25, para. 4);
(7) that both sides respect and protect listed religious rights of Jews, Christians, Moslems and Samaritans; protection of Holy Sites, free access to Holy Sites and freedom of worship and practice (art. 32);
(8) that without derogating from provisions in the Protocol on Economic Relations, a Joint Committee to be established through the CAC to facilitate coordination and cooperation on day to day tourism issues (art. 37);
(9) that while respecting each side's powers and responsibilities in the sphere of water and sewage in their respective areas, both sides agree to coordinate the management of water and sewage resources and systems in the West Bank during the interim period (art. 40, para. 3), and that in order to implement their undertakings under the Article, the two sides to establish a permanent Joint Water Committee (JWC) for the interim period under the auspices of the CAC (art. 40, para. 11) and Joint Supervision and Enforcement Teams (art. 40, para. 17), detailed in schedules 8 and 9 of Annex III respectively.

262. *See* Oslo II, *supra* note 24, at Annex II, app. 1, art. 40, paras. 16-17, detailed in Schedule 9.
263. Interview with Mordechay Cristal, Civil Negotiator for Coordination of Government Activities in the Territories, in the Ministry of Defense in Tel Aviv, Israel (June 14, 1999).



and sewage, the Agreement cites that both sides recognize the need to establish a joint mechanism for supervision over, and enforcement of, their agreements in the West Bank (Joint Supervision Enforcement Teams).[262]

The Professional Committees acting under the RCACs and the CAC convene with different frequency due to their respective needs, the political and legal weight that their issues carry, as well as the degree of mutual interest in the field. For example, the need for the Agriculture Committee to convene frequently is not great, because the ministries interact on a daily basis. They may meet to "save the mechanism as a mechanism,"[263] but when concerns of principle arise, these may be addressed at the RCAC or CAC levels. Electricity is similar in that the meetings are not consistently held, rather the officials from Israel and the PA confront matters of a daily nature.

When matters require input because of the possible political repercussions, or there is simply a "serious professional debate, a deadlock,"[264] the RCAC and CAC are used to reach professional and political settlements. When there is mutual interest, as with employment, these mechanisms can be effective, whereas when there is not, as in the case of environmental concerns,[265] they are virtually non-functional.

The Professional Committees that have operated are the Agricultural, Employment, Postal, Environmental, Telecommunications, Transport, Electricity, Population Registry, and Water Committees. Ad hoc mechanisms have been established where necessary, as in the case of the Water Committee, with the creation of technical subcommittees for, *inter alia*, pricing, drilling and pipelines. However, there still remain untouched issues of vital concern. Coupled with final status controversies, this complex bureaucratic structure ignores the most pressing matters, such as sewage.[266] This vividly illustrates both political and bureaucratic weakness of the structure, considering the area of failure in this case.

### C. *Economic Cooperation*

264. *Id.*

265. The interest of environmental protection and preservation is not the primary concern of the PA, considering that economic considerations come before all else. This is undoubtedly the trend of any "developing" or newly forming entity.

266. The Palestinian Israeli Water Committee met to discuss the findings of a report released by the Institute for Peace Implementation ("IPI") in which the Water Commission and Palestinian Water Authorities blamed both Israel and Palestinian Authorities for the deterioration of sewage pollution. Jerusalem Post Staff, *West Bank Water Pollution at "Dangerous Level"*, JERUSALEM POST, Apr. 30, 1997, at 2. The report suggests that a joint effort to purify waste water would solve the problem, but issues such as how to allocate the purified water and where to build treatment plants which could affect final status arrangements, would cause delay in resolving the problem. The IPI studies involved implementing permanent status arrangements as well as economic development and democratization in the region. *See id.*



#### 1. Economic Relations, Agreements and the Joint Economic Committee

The DOP specifies extensive economic measures to be taken by the PA.[267] In addition, it indicates that an Israeli-Palestinian Liaison Committee should be established to promote the development of the West Bank, the Gaza Strip and the rest of Israel.[268] At the same time, the DOP recognizes that both parties view multilateral working groups as an appropriate instrument for promoting the "Marshall Plan," the regional and other programs, including special plans for the West Bank and Gaza Strip.[269]

The preamble to Annex IV of the Cairo Agreements, the Protocol on Economic Relations, stated that the two parties view the economic domain as a cornerstone in their mutual relations. The JEC was established to serve as the continuing committee for economic co-operation envisaged in Annex III of the DOP.[270] Like Annex II, concerning civil affairs, Annex V contained a list of the areas of transfer of economic responsibility and specified areas of coordination.[271]

Oslo II adopts a similar Protocol.[272] It adds that the JEC should follow up the implementation of the Protocol, decide on problems related to it that may arise, and review issues related to the Agreement on request of either party. It additionally details areas of cooperation and transfer.[273] These areas over-

267. *See* DOP, *supra* note 26, at art. 7, para. 4.

268. *See id.* at art. 11.

269. *See id.* at art. 16.

270. *See* Cairo Agreement, *supra* note 21, at Annex IV, art. 2. Like the JSC and CAC, it was to consist of equal numbers of members from each side, to come to decisions by agreement and determine its own rules of procedure. *See id.* at paras. 3-4.

271. *See id.* at Annex IV, arts. 3-11.

272. *See* Oslo II, *supra* note 24, at Annex V.

273. *See id.* at Annex V, arts. 3-11. Oslo II requires:

(1) coordination in certain areas relating to the import tax regime and import policy of the PA by the JEC or a sub-committee established by it (art. 3, para. 16);

(2) the establishment of a mechanism for cooperation and for the exchange of information between the Bank of Israel and the Palestinian Monetary Authority (art. 4, para. 9(f));

(3) discussion through the JEC of the possibility of introducing mutually agreed Palestinian currency (art. 4, para. 10(b));

(4) exchange of currency between the BOI and PMA and these two to meet annu-

lap considerably with Annex III Concerning Civil Affairs,[274] and the Standing Cooperation Committee ("SCC").

A joint economic conference met in Paris in 1993 to set a framework for economic cooperation. Both sides emphasized the centrality of economics to the success of the peace process and the need for cooperation. However, the Palestinians focused on cooperation between two independent entities, while the Israeli delegation suggested cooperation devoid of barriers. Three subcommittees were established in addition to the JEC;

ally to discuss and determine the annual amount of convertible NIS during the following calendar year and to meet semi-annually to adjust the amount (art. 4, paras. 16-20);
(5) a provision that Israel transfer 75% of income tax collected from Palestinians from the Gaza Strip and the Jericho area employed in Israel, and the full amount of income taxes collected from Palestinians from the Gaza Strip and Jericho Area employed in the settlements, and that the two sides agree on a set of procedures to address all issues concerning double taxation (art. 5, paras. 4-5);
(6) that the two sides establish a sub-committee to deal with the implementation arrangements regarding the clearance of VAT revenues (art. 6, para. 5(11));
(7) that Palestinian side has the right to regulate the employment of Palestinian labor in Israel through the Palestinian employment service, and the Israeli Employment Service to cooperate and coordinate in this regard (art. 7, para. 1);
(8) that Palestinians employed in Israel to be insured in the Israeli social insurance system (art. 7, para. 2(a));
(9) that the JEC to meet at the request of either side and review the implementation of Article VII and other issues involving labor, social insurance and social rights (art. 7, para. 10);
(10) provisions regarding the free movement of agricultural produce (subject to certain exceptions) (art. 8, para. 1);
(11) the establishment of sub-committees of the respective official veterinary (the Veterinary Sub-Committee) and plant protection services (art. 8, para. 14);
(12) provisions regarding the free movement of industrial goods subject to each side's legislation (art. 9, para. 1) JEC to meet and review issues pertaining to Article IX on industry (art. 9, para. 7);
(13) the provision that JEC or a tourism sub-committee established by it to meet on the request of either side the implementation of art. 10 on Tourism and to discuss and consider tourist issues of benefit to both sides, to promote educational programs for tourism entities of both sides in order to further their professional standards and their ethics (art. 10, para. 9), and that complaints of one side against the behavior of tourism entities of the other side are to be channelled through the committee; The PA to maintain compulsory absolute liability system for road accident victims, and any change requires prior notice to the other side (art. 11, para. 2(a), (c));
(14) the two side are required to establish immediately upon the signing of the Agreement, a sub-committee of experts (the Sub-Committee) to deal with issues regarding the implementation of art. 11 on insurance (art. 11, para. 10(a)).

274. *See, e.g.*, Oslo II, *supra* note 24, at Annex III, app. 1, arts. 4 (on banking and monetary issues), 6 (containing provisions regarding commerce and industry), 8 (on direct taxation), 18 (on indirect taxation), and 19 (on insurance).



one to deal with trade and labor issues, another with fiscal matters, and the third with finance and banking.[275]

The WRM strongly emphasizes cooperation in the interest of promoting economic development in the West Bank and the Gaza Strip.[276] The parties are stated to have agreed to continue or to reactivate all standing committees established by Oslo II. These include the JEC, the MSC, the CAC, the Legal Affairs Committee ("LAC"), and the SCC in the same section of the Memorandum emphasizing the importance placed on the provisions relating to economic issues.[277]

Strategic economic dialogue is to be launched within the framework of the JEC and with an additional Ad Hoc Committee.[278] This is to review Israeli purchase taxes, cooperation in combating vehicle theft (apparently a civil or legal concern), dealing with unpaid Palestinian debts, and the impact of Israeli standards as barriers to trade (and the expansion of A1 and A2 lists).[279]

The WRM refers to agreements reached on the opening of the Gaza Industrial Estate and the International Airport in the Gaza Strip.[280] Uniquely, these committees have fulfilled their purpose, although the reasons for their success may be their relatively specific aims and the willingness of both sides to compromise. The issues represent the common desire for greater economic independence amongst the Palestinian population and concessions in this area do not appear to be a defeat in any way, while significant for both sides. The achievement in the agreements is more in the details of how these projects

275. Israeli representatives included the Finance Minister Avraham Sharon. The Palestinian delegation was led by Abu Ala. Ala, focusing on respect for his side's opening, stated in his opening speech, "the economic issue is one of the main issues in the peace process and I believe that cooperation between us on a basis of parity and equality will create and motivate this process and make a real change on the ground (to meet) the aspirations of our people." Josh Rosenfeld, *Shohat Makes Goodwill Gesture to the Palestinians. Cooperation Offer at Economic Talks*, JERUSALEM POST, November 17, 1993, at 1. Sharon proposed sharing the benefits and market access the country draws from its international trade agreements. *See id.*

276. *See* WRM, *supra* note 52, at pt. III, paras. 6, 7.

277. *See id.* at pt. III, paras. 1, 6, 7.

278. *See id.* at pt. III, para. 6.

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279. *See id.* at pt. III, para. 6.

280. *See id.* at pt. III, para. 2. The Memorandum requires negotiations on the Port of Gaza to take place as well. *See id.* at pt. III, para. 4.

could be pursued rather than settling whether they would be able to at all. This appears to support the notion that compromise and coordination are certainly possible and can be effective provided there is some basic agreement, even though the outcome requires subtle, patient development; particularly in order to maintain the mutual trust that resulted in the initial point of consensus.

The two sides agree on the importance of continued international donor assistance to facilitate implementation. In the interests of enhanced donor support, the parties are said to agree on jointly approaching the donor community to organize a Ministerial Conference to seek pledges of such assistance.[281]

The JEC meets once a month on average, with the respective officials in contact on a weekly basis. Despite mutual interest on many issues, seeming progress is offset by politically fueled hesitation, the A-1 list in WRM being a prime example.[282] Another case is the lack of joint promotional efforts for tourism in the year 2000.[283] Considering the projected opportunities for both the Palestinian and Israeli economies, this is clearly an area where mutual interest has not been exploited to its potential,[284] and may turn out to be an area of tension instead of collaboration.

281. *See id.* at pt. III, para. 7.

282. Confidential Interview with Senior Israeli Official involved in the Oslo Peace Process, in Jerusalem (Jan. 4, 1999). In WRM, 4 issues of pending economic concern were brought to the JEC to be addressed, 2 of Israeli interest and 2 of Palestinian interest. The 4 were to be completed as a package within the delegated time of the Memorandum. One of the Palestinian demands was the expansion of the A-1 list, whereby Israel would grant importation of goods from Jordan and Egypt at reduced or duty free expense.

Israel agreed to 75% of the goods on the A-1 list, but with the decision for early elections, the WRM was frozen, and "we put everything on hold. And then after . . . King Hussein passed away and the new King ... took power, and Netanyahu and Sharon went to Jordan, they said, let's split the issue of the list because the list is also assisting Jordan, because the Palestinians are also allowed to import from Jordan. So this was an issue in favor of Jordan, let's take it from the package and deal with it . . . What happened is that when Israel invited the Palestinians, we said . . . [for] now it will be only for Jordanian products, not Egyptian products, so they said no, we don't want to sign this extended list . . . (a) because we don't want to give you any political rewards during [the frozen Wye period], we don't want to show any progress with this process, and (b) we think that Egypt also should be included . . . This is an example of an issue that was agreed, professionally it was agreed, it benefit the Palestinians, it doesn't harm Israelis, but because of political reasons."

283. Confidential Interview with Senior Israeli Official, *supra* note 282. "The higher level of cooperation we have is with the Palestinian Minister of Tourism and the Palestinian Minister in charge of the year 2000 celebration, but they are very limited, they are very restricted because they don't have the green light from the highest level to go on with this cooperation."



### 2. Summary

Both the JEC and the SCC may create sub-committees or working bodies which may include or be assisted by experts.[285] This gives them greater potential to deal with this broad and complex area of responsibility, though this may be a blank check for bureaucratic profligacy.

Financial support can be the deciding factor in the survival of a particular system, and in a largely capitalist world, once peace has been achieved, maximization of wealth is the next major goal. However, this depends on the precondition that peace and security be achieved without stunting economic growth, wasting vast amounts of resources, and destabilizing investment. Although without economic power in a positive or negative sense,[286] it is possible that security could not itself be achieved.

284. *See* Abed Al-Jawad Hassan, *Bethlehem 2000: Behind Schedule?*, THE JERUSALEM TIMES, June 11, 1999, at 7. "[I]n the coming months, the large number of tourists flooding to Palestine could possibly discover that in many respects, its town and cities are not all that they had hoped for. It would not be an exaggeration to say that to date, less than 25 percent of the planned for projects have been carried out, particularly in regard to the various infrastructure projects that were once spoken about so enthusiastically." *Id.* Actually, tourism was quite strong in 2000 until, in late September, the Al-Aqsa intifada created a climate of fear that virtually emptied the hotels and incoming flights.

285. *See* Oslo II, *supra* note 24, at Annex VI, art. 3, para. 2; *id.* at Annex V art. 2, para. 3.

286. That is the ability to fund a particular pursuit or to prevent funding being made available to the pursuits of another.

*D. Legal*

1. Legislation and the Legal Committee

The DOP states that the PA should be empowered to legislate within the areas of authority transferred to it, while both parties are to jointly review laws and military orders presently in force in remaining spheres.[287]

In the Cairo Agreement, legislation promulgated by the PA had to be communicated to a legislation subcommittee, to be established by the CAC (the "Legislative Subcommittee"), in which its validity could be challenged by Israel. The potential urgency of legislation was recognized in the approval procedure; if a decision was reached by the Legislative Subcommittee within fifteen days, the matter was to be forwarded to a board of review made up of jurists.[288] The Legislative Subcommittee was instructed to attempt to reach a decision on the merits within 30 days.

The Transfer Agreement provided a slightly different arrangement whereby legislation is communicated to Israel, which may notify the PA of its opposition within thirty days specifying the reason for opposition. If Israel has no problem with the legislation, it still must inform the PA at the earliest opportunity, though in the absence of opposition the legislation was to enter into force after thirty days regardless.[289] The PA could, in the event of contention, submit a new draft or request a review by the Legislative Subcommittee established under the Gaza-Jericho agreement. The Subcommittee was to attempt to reach a decision on the merits of the matter within thirty days. If it was unable to do so, the PA was entitled to refer the matter to the LC to consider the matter immediately and attempt to settle it within thirty days.[290] The PA could request a speedy review of detailed technical regulations.[291]

Under Oslo II, PA legislation which is inconsistent with the provisions of the DOP or any interim agreements is *void*

287. *See* DOP, *supra* note 26, at art. 9.
288. *See* Cairo Agreement, *supra* note 21, at art. 7.
289. *See* Transfer Agreement, *supra* note 37, at art. 7.
290. *See id.* at art. 7.
291. *See id.* at art. 7.



*ab initio*.[292] Oslo II also states that Israel and the PA should cooperate through the LC.[293] Legislation is to be communicated to the Israeli side of the LC, where it may be challenged. There are no provisions to prevent delay, though the article states that it should consider the legislation at the earliest opportunity;[294] suggesting that the previous procedures were unmanageable.

The WRM states, under the Part entitled "Interim Committees and Economic Issues," that the Palestinian side should provide Israel with copies of all laws in effect.[295] This implies that the process set up under Oslo II was not functioning.

The Legal Committee was established with two sub-committees: (1) the General Legal Affairs Committee, including monitoring legislation, and; (2) the Prisoners Committee. However, due to the lack of mutual interest and shared goals, the LC has met perhaps least frequently and with the least success of all the committees. In the last three years, it is estimated that the LC has convened merely twice, and any other interaction between the Palestinian and Israeli members is limited and unproductive.[296] Considering that next to security, this is the most relevant field, some new legal structure will have to be devised for the final status talks if there is to be hope of cooperation in this area.

2. Cooperation in Criminal Law Fields

The DOP states that the PA's Legislative Council should have jurisdiction over the West Bank and Gaza strip territories except for issues to be negotiated in the permanent status negotiations.[297]

The Cairo Agreement states that the PA should administer justice through an independent judiciary[298] as well as providing for PA jurisdiction in the Gaza Strip and Jericho. Coopera-

292. *See* Oslo II, *supra* note 24, at art. 18.
293. *See id.* at art. 17, para 7.
294. *See id.* at art. 18, para. 6.
295. *See* WRM, *supra* note 52, pt. III, para. 5.
296. *See* Interview with Mordechay Cristal, *supra* note 87.
297. *See* DOP, *supra* note 26, at art. 4.
298. *See* Cairo Agreement, *supra* note 21, at art. 6.

tion is facilitated through a subcommittee of the CAC, detailed criminal and civil jurisdiction, and legal assistance in these fields.[299]

In criminal matters, investigations were to be coordinated and relevant information shared.[300] Where an offense was committed in the territories by an Israeli acting jointly with an individual under Palestinian personal jurisdiction, the two sides were to cooperate in conducting an investigation.[301] If an Israeli committed a crime against person or property, the Palestinian Police, upon arrival at the scene of the offense could, until arrival of the Israeli military forces: (1) detain the suspect in place while ensuring his or her protection and the protection of those involved; (2) prevent interference with the scene of the offense, and; (3) collect the necessary evidence and conduct preliminary questioning. The Palestinian policeman, meanwhile, should immediately notify the Israeli authorities through the DCO.[302]

The PA could take measures necessary in relation to Israeli vehicles or property used in the commission of a crime which presented an immediate danger to public health or safety, but they must notify the Israeli authorities immediately through the relevant DCO.[303] If an Israeli were suspected of committing an offense and were present in the territories, the Israeli military forces could arrest, search and detain the suspect as stipulated. In areas where the Palestinian police exercised powers and responsibilities for internal security and public order, coordination with the Palestinian police was required, including its presence and its assistance in making and following up the arrest.[304] Further cooperation would be obligated in relation to the summons and questioning of witnesses, transfer of suspects and defendants, in the execution of Court Orders for the purposes of investigation, and legal assistance in the conduct of judicial proceedings.[305] For instance, if a non-Israeli suspected of, charged with, or convicted of an offense that fell within Palestinian criminal jurisdiction were

299. *See id.* at art. 5 and Annex III.
300. *See id.* at Annex III, art. 2.
301. *See id.*
302. *See id.*
303. *See* Cairo Agreement, *supra* note 21, at Annex III, art. 2.
304. *See id.* at Annex III, art. II.
305. *See id.* at Annex III, art. 2.



present, outside the territories, the PA could request Israel to arrest and transfer the individual to the PA.[306] If an individual suspected of, charged with, or convicted of an offense that fell within Israeli jurisdiction were present in the territories, Israel could request the PA to arrest and transfer the individual to Israel. The party receiving the request was required to perform the arrest and transfer.[307]

The Transfer Agreement provided very limited responsibility for the PA maintaining the status quo on most legal issues in this regard.[308] However, Oslo II has a very similar protocol to the Cairo Agreement.[309] It seems quite possible that individual officers would not be aware of these provisions let alone their complex details, and the effectiveness of these conditions for cooperation would themselves require cooperation by the relevant authorities in informing their staff of these stipulations. It is likely that they would require significant elaboration in practice, which is apparently an unstated goal for the LC.

The WRM specifies that requests for the arrest and transfer of suspects and defendants[310] be submitted or resubmitted through the mechanism of the LC, with a time limit of up to twelve weeks to respond.[311] U.S. involvement is provided for, which the Agreement states was mandated by both sides, in reporting on a regular basis on the steps being taken to respond to requests.[312] The WRM restates that the Palestinian police are required to exercise powers and responsibilities with due regard to internationally accepted norms of human rights and the rule of law, to be guided by the need to protect the public, respect human dignity, and avoid harassment.[313]

In practice, the transfer of suspects and the procedures that depend on the initial transfer have not proved effective. Even prior to the Al-Aqsa intifada, meetings of the LC were sporadic, and requests are either ignored by the PA or reject-

306. *See id.* at Annex II, art. 2, para. 7.
307. *See id.* at Annex IV, art. 2, para. 7(f).
308. *See* Transfer Agreement, *supra* note 37, at art. 8.
309. *See* Oslo II, *supra* note 24, at Annex IV.
310. In accordance with Oslo II. *See* Oslo II, *supra* note 24, at Annex IV, art. 2, para. 7.
311. *See* WRM, *supra* note 52, at pt. II (C), para. 3.
312. *See id.* at pt. II (C), para. 3.
313. *See id.* at pt. II (C), para. 4.

ed.[314] Two subcommittees of the LC were created to deal with

314. The Oslo II Agreement and its predecessor, the Cairo Agreement, give Israel exclusive criminal jurisdiction over terrorist attacks against Israelis. Yet from the outset of the peace process, the PA has refused to implement mandatory provisions requiring the transfer and trial of persons suspected of terrorism against Israel. *See, Disturbing Pattern of PA Non-Compliance Concerning the Transfer of Terror Suspects to Israel; None of the 16 Terror Suspects Requested by Israel Have Been Turned Over*, PEACE WATCH, Sept. 19, 1995. At first, the rationale for non-compliance was found in the PA's interpretation that only offenses perpetrated *after* the signing of the Cairo Agreement were covered. *See, Transfer of Suspects in Criminal and Terrorist Acts Between Israel and the Palestinian Authority*, PEACE WATCH, Dec. 6, 1994. When Israel subsequently requested the transfer of suspects in attacks carried out after the signing of the Cairo Agreement, the suspects were hastily brought to trial in PA courts, convicted and imprisoned. The PA claims to rely on a loophole in both the Cairo and the Oslo II Agreement that permits "the side receiving the request . . . [to] delay the transfer [of the suspect] for the duration of the detention or imprisonment." Thus, under this bad faith practice, a suspect requested by Israel is protectively sentenced by the PA courts, even though the relevant provisions in the agreements only permit the PA to delay transfer when the suspect is detained in connection with *another* crime. Oslo II, *supra* note 24, at Annex IV, art. 2, para. 7(f)(2); Cairo Agreement, *supra* note 21, at Annex III, art. 2, para. 7(f)(2); *see* Press Bulletin, Israel Government Press Office, State of Israel, Transfer of Terror Suspects to Israel by the Palestinian Authority-Update (Dec. 18, 1996) No. 21 (on file with author).

In December 1996, the Israel Government Press Office, a division of the Prime Minister's office, issued a Press Bulletin detailing the PA's continued failure to honor its obligation to transfer suspects to face trial in Israel. The Bulletin noted that in all but two instances of the 27 persons whose transfer was sought by Israel, the PA had not even responded to Israel's request. *See id.* Moreover, at that time 10 of the 27 terror suspects were either serving in the Palestinian Police, the PA Preventative Security Service or Palestinian Military Intelligence or were in the process of joining their ranks. *See id.* Shortly before the signing of the Hebron Protocol, the PA's Preventative Security Chief Jabril Rajoub rejected transferring two Palestinians who killed two Israeli civilians in a drive-by shooting. He said that any request for transfer, "is a dream and won't happen. You can forget about it." Jon Immanuel & Herb Keinon, *Rajoub: Israel Can Forget About Asking PA to Extradite PFLP Killers*, JERUSALEM POST, Dec. 19, 1996, at 1. Despite Rajoub's attitude which apparently represents the mainstream viewpoint of the PA's leadership, the Note for the Record reiterated the PA's obligation to transfer suspects. Shortly afterwards Minister of Justice Hanegbi threatened that he would "demand a unilateral freeze on all negotiations with the Palestinians" unless the "Palestinian Authority begins fulfilling this part [the transfer of suspects] of the agreement." Hanegbi indicated he would bring a list of 33 Palestinians suspected of murder and other serious crimes against Israelis to his next meeting with the PA Justice Minister. Batsheva Tsur & Jon Immanuel, *Hanegbi to Demand Extradition of 33 Palestinian Suspects*, JERUSALEM POST, Feb. 28, 1997, at 20. Apparently a list of 31 such requests was submitted to the PA in late February. *See*, Margot Dudkevitch, *Palestinian, Israeli Police Officials Meet*, JERUSALEM POST, May 14, 1997, at 2.

In January 1996 the JLC failed to reconstitute after the Palestinian elections since Palestinian Authority Justice Minister Freih Abu Meiden and the newly elected PA had not decided who would hold the justice portfolio. The Israeli



civil legal matters and with questions relating to prisoners, directly in response to what was thought to be a breakthrough in the deadlock through talks between the Israeli Justice Minister and his PA counterpart.[315] The "breakthrough" proved to be illusory.

### 3. Civil Law

In civil law matters, the Cairo Agreement requires cooperation in the service of documents, temporary injunctions, the taking of evidence and the enforcement of judgements.[316] Os

Justice Minister David Libai stated that he would consider the transfer of Israelis guilty of killing Arabs, though he raised the question whether the justification for releasing prisoners, that their crimes were committed for ideological reasons, would equally apply to them. Evelyn Gordon, *Liba'i: Freeing Jews Who Killed Arabs is Possible*, JERUSALEM POST, January 23, 1996, at 2.

A meeting of the JLC was held in February 1996, the first after the Palestinian elections. Liba'i resubmitted 14 requests for the transfer of terrorists. PA Attorney General Khlaid al-Qidrah promised detailed written answers, and stated that he wanted to honor his obligations. Requests for the murderers of Uri Megidish in March 1993, and the murderers of Shlomo Kapah and Gil Revah in August 1994 were previously rejected and other requests ignored. Evelyn-Gordon, *PA to Respond to Extradition Requests*, JERUSALEM POST, Feb. 6, 1996, at 2.

In December 1996, Justice Minister Tzahi Hanegbi made the first formal request for the transfer of the suspects since the Netanyahu government took office. Three other requests were to be submitted at the next meeting of the JLC. There had been no meetings since the elections. The suspects were tried and sentenced to life by the PA, and the PA stated this as the reason for delays in transfer. 15 of the 17 requests by the previous government had been ignored, the other two rejected. Since the offense took place in Israeli controlled areas, under the agreements (*See* Oslo II, *supra* note 24, at Annex III, Section 1) the PA had no authority to try the suspects, an issue that arose in previous incidents. Evelyn-Gordon, *Israel will demand extradition of PFLP killers, says Hanegbi*, JERUSALEM POST, Dec 20, 1996, at 2.

Regarding the PA's failure to keep judicial agreements, Justice Minister Tzahi Hanegbi stated that "there is a deep crisis with regard to mutual trust, cooperation, and the recognition that there is no way back ... a crisis leads to frustration and frustration to despair . . . the most annoying issue is the total infringement of the agreement which obliges the Palestinians to turn over to Israel persons suspected of crimes, for whom an arrest warrant has been issued by the courts at the request of the attorney-general." Batsheva-Tsur, *Hanegbi: PA Violating Judicial Agreements*, JERUSALEM POST, Sept 16, 1997, at 3.

315. *See* Tsur, *supra* note 314, at 2.

316. *See* Cairo Agreement, *supra* note 21, at Annex III, art. 4.

lo II adopts these provisions,[317] though it leaves out stipulations on temporary injunctions.[318]

### 4. General Provisions

While the agreements generally transfer authority to the PA, they state that Israel has the authority over areas not under the territorial jurisdiction of the PA and, to this end, the Israeli military government shall retain the necessary legislative, judicial and executive powers and responsibilities in accordance with international law.[319] Oslo II further emphasizes cooperation to prevent hostile acts[320] and in combating criminal activity which may affect both sides, such as drug related offenses and wide-scale theft.[321] These provisions seem intentionally vague and their effect is unpredictable.

The incarceration of terrorists (with very significant security and political implications) appears to be underemphasized in the agreements, which is a likely source of tension that could have been ameliorated by cooperation through effective lines of communication.[322] It was clear after the Hebron Pro-

317. *See* Oslo II, *supra* note 24, at Annex IV, art. 4.
318. *See id.* at Annex IV, art. 4.
319. *See id.* at art. 17, para. 4.
320. *See id.* at art. 15.
321. *See id.* at art. 22, para. 3.
322. The PA's ineffectual response to the terrorists' suicide bombings, drive-by shootings, roadside bombs, kidnappings and knife attacks has contributed to delays in the peace process and has threatened its continuance. *See* Eytan Rabin, *Two Hikers Murdered in Wadi Kelt; Gang of Terrorists Escaped to Jericho*, HA'ARETZ, Jul. 19, 1995, at A1; Moshe Toubal et al., *5 Killed in Suicide Bombing of Bus in Ramat-Gan*, HA'ARETZ, Jul. 25, 1995, at A1; Serge Schemann, *Bus Bombing Kills Five in Jerusalem; 100 are Wounded*, N.Y. TIMES, Aug. 22, 1995, at A1. *See, e.g.*, Jon Immanuel, *Israel Suspends Talks in Cairo*, JERUSALEM POST, Oct. 12, 1994, at 2; *see, e.g.*, Derek Brown, *Israeli Fears Put Pact With P.L.O. At Risk*, THE GUARDIAN, Dec. 7, 1994, at 14; *see, e.g.*, *A Majority of One*, TIME, Nov. 13, 1995, at 64; Bill Hutman & Raine Marcus, *25 Killed in Jerusalem, Ashkelon*, JERUSALEM POST, Feb. 26, 1996, at 1. Further, Arafat himself has continued to be a primary source of incitement throughout the peace process. *See* discussion *infra* note 211.

Instead of dismantling the infrastructure of Hamas and other organizations sponsoring suicide bombings, the PA has adopted a policy of conciliation backed by limited force. Although the Palestinian Police and security services have carried out arrests and held perpetrators and suspects in custody (*see, e.g.*, Jon Immanuel, *Arafat Pledges To Fight Terror With Israel*, JERUSALEM POST, Mar. 5, 1996, at 2; Jon Immanuel, *PA Releases Three Hamas Prisoners*, JERUSALEM POST, Apr. 28, 1996)), officially banned the organizations (*see* Jon Immanuel, *Arafat Bans Armed Groups, Promises "Serious Steps"*, JERUSALEM POST, Mar. 4, 1996, at. 2), and punished some of those responsible for terrorist attacks (*see, e.g.*, Amira Hess, *Head of Hamas Ring in Ramallah Sentenced to Life Imprisonment in Palestinian Court*, HA'ARETZ, Mar. 7, 1996, at A)), the PA generally favors accommodation (*see The 6 Core Members of Hamas' Military Wing Have Not Yet Been Arrested by PA*, PEACE WATCH, April 1, 1996; *but see, Palestinian Authority Arrested Number 2 on Israeli Wanted List, Muhammed Dief's Subordinate*, HA'ARETZ, April 26, 1996, at A6), and has never comprehensively liquidated the infrastructure of the terrorist organizations. Terrorist suspects arrested by the PA have routinely been released after the political protest from particular attack(s) has passed. *See, e.g.*, Jon Immanuel, *PA Frees Hamas Activists*, JERUSALEM POST, Jan. 29, 1996, at 2; *see* Ze'ev Schiff, *That's Not How You Eliminate Terrorist Organizations*, HA'ARETZ, Mar. 4, 1996, at B1. Perpetrators of terrorist attacks within Israel often escape punishment by fleeing to the PA self-governed areas, and Israel has had no success persuading Arafat to transfer them for trial in accordance with the Oslo II Agreement. *See id.*



tocol that legal, specifically penal, cooperation to combat terrorism was possible. However this has been the clearest area of breakdown in the cooperative institutions, with serious failures in preventing terrorism and violence with profound implications for the peace process as a whole.[323]

The WRM focuses on the primary security issues of incitement and terrorism.[324] Each side is to take such measures as are necessary to prevent acts of terrorism, crime, and hostilities against person or property, and to take legal measures against incitement by any organizations, groups or individuals.[325] The importance of security is reemphasized and is to be achieved in accordance with Annex I to Oslo II. The general preamble on security stresses that measures must be comprehensively aimed at the support structure for terrorism, as well as terrorism itself, and must be operationally cooperative through the joint organs and the exchange of information.[326]

WRM specifies that terrorism and terrorist organizations must be outlawed and a zero tolerance policy adopted, one which must combat those effectively and systematically.[327] A U.S.-Palestinian committee is to be created to review, bi-weekly, steps taken to eliminate terrorist cells and support structures, and to review and evaluate evidence pertinent to decisions on prosecution, punishment and other legal measures affecting the status of individuals suspected of abetting or

323. *See* discussion *infra* note 314. *See also* discussion infra note 322.
324. *See* WRM, *supra* note 52, at pt. II, Preamble.
325. *See id.* at pt. II, para. A(1).
326. *See id.* at pt. II, Preamble.
327. *See id.* at pt. II, para. A(1)(a).

perpetrating acts of violence or terror.[328] To conform with previous agreements, an effective legal framework to make criminal any importation, manufacturing, or unlicensed sale, acquisition or possession of firearms, ammunition, or weapons in the territories concerned must be established by the Palestinian side.[329] A program to collect and appropriate the handling of all illegal items was to be created with U.S. involvement.[330] A U.S.-Palestinian-Israeli committee was to be established so as to assist and enhance cooperation preventing the smuggling or other unauthorized introduction of weapons or explosive materials into areas under Palestinian jurisdiction.[331]

The Palestinian Council agreed to decree the prohibition of all forms of violence and incitement, comparable to the Israeli legislation on the subject.[332] A U.S.-Palestinian committee was to be created to monitor cases of incitement or to make recommendations and reports on how to prevent such incitement.[333] Israel, the Palestinian side, and the U.S., were to each appoint a media specialist, a law enforcement representative, an educational specialist, and a current or former elected official to the committee.[334]

The Memorandum goes on to state that the two sides recognize that unresolved legal issues adversely affect the relationship between the two peoples.[335] It, therefore, states that they will accelerate their efforts through the LC to address outstanding legal issues and to implement solutions to these matters in the shortest possible period.[336] It suggests that the authors of the WRM considered legal measures to be relevant to preventing terrorism.

It is not clear why cooperation in combating vehicle theft is listed as an area to be reviewed by the Ad Hoc Economic Committee created in the WRM which is somehow to act within the framework of the JEC.[337]

328. *See id.* at pt. II, para. A(1).
329. *See id.* at pt. II, para. A(2).
330. *See* WRM, *supra* note 52, at pt. II, para. A(2).
331. *See id.* at pt. II, para. C(2).
332. *See id.* at pt. II, para. A(3).
333. *See id.* at pt. II, para. A(3)(b).
334. *See id.* at pt. II, para. A(3)(b).
335. *See id.* at pt. III, para. 5.
336. *See* WRM, *supra* note 52, at pt. III, para. 5.
337. *See id.* at pt. III, para. 6 (dealing with the launch of a strategic economic dialogue).



It was hoped that economic incentives and sanctions from the U.S. would bring both sides in line with the agreements. However, they cannot be divorced from support amongst their respective populations, nor from being able to exercise a measure of control over that population. The success of the WRM depended upon whether the PA was willing to take the politically unpopular step of embarking on a program of sustained and extensive suppression of violence against Israel.

### *E. The JLC and Cooperation in General*

#### 1. Dispute Resolution

The DOP provides, in virtually identical language, a three-tiered blueprint for dispute resolution.[338] The first mechanism, the JLC has the purpose, *inter alia*, of dealing with general controversies and disputes that may arise between the parties throughout the interim period.[339] These agreements also allow for the creation of a conciliation mechanism for disputes that the Joint Liaison Committee cannot resolve.[340] Should conciliation prove ineffective in resolving the parties' differences, the agreements provide for the formation of an Arbitration Committee.[341] Revealingly, each of the parties has unfettered discretion to refuse to utilize these mechanisms or to comply with the decision arrived at by the conciliators or arbitrators.[342] The Cairo Agreement[343] adopted this position,

338. *See* DOP, *supra* note 26, art. 15.
339. *See id.* The DOP states that the Committee's function is "to deal with issues requiring coordination, other issues of common interest, and disputes." *Id.* at art. 10. In addition, the DOP provides that "[d]isputes arising out of the application or interpretation of this Declaration of Principles, or any subsequent agreements pertaining to the interim period" are to be settled through negotiations by the same Joint Liaison Committee. *Id.* at art. 15.
340. *See id.* The DOP states, "[d]isputes which cannot be settled by negotiations may be resolved by a mechanism of conciliation to be agreed upon by the parties." *Id.* at art. 10.
341. *See id.* at art. 15, para. 3.
342. *See id.*
343. Cairo Agreement, *supra* note 21, at art. 17.

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328. *See id.* at pt. II, para. A(1).
329. *See id.* at pt. II, para. A(2).
330. *See* WRM, *supra* note 52, at pt. II, para. A(2).
331. *See id.* at pt. II, para. C(2).
332. *See id.* at pt. II, para. A(3).
333. *See id.* at pt. II, para. A(3)(b).
334. *See id.* at pt. II, para. A(3)(b).
335. *See id.* at pt. III, para. 5.
336. *See* WRM, *supra* note 52, at pt. III, para. 5.
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341. *See id.* at art. 15, para. 3.
342. *See id.*
343. Cairo Agreement, *supra* note 21, at art. 17.

as does Oslo II.[344]

To date, only the JLC which, in accordance with the DOP, must convene, has served the parties as a forum for the resolution of their numerous differences.[345] The parties have not invoked the optional conciliation and arbitration mechanisms,[346] although Arafat and the PA have voiced occasional demands for arbitration of various Palestinian claims.[347] The sides have failed to invoke these mechanisms because of a common lack of faith in their efficacy. Both sides prefer to make their case to the United States and in addition, Arafat frequently takes his case to more sympathetic international forums such as the United Nations Security Council and General Assembly,[348] the Arab League,[349] and the Non-aligned Movement,[350] the Organization of the Islamic Conference,[351]

344. Oslo II, *supra* note 24, at art. 21.

345. Telephone Interview with Dan Polisar, Director, Peace Watch, in Jerusalem (June 12, 1995). The Joint Liaison Committee has been convened on numerous occasions. *Id.*

346. *Id.* An Arafat aide, however, recently called for arbitration of the outstanding controversies including Har Homa. Voice of Palestine (BBC Short Wave Broadcast, Jericho, Apr. 19, 1997) (ME/2892 MED/14).

347. *See, e.g.*, Jon Immanuel, *PA to Request Arbitration if July 1 Deadline Isn't Met*, JERUSALEM POST, June 11, 1995, at 1; David Makovsky, *Hebron Issue Keeps Taba Talks Deadlocked*, JERUSALEM POST, Sept. 08, 1995, at 1; Jon Immanuel, *Arafat May Seek Intl Arbitration*, JERUSALEM POST, Aug 12, 1996, at 1.

348. *See The PLO Campaign*, JERUSALEM POST, Feb. 24, 1995, at 4. In early April, 1997, Arafat called for an emergency session of UN General Assembly after the United Sates vetoed two Security Council resolutions that were critical of Israel. AP, *Arafat Calls for UN Emergency Session*, JERUSALEM POST, Apr. 8, 1997, at 3. It was the first time since 1982 that the General Assembly met in emergency session and the fourth time the UN debated the Har Homa project. Marilyn Henry, *Israel Slams UN Emergency Debate*, JERUSALEM POST, Apr. 25, 1997, at 2. By overwhelming majority, the General Assembly passed a resolution calling Israel to reverse its decision on Har Homa. *See General Assembly Urges Israel to Reverse Har Homa Decision*, JERUSALEM POST, Mar. 14, 1997, at 20. Israel criticized the session "a relic of the Cold War era" and accused the PA of "clear incitement to violence." Marilyn Henry, *Israel Slams UN Emergency Debate*, JERUSALEM POST, Apr. 25, 1997, at 2.

349. At an Arab League meeting Egypt took the lead in reaching a recommendation that member states freeze Arab-Israeli relations and restore the Arab boycott against Israel. *See* Steve Rodan, *US-Egyptian Ties Under Growing Strain*, JERUSALEM POST, Apr. 18, 1997, at 14. This is yet an additional manifestation of the decay of the peace process.

350. *See* Moshe Zak, *Is Israel Really Isolated?*, JERUSALEM POST, Apr. 11, 1997, at 5.

351. *See, e.g.*, Pakistan TV (BBC Short Wave Broadcast, Islamabad, Mar. 23, 1997) (FE/2876 S3/7-9). In his speech before the Islamic Conference Arafat repeated three times, "there can be no peace without the holy *Al-Qods* [Jerusalem]," and



and the Gulf Cooperation Council.[352] This underscores a major weakness in the interim agreements, as the dispute resolution mechanisms are ineffective, and the agreements provide no sanctions for violations.

What appeared to keep the process going prior to the Al-Aqsa intifada, apart from outside sanctions and promises, were the political negotiations themselves, both regarding the interim period and the permanent status negotiations which maintain some focus. Apart from that, the ultimate goal of peace also allows the parties' negotiators to find practical solutions which overcome obstructions, by establishing a working relationship with creativity and tenacity, and extending the common ground on which the negotiators and populations are able to agree.

### 2. The Joint Liaison Committee (or Israeli-Palestinian Steering Committee)

The DOP created the JLC to provide a smooth implementation of the DOP and to deal with issues requiring coordination, other issues of common interest, and disputes.[353]

The minutes to the DOP regarding article X report that the parties agreed that on the entry into force of the Declaration of Principles, the Israeli and Palestinian delegations should: (1) exchange the names of the individuals designated by them as members of the JLC; (2) have an equal number of members on the Joint Committee; (3) reach decisions by agreement; (4) add other technicians and experts as necessary, and;

insisted that the city "and all the surrounding area are trusts which have been entrusted by God to us to rescue them from the settlements and from the danger of Judaization." *Id.* It is not clear what Arafat means in that since the 1870 Turkish census, Jews have constituted a majority of the population of the city. Israel Min. of For. Aff., *Jerusalem: The City's Development from a Historical Viewpoint*, *at* http://www.israel-mfa.gov.il/news/jerdev.html (last modified Apr. 15, 1997). In recent decades the ratio between Jews and Arabs has been approximately 3 to 1. *See, id.* He alleged that Israel is attempting through "treachery" and "conspiracy" to "Judaize" and "isolate" Jerusalem, which he characterizes as a "Palestinian," "Arab" and "Islamic" city. *Id.*

352. *See* Moshe Zak, *Is Israel Really Isolated?*, JERUSALEM POST, Apr. 11, 1997, at 5.

353. *See* Oslo II, *supra* note 24, at art. 10.

(5) decide on the frequency and places of its meetings.

The Cairo Agreement adopted the JLC as established in the DOP.[354] The retention in Oslo II of the dispute resolution mechanism in the DOP suggests that they were sufficient, or the best arrangement under the political circumstances. It expands the JLC and establishes it as the coordinating body for the JSC, the CAC, the Legal Committee the JEC and the SCC, through the MSC which is to be composed of the heads of these committees, and the two heads of this committee are to establish the rules of procedure, including the frequency and places of its meetings.[355]

The WRM states that the two sides agree that security cooperation will involve full bilateral cooperation between the two sides, in addition to Forensic Cooperation and Trilateral Cooperation with U.S. involvement.[356] The Memorandum names the MSC as amongst those groups to be continued or reconvened.[357] The JLC is not mentioned because it clearly continues to function and needs no alteration. Similarly, the JSC is not mentioned, though the JSC's primary function is covered by the provision in the WRM for bilateral cooperation.[358] However, dispute resolution is not mentioned. The WRM expressly states that it is subject to the relevant terms and conditions of the prior agreements and that its terms do not supersede their other requirements.[359]

The JLC, or Joint Israeli-Palestinian Steering Committee, as it has been called in practice, has served the parties as a forum for the resolution of their varied and numerous differences.[360] Pertinent issues have been discussed, although decisions do not appear to have been taken at this level.[361] In one

354. Cairo Agreement, *supra* note 21, at art. 15.

355. Oslo II, *supra* note 24, art. 26.

356. WRM, *supra* note 52, at pt. II, para. B

357. *Id.* at pt. III, para. 1.

358. *Id.* at pt. II, para. B(1).

359. *Id.* at Preamble.

360. Telephone Interview with Dan Polisar, Director, Peace Watch, in Jerusalem (June 12, 1995). The Joint Liaison Committee has been convened on numerous occasions. *See id.*

361. For example, the Israeli-Palestinian Steering Committee (as the Joint Liaison Committee is called) met in Jericho in September 1996 for the first time after the Palestinian Council elections, in order to renew the work of the civil, economic, and security subcommittees which appear to have lapsed then. Discussions over Hebron did not make progress and issues were raised over further redeployment.



meeting separate security and civil subcommittees of the JLC were created to deal with the issues at hand, namely those concerning Hebron.[362]

In addition, a multilateral steering committee has met periodically.[363] This represents another level of cooperation altogether, but also illustrates both the use of established

Matters of prisoner releases, security arrangements at Gaza's proposed airport, safe passages, and easing of closure as well as Hebron were to be dealt with by a separate meeting between Defense Minister Yitzhak Mordechai and PA Chairman Yasser Arafat the week after the Steering Committee meeting. Those present included Israeli team leader Dan Shomron, the Israeli Government Coordinator in the Territories Major General Oren Shahor, and Brigadier General David Agmon, Saeb Erekat, the Palestinian steering committee head, Hassan Afour, an Oslo negotiator for the PA, and Jamil Tarifi, the PA Minister of Civil Affairs. *See* Jon Immanuel, *Israel-PA Talks Resume*, JERUSALEM POST, Sept. 10, 1996, at 2.

A meeting in October 1996 (scheduled in the September meeting) at Erez split into security and civil affairs subcommittees as a result of the failure to make progress in discussions about Hebron. Saeb Erekat headed the Palestinian steering committee team. The security committee included Major General Shaul Mofaz, head of the IDF Planning Branch, and Colonel Jibril Rajoub, West Bank Preventive security chief. Hebron was discussed. PA Chairman Yasser Arafat ordered no compromises on the agreement, and Erekat is reported to have said on Palestinian Radio that if Israel did not agree finally to implement the accord without changes, the PA would seek arbitration. Dennis Ross US peace process coordinator met briefly with a pared-down steering committee. The Israeli Government coordinator in the territories Major General Oren Shahor and PA Civil Affairs Minister Jamil Tarifi, headed the civil affairs subcommittee. Among the issues discussed were untransferred areas of civil authority in Hebron, as well the development of 400 Palestinian inspectors in the area to remain under IDF control. More workers were to be allowed into Israel. *See* Jon Immanuel, *Little Headway in Hebron Talks as New Subcommittees are Formed*, JERUSALEM POST, Oct. 10, 1996, at 1.

A meeting was held in Jericho in February 1998 between Israeli Cabinet Secretary Dan Naveh and Saeb Erekat representing the PA in their capacities as heads of the steering committee for bilateral negotiations. Both concluded with the statement that mutual implementation was required (Erakat was quoted as saying that there is no point in "meetings for the sake of meetings" while the main issue is "the implementation of agreements"). Hopes were expressed for the continuation of the talks. Erekat appeared to call for greater international involvement. Jay Bushinsky and Margot Dudkevitch, *Israel-PA Talks Resume*, JERUSALEM POST, Feb 24, 1998, at 1.

362. *See* Immanuel, *Little Headway . . . , supra* note 361.

363. The multilateral steering committee was to meet in Moscow in February 1997 after not having met for two years. American efforts to push the Arab countries to make good their pledges to continue normalization with Israel prompted the meeting in the aftermath of the Hebron agreement. Oman, Qatar and Tunisia froze emerging ties with Israel in the months after PM Netanyahu's election. Others such as Saudi Arabia had no ties, but participated in previous multilateral groups. *See* Hillel Kuttler, *Moves Afoot to Revive the Moribund Multilateral Peace Talks*, JERUSALEM POST, Feb 9, 1997, at 2.

committees as well as the weaknesses of a purely voluntary system of attendance at meetings of such committees.

### *F. The Standing Cooperation Committee*

The SCC is created in Oslo II to promote cooperation in areas of economic, scientific, social, and cultural endeavors, involving officials, institutions and the private sector.[364] The Committee is also intended to meet common challenges and to strengthen regional cooperation in order to establish a dialogue and cooperation on the bases of equality, fairness, and reciprocity, as well as to act together to ensure peace, stability and cooperation within the interim period.[365]

Concerned with promoting cooperation in the broadest sense, the scope of the SCC covers environmental protection, economic, scientific, technological, cultural, and educational cooperation, in addition to enhancing dialogue through a People-to-People Program.[366] It is composed of an equal number of members from each side, to reach decisions by agreement and to determine its own rules of procedure. In addition, it is required to meet once a month, or more frequently (at the request of either side).[367] In the sphere of economics, the SCC encourages industrial, agricultural, and environmental policy cooperation, as well as promoting relations in the energy, transport and tourism sectors.[368]

While the responsibilities of the SCC appear to be both necessary and worthy, they are in fact diffuse and overly optimistic. The notion that the SCC is accountable for promoting dialogue and cooperation among all the aforementioned fields, as well as with the general population, is unrealistic and unfair to the members of the SCC. It would seem as though a committee such as this is desired if not indispensable to the peace initiative. However, the structure of the SCC and strategy of cooperation devised in Oslo II are far too general and centralized within the SCC itself.

364. Oslo II, *supra* note 24, at Annex VI.
365. *Id.* at Annex IV, art. 1.
366. *Id.* at Annex VI, arts. 2, 8.
367. *Id.* at Annex VI, art. 3.
368. *Id.* at Annex VI, art. 5.



For instance, the SCC is expected to devise economic cooperation programs separate from the JEC, as well as create cooperation programs for civil fields such as environmental conservation and transportation without coordination with any RCACs or DCLs. This appears to be unnecessarily bureaucratic and at the least counterproductive and repetitive. Instead of setting up the SCC as a distinct entity attempting to encourage cooperation in other committees' fields in addition to general dialogue, it perhaps would be more prudent to have SCC members sit on other committees. SCC members could collaborate with the specific committees to solve logistic and cooperative issues, through coordination of the particular knowledge of the committee and skills of the SCC representative.

Another possibility would be a forum for communication and debate outside the political negotiations, which perhaps would be more in line with the stated goals of the SCC.[369] The SCC has been established, but has not convened recently.

## IV. FEDERALISM AND THE PEACE PROCESS

### *A. Federal Solutions*

If neighboring populations are not, or could not be entirely self-contained and separate, they may interact to the advantage of each other. Alternatively they may live antagonistically, seeking to weaken the other at every opportunity. However, this would inevitably produce detrimental effects for both. The conflict will have repercussions on neighboring countries and the international community at large. In cases where there is cooperation based on a combination of self-rule and shared rule, the outcome has been labeled federalism.[370]

Federal entities exist on the basis of a mutual "will to

369. *Id.* at Annex VI, art. 2.
370. DANIEL J. ELAZAR, TWO PEOPLES, ONE LAND: FEDERAL SOLUTIONS FOR ISRAEL, THE PALESTINIANS, AND JORDAN 6 (1991). Unfortunately, in the light of the connotations this term has attracted, this term is perhaps best avoided in relation to sensitive solutions such as that sought in the Oslo peace process. *See* Daniel J. Elazar, Federalism and Peace Making, Paper Presented at the International Association of Centers for Federal Studies and Jerusalem Center for Public Affairs 1998 Conference (October 22, 1998).

federate," which is essential for the federation to sustain itself.[371] Were a federal body established by force, it would not be truly federal by nature.[372] A level of association whether federal or something less extensive may be used both to settle disputes and to strengthen the parties' commitment to the resolution of the dispute, and thus to foster goodwill through mutual trust and reliance.[373] This is a prerequisite for effective operation of the structure of negotiations and peace, whether temporary or intended to be permanent.

However, in federal arrangements the associative level is twofold: that of structure as well as process. This notion came from the realization that in the past, forms of government with federal structures were not necessarily implemented within the federal framework. Thus, "[m]any came to the conclusion that federalism is as much a matter of process as of structure . . . [and that] federalism must combine both structure and process. That, indeed, is what creates a federal system."[374]

As much a part of federal solutions as the combination of structure and process is the unique amalgamation of unity and diversity. It is an attempt to unify separate people while accommodating diversity into the system through direct political expression, which would appear to be two antagonistic processes. The unity might be limited to joint issues of concern and disagreement, such as security, resource sharing, employment across federal divides, or access to holy sites. However, not all federal arrangements can be conducive to a sustainable unity due to the various combinations of diversity and their manifestations in society.[375]

According to leading political scientist, the late Daniel J. Elazar, the most relevant forms are the modern federation.[376] These are defined as a constitutional division of powers with a single political entity between a federal government and the governments of the individual entities that make up the federation, and a confederation "in which the constituent states [or other entities] retain the better part of their political independence but band together in perpetual union under a common constitution to form a joint government for quite specific and limited purposes . . . Characteristics of postmodern confederations is that each of the constituent or partner entities maintains a full set of governmental institutions."[377] Confederacy provides for separate states within the territorial entity, insisting on individual equality as well. Though this may seem more radical than a federation, it is certainly more likely in terms of the level of cooperation and compromise that could be expected.

Beyond this level of federacy, according to Elazar, are leagues and inter-jurisdictional functional authorities which do not have common government. Elazar posits that "[the federation], because it can be harmonized with modern nationalism . . . has become the dominant federal arrangement in the world today, and, in fact, is synonymous with the notion of federalism in the minds of most people."[378] This form he suggests "requires strong general government operating directly on all citizens who in return, are entitled to equal political status and rights."[379]

Confederalism, as Elazar explains, began in pre-modern federalism, before the rise of the modern nation-state, which was at the time a method for bringing together small polities.[380] Beyond a full set of governmental institutions for each constituent, there may or may not be common citizenship in the confederation (based on citizenship of the constituent entities), though confederal authorities "formally are excluded from direct contact with the citizens of individual constituent entities."[381] Characteristic of Elazar's post-modern confederation is that they are constructed entities,"[382] composed of joint, extensional authorities established by the constituent elements which are delegated certain duties. Seldom do they begin with an encompassing confederal entity. Examples illustrate that

371. ELAZAR, *supra* note 370, at 64.
372. DANIEL J. ELAZAR, FEDERALISM AND PEACE MAKING (1998).
373. *Id.* at 4.
374. ELAZAR, *supra* note 370, at 38.
375. *Id.* at 39.
376. Elazar describes the "Basic Forms of Federalism," which also include: federacy and associated statehood, consociation, constitutionally decentralized states, unitary states with federal arrangements, and federal combinations. *See id.* at 39-64.
377. *Id.*
378. *Id.*
379. *Id.*
380. ELAZAR, *supra* note 370, at 43.
381. *Id.*
382. *Id.*

they may or may not develop common comprehensive legislative, and/or judicial instruments.[383]

The principal advantage of confederation, according to Elazar, "is that since the confederal government serves the constituent or partner states first and foremost, issues of equal political status and rights can be handled on two levels: equality of all states within the confederation as states and equality of individuals within each state as defined by that state."[384]

Temporary federal structures may be created during negotiations as part of interim arrangements pending a final settlement which requires extensive negotiation, perhaps as a result of the difficult compromises required or the severe tension between the negotiating parties. The temporary structures created then may be adopted as a model for the final settlement expected if they prove to be successful, or they may simply continue to operate as part of that settlement. Shared governance may be extended to shared government institutions, though this would be unlikely at an early stage.

The speed of any separation, and the degree of general caution and efforts taken to promote support for the negotiations amongst the populations concerned may be one of the most influential factors in relation to maintaining the good will necessary to successfully pursue negotiations of this sort.[385] Particularly where security or essential resources are concerned, it is likely that the specialist structures created during negotiations to deal with the mutual concerns would be themselves maintained to promote those concerns once final agreement is reached, rather than creating a new structure to perform the same function.

### *B. The Oslo Peace Process – Possible Federal Approaches*

Any federal arrangement will integrate the self-rule of constituencies with the shared rule of those groups into an encompassing body. A federal resolution of the peace process could involve shared rule over specified areas where Israelis and Palestinians extensively coexist, namely the West Bank

383. *Id.*
384. *Id.*
385. *Id.* at note 372.



and the Gaza Strip. This would give a degree of self-rule to the PA over the Palestinian population, while maintaining the security of the Israeli population.[386] Whether this would involve shared government under the strict definition of federalism is doubtful.[387]

One approach reflected *a priori* would be total, immediate withdrawal of Israeli security forces from the territories. Complete withdrawal would create security threats which clearly could result in attacks on Israelis living in the disputed territories, while extending the threat to the rest of Israel as well. Access to or control of strategic points in the disputed territory and the protection of the settlements would satisfy the concern of Israelis in this respect.[388] Through the cooperation, the parties might come to agree on the limited areas of residual military presence. Collaboratiye efforts also would prevent the threat to the Palestinian population of extremists seizing control of the territory or other neighboring countries seeking to take control.[389]

Another strategy that is not feasible by nearly everyone's account would be the complete annexation of the disputed territories.[390] The annexation of these areas with consequent Israeli sovereignty would be incompatible with the international demands, disadvantageous in the long run for maintaining a Jewish national state, and unacceptable to the Palestinian constituency.[391]

Repartition or military redeployment and the transfer of civil authority without shared control in any formal sense is an alternative to a federal solution.[392] The progress so far made in resolving the conflict has been due to the acceptance of this approach by Israel and also by the Palestinian population and

386. ELAZAR, *supra* note 370, at 23.
387. *Id.* at 37.
388. The alternative objection to withdrawal, the historic and religious feeling that any territory in the area could justifiably have an Israeli Jewish population is on the whole limited amongst those who hold this view by respect or tolerance of existing settlement of the area.
389. ELAZAR, *supra* note 370, at 23-25.
390. *Id.*
391. *Id.*
392. *See id.* at 101. The author details eleven basic options including the broad approaches mentioned and approaches taking into account significant Jordanian involvement. This factor appears to have become significantly less influential with the higher profile of the PLO.

its negotiators.[393] However, because of Israel's strategic requirements, difficulties in areas such as the settlements or the city of Hebron, shared physical resources, economic interdependence,[394] and the potential for subversion of authority in the territory by extremist organizations (such as Hamas or by external powers), federal structures must exist to allow continuing Israeli involvement in the areas. This must be clearly defined in the interests of diplomacy.

The use of joint institutions in the long term, without joint government, is implied by the DOP,[395] but there is no explicit reference to this. This would appear to be in the interest of both populations, pragmatically in terms of long term economic prosperity, at least and for the same security reasons, as in the interim period.

### *C. The Oslo Peace Process – Federal Structures in the Interim Agreements*

The structures created by the peace process take limited strides towards a cooperative, even federal solution, in the fields of security and civil amenities. They bring together diplomats and staff from both sides, in order to operate and monitor the day to day functions involved in maintaining security and civil obligations. They, therefore, sustain the integrity of the lawful authorities and infrastructure at all levels from international support of licensing, tariff and resource issues.

The negotiations and the JLC bring together politicians from both sides. The JSC and other high level military committees bring together the top ranking military personnel. The CAC and JSC bring together politicians and high level civil servants. The JLC should bring together legislators, the judiciaries, and law enforcement personnel as well. In theory, these committee members are more than likely to come to see their counterparts' perspectives, and establish dialogue with them. The regional and district subcommittees bring together middle ranking workers and require them not only to come to

393. *Id.* at 23, 27-30.

394. Primarily on the part of the Palestinian population who rely on the freedom to undertake and commute to work in Israel.

395. DOP, *supra* note 26, at art. 5.



understand their colleagues, but to work constructively with them. The JPs and JMUs require the closest cooperation and a great deal of mutual trust and good will. The specialist civil working committees require similar dedication if they are to operate; they are essential to both populations and it is their interest to find willing staff. The influence of these on the population at large cannot be zero, but may be limited to those more directly affected by the decisions that result from the work of the committees. These may form the basis of long-term relations in the permanent status negotiations.[396]

The agreements do not seem to take the SCC seriously as a means of creating a society, or at least societies receptively, that desire to coexist and avoid prolonging the conflict. This has been identified as the most serious failing in the agreements, particularly from a perspective that views good will as the basis of not only federal solutions, but of any solution that is to promote peace.[397] The emphasis on security instead, less explicit in Oslo II than, for instance, in the more recent Hebron Protocol or Wye River Memorandum, goes against the idea of emphasizing areas which are less controversial such as economic cooperation.

## V. CONCLUSION

Any declaration of Palestinian statehood prior to the successful resolution of final status negotiations is prohibited by the DOP.[398] Pursuant to the interim peace agreements there appears to be no intention to create a bi-national entity. Rather, the best case scenario is coexistence without conflict. While a federation involves tighter links between two populations, confederacy provides for separate states within the territorial entity, insisting on individual equality as well. Though this may seem more radical than a federation, it may be more likely in terms of the level of cooperation and compromise that could be expected.

396. However, the DOP states explicitly that the outcome of the permanent status negotiations should not be prejudiced or preempted by agreements for the interim period. *See* DOP, *supra* note 26, at art. 5.

397. ELAZAR, supra note 372, at 5.

398. DOP, *supra* note 26, at art. 8.

Built on the initial compromises reached in the interim agreements, it is now conceivable that some constitutional compromise or separation will occur. The direction appears to be towards a Palestinian state, although the dimensions of that entity are unclear. This also depends on both sides' ability able to maintain popular support and interested third party political and economic sponsorship.[399]

Successful interaction between Palestinian and Israeli representatives on a functional level could be institutionalized so as to endure after the peace process. High level committees could be embellished to create joint bureaucratic departments of a political body. Methods of protecting such a fragile structure could be molded from the existing joint organs on the ground. However, some of the existing structures are still in the initial stages, and, at this point, are clearly inadequate to establish cooperation for the long term. Certain committees, such as the JLC, appear inadequate at this juncture while others show more promise.

The advancement of the peace process is illustrated not only by the immediate effects of implementation and the political reaction among diplomats and the populations involved, but by how extensive the implementation of the terms and provisions of the agreements has been. The tenacity of the diplomats and the support they have is characterized by the continuity in the peace treaties; reflected in the ability to maintain similar structures in the first eight interim agreements (from the DOP through the Sharm el-Sheikh Memorandum). The Al-Aqsa intifada has demonstrated, however, that in the absence of continuous political good will, these structures are insufficient to ensure the survival of the peace process, never mind forward progress. When the political echelon is moving forward, the structures can maintain a framework. However when the political eschelon breaks down, as it has during the Al-Aqsa intifada, the federal structures are incapable of preventing the outbreak of widespread hostilities which may, over time, result in the disintegration of the peace process. Acknowledging their limitations as well as their strengths, the legal structures which form the core of the Oslo peace process

399. Elazar recognizes the further difficulties created by the diaspora populations. *See* ELAZAR, *supra* note 370, at 11-12 (although discussion of these difficulties is beyond the scope of this article).



have the potential to meet the day to day needs of the Palestinian and Israeli populations. The extent to which these legal structures succeed will be predictive of the long-term prospects co-existence during and after this peace process.

## VI. POSTSCRIPT

The Israel-PA relationship has taken a dramatic turn for the worse during the period I was reviewing the proof copy of this article. Despite being offered unprecedented unilateral concessions by Israeli Prime Minister Barak at the recent Camp David Summit, Chairman Arafat apparently made the calculation that he can achieve more through confrontation and violence than across the negotiating table.[400] As a result, the peace process has ground to a halt and in its place a mini-war has erupted in the West Bank, Gaza Strip and even certain locations in Israel. The flash points include road junctions, IDF positions on the outskirts of Palestinian population centers, and even religious sites. Despite repeated efforts by President Clinton, whose formidable powers of persuasion had moved the parties past previous impasses, the downward spiral toward armed conflict has continued without respite for the past six weeks.

Watching the television coverage of the daily Palestinian riots,[401] named the Al-Aqsa intifada,[402] one is immediately

400. Prime Minister Barak stated:

> there is an understanding in the Arab world that Arafat and the PA, in their decision not to reach an agreement with us that was within reach, but rather to choose the path of violence, have taken upon themselves a heavy responsibility that changes the character of the [peace] process. At the moment the PA and Arafat have chosen the path of conflict in an attempt to make us fold and to get us to surrender our vital interests through force.

Herb Keinon and Lamia Lahoud, *Egyptian Foreign Minister Moussa: Current Peace Process Over*, JERUSALEM POST, Oct. 25, 2000, at 1.

401. A *USA Today* reporter noted that as dusk approached the television crews left the Ramallah junction where hundreds of children had been hurling rocks and Molotov cocktails at the IDF all day long. Noting that the children also dispersed, the Israeli officer on the scene commented, "The kids only want to die when the TV cameras are on so they can get the sympathy of the world . . . They'll be back tomorrow, as soon as the media arrives." Jack Kelley, *Street Clashes Now Deliberate Warfare*, USA TODAY, Oct. 23, 2000, at 1.

struck by the near total absence of adults. Indeed, most of those hurling Molotov cocktails and stones are teenagers; many are even younger. Intoxicated by the challenge of becoming a hero, and lacking the maturity to calculate the dangers they are assuming, thousands of young people have been persuaded to place themselves in harm's way. The message from the top, from PA Chairman Arafat, is clear incitement. He regularly panders to the agitated youth by lauding them as "the generals of the rocks."[403]

Since the recent disturbances began, media reports have often highlighted instances in which Palestinian children have been killed or injured by Israeli troops or policemen. These reports have generated much criticism of Israeli policies, although few in the Western world have thought through the chaos they see on the news to consider whose interests are served by the violence. Even fewer have access to the information necessary to place in legal and historical context these weeks of death and disorder. The confusion has, however, provided an excellent opportunity for Arafat who, addressing the Emergency Arab Summit in Cairo, went so far as to accuse Israel of "a massacre" and "genocide."[404] Wielding their overwhelming political clout, the Palestinians prevailed on the UN Human Rights Commission to condemn Israel for "crimes against humanity."[405] Even the UN Security Council voted a one-sided resolution condemning Israel.[406] Although these accusations are transparently rhetorical, there is little doubt that, by their deliberate misuse of children, the Palestinian cause has attracted new sympathy.

402. Palestinian sources have dubbed the current disturbances the "Al-Aqsa intifada." Intifada is the Arabic word for "uprising" or "shaking off" and Al-Aqsa is the mosque in Jerusalem which observant Moslems regard as their third holiest site, after Mecca and Medina. See Lamia Lahoud, *Fatah Calls for Intifada Despite Summit*, JERUSALEM POST, Oct. 17, 2000, at 1. The current Al-Aqsa intifada should be distinguished from the earlier intifada, which began in December, 1987, had practically disappeared by the time of the Gulf War in January, 1991, ending with the commencement of the Oslo peace process in mid-1993.

403. Alan Baker, Legal Advisor to the Israel Min. of Foreign Aff., *Using Children in Conflict*, AIJAC (Melbourne)(n.d.).

404. Ironically, Arafat's frequent calls, directly and indirectly, for the annihilation of Israel violate the Genocide Convention, which criminalize not only acts of genocide but also incitement to commit genocide in articles II, III and IV.

405. Kelley, *supra* note 401.

406. U.N. SCOR, 55th Sess., 4205th mtg., U.N. Doc. S/RES/1322 (2000).



The participation of Palestinian children in these riots is not accidental. The Palestinian Authority has intentionally mobilized Palestinian children to man the front line in its struggle against Israel; frequently using them as shields to protect Palestinian gunmen. Improving on their widespread use of children in the original intifada of a decade ago, the children act as bait, burning tires and shooting slingshots, to attract the television cameras and distract the IDF. Since the Palestinian public knows that Israeli soldiers are ordered not to shoot live ammunition at children,[407] the rioting children act as shields to protect Palestinian snipers in ambush positions on rooftops and in alleys, who shoot to kill any exposed members of the IDF.[408]

Israeli statistics reveal that during the month of October, 2000, there were 599 shooting incidents at military,[409] police, and civilian targets.[410] Twenty-six bombs were detonated with intent to harm Israelis and 400 Molotov cocktails were thrown at Israelis. In all there were 3,209 violent disturbances

407. IDF regulations make every effort to avoid incurring unnecessary casualties. Especially strict rules apply to the employment of live ammunition, preferring to make due, whenever possible, with loudspeaker warnings, tear gas, stun grenades, and rubber bullets. Generally, live ammunition is aimed below the waist. Kelley, *supra* note 401. The Israeli policy for use of live ammunition holds:

> Soldiers are prohibited from opening fire with live ammunition unless, (1) they are fired upon; (2) they are in a situation where despite verbal warnings there remains an immediate danger to their lives or the lives of Israeli civilians; or (3) they are apprehending an escaping suspect who is believed to have committed a serious crime. Any soldiers who violate the Rules of Engagement are subject to investigation, disciplinary trial and, in serious cases, court-martial."

Telephone Interview with Col. Raanan Gissin, IDF Spokesman's Office, in Jerusalem (Nov. 8, 2000).

408. Kelley, *supra* note 401. Ironically those very weapons were provided to them to maintain order, as against terrorism and incitement, under the interim peace agreements that Arafat signed.

409. *See* Interview with IDF Chief of Staff General Shaul Mofaz, Israel Radio (Oct. 25, 2000).

410. Press Release, IDF Spokesman's Office, *The Total 599 Shooting Incidents of "Ebb and Flow" According to Destination of Incident 29/09-29/10/2000*, Oct. 31, 2000. *See* Margot Dudkevitch, *3209 Violent Incidents in West Bank in October*, JERUSALEM POST, Nov. 1, 2000 at 3. Another report gave the figure of 780 shooting incidents in the previous month. Arieh O'Sullivan, *Gil Missile Used for First Time Against Beit Jallah*, JERUSALEM POST, Nov. 2, 2000, at 2.

including 1,397 stone throwing incidents.[411] As a consequence, six Israeli civilians and seven soldiers were killed, and 51 civilians and 139 soldiers were injured.[412] One major difference between the current Al-Aqsa intifada and its predecessor, the original *intifada* of a decade ago, is the enormous increase of Palestinian firepower, primarily in the form of tens of thousands of assault rifles.

This mobilization of Palestinian youth has, moreover, been facilitated by the cumulative, long-term impact of incitement contained in PA school textbooks, government-controlled media,[413] and summer camp programs,[414] which indoctrinated the youth for violent confrontation with Israel even prior to the current crisis. Once the Al-Aqsa intifada started, the PA not only ignored its signed commitments under the interim peace agreements but, despite repeated calls for restraint by world leaders including President Clinton, its official media broadcast the PA-appointed cleric leading prayers at the Al-Aqsa mosque in Jerusalem, calling for his followers to, "eradicate the Jews from Palestine."[415] Also aired was a live sermon by Dr. Ahmad Abu Halabiya. Halabiya, a member of the PA-appointed Fatwa Council and former acting Rector of the Islamic University in Gaza, called for Israelis to be humiliated, tortured, and butchered.[416] His rant continued, "Have no mercy on the Jews, no matter where they are, in any country. Fight them, wherever you are. Wherever you meet them, kill them. Wherever you are, kill those Americans who are like them . . . and those that stand by them."[417]

411. IDF Spokesman's Office, *supra* note 407. Some have claimed that stone-throwing is a purely symbolic act. Nothing could be further from the truth. It often causes serious injury and occasionally even death. Thus, one of the Israeli fatalities was hit in the chest by a large rock that was thrown at his car near the Arab village of Jisr e-Zarka on the highway between Haifa and Tel Aviv, two of Israel's largest cities. David Rudge, *2 Israeli Arabs Killed in Nazareth Clashes*, JERUSALEM POST, Oct. 10, 2000 at 1.

412. IDF Spokesman's Office, *supra* note 407.

413. Matthew Dorf, *Palestinian Children's Show Sparks Anger in Washington*, Jewish Telegraphic Agency, Aug. 17, 1998; George Will, *The Downfall of Israel?*, JERUSALEM POST, Oct. 16, 2000, at 6.

414. John F. Burns, *Palestinian Summer Camp Offers the Games of War*, N.Y. TIMES, Aug. 3, 2000 at 1.

415. Will, *supra* note 414.

416. IRIS, *The Palestinians in Their Own Words*, PALESTINIAN QUOTE SHEET #50, Oct. 16, 2000.

417. *Id.*



The exploitation of children in the new *intifada* has implications beyond its marked corrosive effect on the peace process. In recent decades the international community has increasingly condemned the exploitation of children in armed conflicts. Article 38 of the United Nations Convention on the Rights of the Child condemns the recruitment and involvement of children under 15 years old in hostilities and armed conflicts.[418] The provision clearly states, "[s]tate parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities."[419] Current treaty law not only forbids children to participate in combat, but it also proscribes a wide range of other indirect activities.[420] Recently, UN Security Council Resolution 1261 specifically described the use of children as soldiers as a "violation of international law."[421]

In order to assure children are not involved in wars and other violent conflicts it is necessary to keep them out of harm's way both physically and emotionally. International law broadly attempts to protect children from the horrors of armed conflict. For example, the use by states of children as shields to impede an adversary's military operations is prohibited. Article 28 of the Fourth Geneva Convention strictly forbids the use of any civilian as a shield.[422] Jean Pictet, in the official Red Cross commentary on article 28, notes that the use of civilians (of any age) as shields has been condemned as cruel and bar-

418. U.N. Convention on the Rights of the Child, U.N. G.A. Res. 25, 44th Sess., U.N. Doc. A/RES/44/25 (1989) *reprinted in* 28 I.L.M. 1457 (1989) [hereinafter Child Rights Convention]. This Convention has been ratified by 191 states, making it the most widely ratified human rights instrument ever. UN Economic and Social Council, Commission on Human Rights, *Rights of the Child: Additional Report of the Special Representative of the Secretary-General for Children and Armed Conflict, Mr. Olara Otunnu, Submitted in Accordance with General Assembly Resolution 53/128*, U.N. Council, art. 2(6), E/CN.4/2000/71 (2000).

419. Child Rights Convention, *supra* note 418, at art. 38.

420. Alan Baker, Legal Advisor to the Israel Min. of Foreign Aff., *Using Children in Conflict*, AIJAC (Melbourne)(n.d.).

421. U.N. SCOR, 55th Sess., 4037th mtg., U.N. Doc. S/RES/1261 (1999), arts. 3, 8, 13.

422. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 ["Fourth Geneva Convention"], art. 28.

baric.[423]

The PA does not, at this point, enjoy sovereignty,[424] and therefore, is not *de jure* bound by the above mentioned conventions.[425] As a non-sovereign entity, the above mentioned international conventions are not strictly binding on the PA. However, it is nothing less than hypocrisy for this autonomous entity to continuously pressure the international community to condemn Israel for violating human rights while the PA orchestrates the massing of children in the front lines of the conflict. While the PA is not formally bound by international human rights conventions, it is nonetheless required by the Oslo agreements, which PA Chairman Yasser Arafat signed, to honor "internationally accepted norms of human rights and the rule of law."[426] Moreover, their misuse of children should set off an alarm for the world community raising doubt whether the PA intends, if it obtains recognition as a state, to be a law-

423. Fourth Geneva Convention, *supra* note 422, at art. 28. Article 36 asserts that state parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare, which logically includes even their voluntary recruitment to participate in a conflict. *Id.* Ironically, this standard appears to conform with Islamic law, which prohibits children under 15 from participating in a *jihad*. But neither international law nor Islamic law has curtailed the use of children in the Al-Aqsa intifada by Hamas and Islamic Jihad, two of the Islamist terrorist groups operating out of the Palestinian areas.

424. The PLO maintains diplomatic relations of various types with over a hundred different governments even though it does not meet the standard indices of state sovereignty as set forth in the Montevideo Convention on the Rights and Duties of States. *See* James Crawford, *The Creation of the State of Palestine: Too Much Too Soon?*, 1 Eur. J. Int'l L. 307; Ruth Lapidoth & N.K. Calvo-Goller, *Les Elements Constitutifs de L'Etat et la Declaration du Conseil National Palestinien du 15 Novembre 1988*, R.G.D.I.P. 777 (1992) (French original). *But see* Francis A. Boyle, *The Creation of the State of Palestine*, 1 Eur. J. Int'l L. 301; M. Flory, *Naissance d'un Etat Palestinien*, R.G.D.I.P. 385 (1989) (French original). This has been recognized by the senior Palestinian peace negotiator and the senior deputy to Arafat, Mahmoud Abbas, who referred to the DOP by stating that, "[W]e do not claim that we signed an agreement that created an independent Palestinian State; none of the provisions of the Declaration of Principals make such a claim." MAHMOUD ABBAS, THROUGH SECRET CHANNELS 218 (1995).

425. Similarly, in response to the PA's declaration that it would adhere to the Geneva conventions of 1949, and the subsequent two protocols, the Swiss Federal Council stated that "it was not in the position to decide whether the letter constituted an instrument of accession," and deferred from making a decision "due to the uncertainty within the international community as to the existence or non-existence of the state of Palestine." Geneva Conventions, Aug. 12 1949 and additional protocols of June 8, 1977: Ratifications, Accessions and Successions, DD/JUR 98/820- CPS 32 (Dec. 31, 1998).

426. Wye River Memorandum, *supra* note 52, art. II C.4.



abiding entity in the international community.

This sustained violence has had a cataclysmic impact on the Oslo peace process, both on the political level and on the structural level. Notwithstanding the accomplishments of bilateral and trilateral committees, and despite the positive and sometimes warm personal relationships that emerged out of this federal cooperation, the structures and relationships have proved virtually useless during the Al-Aqsa intifada. This being the Conclusion of an already too-long article, it will suffice to provide several examples:

First, Israel and the PA agreed to abolish a customs union and adopt free trade when a final peace agreement was reached.[427] This was expected to boost both economies and thereby accelerate the peace process. The recent violence, however, has postponed indefinitely prospects for a final peace agreement and, along with it, the implementation of free trade.

Second, the Erez industrial zone was created pursuant to the peace process, located where Israel adjoins the Gaza Strip. The zone was designed to promote the integration of the Palestinian and Israeli economies and to ameliorate to the chronic high unemployment in Gaza. These objectives suffered a major setback when, a month into the violence, Palestinians set fire to a rubber factory in the Erez industrial zone.[428] In the aftermath, it is difficult to foresee new investors coming forward to back such joint projects.

Third, a crucial test of durability of the peace process is whether, despite the agitated political climate, the PA will honor its commitments as regards Jewish holy sites. What transpired at one such site, the prophet Joseph's tomb, has been discouraging to say the least. The tomb was a small Israeli enclave in the midst of Area A (under sole Palestinian local administration). Until the recent violence, Israeli visitors had access via a bulletproof bus with an IDF escort. Cooperation by the PA was problematic in the best of times and once the Al-Aqsa intifada got underway, the site was attacked by hundreds of Palestinians. An IDF soldier stationed there bled to death while the PA, despite repeated Israeli requests on the

427. *Palestine and Israel to Abolish Customs Union, Adopt Free Trade*, JERUSALEM TIMES, Sept. 29, 2000, at 9.

428. Margot Dudkevitch, *Violence Persists, But Less Intense*, JERUSALEM POST, Nov. 5, 2000, at 2.

highest level, delayed his evacuation to hospital. Because of its exposed position, and because in recent years a number of soldiers had been killed there, Israel secured an agreement from the PA that it would guarantee the site's sanctity after the IDF redeployed. Yet, the PA did nothing to stop the Palestinian mob which descended on the tomb, torching and destroying its contents, even attempting to demolish it stones-by-stone crowbars.[429] Israel's Regional Cooperation Minister, Shimon Peres, said these events reveal Arafat's problem with protecting holy sites, thereby confirming doubts that the PA can be trusted to protect them in the event of future Israeli withdrawals. Given the number of Jewish holy sites, in the hypersensitive city of Jerusalem and elsewhere, this will greatly complicate peace negotiations.[430]

Fourth, another vehicle for Israeli-Palestinian cooperation, the joint patrols, was abandoned after an Israeli border policeman, Yossi Tabaja, was murdered by his Palestinian counterpart. The killer turned himself over to Palestinian Preventive Security officials who immediately declared him mentally unstable and blamed the Israeli soldiers for provoking him.[431] In the aftermath of this and other serious incidents, the IDF said these patrols do more harm than good. Rather then defuse friction between Israeli and Palestinian civilians, their original role according to the peace accords, they create tension and are a vessel of mutual mistrust.[432]

Fifth, security cooperation–coordinating efforts to prevent Palestinian terrorist attacks against Israeli targets–has also fallen upon hard times since the beginning of the Al-Aqsa intifada. Although high level meetings between Israeli and Palestinian security officials have taken place, they have been perfunctory and lacking in substance, missing the opportunity to save lives and contain the fighting. For example, in an effort to restore calm, IDF Major Generals Yitzhak Eitan and Yom-Tov Samia met their Palestinian counterparts on October 25,

429. Margot Dudekvitch, *Palestinians Ransack Evacuated Joseph's Tomb*, JERUSALEM POST, Oct. 8, 2000, at 1.

430. Nina Gilbert, *Peres Slams Arafat's Handling of Joseph's Tomb*, JERUSALEM POST, Oct. 8, 2000, at 3.

431. Margot Dudekvitch, *Border Policeman Murdered by Palestinian Counterpart*, JERUSALEM POST, Oct. 2, 2000, at 5.

432. Arieh O'Sullivan, *IDF Considering Ending Joint Patrols*, JERUSALEM POST, Oct. 5, 2000, at 2.



2000. The Israelis were disappointed by the meetings, and according to one security official, "[i]t appeared that the Palestinians had no intention of restoring working ties and instead made political statements."[433] IDF Brigade Commander, Colonel Gal Hirsch stated:

> We have discovered that they don't keep their promises. On at least five occasions, I have met in the morning with my counterpart from the PA, and we agree. He will keep the demonstrators under control, and I will pull back my forces. So I pull back from the good positions we had taken. And then the Palestinian police don't contain the demonstrators, who break through their lines. Then we have to take back positions we withdrew from a few hours earlier.[434]

During a subsequent meeting between Arafat and Shimon Peres, an agreement was reached to restore intelligence and security cooperation between the two sides which had been frozen since the outbreak of hostilities a month earlier.[435] It remains to be seen if this latest agreement is more successfully implemented than similar ones which preceded it.

In summation, it is too early to discern what these failures portend for the long-term prospects for peace. What is clear is that the new Palestinian intifada undermines not only the spirit of the Oslo peace process, but its *raison d'être* to resolve differences through negotiation rather than violence. As Arafat proclaimed in his September 9, 1993, letter to Yitzhak Rabin:

> The PLO considers that the singing of the Declaration of Principles constitutes a historic event, inaugurating a new epoch of peaceful coexistence, free from violence and all other acts which endanger peace and stability. Accordingly, the PLO renounces the use of terrorism and all other acts of violence and will assume responsibility over all PLO elements

433. Margot Dudekvitch & Lamia Lahoud, *Fatah Calls to Continue the Intifada*, JERUSALEM POST, Oct. 25, 2000, at 1.

434. Hanan Sher, *Brief Encounter: Col. Gal Hirsch*, JERUSALEM REPORT, Nov. 20, 2000, at 16.

435. Herb Keinon, *PM Demands Arafat Put Terrorists Back in Jail*, JERUSALEM POST, Nov. 3, 2000, at 2.

and personnel in order to assure their compliance, prevent violations, and discipline violators.[436]

This was Arafat's price of admission into the US-brokered and funded peace process. In return, Yitzhak Rabin agreed to recognize the PLO as the representative of the Palestinian people and commence negotiations with what previously had been deemed a terrorist organization.[437]

The palpable frustration and mistrust caused by the Al-Aqsa intifada will haunt new efforts at Israeli-Palestinian peace making for years to come. But when it does start, the federal structures which enjoyed some viability during the Olso period will likely be reactivated or recreated to provide a sense of legitimacy, a frame of reference, and a design for cooperation, as well as functioning as a negotiating forum.

436. Yasser Arafat, *Letter to Yitzhak Rabin, in* PEACEWATCH: THE ARAB-ISRAELI PEACE PROCESS AND U.S. POLICY 77 (Judith Wrubel ed., 1994).

437. Yitzhak Rabin, *Letter to Yasser Arafat*, Sept. 9, 1993. Israel Ministry of Foreign Affairs, *Declaration of Principles on Interim Self-Government Arrangements.*



## APPENDIX

CAC - Joint Civil Affairs Coordination and Cooperation Committee

DCL - District Civil Liaison Office

DCO - District Coordination Office

DOP - Declaration of Principles

IDF - Israeli Defense Force

IPI - Institute for Peace Implementation

JAC - Joint Aviation Subcommittee

JCC - Joint Coordination Center

JEC - Joint Economic Cooperation Committee

JHC - Joint Coordination Committee for Hebron

JLB - Joint Liaison Bureau

JLC - Joint Liaison Committee

JMU - Joint Mobile Unit

JP - Joint Patrol

JSC - Joint Security Committee

LC - Legal Committee

LAC - Legal Affairs Committee

MC - Maritime Coordination and Cooperation Center

MSC - Monitoring and Steering Committee

PA - Palestinian Authority

PLO - Palestinian Liberation Organization

RCAC - Regional Civil Affairs Subcommittee

RSC - Regional Security Committee

SCC - Standing Cooperation Committee

TIPH - Temporary International Presence in Hebron

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RCAC - Regional Civil Affairs Subcommittee

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SCC - Standing Cooperation Committee

TIPH - Temporary International Presence in Hebron

VAT - Value Added Tax

WRM - Wye River Memorandum