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 Temporary

INTRODUCTION

Katherine Meighan's Note "The Israel-PLO Declaration of Principles"
ciples: Prelude to a Peace?", 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), 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. Meighan also discusses the stages the parties envisioned for the negotiation and conclusion of interim and permanent status agreements.


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 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 Cairo and Jericho Agreements], 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 Kosser's (Israel's parliament) implementation of the Cairo and Jericho Agreements, see Laws Implementing the Gaza-Jericho Agreement 1994, 1497 Sefer Ha'Shukim 48 (Dec. 28, 1994).

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

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ISRAEL-PLO  

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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’ais (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.B. 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.1.2. 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.4., V.9. 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.B. In addition, all meetings of the Council and its committees must "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, for the time being, the West Bank and Gaza Strip occupied territories, including Jerusalem, the Jewish settlements, specified military locations, Palestinian refugees, borders, foreign relations and Israeli citizens. Id. arts. IX.A., XVI.I.4. In addition, the Council’s jurisdiction does not encompass matters for which the PA has received authority under the Oslo II Agreement, such as defense against foreign threats. Id. art. XII.

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. art. XII.2. 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. As part of a number of "confidence building measures," Israel has agreed to release or tolerate 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 took place on December 28, 1994. The third stage included the release of 500 prisoners. See Oslo II, 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 to remove 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 elections and approve the required amendments. Id. art. XXX.I.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." Her final appraisal acknowledges the overall soft essence of the DOP but insists that "a detailed examination of its provisions reveals surprising solidity." Meighan concludes that the DOP's authority is "convinces," 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." 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. Meighan succinctly summarizes the agreement's main provisions, such as the establishment of the Palestinian Authority (PA) and the creation of a "strong" Palestinian police force. 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.

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). She suggests that the DOP marks a significant development in international law because it breaks the traditional party to international agreements. 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 not satisfying the traditional criteria of statehood."

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, 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.

16. Id. at 467.
17. The circumstances which brought the parties to the negotiating table must be considered. After a 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 political suicide. 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 Palestinians following Rabin's beheaded murder of a 400 Islamic militants to Southern Lebanon. See Yigal Carmon, The Story Behind the Handshake, Commentary, Mar. 1994, at 25-26; Wadji Qaitouni, Life Or Kiss of Death?, Bimadi Jerusalem Times, Oct. 7, 1994, at 5 (Palestinian ambassador to the U.S. said 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 Fc 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 reached.
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 “open and forthright communication, reached. Subsequently, Israeli, 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 Israeli Defense Forces. See Justus R. Werner, Human Rights in the Israeli Administered Areas During the Intifada: 1987-1991, 10 Wis. Int’l L.J. 185, 187-92 (1992).


20. For a historical background to the peace process and an account of the Israeli-PLO conflict, see Thomas L. Friedman, From Beirut to Jerusalem (1989); Conor C. O’Brien, The Siege 362-602 (1986); William V. O’Brien, Law and Morality in Israel’s War with the PLO 7-76 (1990); David K. Shipley, Arab & Jews (1980); 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 Cygulman, No, Oslo is Not Dead, 2 Pal.-Isr. J. of Pol. Econ. & Culture 3, 4 (1993).


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

[It] 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 411.
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 23, 34 (1995); see also Here Comes the Hard Part, Newsweek, May 16, 1994, at 10.
may hold substantial consequences for domestic and international political processes, and the likelihood of repercussions may exert a compelling influence toward compliance.\textsuperscript{30}

International conventions or treaties concluded between or among sovereign states, Meighan notes, are “traditionally viewed as the paradigm of hard, binding international law.”\textsuperscript{31} As the PLO is not a state, she reasons that the DOP is neither a treaty nor an international convention.\textsuperscript{32} Hence, the DOP may not be deemed “hard” international law, although, because of its “considerable degree of binding force,”\textsuperscript{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.\textsuperscript{34} Elsewhere, Meighan asserts that the DOP represents a novel “sub-species of international instrument,”\textsuperscript{35} because although the PLO is not a state, it has begun to assume some of the prerogatives traditionally associated with statehood.\textsuperscript{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.\textsuperscript{37} That organization has claimed to be the sole representative of the Palestinian people for more than two decades.\textsuperscript{38} Prior to 1988 it enjoyed only incomplete support in the international arena.\textsuperscript{39} The PLO maintained diplomatic relations of various types\textsuperscript{40} with over a hundred different governments and received a grant of permanent observer status at the United Nations in 1974.\textsuperscript{41}

On November 15, 1988, the Palestinian National Council\textsuperscript{42} 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.\textsuperscript{43} In turn, a number of countries, most of which belonged either to the Third World or the former Eastern Bloc, recognized this “state.”\textsuperscript{44} The United Nations General Assembly modified the PLO’s designation in consequence to “Palestine.”\textsuperscript{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

\textsuperscript{39} Id.

\textsuperscript{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.

\textsuperscript{41} Id. at 14.


\textsuperscript{43} Alan Hart, in his officially approved biography of PA Chairman Yasser Arafat, defined the Palestinian National Council as “more of 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? 43 (1984).


\textsuperscript{45} 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. Int’l L. Rev., The Clinton-Rabin Partnership In the Middle Peace Process 28 (1993).

\textsuperscript{30} Meighan, supra note 2, at 449.

\textsuperscript{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).


\textsuperscript{33} Meighan, supra note 2, at 449.

\textsuperscript{34} Id. at 453.

\textsuperscript{35} Id. at 466.

\textsuperscript{36} Id. at 466-67.


\textsuperscript{38} William V. O’Brien, supra note 20, at 12-14.
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.A.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 Israel." 49 Further, the Oslo II Agreement explicitly provides 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

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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).
49. Oslo II Agreement, supra note 5, art. XVII.A.a (The Agreement Supersedes the 1995 Agreement, supra note 5, art. IX.3.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. at X.4.
50. The Oslo II Agreement provides, "The two Parties view the West Bank and the Gaza Strip as a single territorial entity, the integrity and stability of which will be preserved during the interim period. " Oslo II Agreement, supra note 5, art. XXXII.B. see also DOP, supra note 3, art. IV ("The two sides view the West Bank and the Gaza Strip as a single territorial entity, whose integrity will be preserved during the interim period.")
51. 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. XIX.I.5 ("The Gaza Strip and the Jericho Area shall 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. XXII.I.6 ("The two Parties view the West Bank and the Gaza Strip as a single territorial entity, the integrity of which will be preserved during the interim period.").
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.
54. 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 talk.

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 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.


55. 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.

56. 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 Huest Hannam & Richard B. Lilllich, The Concept of Autonomy in International Law, 74 Am. J. Int’l L. 838, 872-75 (1980).

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.

Furthermore, Israel’s recognition of the Palestinians’ “legitimate and political rights,”62 which presumably include the right to self-determination,63 did not, as Meighan implies, automatically entail its assent to the creation of a Palestinian state as the inevitable

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).

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 344 (“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.”); Castese, 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, is ambiguous as to the forms that self-determination may take. 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 extent its independence would have on other states in the region." 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. 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 "[i]n the Declaration of Principles was formally signed by leaders with full authorization to represent their respective parties." Had it been otherwise the document's "authority" would be considerably 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." 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. 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 Rabin, and the forceful settling of unoccupied land in the West Bank.

Neil C. Livingston & David Halle, 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 would provide each individual with more security and a better quality of life.

72. See, e.g., R. A. Marcus, supra note 71, at 11:15 P.M. After Being Shot, Jerusalem Post, Nov. 5, 1995, at 1; Raine Marcus & Herb Keason, 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 would 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 would probably have much more difficulty prevailing in the next national election.

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


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 105-50 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 weaknesses[81] and that it considerably “compromises[82] 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.

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


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.


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.


100. Yasir 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, 22; see Yosi Troupstein, 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.


1995]   ISRAEL-PLO   951

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

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. In addition, the sluggishness


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. VII.5. Abbas, Art. II of the Cairo Agreement, limits the number of policemen to 9,000. Cairo Agreement, supra note 5, annex I, art. III.5, sources in Israeli estimate that the PA has violated the agreements by existing about 15,000 Palestinian policemen. See Alex Fishman, Gaza Like Lebanon, Maariv, 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 Israeli 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 violations 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, Yediot Report, Mar. 19, 1995, at 3; Uri Nir, Palestinian Authority To Begin Importing Petroleum From Iraq In Three Weeks, Ha'aretz, Sept. 9, 1995, at A5.


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.\textsuperscript{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.\textsuperscript{105}

\section*{IV. DOMESTIC AS DISTINCT FROM INTERNATIONAL POLITICAL CONSIDERATIONS}

Is Oslo dying? Is it already dead? Was it defective from birth, and therefore predestined to whither in infancy?\textsuperscript{106}

Meighan addresses the numerous domestic and international political considerations that, in her view, assume a critical extratextual 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 considered in assessing the ultimate effectiveness of the document."\textsuperscript{107} Nonetheless, she concedes that "[m]any difficulties beset the ongoing implementation of the Declaration."\textsuperscript{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.\textsuperscript{109} In fact, Arafat and the Rabin-Peres team have become political Siamese twins,\textsuperscript{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 Agreement 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.\textsuperscript{111} Although the popularity of Rabin's successor, Shimon Peres, soared in the immediate aftermath of the

\textsuperscript{107} Meighan, supra note 2, at 459.

\textsuperscript{108} Id.

\textsuperscript{109} Id. at 449.

\textsuperscript{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 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 [Israeli government is in a trap].") see also Yacov Ben Efraim, The First of July - or Not, Challenge: A Jerusalem Magazine on the Israeli-Palestinian Conflict, July-Aug., 1995, at 9.

\textsuperscript{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 Sefar HaKhuvinim 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 Uri 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 Horovitz, The Men Who Would Be King, Jerusalem Post, 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 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. (“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 militants 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 Collision: 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 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 A3; Amira Hess, Palestinian Police Locate 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 Coup Begins Working, Jerusalem Post, Feb. 17, 1995, at 2; Herb Keelson, Gaza Council Calls Ex-Soldiers To Hunt Down Killers, Jerusalem Post, Oct. 29, 1995, at 2; Palestinian Police Arrest 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; Eryan Rabin, Reports Arrive to Israeli: “Arafat Strengthening Fight Against Terror,” Jerusalem Post, July 16, 1995, at A3; Palestinian Police Storm Homes in Gaza, 210 Arrested; Arms Surrendered (BBC Short Wave Broadcast, Voice of Israel, Apr. 13, 1995); Palestinian Security Court Gives Hamas Activist 13-Year Sentence (BBC Short Wave Broadcast, Voice of Palestine, Apr. 13, 1995); PNA Statement Announces Ban On Possessing Gas 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 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 Wears: 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 & Rafeeq Marees, 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; Rane Marcus, 12 Die in TA as Hamas Terror Strikes Again, Jerusalem Post, Mar. 5, 1996, at 1; Ouri Nir & Odelion Alan, 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 Keelson, Suicide Bomber Explodes Donkey Cart Near Khan Yunis, 3
terror since the signing of the DOP\textsuperscript{22} 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.\textsuperscript{23} Some members (MKs) of Knesset (Israel's Parliament) from the incumbent Labor Party, along with the President of Israel\textsuperscript{122} 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.\textsuperscript{124}

C. Arafat: Economic Turmoil and Islamic Opposition

Arafat's political survival is likewise absolutely vital for the


121. Numerous suicide bombings by Hamas and the Islamic Jihad have resulted in a 100% increase in Israeli fatalities in the 3 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.


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 support the DOP Chairman Yasser Arafat as a terrorist. See Iris Rosenblum, Poll: 54% Believe Arafat Terrorizes: 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 as notable as the Israeli President's role is largely ceremonial and presidents generally do not make political statements. See Yossi Hatziot, As Eyichol Visit Weizman Calls for Revaluation 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.


peace process to continue on track. The assumption of power by either of the only significant opposition groups, Hamas\textsuperscript{125} and Islamic Jihad, which adamantly refuse to recognize Israel's legitimacy and regularly take "credit" for terrorist activities against Israeli targets,\textsuperscript{126} would almost certainly precipitate a spiral of hostilities and the immediate suspension, if not total breakdown, of the peace talks.\textsuperscript{127}

Meighan has questioned Chairman Arafat's style of governance.\textsuperscript{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.\textsuperscript{129} Furthermore, Palestinian hopes of economic growth and political freedom have given way to bitter disillusionment and frustration caused by the increasingly desperate economic situation\textsuperscript{130} and the snail's pace that characterized the interim peace talks.\textsuperscript{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] credibility as the credible partner with whom to conclude peace.


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

128. See Meighan, supra note 2, at 459. In December 1993, H. Haidar 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 Adrienne 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.


donors from the international community has been very slow in coming, leaving the Palestinian entity on the verge of bankruptcy. Unemployment figures for the Gaza Strip have reached astronomical proportions, fostering hatred and anger among the resident population and strengthening the ranks of those opposed to peace.

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. A bomb was located in his office in the Gaza Strip.


In these desperate circumstances, traditional members of left-wing Palestinian groups such as the old Palestinian Communist Party and the Popular Front for the Liberation of Palestine (PFLP) have turned to extremist groups such as Hamas to oppose Arafat’s mainstream Fatah-based authority. See Rabbi Dovellow, Hamas Supplants Marx, Ha’aretz, May 8, 1995, at B1.

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
and an attempt against his life was planned at the Organization of African Unity conference in Addis Ababa.\textsuperscript{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.\textsuperscript{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.\textsuperscript{141} Although the Clinton Administration and many European governments clearly support the peace process, 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.\textsuperscript{142}

In support of her assessment concerning international backing for the DOP, Meighan mentions the U.N. Security Council's Resolution\textsuperscript{143} in the aftermath of the killing in Hebron by the Jewish settler, Baruch Goldstein,\textsuperscript{144} 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,\textsuperscript{145} as they often fail to take Israel's security concerns into consideration.\textsuperscript{146} Israeli discounts 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.\textsuperscript{147} Even after the


142. Meighan, supra note 2, at 450.

143. 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 that 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).


repeal of the resolution equating Zionism with racism in 1991. Therefore, the United Nations has continued to evidence a less-than-objective attitude toward Israel. 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

The parties have undertaken a serious and binding commitment to continue expeditiously toward a final settlement by means of a timely implementation...

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 Israeli 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, did not take place before January 1995. This delay has been blamed primarily on Israel. 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. Despite late night negotiations between then Israeli Foreign Minister Peres and Chairman Arafat, this date also passed.

Meighan accurately observes that "the Declaration is quite ambitious regarding the multiple political, social, and economic issues that it encompasses. 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. Hence, Meighan's judgment that "the Declaration of Principles ambitiously conceives that a permanent settlement agreement will be completed by 1999" 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.

Some Palestinian and Israeli leaders, disappointed with the slow
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


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 Yazarach Tal, Israeli Sources: Palestinians Fear That Likud Government Will Change Interim Agreement Into Permanent Status Deal, Ha'aretz, Aug. 7, 1995, at A5. Officially speaking, the sequence of which issues are considered to form a bone of contention between negotiating parties because each side fears that issues of the greatest importance to it will remain unresolved should the negotiations break down is relatively small. 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.


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 XII, letter B; Bill Hutton & David Makovsky, Olmert Vows to Close Orient House, Jerusalem Post, June 26, 1995, at 1.

165. Any permanent status agreement between the parties will certainly involve the 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 Ben-Benjamin, 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 Sharfati, Over A Thousand Soldiers and Officers in Judea and Samaria: We Will Resist Orders to Evacuate Settlements, Ha'aretz, Sept. 9, 1995, at A1; Nadav Sharfati, Rabbi Grows Rivals in '93 That Soldiers Must Refuse to Evacuate Settlements, Ha'aretz, July 9, 1995, at A2; Nadav Sharfati, "There is a Prohibition in the Torah to Transfer Military Bases to Non-Jews," Ruled Right-Wing Rabbi, Ha'aretz, July 13, 1995, at A2; Nadav Sharfati, 5 Reserve Officers Call for Refusal to Serve, "Army Serves Our Enemies, This is a Cultural War," Ha'aretz, July 20, 1995, at A4.

166. 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-Eliassar, 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 "incoercible about implementing the agreements he signed with the Palestinians" and 83.1% 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 Dabouche, Palestinian Public Opinion Polls on the Peace Process, 2 Pal.-J. Pol. Econ. & Culture 68 (1995); see Beyer, supra note 111, at 44-45; Jermi Frazier, Israelis, Palestinians United in Pessimism, Jewish Chronicle, June 16, 1995, at 2.

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


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 cities 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.

170. Carmon, supra note 17, at 27.

171. Id.


173. Carmon, supra note 17, at 29.


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.

176. 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.

increasingly replaced initial hope. 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 Jordan and has improved diplomatic and trade relations with certain European, Islamic, Third World and even Arab states. The PLO has achieved reacceptability 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 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 euphoria for the slain Israeli Prime Minister fades, there are a number of ways in which the current peace process can fail. Primarily, it appears unlikely that the agreements have any chance to meet the exaggerated expectations of Palestinians and Israelis, 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. 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.
182. See Mahmoud Abbas, supra note 58, at 199-200; Joseph Alpher, West Bank Will Be a Waterhed, Jerusalem Post, Jan. 28, 1994, at 4; Jenin 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.