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HARD FACTS MEET SOFT LAW—THE ISRAEL-PLO
DECLARATION OF PRINCIPLES AND THE
PROSPECTS FOR PEACE: A RESPONSE TO
KATHERINE W. MEIGHAN

JUSTUS R. WEINER

ESSAY

Hard Facts Meet Soft Law—The Israel-PLO Declaration of Principles and the Prospects for Peace: A Response to Katherine W. Meighan

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Ancient Middle Eastern Saying: There is Nothing So Permanent as the Temporary¹

INTRODUCTION

Katherine Meighan's Note "The Israel-PLO Declaration of Prin-

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1. The widespread practice of religions and religious denominations (e.g. the Greek Orthodox, Roman Catholic, Armenian, Coptic and Ethiopian churches) to compete for possession of the holy sites in Jerusalem and throughout the region provides an illustration. For example, the Church of the Holy Sepulchre, the Church of Nativity, and their various components, changed hands as different denominations curried favor with influential political forces including the Crusaders, the Ottoman Turks, the Mamluks, France and Czarist Russia. In an effort to avoid disagreements between the different sects over possession and the right to worship, an edict of the Ottoman Sultan stipulated the control of the holy places in 1757. It came to be called the regulation of the Status Quo. A successor reaffirmed this in an edict in 1852. Although Jerusalem has been captured three times, its population has grown 50 fold, and a major fire caused the collapse of the dome of the Church of the Holy Sepulchre in 1808, all subsequent rulers have adhered to the allocation of rights as initially specified in the Status Quo edict of 1757. Thus, an arrangement that was intended to function as a respite from the struggle for the possession

ciples: Prelude to a Peace?"² which appeared in the Winter 1994 issue of the *Virginia Journal of International Law*, endeavors to assess the authority of the Declaration of Principles (DOP),³ signed by Israel and the Palestinian Liberation Organization (PLO), as a legal instrument in international law. Section I of Meighan's Note contains an extensive factual review of the secret Israel-PLO negotiations in Oslo which precipitated the signing of the DOP on the White House lawn two years ago. The next section outlines the DOP's contents and analyzes the structure of the accord.⁴ Meighan also discusses the stages the parties envisioned for the negotiation and conclusion of interim and permanent status agreements.⁵

of sacred real estate has now endured nearly 250 years. See S.P. Colbi, *The Christian Establishment in Jerusalem*, in *Jerusalem: Problems and Perspectives* 153-77 (Joel L. Kraemer ed., 1980).

2. Katherine W. Meighan, Note, *The Israel-PLO Declaration of Principles: Prelude to a Peace?*, 34 *Va. J. Int'l L.* 435 (1994).

3. *Declaration of Principles on Interim Self-Government Arrangements*, Sept. 13, 1993, Isr.-P.L.O., 32 *I.L.M.* 1525 (1993) [hereinafter DOP].

4. Meighan, *supra* note 2, at 444-48. For a discussion of the various aspects of the DOP, see Ruth Lapidoth, *The Peace Process in the Middle East - A Stocktaking*, Survey of Arab Affairs (Jerusalem Center for Public Affairs, Jerusalem, Israel), May 15, 1995; Eyal Benvenisti, *The Israeli-Palestinian Declaration of Principles: A Framework For Future Settlement*, 4 *Eur. J. Int'l L.* 542 (1993); Antonio Cassese, *The Israel-PLO Agreement and Self-Determination*, 4 *Eur. J. Int'l L.* 564 (1993); Raja Shihadeh, *Can the Declaration of Principles Bring About a 'Just and Lasting Peace'?*, 4 *Eur. J. Int'l L.* 555 (1993); Joel Singer, *The Declaration of Principles on Interim Self-Government Arrangements*, 1 *Just. 4* (1994); Justus R. Weiner, *Human Rights in Limbo During the Interim Period of the Israeli-Palestinian Peace Process: Review, Analysis and Implications*, N.Y.U. *J. Int'l L. & Pol.* (forthcoming 1996) (manuscript on file with the author). See generally Symposium, *The Peace Process*, 28 *Isr. L. Rev.* 207 (1994) (discussing other issues relating to the peace process and the interim agreements concluded thus far (see *infra* note 5) between Israel and the PLO).

5. Israel and the PLO have concluded five agreements so far. First, the DOP, *supra* note 3, lays out the overall framework for Israeli-Palestinian negotiations with the objective of reaching interim and permanent status agreements.

Second, the Israel-Palestine Liberation Organization Agreement on the Gaza Strip and the Jericho Area, May 4, 1994, Isr.-P.L.O., 33 *I.L.M.* 622 (1994) [hereinafter *Cairo Agreement*], provides for the withdrawal of Israeli administration and military forces from the bulk of the Gaza Strip and the greater Jericho area (Gaza and Jericho) and the transfer of various powers and responsibilities to the Palestinian Authority (PA).

Thereafter, the Agreement on Preparatory Transfer of Powers and Responsibilities, Aug. 29, 1994, Isr.-P.L.O., 34 *I.L.M.* 455 (1994) [hereinafter *Erez Agreement*], allows for the transfer of powers 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. For the Knesset's (Israel's parliament) implementation of the Cairo and Erez Agreements, see *Laws Implementing the Gaza-Jericho Agreement 1994*, 1497 *Sefer Ha'Khukim* 58 (Dec. 28, 1994).

A subsequent agreement, *The Protocol on Further Transfer of Powers and*

Responsibilities, Aug. 27, 1995, Isr.-P.L.O., Ministry of Foreign Affairs of the State of Israel (on file with the *Virginia Journal of International Law*) [hereinafter *Further Transfer Protocol*], provides for the transfer of 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.

Shortly thereafter, the parties signed a major agreement, *The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip*, Sept. 28, 1995, Isr.-P.L.O., Ministry of Foreign Affairs of the State of Israel (on file with the *Virginia Journal of International Law*) [hereinafter *Oslo II Agreement*], at the White House. It constitutes the final interim agreement, largely superseding all previous interim agreements, including the *Cairo and Erez Agreements*.

The Oslo II Agreement sets forth the overall framework for the elections of the Palestinian Interim Self-Government Authority (Council) and the Ra'ees (Chairman) of the Executive Authority. Id. art. II. The Council will supplant the PA once it comes into office and will govern the Palestinian residents of the West Bank and Gaza Strip during the rest of the interim period. Id. art. III.1. Before the elections, Israeli military forces will withdraw from most Palestinian populated centers in the West Bank, i.e. cities, towns, villages, refugee camps and hamlets. Subsequent redeployment of Israeli military forces in the West Bank will be carried out in three phases after the inauguration of the Council, and must be concluded within 18 months therefrom. Id. arts. II.4., X.1., X.2. The Oslo II Agreement also establishes the structure and size, as well as the powers and responsibilities to be assumed by the Council, the Executive Authority and its Chairman. Id. arts. III, IV, V, IX. Moreover, the agreement stipulates that the Council will adopt a Basic Law; i.e. a constitution, that will set forth the organization, structure and function of the Council, together with the institution of a judicial system composed of independent Palestinian courts and tribunals. Id. art. III.7. In addition, all meetings of the Council and its committees are to "be open to the public." Id. art. VII. Oslo II also sets forth a mechanism for judicial review of acts or decisions taken by the Executive Authority or its Chairman. Id. art. VIII. The Council's jurisdiction covers the West Bank and the Gaza Strip, but does not include, *inter alia*, matters reserved for the permanent status negotiators; e.g. Jerusalem, the Jewish settlements, specified military locations, Palestinian refugees, borders, foreign relations and Israeli citizens. Id. arts. IX.5.a., XVII.1.a. In addition, the Council's jurisdiction does not encompass matters for which it has not received authority under the Oslo II Agreement, such as defense against external threats. Id. art. XII.1.

The Oslo II Agreement establishes that the Council is to have a strong police force that will assume responsibility for public order and internal security in the areas under its jurisdiction in the West Bank and Gaza Strip. Id. art. XII.1. The deployment of the Palestinian Police in the West Bank is to occur gradually, commensurate with the redeployment of the Israeli military forces in the region. Id. arts. X.2., XIII. The agreement permits no other organization, group or individual, aside from members of the Israeli military, to possess arms in the West Bank and Gaza Strip. Id. art. XIV.4. As part of a number of "confidence building measures," Israel has agreed to release or transfer Palestinian residents of the West Bank and Gaza Strip imprisoned or otherwise detained in its custody. Id. art. XVI.1. The release is to be carried out in three stages, the last of which has yet to be determined. The first release took place on the day of the signing of the agreement, and the second prior to the Council elections. Jon Immanuel, 800 Palestinian Prisoners Released in Accord With Oslo II, *Jerusalem Post*, Jan. 11, 1996, at 2.

Lastly, in Oslo II the PLO reiterates its commitment to annul the provisions of its National Covenant declaring the establishment of the State of Israel illegal and calling for its destruction. To this end, the agreement stipulates that the Palestinian National Council (the PLO's quasi-parliament) will convene within two months of the date of the elected Council's inauguration and approve the required amendments. Id. art. XXXI.9.

The core of Meighan's Note, Section III, examines the text of the DOP in light of the hard/soft law paradigm. Throughout her analysis, Meighan refers not only to the accord's specific provisions but also to external domestic and international political circumstances that, in her view, are likely to "exert a compelling influence toward compliance."⁶ Her final appraisal acknowledges the overall soft essence of the DOP but insists that "a detailed examination of its provisions reveals surprising solidity."⁷ Meighan concludes that the DOP's authority is "convincing,"⁸ in substantial part due to her belief that "[d]omestic and international pressures toward compliance . . . may tend to offset the lack of control in the formal provisions of the Declaration."⁹

Meighan devotes the fourth section of the Note to the Cairo Agreement, signed on May 4, 1994, which gives substance to many of the principles set forth in the DOP.¹⁰ Meighan succinctly summarizes the agreement's main provisions, such as the establishment of the Palestinian Authority (PA)¹¹ and the creation of a "strong" Palestinian police force.¹² In addition, Meighan mentions the difficulties confronting the Palestinians residing in Gaza and Jericho as they enter their first stage of local self-rule, such as the need to train the Palestinian Police and to draft a Palestinian constitution that restructures their legislative and judicial systems.¹³

In the Note's final section, Meighan contends that the DOP constitutes a "unique" accord because it was concluded between a state (Israel) and what she defines as a quasi-state (the PLO).¹⁴ She suggests that the DOP marks a significant development in international law because it breaks the traditional monopoly of states as the sole parties to international agreements.¹⁵ Hence, Meighan proposes that "the real import of these events may be that some of the powers pertaining to statehood exist in this context independently of the label 'state,' in the possession of entities

6. Meighan, *supra* note 2, at 449.

7. *Id.* at 462.

8. *Id.*

9. *Id.* at 463.

10. *Id.* at 463-65.

11. Cairo Agreement, *supra* note 5, arts. IV, V, VI, VII.

12. *Id.* arts. VIII, IX.

13. A fourth draft of the constitution is now under review. See Draft Basic Law for the National Authority in the Transitional Period (1996) (available from the Jerusalem Media & Communication Centre).

14. Meighan, *supra* note 2, at 465-67.

15. *Id.* at 165-66.

not satisfying the traditional criteria of statehood."¹⁶

Written far from the Middle East, Meighan's Note makes significant factual assumptions regarding the implementation of the DOP and the good faith of the parties. The purpose of the following response is to inject a note of realism into Meighan's overly optimistic, but otherwise commendable, effort.

Without detracting from the undertaking of the PLO, Israel and Norway, and even if one accepts their expressed intentions to resolve the longstanding conflict at face value,¹⁷ it is the author's conviction that any legal evaluation of the DOP should take into account the complex and unstable political and economic situation in the Middle East. An observer who ignores the political and economic context risks getting enmeshed in a web of chimeras that will cloud even the most assiduous legal analysis. In particular, the possibility that the unprecedented peace process will become deadlocked or collapse as a result of its internal contradictions or external pressures should be carefully weighed.¹⁸

16. *Id.* at 467.

17. The circumstances which brought the parties to the negotiating table must be considered. Arafat, after some 25 years as chairman of the PLO, had nothing tangible to show for the sacrifices he had urged upon his people. The PLO was largely discredited in the West and even in the Arab world after siding with Iraq during the Gulf War. It had lost its primary source of arms and diplomatic support, the Soviet Union. Finally, the intifada was waning and the Palestinian youth were gravitating increasingly to Hamas and other Islamic organizations. The government of the late Israeli Prime Minister Rabin, too, had reached its political nadir. Elected on a platform of achieving security and reaching an autonomy agreement with Palestinians in six to nine months, some 15 months had passed and neither had been achieved. Escalating terrorism had a great toll on Israeli civilians, and the Madrid peace conference, which Rabin inherited from his predecessor, was being boycotted by the Palestinians following Rabin's bungled expulsion of some 400 Islamic militants to Southern Lebanon. See Yigal Carmon, *The Story Behind the Handshake*, Commentary, Mar. 1994, at 25, 26; Wahib Qaitouni, *Lifeline Or Kiss of Death?*, Biladi Jerusalem Times, Oct. 7, 1994, at 5 (Palestinian ambassador to one of the Persian Gulf countries says that "[w]ithout Oslo the Palestinian people would have been exposed to liquidation politically and geographically.").

18. Previous efforts, such as the 1973 Geneva Peace Conference, the Rogers plan, the Reagan peace initiative, the Fez peace plan and the Madrid conference, made little headway in solving the Israeli-Palestinian conflict. Perhaps the most promising opportunity arose from the 1978 Camp David Accords and the ensuing Israel-Egypt Peace Treaty of 1979. See Treaty of Peace Between the Arab Republic of Egypt and the State of Israel, Mar. 26, 1979, Egypt-Isr., 18 I.L.M. 362 (1979). The Camp David Agreement stated the goal of establishing "a self-governing authority" for the Palestinians as an interim agreement, pending a final resolution of the issues of peace and territory. A Framework for Peace in the Middle East Agreed at Camp David, Sept. 17, 1978, Egypt-Isr.-U.S., 17 I.L.M. 1466, 1467 (1978). Egypt, Israel and Palestinian representatives were to negotiate the nature of this autonomy. Under pressure from the PLO, prospective Palestinian participants boycotted the negotiations on autonomy from the outset. Egypt, which initially participated in the negotiations, also walked out before an agreement could be

Part I of this Commentary focuses on the overly optimistic approach which pervades Meighan's factual review of the secret negotiations in Oslo. Part II comprises a general discussion of Meighan's assessment of the legal quality of the DOP as an international instrument, particularly to the extent it supports assertions that a "state" of Palestine will inevitably emerge as a consequence of the peace process. The numerous violations of the agreements that the parties have committed thus far form the topic of Part III. Part IV discusses the influence exerted by domestic and international considerations on the unfolding of the peace process. Part V examines the parties' noncompliance with the timetables set forth in the DOP. The author's Conclusion and Outlook comprise the final section of this Essay.

I. MEIGHAN'S AUSPICIOUS ASSUMPTIONS AND CONJECTURE

Optimism is the noble temptation to see too much in everything.¹⁹

Regrettably, unfounded assumptions and conjecture skew Meighan's overall analysis of the DOP and her account of the circumstances of its signing and initial implementation. She fails to acknowledge that decades of bloodshed, fear and animosity²⁰ cannot possibly be dissipated in a matter of months. Her statement that the two former enemies managed to create "an atmosphere of trust, fairness, and creativity"²¹ typifies her optimism. Subsequently she writes of "[o]pen and forthright communication,

reached. Subsequently, Israel, of its own accord, took a major step towards creating autonomy by replacing the military government with a Civil Administration. Although not required by the Camp David Accords or international law, Israel made this effort in an attempt to normalize the daily life of the Arab residents of the Administered Areas by diminishing its interaction with the Israel Defense Forces. See Justus R. Weiner, Human Rights in the Israeli Administered Areas During the Intifada: 1987-1990, 10 Wisc. Int'l L.J. 185, 187-92 (1992).

19. Dictionary of Quotable Definitions 414 (Eugene E. Brussell ed., 1970) (attributed to Gilbert Keith Chesterson).

20. For a historical background to the peace process and an account of the Israel-PLO conflict, see Thomas L. Friedman, *From Beirut to Jerusalem* (1989); Conor C. O'Brien, *The Siege* 362-662 (1986); William V. O'Brien, *Law and Morality in Israel's War with the PLO* 7-76 (1991); David K. Shipler, *Arab & Jew* (1986); Mark Tessler, *A History of the Israeli-Palestinian Conflict* (1994). For years Israeli leaders asserted that they would never talk to the PLO and Arafat maintained that the PLO would never recognize or make peace with Israel. See Victor Cyguelman, No, Oslo is Not Dead, 2 Pal.-Isr. J. of Pol. Econ. & Culture 3, 4 (1995).

21. Meighan, *supra* note 2, at 436.

[which] in turn fostered the shared ethic of creativity, flexibility, [and] fairness."²² Scattered mentions of the "[m]oderation,"²³ "goodwill,"²⁴ "credibility"²⁵ and "good faith"²⁶ of the parties appear elsewhere in the Note.

An additional instance of unjustified optimism appears in the Note's discussion of the final stages of the secret negotiations conducted in Oslo. In Meighan's view, the parties reached an agreement as a result of what she identifies as "an exchange of balanced concessions"²⁷ by the officials involved. Yet, from the outset of the peace talks, many Palestinians and Israelis have chided their leaders for making gratuitous and unwarranted concessions to the other side.²⁸ These reproaches have not infrequently included accusations of treason.²⁹

II. HARD AND SOFT INTERNATIONAL LAW

[I]t is evident that the circumstances of its adoption give this technically soft-law instrument [the DOP] a considerable degree of binding force. . . . [S]oft law instruments

22. *Id.* at 437-38.

23. *Id.* at 443.

24. *Id.* at 441.

25. *Id.* at 443.

26. *Id.*

27. *Id.*

28. According to one public opinion poll conducted in Israel at the beginning of 1995, 47% of Israelis believe that the Palestinians gained more than Israelis from the peace process. Dan Leon, Israeli Public Opinion Polls on the Peace Process, 2 Pal.-Isr. J. of Pol. Econ. & Culture 56, 59 (1995). Many Palestinians, not surprisingly, have come to the conclusion that Israel's aim in Oslo "was to exploit Palestinian weakness in order to solve the Palestinian problem and to pave the way for normalizing relations between Israel and other Arab countries." Ali Jarbawi, What is the Alternative to Oslo?, 2 Pal.-Isr. J. of Pol. Econ. & Culture 33, 34 (1995); see Here Comes the Hard Part, Newsweek, May 16, 1994, at 10.

29. See Barton Gellman, Gaza Slaying: A Warning From Israel?, Wash. Post, Nov. 15, 1994, at A12; Jack Kelley, Palestinians Lose Trust in Arafat, USA Today, Nov. 1, 1994, at 8A; Geoffrey Kemp, For Arafat, Hobson's Choice After Hamas Bus Bombing, L.A. Times, Oct. 23, 1994, at M1; Henry Siegman, Palestinian Statehood Now, N.Y. Times, Jan. 26, 1995, at A21. Political demonstrations in Israel against the signing of the Oslo II accord gave rise to the physical harassment of several members of the Israeli cabinet, including the late Israeli Prime Minister Yitzhak Rabin. See Yossi Hatoni, "I Feel Good and Secure" Says Rabin at Visit, Heavily Surrounded by Bodyguards, Ha'aretz, Oct. 13, 1995, at A2; Reuven Shapira, Police: Right Organized for Violent Activity and Harassment of Elected Officials, Ha'aretz, Aug. 4, 1995, at A2. It was therefore not a complete surprise, although certainly unprecedented in Israel's history, when Prime Minister Rabin was assassinated on November 4, 1995. See Raine Marcus et al., Pronounced Dead at 11:15 P.M. After Being Shot, Jerusalem Post, Nov. 5, 1995, at 1; Raine Marcus & Herb Keiron, Assassin: God Told Me To Kill Rabin, Jerusalem Post, Nov. 5, 1995, at 1.

may hold substantial consequences for domestic and international political processes, and the likelihood of repercussions may exert a compelling influence toward compliance.³⁰

International conventions or treaties concluded between or among sovereign states, Meighan notes, are "traditionally viewed as the paradigm of hard, binding international law."³¹ As the PLO is not a state, she reasons that the DOP is neither a treaty nor an international convention.³² Hence, the DOP may not be deemed "hard" international law, although, because of its "considerable degree of binding force,"³³ she argues that it may not be typical of "soft" (i.e., non-binding agreements on principles that customarily address social, political or economic concerns) international law either.³⁴ Elsewhere, Meighan asserts that the DOP represents a novel "sub-species of international instrument,"³⁵ because although the PLO is not a state, it has begun to assume some of the "prerogatives traditionally associated with statehood."³⁶ Her apparent enthusiasm for this development may prove misplaced, or at least premature, if the experiment proves a failure.

A. *The PLO and Claims of Statehood*

Much has been written on the subject of the PLO's status under international law.³⁷ That organization has claimed to be the sole representative of the Palestinian people for more than two decades.³⁸ Prior to 1988 it enjoyed only incomplete support in the

30. Meighan, *supra* note 2, at 449.

31. *Id.* at 451. Meighan draws attention to article 38 of the Statute of the International Court of Justice, which is generally regarded as a complete enunciation of the traditional sources of international law. See Ian Brownlie, *Principles of Public International Law* 3 (4th ed. 1990).

32. According to the Vienna Convention on the Law of Treaties, a treaty is always an international agreement "concluded between states." See Vienna Convention on the Law of Treaties, concluded May 23, 1969, art. 1, 1155 U.N.T.S. 331, 331.

33. Meighan, *supra* note 2, at 449.

34. *Id.* at 453.

35. *Id.* at 465.

36. *Id.* at 466-67.

37. See Robert A. Friedlander, *The PLO and the Rule of Law: A Reply to Dr. Anis Kassim*, 10 *Denv. J. Int'l L. & Pol'y* 221 (1981); Anis F. Kassim, *The Palestine Liberation Organization's Claim to Status: A Juridical Analysis Under International Law*, 9 *Denv. J. Int'l L. & Pol'y* 1 (1980); William O'Brien, *The PLO in International Law*, 2 *B.U. Int'l L.J.* 349 (1984).

38. William V. O'Brien, *supra* note 20, at 12-14.

international arena.³⁹ The PLO maintained diplomatic relations of various types⁴⁰ with over a hundred different governments and received a grant of permanent observer status at the United Nations in 1974.⁴¹

On November 15, 1988, the Palestinian National Council⁴² issued the Algiers Declaration proclaiming the creation of an independent Palestinian state in the West Bank and Gaza Strip, with East Jerusalem as its capital.⁴³ In turn, a number of countries, most of which belonged either to the Third World or the former Eastern Bloc, recognized this "state."⁴⁴ The United Nations General Assembly modified the PLO's designation in consequence to "Palestine."⁴⁵ This, however, in no way constituted a recognition of "Palestine" as a sovereign entity under international law. Professor Frederic L. Kirgis, Jr. clarified that:

When the United Nations General Assembly adopted its resolution on the "Question of Palestine" in December

39. *Id.*

40. As one observer has noted:

The political/diplomatic strategy employed by the PLO in carrying out its grand strategy has been highly successful. . . . The practical manifestations of "recognition" or "observer status" have often been obscure, but the sheer quantity of recognitions and grants of status have produced the appearance of an international person, notwithstanding the fact that for most of its existence the PLO has not even claimed to be a government-in-exile and, even after the proclamation of the state of Palestine, has possessed no territory and exercised sovereign powers over no population.

Id. at 14.

41. Observer Status for the Palestine Liberation Organization, G.A. Res. 3237, U.N. GAOR, 29th Sess., 2296th plen. mtg., Supp. No. 31, at 4, U.N. Doc. A/9631 (1974); see Friedlander, *supra* note 37, at 232-34.

42. Alan Hart, in his officially approved biography of PA Chairman Yasser Arafat, defined the Palestinian National Council as "more or less the Palestinian parliament-in-exile. It is the highest Palestinian decision-making body and the P.L.O. is answerable to it." Alan Hart, *Arafat: Terrorist or Peacemaker?* 45 (1984).

43. Political Communique and Declaration of Independence by Palestinian National Council, Nov. 15, 1988, 27 *I.L.M.* 1660 (1988).

44. Benvenisti, *supra* note 4, at 544. The United States has never recognized the "state" of Palestine and has regarded the PLO as a terrorist organization for most of its history. See William V. O'Brien, *supra* note 20, at 62-64. As a presidential candidate Bill Clinton campaigned in opposition to the creation of an independent Palestinian state. See Raphael Danziger & Arthur Rubin, *Am. Isr. Pub. Aff. Comm., The Clinton-Rabin Partnership in the Mideast Peace Process* 28 (1993).

45. Question of Palestine, G.A. Res. 43/177, U.N. GAOR, 43rd Sess., 82nd plen. mtg., Supp. No. 49, at 62, U.N. Doc. A/43/49 (1988). The General Assembly adopted the resolution by a vote of 104-2 (Israel and the United States cast the only negative votes) with 44 states abstaining. See Francis A. Boyle, *The Creation of the State of Palestine*, 1 *Eur. J. Int'l L.* 301, 302 (1990).

1988, it did not recognize a Palestinian state; nor did it call the PLO a provisional government. Instead, it acknowledged that the Palestine National Council had proclaimed the State of Palestine, affirmed the need to enable the Palestinian people to exercise sovereignty over the occupied territories, and changed the PLO's designation to "Palestine" in the UN system.⁴⁶

The signing of the DOP and the ensuing interim agreements caused the question of the PLO's status under international law to arise anew. Yet it is evident even today that the "state" of Palestine does not meet all the commonly understood requirements of statehood under international law as set forth in the Montevideo Convention on the Rights and Duties of States.⁴⁷ Article I of that convention provides, "The state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states."⁴⁸

The PA, headed by Yasser Arafat, his appointed administration and the elected Palestinian Council (Council), assumed considerable control over certain areas of the West Bank and Gaza Strip following the conclusion of the Cairo and Oslo II Agreements. Yet Israel has not transferred all of its powers in these areas to the Palestinian entity and continues to exercise certain critical prerogatives. For instance, article XVII.4.a. of the Oslo II Agreement states, "Israel, through its military government, has the authority over areas that are not under the territorial jurisdiction of the Council, powers and responsibilities not transferred to the Council and Israelis."⁴⁹ Further, the Oslo II Agreement explicitly provides

46. Frederic L. Kirgis, Jr., Admission of "Palestine" as a Member of a Specialized Agency and Withholding the Payment of Assessments in Response, 84 Am. J. Int'l L. 218, 219-20 (1990).

47. See James Crawford, The Creation of the State of Palestine: Too Much Too Soon?, 1 Eur. J. Int'l L. 307 (1990); Ruth Lapidoth & N.K. Calvo-Goller, Les Elements Constitutifs de L'Etat et la Declaration du Conseil National Palestinien du 15 Novembre 1988, 96 Revue Generale de Droit International Public 777 (1992). But see Boyle, *supra* note 45; Maurice Flory, Naissance d'un Etat Palestinien, 93 Revue Generale de Droit International Public 385 (1989).

48. Convention on the Rights and Duties of States, Dec. 26, 1933, art. 1, 49 Stat. 3097, 3100, 165 L.N.T.S. 19, 25; see Brownlie, *supra* note 31, at 71-86.

49. Oslo II Agreement, *supra* note 5, art. XVII.4.a. The Agreed Minutes to article VII (5) of the DOP state: "The withdrawal of the military government will not prevent Israel from exercising the powers and responsibilities not transferred to the Council." DOP, *supra* note 3, at 1543. The Oslo II Agreement expressly negates the Council's assumption of any major powers and responsibilities in the realm of foreign relations. Oslo II

that the legal status of these areas remains unchanged for the interim period and is thus, still subject to Israeli occupation.⁵⁰

On this subject, Joel Singer, legal advisor of the Israeli Ministry of Foreign Affairs and senior negotiator to the talks with the Palestinians, made the following assertion:

In this context, the fact that the military government in the West Bank and Gaza Strip will continue to exist is very significant. It emphasizes that, notwithstanding the transfer of a large portion of the powers and responsibilities currently exercised by Israel to Palestinian hands, the status of the West Bank and Gaza Strip will not be changed during the interim period. These areas will continue to be subject to military government. Similarly, this fact suggests that the Palestinian Council will not be independent or sovereign in nature, but rather will be legally subordinate to the authority of the military government. In other words, operating within Israel, the military government will continue to be the source of authority for the Palestinian Council and the powers and responsibilities exercised by it in the West Bank and Gaza Strip.⁵¹

Agreement, *supra* note 5, art. IX.5.a. In addition, the Oslo II Agreement provides that Israel is solely in charge of ensuring the defense of the West Bank and Gaza Strip against external threats. *Id.* art. X.4.

50. The Oslo II Agreement provides, "The two Parties view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which will be preserved during the interim period." Oslo II Agreement, *supra* note 5, art. XXXI.8; see also DOP, *supra* note 3, art. IV ("The two sides view the West Bank and the Gaza Strip as a single territorial unit, whose integrity will be preserved during the interim period.").

In addition, the DOP emphasizes that, "[T]he status of the Gaza Strip and Jericho area will continue to be an integral part of the West Bank and Gaza Strip, and will not be changed in the interim period." DOP, *supra* note 3, annex II, art. VI; see also Erez Agreement, *supra* note 5, art. XIII.5 ("The Gaza Strip and the Jericho Area shall continue to be an integral part of the West Bank and the Gaza Strip. The status of the West Bank shall not be changed for the period of this Agreement . . ."); Cairo Agreement, *supra* note 5, art. XXIII.6 ("The two Parties view the West Bank and the Gaza Strip as a single territorial unit, the integrity of which will be preserved during the interim period.").

51. Singer, *supra* note 4, at 6. But see Eyal Benvenisti's observation on the subject:

The Cairo Agreement contains a legal paradox: Israel is depicted as an occupant without effective control . . . underscor[ing] the conclusion . . . that Israel has but a formal status in the areas under the PA's jurisdiction, a status whose significance extends only to the bilateral relations between Israel and the PLO. From the point of view of third parties, Israel should not be regarded as [an] occupant in the Gaza Strip and the Jericho Area.

Eyal Benvenisti, The Present Status of the Palestinian Authority, in *The Arab-Israeli Accords: Legal Perspectives* 17 (Mallat Shibli ed., forthcoming 1996).

The logic of Singer's analysis is unimpeachable. Clearly all areas in the West Bank and Gaza Strip under local Palestinian administration during the interim period remain nonindependent. The elections that were held on January 20, 1996 should not have altered this.⁵²

By virtue of the Oslo II Agreement the Council clearly lacks the capacity to enter into relations with other states,⁵³ an essential prerequisite for independence under international law.⁵⁴ The Council's lack of capacity to conduct foreign relations,⁵⁵ in conjunction with Israel's exclusive authority over external security as expressly provided for in the agreements, reflect the parties' commitment to the creation of an autonomous Palestinian entity, rather than an independent Palestinian state.⁵⁶ Hence, Meighan's assessment that the PLO constitutes no more than a quasi-state entity⁵⁷ is correct.

52. See Uri Nir, Close to 80% of Registered Palestinian Voters Participated in Elections; Arafat Gets 85% of Vote, Ha'aretz, Jan. 21, 1996, at A1.

53. Paragraph 5(a) of article IX of the Oslo II Agreement provides:

[T]he Council will not have powers and responsibilities in the sphere of foreign relations, which sphere includes the establishment abroad of embassies, consulates or other types of foreign missions and posts or permitting their establishment in the West Bank or Gaza Strip, the appointment of or admission of diplomatic and consular staff, and the exercise of diplomatic functions.

Oslo II Agreement, *supra* note 5, art. IX.5.a. Joel Singer elaborates upon the critical importance of the realm of foreign relations in the Israeli-Palestinian peace talks:

In each one of the three main agreements which Israel has concluded to date with the PLO as part of the current peace process, the issue of foreign relations has received special treatment. This reflects the fact that . . . the treatment of the sphere of foreign relations has an added effect on the very nature of the autonomous entity itself, because full capacity to conduct foreign relations is one of the accepted indicia of sovereignty and statehood. Any arrangements reached with regard to the sphere of foreign relations are, therefore, of critical significance.

Joel Singer, Aspects of Foreign Relations Under the Israeli-Palestinian Agreements on Interim Self-Government Arrangements For the West Bank and Gaza, 28 *Isr. L. Rev.* 268, 268-69 (1995) [hereinafter, Singer, Foreign Relations] (footnote omitted).

54. According to Ian Brownlie, the ability to enter relations with other states indicates independence from foreign rule: "[T]he concept of independence is represented by the requirement of capacity to enter into relations with other states. Independence has been stressed by many jurists as the decisive criterion of statehood." Brownlie, *supra* note 31, at 73-74.

55. The Oslo II Agreement does permit some Palestinian interaction with foreign states and international organizations for the purpose of obtaining economic assistance as well as in the limited spheres of culture, science and education. See Oslo II Agreement, *supra* note 5, art. IX.5.b. According to Singer, however, these contacts constitute exceptions to the rule that an autonomous body is not to conduct foreign relations and correspond to the accepted international practice in this domain. Singer, Foreign Relations, *supra* note 53, at 283; see Hurst Hannum & Richard B. Lillich, The Concept of Autonomy in International Law, 74 *Am. J. Int'l L.* 858, 872-75 (1980).

56. See Singer, Foreign Relations, *supra* note 53, at 296.

57. Meighan, *supra* note 2, at 465.

Even Arafat's senior deputy Mahmoud Abbas, who was intimately involved in negotiating the DOP, has written, "[w]e do not claim that we signed an agreement that created an independent Palestinian State; none of the provisions in the Declaration of Principles make such a claim."⁵⁸

B. *Self-Determination Does Not Necessarily Imply the Right to Statehood*

Despite the agreements' multiple provisions forbidding the Council from activity in such sensitive realms as foreign relations and external security, Meighan infers a tendency toward Israeli recognition of Palestinian statehood from the DOP.⁵⁹ Such an interpretation, however, fails to consider the agreements' specific restrictions on the Council's powers which preclude the characterization of the Palestinian entity as a state. Furthermore, the late Israeli Prime Minister Yitzhak Rabin and his successor Shimon Peres repeatedly expressed their preference for other non-state models of government for the Palestinian population in the Gaza Strip and the West Bank,⁶⁰ namely, a confederation with Jordan.⁶¹ The major opposition party, the Likud, is even more categorical in its negation of a Palestinian state.⁶²

Furthermore, Israel's recognition of the Palestinians' "legitimate and political rights,"⁶³ which presumably include the right to self-determination,⁶⁴ does not, as Meighan implies, automatically entail its assent to the creation of a Palestinian state as the inevitable

58. Mahmoud Abbas, Through Secret Channels 218 (1995).

59. See Meighan, *supra* note 2, at 465.

60. In the 1992 national elections Rabin and Peres ran on a Labor Party platform that specifically opposed the creation a Palestinian state. See Robert Slater, Rabin of Israel 401 (1993).

61. See David Makovsky, Rabin to P.A.: The Streets Are Yours, Jerusalem Post, Apr. 14, 1995, at 9; Peres Denies Proposal to Turn Gaza Strip into a Palestinian State (BBC Short Wave Broadcast, Voice of Israel, Mar. 28, 1995). In addition, the U.S. government has consistently opposed the creation of a Palestinian state. Raphael Danziger & Steven J. Rosen, *Am. Isr. Pub. Aff. Comm.*, Guide to the Mideast Peace Process 63-64 (1991); Euphoria and Misgivings, Jerusalem Post, Sept. 14, 1993, at 6.

62. See Benjamin Netanyahu, The Alternative is Autonomy, Jerusalem Post, Apr. 8, 1994, at 4.

63. See DOP, *supra* note 3, pmbl.; see also id. art. III (affirming that holding elections for the Council "will constitute a significant interim preparatory step toward the realization of the legitimate rights of the Palestinian people and their just requirements").

64. See generally Benvenisti, *supra* note 4, at 544 ("One can argue that the consequence of recognizing the Palestinian people and its right to govern itself in the West Bank and Gaza is recognition in principle of the right of this people to establish a state in these areas if it so desires."); Cassese, *supra* note 4.

outcome of the peace process. The prevailing standard of international law, as set out by the International Court of Justice in the *Western Sahara* case,⁶⁵ is ambiguous as to the forms that self-determination may take.⁶⁶ Professor Malvina Halberstam explains, "[T]he establishment of an independent state for each group seeking 'self-determination' may not be the best solution. The desirability of an independent state depends on its economic, political, and military viability and on the effect its independence would have on other states in the region."⁶⁷ Thus, under international law, sovereignty is not a necessary consequence of the exercise of the right to self-determination.

C. How "Soft" is the DOP?

Having concluded that the DOP may not be characterized as "hard law," Meighan proceeds to examine whether the DOP, as an international instrument, is capable of effectively binding its signatories.⁶⁸ She professes that the accord enjoys much credibility, particularly given the fact that the highest executive authorities on both sides actively participated in the negotiating process, and that "[t]he final Declaration of Principles was formally signed by leaders with full authorization to represent their respective parties."⁶⁹ Had it been otherwise the document's "authority" would be con-

65. See *infra* note 67.

66. Yoram Dinstein, *Autonomy*, in *Models of Autonomy* 291, 294 (Yoram Dinstein ed., 1981). For a survey on the topic see Michael Curtis, *International Law and the Territories*, 32 *Harv. Int'l L.J.* 457, 470-75 (1991); Malvina Halberstam, *Self-Determination in the Arab-Israeli Conflict: Meaning, Myth, and Politics*, 21 *N.Y.U. J. Int'l L. & Pol.* 465 (1989); Lapidot & Calvo-Goller, *supra* note 47, at 798.

67. Halberstam, *supra* note 66, at 470-71. Halberstam relies on the *Western Sahara* case where the International Court of Justice held that self-determination was not tantamount to independence. Judge Dillard expressed his view as follows:

I can find nothing in [the relevant U.N.] resolutions, however, or in the legal aspects of the "right" itself which compels such conclusions [that self-determination must be equated with independence]. On the contrary it may be suggested that self-determination is satisfied by a free choice not by a particular consequence of that choice or a particular method of exercising it.

Western Sahara, 1975 I.C.J. 12, 123 (Oct. 16) (separate opinion of Judge Dillard).

68. Meighan, *supra* note 2, at 454.

69. *Id.* at 457. Arafat presumably exercises firm control over his own Fatah faction but not over the numerous other groups which also form part of the PLO. A pair of commentators have noted that:

[A]s chairman of the PLO, Yasir Arafat presides over a fractious and unwieldy organization. There is constant tension between the various constituent elements of the PLO Arafat can give orders to Fatah, but not to the other organizations that compose the PLO; he can only attempt to coordinate their activities and to impose on them a loose kind of discipline.

siderably impaired since, as Meighan explains, "[a] negotiating process fraught with any suspicion of action *ultra vires* or obligations undertaken with insufficient care may thus detract from the authority of the resulting agreement."⁷⁰

Meighan's conclusion that Rabin and Arafat each signed the accord with full authorization from their constituents is reductionist. She fails to consider the extremely fragile local base of political support that both Rabin and Arafat possessed for their peace undertaking.⁷¹ Her argument completely disregards the capability of Palestinian, as well as Israeli, opposition groups to undermine the peace talks by democratic or other means. These acts have included a wave of Palestinian suicide bombings, the assassination of Prime Minister Rabin⁷² and the forceful settling of unoccupied land in the West Bank.⁷³

Neil C. Livingstone & David Halevy, *Inside the PLO* 87 (1990); see William V. O'Brien, *supra* note 20, at 64.

70. Meighan, *supra* note 2, at 456-57.

71. One of the Israeli initiators of the Oslo negotiations commented that:

Popular Israeli opinion holds that the Declaration of Principles (DOP) was not signed out of a sudden Israeli love for Palestinians, or out of a sudden understanding of Palestinian political demands, but rather out of a belief that the process will provide each individual with more security and a better quality of life.

Ron Pundik, *Towards a New Chapter in Israeli-Palestinian Negotiations?*, 2 *Pal.-Isr. J. Pol. Econ. & Culture* 6, 8 (1995).

72. See Raine Marcus et al., *Pronounced Dead at 11:15 P.M. After Being Shot*, *Jerusalem Post*, Nov. 5, 1995, at 1; Raine Marcus & Herb Keinon, *Assassin: God Told Me To Kill Rabin*, *Jerusalem Post*, Nov. 5, 1995, at 1. It is likely that the feelings of outrage most Israelis experienced at the assassination of Prime Minister Rabin will boost the short-term popularity of the peace process. This will make it politically easier for his successor to pursue Rabin's policies with less domestic opposition. Without Rabin as its leader, however, the Labor party will probably have much more difficulty prevailing in the next national election.

73. See Gideon Alon, *Tsuker on the Invasion of Apartments in the Territories: The Government Has Failed to Impose the Law*, *Ha'aretz*, June 15, 1995, at A4; Gideon Alon & Nadav Shargai, *Ben Yair: Settlers' Invasion of Apartments Near Barkan Settlement - Illegal*, *Ha'aretz*, June 19, 1995, at A6; Derek Brown, *Jewish Settlers Threaten Peace*, *The Guardian* (London), June 9, 1995, at 12; Edah Oushpiz, *The War of the Hills*, *Ha'aretz*, July 27, 1995, at B3; Nadav Shargai, *Civil Disobedience, First Stop*, *Ha'aretz*, July 14, 1995, at B3; Nadav Shargai, *Conflict is Just a Question of Time*, *Ha'aretz*, June 14, 1995, at A2; Nadav Shargai, *Government Avoiding Evacuation of Settlement in Barkan*, *Yesha Council: "Operations Will Continue"*, *Ha'aretz*, June 14, 1995, at A1; Nadav Shargai, *Increasing the Risk of Losing Control*, *Ha'aretz*, Aug. 8, 1995, at A2; Nadav Shargai, *Settlers Pave Another Road in Shomron*, *Connects Settlements in Binyamin District*, *Ha'aretz*, June 20, 1995, at A3; Nadav Shargai, *Settlers Take Observation Post Previously Held By I.D.F. Near Dehaysha*, *Ha'aretz*, July 3, 1995, at A5; Nadav Shargai, *Settlers to Establish Settlement in West Bank in Protest Over Interim Agreement*, *Ha'aretz*, June 13, 1995, at A1; Nadav Shargai, *Yesha Council Ordered Settlement Leaders to Clear Roads Blockaded by Palestinians*, *Ha'aretz*, June 29, 1995, at A3; Nadav Shargai, *150 Settlers*

As regards Meighan's claim of "full authorization," it is significant that the negotiations from which the DOP emerged were conducted in secrecy. This allowed the parties to sign an agreement on highly sensitive issues without media coverage, public debate or reaction by their political opposition. Naturally, this clandestine stratagem detracted from the DOP's legitimacy in the eyes of the local constituencies on both sides.⁷⁴

According to Meighan, another determinative consideration of the softness of an international instrument is that of control. While conceding that the DOP "is softest in terms of its control; i.e., the ability to give effect to its contents,"⁷⁵ she reiterates her belief that "the political context of the Declaration may serve to bolster its effectiveness, as domestic and international expectations for the settlement raise the costs of violating its terms."⁷⁶

To measure the degree of control the agreement exerts, Meighan provides a substantive overview of the various dispute resolution mechanisms. The first such mechanism, the Joint Israeli-Palestinian Liaison Committee, has the purpose, *inter alia*, of dealing with general controversies and disputes that may arise between the parties throughout the interim period.⁷⁷ The DOP allows for the creation of a conciliation mechanism for disputes that the Joint Liaison

Begin Fencing Lands Near Karnei Shomron; Paving Continues, Ha'aretz, June 21, 1995, at A2.

74. See Abbas, *supra* note 58, at 209; Michael Widlanski, The PLO Accord: A Guide for the Perplexed and Trauma-Ridden, Jerusalem Post, Oct. 20, 1993, at 8. Many actors on the Israeli political scene have called for a national referendum on the Oslo II Agreement. See Lilli Galili, Labour MKs Kahalani, Zisman & Avital Support National Referendum on Oslo II, Ha'aretz, Aug. 2, 1995, at A3; Lilli Galili, MK Porat Rallying Support Within Coalition for Conditioning Oslo II Upon National Referendum, Ha'aretz, July 31, 1995, at A3; Hanna Kayam, New Semantic Patent: Decision by the People, Ha'aretz, July 28, 1995, at B2; Nadav Shargai & Uri Nir, The Right Calls for a National Referendum on Interim Agreement, Ha'aretz, July 24, 1995, at A2. The late Israeli Prime Minister Rabin refused to even give the idea serious consideration. See Yarayach Tal et al., Rabin Rejects Settlers Request that Interim Agreement be Ratified by National Referendum, Ha'aretz, Aug. 6, 1995, at A1.

75. Meighan, *supra* note 2, at 457.

76. *Id.* For the author's views on the impact of domestic and international considerations on the unfolding of the peace process, see *infra* notes 106-50 and accompanying text.

77. The DOP states that the Committee's function is "to deal with issues requiring coordination, other issues of common interest, and disputes." DOP, *supra* note 3, art. X. 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.* art. XV.

Committee cannot resolve.⁷⁸ Should conciliation prove ineffective in resolving the parties' differences on what, at this late stage, would presumably constitute an intractable issue, the DOP offers, as a final recourse, the formation of an Arbitration Committee.⁷⁹

Meighan recognizes that in spite of these tiered dispute resolution mechanisms, the accord's capacity to exert control is entirely subject to the parties' discretion.⁸⁰ She correctly remarks that the DOP's lack of coercive authority in this respect may be counted as one of its "critical weakness[es]"⁸¹ and that it considerably "compromis[es] the agreement in terms of control."⁸² Thus far only the Joint Liaison Committee, which, in accordance with the DOP, must convene, has served the parties as a forum for the resolution of their varied and numerous differences;⁸³ the parties have not invoked the optional conciliation and arbitration mechanisms.⁸⁴ Both sides have failed to invoke these outlets because of a common lack of faith in their utility; i.e., a fear that they could impede rather than advance the peace process.

Regardless of whether the parties invoke the mandatory or the optional dispute resolution mechanisms, the DOP provides no sanctions for violations of its terms. Their absence is understandable. The parties no doubt foresaw the multitude of ways in which breaches of the agreements could occur. Their likely preference was to respond flexibly to any violations, without predetermining their course of action.

78. The DOP states, "Disputes which cannot be settled by negotiations may be resolved by a mechanism of conciliation to be agreed upon by the parties." DOP, *supra* note 3, art. XV.2.

79. *Id.* art. XV.3.

80. Indeed, Meighan argues that the use of the conditional verb "may" in paragraphs two and three of article XV of the DOP (as opposed to the verb "shall" which appears at paragraph one in connection with the Joint Resolution Committee) suggests that the parties have no obligation to settle their differences in the framework of the dispute resolution mechanisms set out therein. See Meighan, *supra* note 2, at 458.

81. *Id.* at 458.

82. *Id.*

83. Telephone Interview with Dan Polisar, Director, Peace Watch (June 12, 1995). The Joint Liaison Committee, headed by then Foreign Minister Shimon Peres and Palestinian negotiator Nabill Shaath, was convened on numerous occasions throughout the process to settle differences which arose in connection with issues like the redeployment of the Israeli army in the Gaza Strip, the status of the Israeli settlements in that area, and the size of the Jericho area. *Id.*

84. *Id.*

III. PALESTINIAN AND ISRAELI VIOLATIONS OF THE AGREEMENTS

Peace: A period of cheating between two periods of fighting.⁸⁵

Meighan argues that the DOP's content suggests that Israel and the PLO have "undertaken a serious and binding commitment"⁸⁶ toward a final settlement of their bitter conflict. Yet subsequent events have not borne this claim out, as the numerous violations of the agreements that both sides have committed demonstrate.⁸⁷

A. Palestinian Violations

The PLO has yet to fulfill its promise⁸⁸ to annul the provisions of its National Charter⁸⁹ (Charter) declaring the establishment of the

85. Dictionary of Quotable Definitions, *supra* note 19, at 426 (attributed to Ambrose Bierce).

86. Meighan, *supra* note 2, at 448.

87. See Alouf Ben, Israel Will Present to the Palestinians a List of Dozens of Violations of the Oslo Accord, *Ha'aretz*, Jan. 2, 1995, at A1; David Makovsky, Both Sides Are Sticking To (Part of) the Oslo Agreement, *Jerusalem Post*, Feb. 24, 1995, at 8; Uri Nir, The Palestinians Also Prepared A List of Violations of the Oslo Accord, *Ha'aretz*, Jan. 3, 1995, at A4.

88. In the Letters of Mutual Recognition Between Israel and the PLO accompanying the DOP, PLO Chairman Arafat affirms that "those articles of the Palestinian Covenant which deny Israel's right to exist . . . are now inoperative and no longer valid . . . [and that] the PLO undertakes to submit to the Palestinian National Council for formal approval the necessary changes in regard to the Palestinian National Council." Letter from Yasser Arafat, Chairman, The Palestinian Liberation Organization, to Yitzhak Rabin, Prime Minister, Israel (Sept. 9, 1993) (on file with the *Virginia Journal of International Law*); see the Exchange of Letters Between the PLO and the Government of the State of Israel accompanying the Cairo Agreement, *Cairo Agreement*, *supra* note 5, at 639.

The Oslo II Agreement states that within two months of the Council's inauguration, following the Palestinian elections in the West Bank, Gaza Strip and East Jerusalem, the Palestinian National Council will convene to amend the disputed provisions of the Covenant. Oslo II Agreement, *supra* note 5, art. XXXI.9. Israeli Prime Minister Peres has conditioned the Israeli military's withdrawal from Hebron upon the enactment of the amendments to the Palestinian Covenant. See Arie O'Sullivan, IDF Clamps Curfew on 465 Villages, *Jerusalem Post*, Mar. 6, 1996, at 1.

The U.S. Department of State also has chided the PLO for not standing up to its commitment to abolish the anti-Israel provisions in the Charter. U.S. State Dep't, Report Pursuant to Title VII of P.L. 101-246, Foreign Relations Authorization Act for Fiscal Year 1990-91, as amended (June 1, 1995) (PLO Commitments Compliance Report). The U.S. Senate has also conditioned financial aid to the PA upon abrogation of provisions of the Charter which express hostility toward the State of Israel. See Akiva Alder, Senate Conditioned Aid to Palestinians upon List of Conditions, *Ha'aretz*, Aug. 22, 1995, at A2.

89. See The Palestinian National Charter of 1968, reprinted in *The Arab-Israeli Conflict - Volume III: Documents*, at 705-11 (John Norton Moore ed., 1974) [hereinafter *Charter of*

state of Israel illegal⁹⁰ and calling for its destruction.⁹¹ Articles of the Charter repudiating the Zionist movement⁹² and justifying armed struggle to liberate Palestine also remain in force.⁹³ Arafat's commitment to abolishing these articles of the Charter was a prerequisite to Israel's formal recognition of the existence of the Palestinian people and the PLO as its representative.⁹⁴ Indeed, until the signing of the DOP, Israel had always considered the Palestinians solely as Arab residents of the West Bank and Gaza and never as a group possessing a separate national identity.⁹⁵ The persistence of these provisions, negating the very existence of the state of Israel, stands in sharp contrast with the "goodwill," "credibility" and "good faith," which according to Meighan, accompanied the negotiation and signing of the DOP.

Additional Palestinian violations of the agreements include prosecuting Palestinians accused of cooperating with Israel,⁹⁶ smuggling

1968]; The Palestinian National Charter of 1964, reprinted in *id.* at 698-704 [hereinafter *Charter of 1964*].

90. Charter of 1968, *supra* note 89, art. 19; Charter of 1964, *supra* note 89, art. 17.

91. The Charter of 1968 states that it "aims at the elimination of Zionism in Palestine." Charter of 1968, *supra* note 89, art. 15. The document later states, "[T]he Arab Palestinian people, expressing themselves by the armed Palestinian revolution, reject all solutions which are substitutes for the total liberation of Palestine . . ." *Id.* art. 21.

92. The Charter of 1968 states, *inter alia*:

Zionism is a political movement organically associated with international imperialism and antagonistic to all action for liberation and to progressive movements in the world. It is racist and fanatic in its nature, aggressive, expansionist and colonial in its aims, and fascist in its methods. . . . [T]he liberation of Palestine will destroy the Zionist and imperialist presence and will contribute to the establishment of peace in the Middle East . . .

Charter of 1968, *supra* note 89, art. 22; see Charter of 1964, *supra* note 89, art. 19.

93. Charter of 1968, *supra* note 89, arts. 9, 10, 21. PLO Chairman Yasser Arafat's address to a Johannesburg mosque, calling to "begin the jihad to liberate Jerusalem," constitutes a further contravention of the DOP's terms. P.L.O. Chairman Yasser Arafat, Speech on Jerusalem to South African Muslims, May 10, 1994, reprinted in *J. Pal. Stud.*, Autumn 1994, at 131, 132; see David Makovsky, Rabin: Arafat's Call for 'Jihad' Puts Peace Process in Question, *Jerusalem Post*, May 18, 1994, at 1. This declaration echoed Arafat's statement on Jordanian television the day the DOP was signed that referred not to peace and coexistence, but rather to the "plan of phases," a euphemism for the step-by-step destruction of Israel. Carmon, *supra* note 17, at 29; Abraham Tal, What Does the "Ra'ees" Mean?, *Ha'aretz*, Aug. 14, 1995, at B1. But see Walid Awad, Jihad of Peaceful Struggle, *Jerusalem Post*, Oct. 6, 1995, at 7.

94. See Abbas, *supra* note 58, at 207-08.

95. See *id.* at 207; Benvenisti, *supra* note 4, at 543.

96. The Cairo Agreement committed the PA to restraint as regards those whom they consider as collaborators: "With the assumption of Palestinian authority, the Palestinian side commits itself to solving the problem of those Palestinians who were in contact with the Israeli authorities. Until an agreed solution is found, the Palestinian side undertakes not to prosecute these Palestinians or to harm them in any way." *Cairo Agreement*, *supra*

Palestinians, declared *persona non grata* by Israel due to their previous involvement in acts of terror, into the Gaza Strip,⁹⁷ establishing PA offices in the city of Jerusalem,⁹⁸ failing to confiscate weapons held by Hamas or Islamic Jihad,⁹⁹ ignoring prior legislation enacted by Israel in Gaza and Jericho,¹⁰⁰ refusing to transfer persons suspected of terrorism against Israel¹⁰¹ and enlisting

note 5, art. XX.4; see also Jon Immanuel, In Time of Peace, War on 'Collaborators' Continues, *Jerusalem Post*, Mar. 17, 1995, at 9; Rabin on 'Collaborators', *Jerusalem Post*, June 15, 1994, at 6. But see Amira Hess, Following Israel's Request, Palestinian Military Intelligence Released Two Collaborators, *Ha'aretz*, June 11, 1995, at A3.

On the treatment of such collaborators in Palestinian hands, see Amnesty International, *Israel and the Occupied Territories Including the Area Under the Jurisdiction of the Palestinian Authority: Human Rights: A Year of Shattered Hopes* 26 (1995) (reporting torture by the PA of Palestinian detainees accused of "collaboration"). Thirty-one Palestinians suspected of having collaborated with Israel have been killed since the PA assumed authority in Gaza and Jericho. Hundreds more fear for their security as the Israeli military prepares to withdraw from parts of the West Bank. See Eytan Rabin, *Hundreds of Collaborators and Civil Administration Workers Seek Refuge in Israel in Fear of Their Fate After Withdrawal*, *Ha'aretz*, Oct. 6, 1995, at A1.

97. See *Puzzling Confrontation*, *Jerusalem Post*, July 14, 1994, at 6.

98. See Peace Watch, *Institutions of the Palestinian Authority in Jerusalem* (1995); see also *Palestinian Officials Have Held 80 Diplomatic Meetings at the Orient House Since the Establishment of the Palestinian Authority*, Press Release (Peace Watch, Jerusalem, Israel), Mar. 7, 1996; Nadav Shargai, "Forum for Jerusalem": 38 Institutions Working in City on Behalf of the P.A., *Ha'aretz*, Aug. 8, 1995, at A3; Nadav Shargai, *Orient House Officials Pass On to P.A. Budget Requests for Jerusalem*, *Ha'aretz*, July 7, 1995, at A3; Nadav Shargai, *Palestinian Authority Opened in Jerusalem Branch of the "Wounded Palestinian Foundation"*, *Ha'aretz*, July 5, 1995, at A3.

The administration of Palestinian Authority offices in Jerusalem violates the Cairo Agreement, which provides, "The offices of the Palestinian Authority shall be located in the Gaza Strip and the Jericho Area, pending the inauguration of the Council to be elected pursuant to the Declaration of Principles." *Cairo Agreement*, supra note 5, art. III.6; see *Oslo II Agreement*, supra note 5, art. I.7; *DOP*, supra note 3, annex II art. V.

99. See *PA: Hand in Weapons by Sunday or Face Imprisonment*, *Jerusalem Post*, May 11, 1995, at 2.

100. Yasser Arafat, in his first official declaration as the chairman of the PA, published in an official gazette issued by the PA, proclaimed that all Israeli military law enacted since 1967 was abolished and that "the laws, regulations and orders in force before 5 June 1967 in the West Bank and the Gaza Strip shall remain in force until unified." Raja Shehadeh, *Questions of Jurisdiction: A Legal Analysis of the Gaza-Jericho Agreement*, *J. Pal. Stud.*, Summer 1994, at 18, 23; see Yossi Tourpstein, *Arafat Declared Return of Pre-1967 Law, Together With Abolition of Israeli Military Law*, *Ha'aretz*, May 26, 1994, at A4. Arafat's declaration constitutes a gross violation since it was not promulgated following the procedure set forth in article VII of the Cairo Agreement. In addition, the declaration violates article VII.9 of the Cairo Agreement, which states that all "[l]aws and military orders in effect in the Gaza Strip or the Jericho Area prior to the signing of this Agreement shall remain in force, unless amended or abrogated in accordance with this Agreement." *Id.* art. VII.9.

101. See Peace Watch Report: *Disturbing Pattern of PA Non-Compliance Concerning the Transfer of Terror Suspects to Israel*, Press Release (Peace Watch, Jerusalem, Israel), Sept. 19, 1995; Gideon Alon & Uri Nir, *Libai Submitted to Abu-Maydan 7 Transfer*

approximately twice the number of police allowed in the Cairo Agreement.¹⁰²

Arafat may prove unable, unwilling or both to honor the commitments he undertook in the DOP. Should this happen it is inconceivable, given the efforts of the Palestinians to achieve international recognition and respectability, that he will resort to the legal fig leaf that the agreements were soft law. Likewise Israel's international credibility would be compromised severely if it were to revoke the DOP and ensuing agreements with the justification that they do not qualify as hard international law.

B. Israeli Violations

Israel too has violated the agreements and has thereby contributed to the weakening of the peace process. Its problematic conduct has included attempts to prejudice the outcome of the permanent status negotiations by favoring housing development for Jews in Jerusalem and attempting to expropriate land belonging to the city's Palestinian residents.¹⁰³ In addition, the sluggishness

Requests, *Ha'aretz*, Sept. 7, 1995, at A1; Evelyn Gordon, *PA Refuses to Hand Over Killers*, *Jerusalem Post*, June 30, 1995, at 2; Jon Immanuel, *PA Refuses to Extradite Two Hamas Terrorists*, *Jerusalem Post*, Aug. 27, 1995, at 1; Liba'i: *No Terrorist Extraditions, No Release of Palestinian Prisoners*, *Jerusalem Post*, Sept. 10, 1995, at 2; Uri Nir, *Palestinian Officers: We Have No Information Demonstrating That Terrorists Escaped to Jericho*, *Ha'aretz*, July 20, 1995, at A4.

The PA's refusal to transfer persons suspected of committing terrorist attacks against Israeli targets violates the Cairo Agreement. See *Cairo Agreement*, supra note 5, annex III, art. II.7.

102. See *Cairo Agreement*, supra note 5, arts. II.6, VIII.1, IX.1; *DOP*, supra note 3, art. VIII. Although the Cairo Agreement, limits the number of policemen to 9,000, *Cairo Agreement*, supra note 5, annex I, art. III.3.c., sources in Israel estimate that the PA has violated the agreements by enlisting about 15,000 Palestinian policemen. See Alex Fishman, *Gaza Like Lebanon, Ma'ariv*, Mar. 12, 1995, Supp., at 3; Rabin Says Palestinian National Authority Has Recruited Too Many Policemen (BBC Short Wave Broadcast, *Voice of Israel*, Mar. 28, 1995).

Other lesser violations allegedly committed by the PA include failing to submit to Israel the complete list of PA policemen (violating article IV.3 of the Cairo Agreement), importing petroleum from Iraq, and several dozen types of infractions relating to matters like joint security patrols, payment of civil claims and the use of stolen Israeli vehicles. See *PLO Violations of Israel-PLO Agreements*, *Yesha Report*, Mar. 1995, at 3; Uri Nir, *Palestinian Authority To Begin Importing Petroleum From Iraq In Three Weeks*, *Ha'aretz*, Sept. 9, 1995, at A5.

103. See *Battle For Jerusalem Heats Up*, *Biladi Jerusalem Times*, Dec. 30, 1994, at 1; Clyde Haberman, *Israel Plans to Confiscate Arab Land in Jerusalem*, *N.Y. Times*, Apr. 28, 1995, at A5; Carlyle Murphy, *Israel Girdling Jerusalem With New Jewish Housing*, *Wash. Post*, Dec. 13, 1994, at A29; Leslie Susser, *Out of Control*, *Jerusalem Report*, Feb. 9, 1995, at 12.

A controversial plan to confiscate 140 acres of land in East Jerusalem for Jewish housing

in the peace talks has been attributed to Israel's unhurried attitude, evidenced by its disregard for the deadlines set out in the timetable fixed in the DOP.¹⁰⁴ Finally, by sharply curtailing the number of Palestinians permitted to enter its territory to prevent further acts of terror by Islamic fundamentalists, Israel has been accused of acting contrary to the spirit of the agreements.¹⁰⁵

IV. DOMESTIC AS DISTINCT FROM INTERNATIONAL POLITICAL CONSIDERATIONS

Is Oslo dying? Is it already dead? Was it defective from birth, and therefore, predestined to wither in infancy?¹⁰⁶

Meighan addresses the numerous domestic and international political considerations that, in her view, assume a critical extra-textual role in ensuring the parties' compliance with the DOP. Thus, she professes that "[d]omestic and international expectations . . . contribute to a nexus of informal control that must be consid-

was suspended after a coalition of the left-wing opposition parties and two Arab Knesset factions threatened to topple the Rabin government. The international reaction to the plan reached the United Nations. See Arafat Adviser Says Veto May Have Cost USA Its Credibility (BBC Short Wave Broadcast, Voice of Palestine, May 18, 1995); Faruq Qaddumi Says the U.S. Veto Has Destroyed the Peace Process (BBC Short Wave Broadcast, Voice of Palestine, May 18, 1995).

PA Justice Minister Freih Abu Medein declared that a pre-1967 Jordanian law allowing for the death of Palestinians who sell land to Jews would be upheld. See Evelyn Gordon, PA Law Calls for Death to Anyone Who Sells Land to Jews, Jerusalem Post, June 16, 1995, at 3.

Despite article V.3 of the DOP, which calls for the final status of Jerusalem to be subject to negotiation, Israel has maintained that it will make no concessions on Jerusalem. See, e.g., Liat Collins, PM, Netanyahu Agree on Capital, Jerusalem Post, May 30, 1995, at 2 ("Rabin repeated his stand that Jerusalem is not a subject for negotiation. 'It was, is, and always will be ours,' he said.").

104. See PLO Accuses Israel of Stalling Talks, Jerusalem Post, June 23, 1995, at 2. The late Israeli Prime Minister Yitzhak Rabin frequently declared that "no deadlines are sacred." See Uri Avnery, Is Oslo Dead?, 2 Pal.-Isr. J. Pol. Econ. & Culture 26, 31 (1995); Alouf Ben, Rabin: We Intend to Arrive at an Agreement Quickly But More Important That it Be All Wrapped Up, Ha'aretz, May 24, 1995, at A2; Peace Watch Report: Israel Has Committed Legal Violation of Oslo Accords in Delaying Implementation of the Interim Phase, Press Release (Peace Watch, Jerusalem, Israel), June 19, 1995.

105. See Avnery, supra note 104, at 30. Lesser alleged violations committed by Israel include the failure to transfer authority to the PA for the West Bank as foreseen by the Erez Agreement, delays in the posting of Palestinian police at the border crossings and deferrals in the delivery of records and data required for the transfer of authorities. See Palestinian Academic Society for the Study of International Affairs, 1995 PASSIA Diary, at 246-47.

106. Avnery, supra note 104, at 26.

ered in assessing the ultimate effectiveness of the document."¹⁰⁷ Nonetheless, she concedes that "[m]any difficulties beset the ongoing implementation of the Declaration."¹⁰⁸

A. Political Siamese Twins: The Rabin-Peres Team and Chairman Arafat

Meighan asserts that "Israel and the PLO have a significant mutual stake in the successful implementation" of the DOP.¹⁰⁹ In fact, Arafat and the Rabin-Peres team have become political Siamese twins;¹¹⁰ that is, neither can survive in power without the other and the appearance that the peace process is advancing. Moreover, as the assassination of Prime Minister Rabin tragically demonstrated, both face multifaceted and grave dangers. The fall of either the Rabin-Peres led government of Israel or PLO Chairman Arafat from power could pose a grave threat to the Agreements and the peace process as a whole.

B. Israel's Upcoming Elections and the Fight Against Terror

It is far from certain that the Labor party of the late Prime Minister Rabin will prevail in the upcoming Israeli national elections, to be held on May 29, 1996.¹¹¹ Although the popularity of Rabin's successor, Shimon Peres, soared in the immediate aftermath of the

107. Meighan, supra note 2, at 459.

108. Id.

109. Id. at 449.

110. See Ian Black, The Desert Hawk on a Return Flight, The Guardian, June 18, 1994, at 29 (Former Israeli Defense Minister Ariel Sharon observed: "Arafat . . . said 'Rabin and I are partners. My success is his success. His success is mine.' Of all the rubbish that he comes out with that is a very true statement. This [Labor] government is in a trap."); see also Yacov Ben Efrat, The First of July - or Not, Challenge: A Jerusalem Magazine on the Israeli-Palestinian Conflict, July-Aug. 1995, at 9.

111. Evelyn Gordon, Elections Finally Set for May 29, Jerusalem Post, Feb. 21, 1996, at 1. The elections will witness the first direct balloting for Prime Minister in Israel's history. See Section 5 Basic Law: Government, 1396 Sefer Ha'Khukim 214 (Apr. 14, 1992). Polls taken before Prime Minister Rabin's assassination indicated that Likud leader MK Benjamin Netanyahu would likely prevail over then Prime Minister Rabin. See Uzi Benyamin, Netanyahu's Links, Ha'aretz, May 21, 1995, at B1; Lisa Beyer, Sick to Death of Peace; A Majority of Israelis and Palestinians Now Regret Making Their Historic Accord, Time, June 5, 1995, at 44-45; Sarah Honig, Netanyahu Ahead in Latest Poll, Jerusalem Post, Apr. 28, 1995, at 3; David Horowitz, The Men Who Would Be King, Jerusalem Report, Mar. 9, 1995, at 12. Any understanding Israel's incumbent administration reaches in the difficult ongoing peace negotiations with Syria will also affect its popularity. Such concessions could cause the defection of several of the Labor party's MKs, thereby threatening its narrow majority in the Knesset and perhaps forcing a vote of no confidence that might bring down the government and force early elections. David Rudge, Third Way MKs Vow to Reinforce Golan Law, Jerusalem Post, July 10, 1995, at 12.

assassination, this short-term development has not persisted in the face of a series of deadly suicide bombings that commenced in late February 1996. These bombings have brought to the surface the strong undercurrent of disillusionment with both the peace process and its sponsors.

An election victory by the opposition Likud party would produce, at the very least, a thorough reevaluation of the current policy of territorial concessions, a principle which lies at the very core of the peace process.¹¹² Although most of its members do not advocate returning to either Gaza or the Palestinian-populated centers recently evacuated in the West Bank,¹¹³ the Likud's leader, Binyamin Netanyahu, has declared that when his party comes to power he will not meet with Yasser Arafat.¹¹⁴ Hence, Palestinian fears that the Oslo II Agreement will *de facto* represent the permanent status agreement may eventually crystallize.¹¹⁵

Indubitably, the main reason for the sharp decrease in Israeli public support for the peace process is the perpetration of terrorist acts against Israeli targets.¹¹⁶ In fact, the primary cause for the extended delays¹¹⁷ and near collapse¹¹⁸ of the peace talks has been the PA's demonstrated failure to make an earnest effort to thwart acts of terror,¹¹⁹ including a series of suicide bombings by Hamas

112. See Amos Perlmutter, *The Israel-PLO Accord is Dead*, Foreign Aff., May/June 1995, 59, 66-67.

113. See Shahar Eilan, Sharon: "Not Responsible to Withdraw From Oslo 2. I Wouldn't Return to Self-governed Areas", Ha'aretz, Dec. 12, 1995, at A4; Jeni Frazer, Likud Will Accept Self-Rule But Will Act Against Terror, Jewish Chronicle, June 6, 1995, at 3; Sarah Honig, Netanyahu Aims to Adapt Party Line to Oslo Reality, Jerusalem Post, Jan. 26, 1996, at 2; Yarayach Tal, Netanyahu Meets With Gore: Oslo Accords Are Bad, But Will Honor Them, Ha'aretz, Jan. 17, 1996, at A4.

114. See Sarah Hong, Netanyahu: I Won't Meet With Arafat, Jerusalem Post, Feb. 6, 1996, at 1.

115. See Yarayach Tal, Israeli source: Palestinians Fear That Likud Government Will Change Interim Agreement into Permanent Status Deal, Ha'aretz, Aug. 7, 1995, at A5.

116. Indeed, Meighan's assessment that "by granting the PLO responsibility for security in the region [the late Israeli Prime Minister Yitzhak Rabin] effectively shifted the problem of Muslim radicals to the PLO" appears seriously flawed. Meighan, *supra* note 2, at 438.

117. See Jon Immanuel, Israel Suspends Talks in Cairo, Jerusalem Post, Oct. 12, 1994, at 2.

118. See Uzi Benzamin, A Government Stuck in a Trap, Ha'aretz, Jan. 29, 1995, at B1; Derek Brown, Israeli Fears Put Pact With PLO At Risk, The Guardian (London), Dec. 7, 1994, at 14; Mark Dennis, Settlements, Suicide Bombers, and Separation, Middle East Insight, Mar.-Apr. 1995, at 10; Yoel Marcus, Not Pleasant But Not Terrible, Ha'aretz, Apr. 14, 1995, at B1; Thomas R. Mattair, Can Oslo Be Saved?, Middle East Insight, Mar.-Apr. 1995, at 14; Gideon Samat, The Agreement: The Beginning of the End, Ha'aretz, Apr. 12, 1995, at B1; Ze'ev Scheff, The Failure is Mutual, Ha'aretz, Apr. 14, 1995, at B1.

119. The PA's obligation to pursue those who perpetrate acts of terror against Israeli

and Islamic Jihad.¹²⁰ The upsurge in Israeli deaths due to acts of

targets was grounded in the Cairo Agreement. Article XVIII states: "Both sides shall take all measures necessary in order to prevent acts of terrorism, crime and hostilities directed against each other, against individuals falling under the other's authority and against their property, and shall take legal measures against offenders." Cairo Agreement, *supra* note 5, art. XVIII; see also Oslo II Agreement, *supra* note 5, art. XV.1 ("Both sides shall take all measures necessary in order to prevent acts of terrorism, crime and hostilities directed against each other, against individuals falling under the other's authority and against their property, and shall take legal measures against offenders.").

120. See Peace Watch, Weapons Control and the Palestinian Authority (1995) (underlining that Palestinian security services have failed to disarm militias in Gaza); Amira Hess, Popular Front Activists Freed From Arrest After Wadi Kelt Murder, Ha'aretz, July 23, 1995, at A2; Jon Immanuel, PA's Gun-Licensing Campaign Lacks Pop, Jerusalem Post, May 12, 1995, at 9; Jon Immanuel, PA-Hamas Collusion: Fact or Fiction, Jerusalem Post, Sept. 1, 1995, at 11; Alon Pinkas, Arrests Are Only Temporary Setback For Hamas Operations, Jerusalem Post, Aug. 24, 1995, at 1; Danny Rubinstein, The Understandings and the Rules of the Game, Ha'aretz, Apr. 20, 1995, at B2. But see Amira Hess, Four and Seven Years Imprisonment For Two Hamas Activist in Gaza Who Implored Youth to Perpetrate Suicide Attack, Ha'aretz, Apr. 23, 1995, at A6; Amira Hess, Military Court in Gaza Sentences Man Who Assisted Hamas in Preparing Attack to Seven Years Imprisonment, Ha'aretz, Apr. 18, 1995, at A3; Amira Hess, Military Supreme Court in Gaza Sentences For the First Time Two Hamas Activists to Imprisonment, Ha'aretz, Apr. 17, 1995, at A3; Amira Hess, Palestinian Authority Members: The Opposition Is Prepared to Consider Suspending the Attacks, Ha'aretz, Apr. 23, 1995, at A10; Amira Hess, Palestinian Police Located Hamas Firearm Stock in Gaza, Ha'aretz, May 25, 1995, at A2; Jon Immanuel, PA: Hand in Weapons By Sunday or Face Prosecution, Jerusalem Post, May 12, 1995, at 2; Jon Immanuel, Palestinian Police Catch Gunman on Way to Attack, Jerusalem Post, Aug. 24, 1995, at 1; Jon Immanuel, PA Police Arrest Man Planning Suicide Attack, Jerusalem Post, Aug. 20, 1995, at 1; Jon Immanuel, PA's Security Courts Begin Working, Jerusalem Post, Feb. 17, 1995, at 2; Herb Keinon, Gaza Council Calls Ex-Soldiers to Hunt Megidish's Killers, Jerusalem Post, Oct. 20, 1995, at 2; Palestinian Police Arrested More Than Ten Armed Hamas Activists in Gaza, Ha'aretz, May 5, 1995, at A3; Palestinian Police Arrested Two Wanted Terrorists, Ha'aretz, May 5, 1995, at A12; Eytan Rabin, Reports Arriving to Israel: "Arafat Strengthening Fight Against Terror", Ha'aretz, May 28, 1995, at A3; Palestinian Police Storm Houses in Gaza; 210 Arrested; Arms Surrendered (BBC Short Wave Broadcast, Voice of Israel, Apr. 13, 1995); Palestinian Security Court Gives Hamas Activist 15-Year Sentence (BBC Short Wave Broadcast, Voice of Palestine, Apr. 10, 1995); PNA Statement Announces Ban On Possessing Guns and Explosives (BBC Short Wave Broadcast, Voice of Palestine, Apr. 12, 1995).

Over a period of about two months (May-June 1995), terrorist attacks against Israeli targets ceased as a result of a calculated decision taken by Hamas and Islamic Jihad leaders to avoid being held responsible by the Palestinian public for any delays in the withdrawal of Israeli forces from the Palestinian populated areas in the West Bank. The suicide attacks have, however, resumed. See Hamas Warns: Truce Over, Jerusalem Post, June 25, 1995, at 2; Amira Hess, Hamas Sources: Agreement With Palestinian Authority Not Cause of Truce, Ha'aretz, June 11, 1995, at A3; Bill Hutman, Hamas Suicide Bomber Kills 18 in Jerusalem, Jerusalem Post, Mar. 4, 1996, at 1; Bill Hutman & Raine Marcus, 25 Killed in Jerusalem, Ashkelon, Jerusalem Post, Feb. 26, 1996, at 1; Jon Immanuel, Jihad Vows to Avenge Activist's Murder, Jerusalem Post, June 23, 1995, at 1; Raine Marcus, 12 Die in TA as Hamas Terror Strikes Again, Jerusalem Post, Mar. 5, 1996, at 1; Ouri Nir & Gideon Alon, Hamas Officers Arrested in Gaza After Cart Explosion in Gush Katif, Ha'aretz, June 27, 1995, at A1 (mentioning that the suicide bomber was affiliated with Hamas); Alon Pinkas & Herb Keinon, Suicide Bomber Explodes Donkey Cart Near Khan Yunis, 3

terror since the signing of the DOP¹²¹ has undermined one of the government's key rationales for breaking with its own previous policy, and that of all prior Israeli governments, by reaching an agreement with the PLO.¹²² Some members (MKs) of Knesset (Israel's Parliament) from the incumbent Labor Party, along with the President of Israel,¹²³ have called for a suspension of the negotiations to pressure Arafat to crack down on the perpetrators of this wave of attacks and on the organizations that recruit, train and finance the terrorists.¹²⁴

C. Arafat: Economic Turmoil and Islamic Opposition

Arafat's political survival is likewise absolutely vital for the

Soldiers Hurt, Jerusalem Post, June 26, 1995, at 1; Eytan Rabin, Two Hikers Murdered in Wadi Kelt; Gang of Terrorists Escaped to Jericho, Ha'aretz, July 19, 1995, at A1; Danny Rubinstein, Arafat's Break, Ha'aretz, June 16, 1995, at B3; Danny Rubinstein, Hamas' "Restraint", Ha'aretz, June 6, 1995, at B1; Zeev Scheif, Terror May Shock Again, Ha'aretz, June 9, 1995, at B1; Serge Schemann, Bus Bombing Kills Five in Jerusalem; 100 Are Wounded, N.Y. Times, Aug. 22, 1995, at A1; Moshe Toubal et al., 5 Killed in Suicide Bombing of Bus in Ramat-Gan, Ha'aretz, July 25, 1995, at A1. The late Israeli Prime Minister Rabin openly expressed his skepticism about the PA's capacity to lead an effective campaign against terror. See Shlomo Shamir & Alouf Ben, Rabin "Questions, Like Every Israeli, the P.A.'s Ability to Fight Terror," Ha'aretz, July 9, 1995, at A1.

121. Numerous suicide bombings by Hamas and the Islamic Jihad have resulted in a 100% increase in Israeli fatalities in the 30 months since the signing of the DOP. See Peace Watch Report: Number of Israelis Killed in Terror Attacks Has Doubled Since Oslo Accords, Press Release (Peace Watch, Jerusalem, Israel), Mar. 11, 1996.

122. See Clyde Haberman, Suicide Bombs Kill 19 in Israel; Shadow Cast Over Peace Talks, N.Y. Times, Jan. 23, 1995, at A1; Serge Schemann, The Enemy of My Enemy . . . , N.Y. Times, Aug. 23, 1995, at A6; see also Terrorism Takes Its Toll, Tel Aviv Univ. News, Spring 1995, at 15 (research revealing link between terrorism and Israeli support for the peace process).

According to one public opinion poll taken in August 1994, 70% of the Israeli public believed that the success of the peace process depended on the degree to which the PLO repressed terrorist activity. Leon, *supra* note 28, at 57. After the Beit Lid bombing in January 1995, public support for the peace process dropped to 35%. *Id.* at 57; see Peace Index: Under the Influence of Terror, Ha'aretz, May 10, 1995, at B3. According to one public opinion poll, 54% of the Israeli public still consider PLO Chairman Yasser Arafat a terrorist. See Irit Rosenblum, Poll: 54% Believe Arafat Terrorist: 72% Support Negotiations, Ha'aretz, Sept. 10, 1995, at A2.

123. The President of Israel, Ezer Weizman, has on numerous occasions called for a suspension in the peace talks because of terrorist violence directed towards Israeli targets. His statements were notable as the Israeli President's role is largely ceremonial and presidents generally do not make political statements. See Yossi Hatoni, At Eychilov Visit Weizmann Calls for Reevaluation of the Government's Policy, Ha'aretz, July 25, 1995, at A4; Christopher Walker, Weizman Speaks Out Against Talks With PLO, The Times (London), Jan. 24, 1995, at 12; Weizman Returns and Declares That the Future of the Peace Process Must Be Reevaluated, Ha'aretz, Apr. 12, 1995, at A8.

124. See Liat Collins & David Rudge, Labour MKs Call On Rabin to Send IDF Back into Gaza, Jerusalem Post, Apr. 12, 1995, at 1.

peace process to continue on track. The assumption of power by either of the only significant opposition groups, Hamas¹²⁵ and Islamic Jihad, which adamantly refuse to recognize Israel's legitimacy and regularly take "credit" for terrorist activities against Israeli targets,¹²⁶ would almost certainly precipitate a spiral of hostilities and the immediate suspension, if not total breakdown, of the peace talks.¹²⁷

Meighan questions Chairman Arafat's style of governance.¹²⁸ Her concerns were well-placed, as Palestinian dissatisfaction with Arafat's performance has engendered a significant decrease in popular support for the peace process.¹²⁹ Furthermore, Palestinian hopes of economic growth and political freedom have given way to bitter disillusionment and frustration caused by the increasingly desperate economic situation¹³⁰ and the snail's pace that characterized the interim peace talks.¹³¹ The financial aid promised by

125. A scholar on the subject of Islamic fundamentalism in the Administered Areas has observed:

It is no longer a secret that Hamas aspires to power in the West Bank and Gaza as an alternative to the PNA [PA]. Indeed, Hamas's motive for its October [1994] escalation . . . could be seen as a reminder to Rabin that peace, stability, and the security of Israel cannot be attained if Hamas is bypassed. The attacks were also meant to expose the weakness of Arafat, indirectly calling into question the PNA's [PA's] viability as the credible partner with whom to conclude peace.

Ziad Abu-Amr, Report From Palestine, J. Pal. Stud., Winter 1995, at 40, 45; see also Hamas Has Plans to Topple Palestinian Authority, Jerusalem Dispatch, May-June 1995, at 8. One opinion poll found that 40% of Palestinians prefer an Islamic system of government, while 26% favor a democratic form of government. See Ouri Nir, 40% of Territories' Residents Prefer Islamic System of Government, Ha'aretz, May 30, 1995, at A12.

126. See Justus R. Weiner, Israel's Expulsion of Islamic Militants to Southern Lebanon, 26 Colum. Hum. Rts. L. Rev. 357, 380-85 (1995); Ronni Shaked & Aviva Shabi, Hamas, Palestinian Islamic Fundamentalist Movement (1994).

127. While serving as Foreign Minister, Shimon Peres said that should Hamas win the elections for the Council, the Israeli Government would cancel the agreements. See Peres: If Hamas Wins Elections In Territories - We Will Cancel Agreement, Davar, Dec. 2, 1993, at A1.

128. Meighan, *supra* note 2, at 459. In December 1993, Dr. Haider Abdel-Shafi, former head of the Palestinian negotiating team, went to Tunis with a petition signed by 118 prominent people in the Occupied Territories, criticizing Arafat's autocratic manner and calling for greater democracy. See Adrien Katherine Wing, Democracy, Constitutionalism and the Future of Palestine 9 (1994). According to one public opinion poll, only 55% and 42% of the Palestinians residing in the West Bank and Gaza Strip respectively feel that they may criticize the Palestinian Authority openly. See Uri Nir, The Right to Shoot in the Knees, Ha'aretz, Aug. 27, 1995, at B2.

129. Uri Nir, The Euphoria is Over in Gaza, Ha'aretz, July 12, 1995, at B2.

130. See Nadav Haetzni, Gaza is on the Brink of Bankruptcy, Ma'ariv, May 5, 1995, Saturday Supplement, at 18; Eric Silver, Progress? What Progress?, Jerusalem Report, Nov. 3, 1994, at 20.

131. See Danny Rubinstein, The July 1 Disappointment, Ha'aretz, July 3, 1995, at B1.

donors from the international community has been very slow in coming,¹³² leaving the Palestinian entity on the verge of bankruptcy.¹³³ Unemployment figures for the Gaza Strip have reached

132. On the delay in the arrival of international monetary aid to the Palestinians, see Peace Watch, *Why Has the International Monetary Assistance for the Palestinians Not Arrived?* (1994). According to this report, the reasons for the delay include, notably, the appointment of Farouk Kaddoumi, a radical opponent of the peace talks with Israel, as chairman of PECJAR's (the Palestinian Economic Council for Development and Reconstruction) Board of Governors, as well as PLO Chairman Yasser Arafat's refusal to accept that all monies given to PECJAR pass the normally acceptable tests of accountability and transparency. See Money Is Not the Answer, *Jerusalem Post*, Nov. 21, 1994, at 6; Steve Rodan, *Donors Check the Pockets of the PLO*, *Jerusalem Post*, June 6, 1994, at 7; Arafat Criticizes Slowness of Donor Countries Appeals to Arabs for Help (BBC Short Wave Broadcast, Voice of Palestine, July 2, 1994).

Recent steps taken by PA officials to transfer PECJAR's functions to other branches of the PA have reduced PECJAR "to a shadow of its intended role." See The Palestinian Authority and the World Bank Will Bypass PECJAR: Foreign Aid Will Now Be Transferred Directly to the P.A., Press Release (Peace Watch, Jerusalem, Israel), Sept. 12, 1995; Report on Financial Issues Facing the PA and Donors Reveals Erosion of Standards for PA's Economic Decisionmaking and Accountability, Press Release (Peace Watch, Jerusalem, Israel), Oct. 17, 1995. Some observers claimed that significant portions of the funds obtained through international aid were diverted for purely political purposes. See Peace Watch Publishes a Report on the Delay in the Arrival of International Monetary Aid to the Palestinians, Press Release (Peace Watch, Jerusalem, Israel), Nov. 28, 1994 (\$13 million in humanitarian aid spent on military and propaganda activities in Lebanon); Peace Watch Releases Report on the Financial Condition of the Palestinian Authority, Press Release (Peace Watch, Jerusalem, Israel), Mar. 21, 1995 (\$1 million in foreign aid directed to the P.L.O. "Martyrs Fund" in Amman).

133. See Richard Nicodem, *PNA Faces Economic Crisis*, *Biladi Jerusalem Times*, Dec. 30, 1994, at 4. In June 1994, the PA suffered from a critical lack of funds necessary to maintain both the police force and the civilian administration in the Gaza Strip. Yet thanks to a quick transfer of funds by donor countries, the PA was able to escape economic collapse. See Andrew Gumbel, \$42m to Halt Palestinian Cash Crisis, *The Guardian* (London), June 11, 1994, at 15.

In April 1995, Western donor countries together with Israel took it upon themselves to fund the PA's \$136 million budget deficit caused by the failure of Saudi Arabia, the United Arab Emirates and Kuwait to provide any financial assistance to the PA. See Nitzan Horovitz, *Donor Countries To Cover P.A.'s Budget Deficit*, *Ha'aretz*, Apr. 28, 1995, at A3; Jose Rosenfeld, *Israel Will Contribute \$6.5m. to Cover PA Deficit*, *Jerusalem Post*, Apr. 27, 1995, at 2. Germany has also provided monetary aid to the Palestinians. See Yosef Algazi, *At Meeting With Arafat Kohl Granted 10 Million Marks to Palestinians*, *Ha'aretz*, June 8, 1995, at A4. Israel has also committed itself to grant \$250 million in economic assistance to the Gaza Strip. See Haim Ben-Shahar, *Economic Aid Plan For The Gaza Strip*, *Ha'aretz*, Mar. 31, 1995, at B1. Although the U.S. Congress recently extended the law permitting financial aid to the PA for an additional 45 days, restrictions and conditions on aid are being considered. See Akiva Alder, *Congress Extends Law for Financial Aid to PA*, *Ha'aretz*, July 2, 1995, at A3; Hillel Kuttler, *Congress Seeks Tight Rules On Aid to PA*, *Jerusalem Post*, June 15, 1995, at 2.

The PA's inability to combat acts of terror against Israeli targets effectively has compelled Israel to impose a tight closure on Gaza, a measure which has had severe economic consequences for its local residents. More than 50,000 workers have lost their source of income. Overall, the Palestinians in Gaza are said to lose \$3 million a day due to

astronomic proportions,¹³⁴ fostering hatred and anger¹³⁵ among the resident population and strengthening the ranks of those opposed to peace.¹³⁶

Despite his overwhelming success in the elections, Arafat's tenure as Chairman of the Council could end in violence; dissident Palestinian factions have made him the subject of frequent threats.¹³⁷ A bomb was located in his office in the Gaza Strip¹³⁸

the lack of economic interaction with Israel. See Clyde Haberman, *Arafat Aide Appeals to Israel and Other Nations for Help*, *N.Y. Times*, Nov. 21, 1994, at A3; PNA Justice Minister on Situation in Gaza, Dialogue With Factions (BBC Short Wave Broadcast, Voice of the Arabs, Apr. 13, 1995); see also Alouf Ben, *United States and Western European Countries Request That Israel Remove Closure On the Strip*, *Ha'aretz*, Apr. 27, 1995, at A1; Alon Gideon et al., *Shahak Warns: Continuing Closure Might Cause Fall of P.A.*, *Ha'aretz*, Apr. 26, 1995, at A1; Amira Hess, *Drop of 25% in Employment in Gaza Due to Closure*, *Ha'aretz*, Oct. 20, 1995, at A2.

134. According to Western and PA figures, over 50% of the Gaza labor force is unemployed. See Steve Rodan, *Resentment Rises in the 'Prison'*, *Jerusalem Post*, Apr. 7, 1995, at 8.

135. According to a poll conducted by Dr. Iad Saraj, a Gaza psychiatrist, 51% of Gaza residents think that their general situation is worse than it was under Israeli occupation, while 86% think that the economic situation in Gaza is worse than it was before the PA came into power. The poll expresses the bitter disappointment large sectors (57%) of the Palestinian population have experienced with respect to the PA's overall style of governing. Furthermore, 69% complain of an absence of democracy and 90% believe that the positions in Gaza were filled unfairly. See Oded Granot, *The Great Shattering*, *Ma'ariv*, Mar. 16, 1995, at 3; see also Abu-Amr, *supra* note 125, at 40-43.

136. PLO Chairman and Head of the PA, Yasser Arafat, in his speech delivered at the donor states' conference in Brussels on November 29, 1994, stated that the PA was facing a devastated infrastructure, a very high unemployment rate, real poverty and the task of building institutions without funds. . . . The political difficulties and the delay in receiving funds has produced a serious and tense situation in our country. This situation only benefits the forces that seek to obstruct and strike at the peace process.

Arafat Tells Conference: "Explosion is Not Far Away" (BBC Short Wave Broadcast, Voice of Palestine, Nov. 30, 1994); see Caroline de Gruyter, *Jerusalem Center for Public Affairs, Viewpoint From Gaza: A Growing Frustration With the Peace Process*, Survey of Arab Affairs, Nov. 15, 1994.

In these desperate circumstances, traditional members of left-wing Palestinian groups such as the old Palestinian Communist Party, have formed close ties to Islamic fundamentalist groups such as Hamas to oppose Arafat's mainstream Fatah-based authority. See Danny Rubinstein, *Hamas Supplants Marx*, *Ha'aretz*, May 8, 1995, at B1.

137. See Lisa Beyer, *Caution: Speed Bumps Ahead*, *Time*, Sept. 27, 1993, at 30; Mary Curtius, *Crowd Assaults Arafat as He Tries to Pray for Slain Activist*, *L.A. Times*, Nov. 4, 1994, at 1; Douglas Davis, *Report: Rabin told Arafat of Plans by Hamas, Jihad to Assassinate*, *Jerusalem Post*, Dec. 20, 1993, at 2; PLO Reports Recent Plot to Blow Up Arafat's Plane, *Jerusalem Post*, Oct. 10, 1993, at 1; Russell Watson & Jeffrey Bartholet, *They've Got a Deal*, *Time*, Sept. 20, 1993, at 11, 12; Hamas Leaflet Condemns Arrests by PNA, *Warns of Civil War: Israeli Report* (BBC Short Wave Broadcast, Voice of Israel, Feb. 18, 1995); Islamic Jihad Movement Threatens to "Step Up" Military Operation (BBC Short Wave Broadcast, Paris Radio Monte Carlo, Apr. 12, 1995); Islamic Jihad Warns Palestinian Authority Against Detentions (BBC Short Wave Broadcast, Al-Quds

and an attempt against his life was planned at the Organization of African Unity conference in Addis Ababa.¹³⁹

D. *The International Community*

As quoted above, Meighan maintains that the international community's expectations arising out of the DOP should pressure the parties toward compliance.¹⁴⁰ This pressure is no doubt particularly significant given the recent attendance of many heads of state and government, including representatives of many Arab states such as Jordan's King Hussein and Egypt's President Mubarak, at Prime Minister Rabin's funeral.¹⁴¹ Although the Clinton Administration and many European governments clearly support the peace process,¹⁴² this position is not shared by Iran, Syria, Libya, the Sudan and several other regional states that do not consider themselves part of the consensus Meighan describes and that are willing to use subversion to pursue their interests.¹⁴³

In support of her assessment concerning international backing for the DOP, Meighan mentions the U.N. Security Council's Resolution¹⁴⁴ in the aftermath of the killing in Hebron by the Jewish

Palestinian Arab Radio, Apr. 10, 1995); Palestinian Sources Report Attempt on Life of PNA Military Commander (BBC Short Wave Broadcast, Voice of Israel, Apr. 11, 1995); Report on Ahmad Jibril's Views on Opposition to Arafat (BBC Short Wave Broadcast, Al-Quds Palestinian Arab Radio, Oct. 21, 1993). Israeli radicals have also called for Arafat's assassination. See Herb Keinon, Goren: Every Jew Commanded to Kill Arafat, Jerusalem Post, June 9, 1994, at 2.

138. Alon Pinkas & Jon Immanuel, Israeli Sources: Bomb Defused in Arafat's Office, Jerusalem Post, May 24, 1995, at 1.

139. Arafat Says He Was Also on Hit List at African Summit, Jerusalem Post, July 2, 1995, at 2; see Hamas Agrees With Iranian Proposal to Assassinate Arafat, Jerusalem Post, Sept. 10, 1995, at 1.

140. Meighan, *supra* note 2, at 450.

141. The presence of an unprecedented number of world leaders (86 heads of state and government, including three Presidents of the United States) at the funeral of the late Prime Minister Rabin epitomized how Israel's image on the international scene has improved as a result of the peace process. As the U.S. ambassador to Israel observed in the aftermath of the assassination, this was certainly a drastic departure from the past "when the predominant image of Israel was of a country in a state of siege, of a country that was isolated, that was treated by the rest of the world as a pariah state." Martin Indyk, Address at Haifa University (Nov. 16, 1995).

142. Israel has reaped many benefits from its commitment to the peace process. See Jodi Meletz, U.S. Allows Israel to Use Guarantee Funds to Finance Budget Deficit, Ha'aretz, Aug. 29, 1995, at A1; Gad Peretz, Israel and EU Signed in Principle New Free Trade and Cooperation Agreement, Ha'aretz, Aug. 29, 1995, at A1; Jose Rosenfeld, EU Planning Euro-Mideast Free Trade Zone, Jerusalem Post, Aug. 3, 1995, at 2.

143. See Yossef Bodansky, *Target America: Terrorism in the U.S. Today* (1993).

144. S.C. Res. 904, U.N. SCOR, 49th Sess., 3351st mtg., U.N. Doc. S/Res/904 (1994).

settler, Baruch Goldstein,¹⁴⁵ that denounced the massacre, while simultaneously affirming its support for the peace process and calling for the implementation of the DOP. She neglects to mention, however, that many observers consider most of the resolutions adopted by the United Nations to be one-sided,¹⁴⁶ as they often fail to take Israel's security concerns into consideration.¹⁴⁷ Israelis discount positions taken by the United Nations in matters involving Israel because the Security Council, the General Assembly and many United Nations agencies have maintained a blatantly hostile attitude toward Israel for some two decades.¹⁴⁸ Even after the

145. In connection with the Hebron massacre, Meighan draws attention to the Jewish settlers and their unwavering opposition to the DOP as an indication of the difficulties confronting the incumbent Labor coalition government in carrying out this accord. Meighan, *supra* note 2, at 460. In particular, she recalls the tension which beset the parties' relationship in the aftermath of the Baruch Goldstein incident, where, as she puts it, "elements of th[e] religious opposition took leave of politics as a Jewish settler killed over forty Palestinians worshipping in a mosque in the West Bank town of Hebron." *Id.* It should be stressed, however, as the investigation and public hearings conducted by a commission headed by Israeli Supreme Court President Meir Shamgar concluded, that the murderous act committed at the Cave of the Patriarchs was not planned by "elements" of the religious opposition, as Meighan suggests, but rather by Goldstein himself. It should also be added that the number of victims of the massacre was not 40, as Meighan claims in her account of the tragic episode, but rather 29, as the Shamgar Commission of Inquiry's report clearly indicates. See Commission of Inquiry into the Massacre at the Tomb of the Patriarchs in Hebron, Excerpts from the Report (1994); Evelyn Gordon & David Makovsky, Cabinet Accepts Shamgar Commission Findings, Jerusalem Post, June 27, 1994, at 1.

146. As one commentator observed regarding the United Nations and Israel, "With this kind of objective detachment it is not surprising that the United Nations' impartiality and its power of moral suasion have become, to the Israelis if not to world public opinion, inherently suspect." Friedlander, *supra* note 37, at 233.

147. See Clyde Haberman, Six Palestinians Killed By Troops, N.Y. Times, Dec. 20, 1992, at 15 (reporting on Israel's rejection of S.C. Res. 799, U.N. SCOR, 47th Sess., 3151st mtg. at 6, U.N. Doc. S/Res/799 (1992) adopted by the Security Council on December 18, 1992, condemning Israel's expulsion of Islamic militants from the West Bank and Gaza Strip).

148. Professor Adam Roberts notes:

The United Nations, and in particular the General Assembly, is sometimes seen as having done little but pass resolutions indiscriminately condemnatory of all aspects of Israeli policy. Although this is more a criticism of the member states than of the Organization as such, the United Nations is vulnerable to the charge of rebuking Israel endlessly, while maintaining a diplomatic silence in respect of certain brutalities committed by other governments, including some Arab governments. The Special Committee to investigate Israeli Practices has been widely criticized. The potential of UN resolutions has been undermined by political partiality and intellectual inconsistency. The General Assembly's espousal in 1975 of the resolution equating Zionism with racism was the most spectacular, but not the only, example of a denunciatory and self-defeating approach. Too often, UN member states have seemed content to cast votes on the subject and leave it at that; painstaking fact-finding, authoritative argument and diplomatic dialogue have sometimes been lacking. All this has conveyed the

repeal of the resolution equating Zionism with racism in 1991,¹⁴⁹ the United Nations has continued to evidence a less-than-objective attitude toward Israel.¹⁵⁰ Therefore, it is dubious whether actions or threats by the United Nations would deter the current Labor coalition government or, *a fortiori*, a subsequent Israeli government led by the Likud party, from deviating from the peace process in the interest of perceived security needs.

V. TIMETABLES FOR INTERIM AND FINAL STATUS AGREEMENTS: A FURTHER SOURCE OF DISCORD

[T]he parties have undertaken a serious and binding commitment to continue expeditiously toward a final settlement by means of a timely implementation¹⁵¹

The DOP contains a series of deadlines for various stages of the peace negotiations. Hence, it is difficult to fault the logic of Meighan's conclusion that both Israel and the PLO committed themselves to proceed "expeditiously" toward a "timely" conclusion of the peace process in accordance with timetables set forth in the DOP. Yet subsequent events have disappointed many, who like Meighan, wanted to believe what appeared in the text of the agreement.

So far, the interim negotiations have advanced at a snail's pace; elections for the Council that should have taken place before July 13, 1994, according to the DOP,¹⁵² did not take place before Janu-

unfortunate impression that the law on occupations is a stick with which to beat occupants and a mechanism of political warfare, rather than a serious means of seeking to reconcile the conflicting interests of the parties.

Adam Roberts, *Prolonged Military Occupation: The Israeli-Occupied Territories Since 1967*, 84 Am. J. Int'l L. 44, 100 (1990); see Harris O. Schoenberg, *A Mandate for Terror: The United Nations and the PLO* 251-327 (1989).

149. G.A. Res. 46/86, U.N. GAOR, 46th Sess., U.N. Doc A/Res/46/86 (1991) (repealing G.A. Res. 3379, determining "that Zionism is a form of racism and racial discrimination").

150. See Morris B. Abram, *Best Weapon for the Fight*, Jerusalem Post, Apr. 10, 1995, at 10; Anne Bayevsky, *Rhetoric as a Weapon*, Jerusalem Post, May 29, 1995, at 6; Meir Rosenne, *Double Standard*, Jerusalem Post, Jan. 11, 1993, at 6 (noting that the U.N. never condemns violence directed at Jews or Israelis); Eliyahu Sleptar, *Under the Cover of Anti-Zionism*, Ha'aretz, May 24, 1995, at B1; Gerald Steinberg, *Five Decades of Damage*, Jerusalem Post, June 5, 1995, at 6. But see Ruth Gerchick, *A Peace-Process Benefit for Israel: Newfound Respect at the UN*, Christian Science Monitor, Feb. 1, 1995, at 19; Letter from Avner Tavori, Press Secretary, Permanent Mission of Israel to the UN, to the Jerusalem Post, Israel and the UN, Jerusalem Post, May 2, 1995, at 6.

151. Meighan, *supra* note 2, at 448.

152. DOP, *supra* note 3, art. III.2.

ary 20, 1996.¹⁵³ This delay has been blamed primarily on Israel.¹⁵⁴ Frustrated with the delays, the left-wing Meretz party threatened to leave the governing coalition should the July 1, 1995 target date for the conclusion of the interim agreement not be met.¹⁵⁵ Despite late night negotiations between then Israeli Foreign Minister Peres and Chairman Arafat, this date also passed.¹⁵⁶

Meighan accurately observes that "the Declaration is quite ambitious regarding the multiple political, social, and economic issues that it encompasses."¹⁵⁷ Indeed the parties face substantial differences over pivotal yet intractable issues including the sovereignty of Jerusalem, the Jewish settlements, use of subterranean water resources, control of holy sites, possible release of Palestinian security prisoners in Israeli jails, recognition of Palestinian sovereignty and the repatriation or resettlement of Palestinian refugees from the 1948 and 1967 wars.¹⁵⁸ Hence, Meighan's judgment that "the Declaration of Principles ambitiously conceives that a permanent settlement agreement will be completed by 1999"¹⁵⁹ is a remarkable understatement. If the sluggish pace of the interim negotiations indicates the parties' capacity to resolve outstanding issues, as is suggested by the failure to meet any of the deadlines fixed in the DOP, the final status negotiations will also fall behind schedule.¹⁶⁰

Some Palestinian and Israeli leaders, disappointed with the slow

153. See *supra* note 52.

154. Peace Watch, *Israel Has Committed Legal Violation of Oslo Accords in Delaying Implementation of the Interim Phase*, June 19, 1995.

155. See Yarrah Tal & Alouf Ben, *Meretz Threatens To Leave the Government if Interim Agreement Not Signed By July 1*, Ha'aretz, May 24, 1995, at A1. The Meretz threat, which could have resulted in the fall of the government and brought about early elections, was not carried out.

156. See David Makovsky & Jon Immanuel, *Peres: July 1 Deadline Can Be Met*, Jerusalem Post, June 26, 1995, at 1; David Makovsky, *Peres, Arafat Meet in Bid to Reach Redeployment Pact*, Jerusalem Post, July 2, 1995, at 1.

157. Meighan, *supra* note 2, at 446.

158. See DOP, *supra* note 3, art. V.3.

159. *Id.* at 447.

160. Thus far, none of the deadlines set out in the DOP have been met. Ahmad S. Khalidi has commented on the tortoise-like pace of the peace process:

One of the most salient characteristics of the process so far has been its apparent disregard of deadlines. Thus, although the DOP was signed in September 1993, the implementation agreement, known as the Cairo Agreement . . . was not signed until 4 May 1994 . . . "early empowerment" due last April [1994] is still under discussion in Cairo, although the agreement was signed on 24 August. Redeployment and elections in the rest of the West Bank, due last July, have yet to have any credible timetable at all.

Ahmad S. Khalidi, *The Palestinians: Current Dilemmas, Future Challenges*, J. Pal. Stud.,

pace of progress in the negotiations, have called for immediate entry into the final status phase.¹⁶¹ If adopted, this approach could bring about rapid deadlock or even a complete fracture of the process given the intensity of disagreement about the future of Jerusalem, which both parties claim as their capital,¹⁶² and about the Jewish settlements¹⁶³—both issues that the DOP postponed.¹⁶⁴

Winter 1995, at 5; see *Sticking to the Timetable of Peace*, *The Guardian* (London), June 29, 1995, at 14.

161. See Ghassan Al-Khatib, *The Inadequacy of an Interim Agreement*, 2 *Pal.-Isr. J. Pol. Econ. & Culture* 13 (1995); Alouf Ben, Norwegian Foreign Minister to Rabin and Peres: "The Atmosphere in Gaza Has Improved," *Ha'aretz*, June 15, 1995, at A3 (noting Israeli Deputy Foreign Minister Yossi Beilin's proposal to open the permanent status negotiations immediately); Shahar Eylan, *Weizmann: Start Discussing Immediately the Permanent Status Arrangement*, *Ha'aretz*, July 26, 1995, at A4; Muhammed Abu Khdeir & Zaki Abu Halaweh, *Shaaath: Palestinian State 5 Years From Now*, *Biladi Jerusalem Times*, Apr. 14, 1995, at 6; *Pray for the Peace of Jerusalem*, *The Guardian* (London), May 19, 1995, at 12; Yarayach Tal, *Third Way Calls on Government to Open Permanent Status Negotiations Immediately*, *Ha'aretz*, July 24, 1995, at A2; *Talks Urged on Holy City Status*, *The Guardian* (London), May 19, 1995, at 11; Yossi Beilin Says Talks on a Permanent Settlement Will Begin on Schedule (BBC Short Wave Broadcast, Voice of Israel, July 6, 1995).

Palestinians have traditionally feared interim agreements because of suspicions that Israel will freeze the process after making token concessions. This will be the most probable outcome should the right-wing Likud party come to power in the upcoming national elections. See Yarayach Tal, *Israeli Source: Palestinians Fear That Likud Government Will Change Interim Agreement into Permanent Status Deal*, *Ha'aretz*, Aug. 7, 1995, at A5. Generally speaking, the sequence in which issues are considered is often a bone of contention between negotiating parties because each side fears that issues of the greatest concern to it will remain unresolved should the negotiations break down. See Paul R. Pillar, *Negotiating Peace: War Termination as a Bargaining Process* 222-23 (1983).

162. The future status of Jerusalem indubitably constitutes the thorniest issue the parties must address in the peace process. According to one public opinion poll, 65% of Israelis support Israeli sovereignty over the united city, while 90% of Palestinians oppose such an idea. Yosef Algazi, *Poll: 65 Percent of Israeli Jews Support Israeli Sovereignty Over Jerusalem*, *Ha'aretz*, June 5, 1995, at A6.

A bill, passed recently in the U.S. Senate, to move the U.S. embassy to Jerusalem caused much agitation among Israelis and Palestinians and was perceived as posing a serious threat to the peace process. See *Appeasement on Jerusalem*, *Jerusalem Post*, June 22, 1995, at 6; Karen Farrell, *Jerusalem Overshadows Talks*, *Biladi Jerusalem Times*, May 10, 1995, at 3; Hillel Kuttler, *Senate Easily Passes Embassy Move 93-5*, *Jerusalem Post*, Oct. 25, 1995, at 1. As a presidential candidate in 1992, Bill Clinton stated that he supports Jerusalem as Israel's undivided capital. Raphael Danziger & Arthur Rubin, *Am. Isr. Pub. Aff. Comm.*, *The Clinton-Rabin Partnership in the Mideast Peace Process* 28 (1993). Yitzhak Rabin made an identical pledge during Israel's 1992 national election campaign. Robert Slater, *Rabin of Israel* 401 (1993).

Ehud Olmert, the Mayor of Jerusalem and a member of the Likud party, has begun to take measures to close Orient House because it serves as the PLO's Jerusalem headquarters in violation of its municipal zoning permit and the express terms of the Cairo Agreement. See *Cairo Agreement*, supra note 5, art. III.6; Bill Hutman & David Makovsky, *Olmert Vows to Close Orient House*, *Jerusalem Post*, June 26, 1995, at 1.

163. Any permanent status agreement between the parties will certainly involve the

Meighan professes that the specific timetables set forth in the DOP for the completion of the peace process foster cooperation and understanding between the parties in negotiating the interim agreements because "as the deadlines approach . . . each [side] will [want to] appear to the other, and to its domestic constituency, to be acting in good faith to fulfill its obligations under the accord."¹⁶⁵ It is more accurate to state, however, that although the parties may wish to appear compliant in the eyes of the international community, significant segments of their domestic constituencies are pushing their leaders in the opposite direction. Many Israelis and Palestinians favor freezing the process, withdrawing from negotiations, reversing the steps already taken or, at the very least, adopting a negotiation strategy that employs ultimatums and brinkmanship.¹⁶⁶ This rejection, qualified or otherwise, is apparent among Israeli and Palestinian elites¹⁶⁷ as well as the general public.

withdrawal of some, if not all, of the Jewish settlements in the West Bank and Gaza Strip. According to one public opinion poll, over 75% of the settlers remain opposed to any territorial concessions to the Palestinians. Uzi Benzamin, *Weekly Column*, *Ha'aretz*, Sept. 1, 1995, at B3.

Additionally, recent Rabbinic legal rulings forbid the withdrawal of both Jewish settlements and Israeli military bases from all areas in the West Bank. As a consequence, over a thousand religious Jewish soldiers expressed their intention to resist any military order to evacuate settlements. See Nadav Shargai, *Over A Thousand Soldiers and Officers in Letter to Rabin: We Will Resist Orders to Evacuate Settlements*, *Ha'aretz*, Sept. 9, 1995, at A1; Nadav Shargai, *Rabbi Goven Ruled in '93 that Soldiers Must Refuse to Evacuate Settlements*, *Ha'aretz*, July 9, 1995, at A2; Nadav Shargai, "There is a Prohibition in the Torah to Transfer Military Bases to Non-Jews," *Ruled Right-Wing Rabbis*, *Ha'aretz*, July 13, 1995, at A2; Nadav Shargai, *5 Reserve Officers Call for Refusal to Serve, "Army Serves Our Enemies, This is a Cultural War,"* *Ha'aretz*, July 20, 1995, at A4.

164. DOP, supra note 3, art. V.3.

165. Meighan, supra note 2, at 449-50.

166. One opinion poll, taken before Rabin's assassination, indicated that 69% of the Israeli public favored suspending the Israel-PLO negotiations. See Letter from Eliahu Ben-Elissar, MK, to the editor of the *New York Times*, *Israel's Likud Will Back Any Peace That's Real*, *N.Y. Times*, Apr. 16, 1995, at 6. In February 1995, the Center for Palestine Research and Studies conducted a public opinion poll which found that only 9.9% of Palestinians believed that Rabin was "sincere about implementing the agreements he signed with the Palestinians" and 80.1% believed that he was "not sincere." See Poll: *Majority of Palestinians Support Peace Process, But Don't Trust Rabin*, *Ha'aretz*, June 23, 1995, at A4; Leon, supra note 28, at 60. An unprecedented 81% of the Palestinian public supported halting the negotiations. Leila Dabdoub, *Palestinian Public Opinion Polls on the Peace Process*, 2 *Pal.-Isr. J. Pol. Econ. & Culture* 60 (1995); see Beyer, supra note 111, at 44-45; Jenni Frazer, *Israelis, Palestinians United in Pessimism*, *Jewish Chronicle*, June 16, 1995, at 2.

167. See Perlmuter, supra note 112, at 61-63; David Agmon, *Slow The Pace, Ma'ariv*, May 5, 1995, *Saturday Supplement*, at 13; Azmi Bishara, *Where Suicide Bombs Come From*, *N.Y. Times*, Feb. 17, 1995, at A31; Yigal Carmon, *The Earth Shakes Under Our Feet*, *Jerusalem Post*, May 5, 1995, at 4; Uri Nir, *Arafat Supports International Observers*

CONCLUSION AND OUTLOOK

Successful peace negotiations have occurred only when there is not only a clear will for peace on the part of the parties involved, but where the character of the peace is basically understood and only the details need to be worked out. That was the case at Camp David; it is emphatically not the case in our present situation.¹⁶⁸

Much of the world took heart when Arafat and Rabin shook hands and exchanged hesitant smiles at the signing of the DOP on the White House lawn. Expectations ran high on all sides, including in the legal community as typified by Meighan's Note. "Gaza and Jericho first," although politically marketable in September 1993, concealed the unwillingness to compromise on what was to follow and, most critically, to agree on the ultimate boundaries of Israel and the Palestinian entity.¹⁶⁹

Meighan's Note articulates a valid point: international agreements, particularly soft law documents like the DOP, must be evaluated with regard to the facts surrounding their formation. Yet, many more of these facts have emerged since the Note was prepared.

In September 1993, the opposition was largely confined to the Israeli right and Palestinians with Islamic leanings. Yet the divergence between what the DOP promised and what the parties have

in Autonomous Areas, Ha'aretz, July 7, 1995, at A2; Danny Rubinstein, Intellectuals Against Arafat, Ha'aretz, June 12, 1995, at B1; Ariel Sharon, The Security Sellout, Jerusalem Post, Feb. 8, 1994, at 6; Tom Tugend, Ashrawi Calls For Rethink, Jerusalem Post, May 31, 1995, at 5; Hamas Leader Urges Continued Jihad; Abd al-Shafi Calls on Arafat to Halt Talks (BBC Short Wave Broadcast, Voice of Israel, May 28, 1995). But see Palestinians For Peace, Jerusalem Report, June 1, 1995, at 11.

168. Daniel J. Elazar, Jerusalem Center for Public Affairs, The Good, The Bad and the Absurd at the Peace Table, Jerusalem Letter/Viewpoints, Jan. 1, 1992.

169. The popular and ambiguous slogan "Gaza and Jericho first" stoked the uncertainty and apprehension many Israelis felt at the outset of the process. It projected the idea that the Israel's military withdrawal from Gaza and Jericho and the subsequent transfer of authority to the PA constituted only an initial experiment. If it proved successful, Israeli withdrawal from Palestinian-populated centers in the West Bank would ensue. Hence, the impression imparted to large segments of the Israeli public at its initiation was that the process remained reversible. With the first stages of the implementation of the Oslo II Agreement rapidly taking effect, however, such an interpretation appears untenable. Prior to the Palestinian elections, the Israeli military completed its withdrawal and transfer of authority to the Council for six densely populated cities in the West Bank. Moreover, following the timetable set out in the DOP, permanent status negotiations are scheduled to commence by May 1996. See An Agreement Capable of Being Implemented, Ha'aretz, Dec. 29, 1995, at B1.

delivered has engendered increasing disaffection, even among the Israeli followers of the Rabin-Peres peace strategy and Arafat loyalists. Rabin himself publicly commented that the DOP, which for the sake of secrecy had been prepared without consulting a single military authority or intelligence officer, had left "hundreds" of issues untouched.¹⁷⁰ Rabin also declared that "the legal foundations of Oslo are rubbish."¹⁷¹ Weeks prior to succeeding Rabin, Peres stated in an interview, "I would say, that among Palestinians a written agreement is 40 percent serious commitment and 60 percent rhetoric and decoration."¹⁷²

Arafat may never have had high expectations of the DOP. The television broadcast he made from Washington to the Palestinian people that day supports this conclusion. Omitting any reference to repudiating terrorism or reaching peace with Israel, Arafat described the then new agreement as the "first step 'in the 1974 plan' - known by all Arabs as the 'plan of phases' for the destruction of Israel."¹⁷³ Thereafter he justified the DOP as "the best possible agreement in the worst possible circumstances."¹⁷⁴ Just as he broke with the 1991 Madrid format to sign the more favorable 1993 DOP, he could abrogate his agreement with the Rabin-Peres government and seek a new arrangement.¹⁷⁵ This has been described as stepping-stone diplomacy, where agreements are made only to be dismantled in order to reach more favorable terms.¹⁷⁶

Thus, disillusionment with both the process and its sponsors has

170. Carmon, *supra* note 17, at 27.

171. *Id.*

172. Tzevev Plotzker, Interview with Foreign Minister Shimon Peres, Yediot Ahronot Business Supplement, Oct. 8, 1995, at 2.

173. Carmon, *supra* note 17, at 29.

174. Avnery, *supra* note 104, at 26.

175. It is assumed that when a state or other entity signs an international agreement it does so in good faith. The maxim *pacta sunt servanda*, that "pacts are to be observed," is, however, sometimes outweighed by another legal principle, *rebus sic stantibus*. This latter adage translates as "if things remain the same." Not infrequently a party to an international agreement will claim that the agreement is obsolete or non-binding when it can be argued that the conditions under which it was ratified are no longer in effect; e.g., as a result of the change in the balance of power between Israel and the Palestinian entity.

The problem with this escape valve is that it is so elastic that virtually any conduct can be justified. Certainly given the historic ability of the Palestinians to marshal almost automatic one-sided majorities in the United Nations and on the diplomatic scene, it is not difficult to envision that the temptation to depart openly from the agreements will be formidable.

176. Dore Gold, PLO Leader's Stepping-Stone Diplomacy, Jerusalem Post, Mar. 18, 1994, at 2B.

increasingly replaced initial hope.¹⁷⁷ The most likely outcome, especially after the period of international mourning for Yitzhak Rabin passes, is some form of deadlock rather than an attempt by either Israel or the Palestinian representatives officially to repudiate their previous concessions. Nor will either side resort to the legal fig leaf that, after all, the agreements were only soft law. Their international credibility would be severely compromised if they adopted this approach. The Palestinians, in particular, aspire to be recognized as a responsible state or state-like actor on the international stage. To openly disavow its solemn commitments, the product of two years of negotiations in which the United States was the primary facilitator, could cripple these efforts. It would be difficult to persuade the international community of the sincerity of a belated assertion that the agreements were void because of their soft law nature. Such a claim, regardless of its legal validity, would be perceived as a bad-faith cover for a decision to back away from the peace process. Clearly, neither side can, several years into the process, claim that it has only now discovered the soft law nature of the commitments it has made.

A stalemate would be the safest way—both politically and legally—for a party to disengage from a process that, perhaps more than any other in recent diplomatic history, boldly sought to bridge chasms of trust and ideology with ambiguous soft law agreements.

Yet the agreements have yielded tangible benefits for Israel and the Palestinians. Israel reached a peace treaty with Jordan¹⁷⁸ and has improved diplomatic and trade relations with certain European, Islamic, Third World and even Arab states. The PLO has achieved respectability in the United States and won financial backing for its efforts to enhance autonomy. The PLO has emerged from the diplomatic isolation brought on by its backing of Saddam Hussein during the 1991 Gulf War and the demise of its primary sponsor on the world scene, the Soviet Union. In addition, the Palestinians are much closer to achieving sovereignty than ever before, although the timing, size and territorial contiguity of a future state of Palestine remains uncertain.

To the extent that the Rabin-Peres team and Arafat had tactical rather than strategic motives for signing the DOP, however, it

177. See Michal Yudelman, Poll: 62% Support 'Gaza/Jericho First', *Jerusalem Post*, Sept. 13, 1993 at 1; 65% of Palestinians in Areas Support Agreement, *Jerusalem Post*, Sept. 13, 1993 at 5.

178. Treaty of Peace Between the State of Israel and the Hashemite Kingdom of Jordan, Oct. 26, 1994, *Isr.-Jordan*, 34 *I.L.M.* 43 (1995).

would not be surprising if, having reaped benefits from the agreements and entered a new phase of the conflict, they, or their successors in office, chose to play new cards. Once the memory of the eulogies for the slain Israeli Prime Minister fades, there are a number of ways in which the current peace process can fail.¹⁷⁹ Primarily, it appears unlikely that the agreements have any chance to meet the exaggerated expectations of Palestinians¹⁸⁰ and Israelis,¹⁸¹ not to mention the international community that has long yearned to solve the apparently perpetual crisis in the Middle East. Indeed, given the parties, their domestic and international constraints and the existential gravity of the issues under negotiation, it is difficult to foresee a satisfactory ending to this venture.

In this same vein, Meighan's conclusion that the DOP enjoys a considerable degree of binding force must be reevaluated. In particular, her reasoning concerning control and authority, and her expectations of international and domestic political support for the peace process appear in need of revision in light of subsequent events. When hard facts meet soft law the outcome may not conform with Meighan's expectations.

If the negotiations grind to a halt with the final status agreement uncompleted or with the Oslo II Agreement not fully implemented, Arafat will likely remain something like a "mayor" of Gaza, Jericho and the other locales from which Israel has evacuated. He and the Palestinian leadership cannot be expected to relinquish their foothold in what they call Palestine voluntarily to return to exile in Tunis or elsewhere.

Practically speaking, Israel has little interest in returning to Gaza as the majority of the citizenry and many of its politicians believe that its cost, both economic and in added security responsibility, outweighs any advantages Israel accrues by holding on to this territory.¹⁸² Nevertheless, Israel will have the additional security burden of policing roads and non-contiguous areas interspersed with

179. International funding, mainly from the United States, is vital for the peace process to continue. Yet congressional wariness about foreign aid, and in particular aid to the Palestinians, could also upset progress. Amira Hess, *There is Accountability*, *Ha'aretz*, July 3, 1995 at B2.

180. See Abbas, *supra* note 58, at 217-24.

181. See Shimon Peres, *Battling for Peace: Memoirs 325-58* (1995); Shimon Peres, *The New Middle East* (1993).

182. See Mahmoud Abbas, *supra* note 58, at 199-200; Joseph Alpher, *West Bank Will Be a Watershed*, *Jerusalem Post*, Jan. 28, 1994, at 4; Jenni Frazer, *Likud Will Accept Self-Rule But Will Act Against Terror*, *Jewish Chronicle*, June 6, 1995, at 3 (stating that the Likud will not return to Gaza should it come to power).

Palestinian controlled territory. The reality may echo the old Middle Eastern adage, "There is nothing so permanent as the temporary." Having dramatically raised expectations in reaching this temporary/permanent reality, both parties will have to cope with the inevitable bitter and angry public reaction. Tragically the outcome may not be peace and reconciliation but renewed and intensified violence.