THE HEBRON PROTOCOL: THE END OF THE BEGINNING
OR THE BEGINNING OF THE END OF THE
ISRAELI-PALESTINIAN PEACE PROCESS?

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C. The Leaders Who Made the Peace Process Work

IV. Conclusion and Outlook

The Israeli-Palestinian Protocol Concerning Redeployment in Hebron and Related Documents ("Hebron Protocol" or "Protocol") are, at first reading, modest in length and scope. Intended to settle implementation issues that had been problematic since the negotiation of the earlier Interim Agreement (sometimes referred to as Oslo III) and to facilitate success in the permanent status negotiations, the Hebron Protocol has opened a Pandora's Box of legal and political obstacles that have repeatedly found expression in headlines during recent months.

This review will analyze the protracted legal and political controversies that arose prior to the signing of the Protocol, as well as the unforeseen complications that have since emerged. Part I considers the inception of the Hebron Protocol with emphasis on the significance of the city of Hebron to Israelis and Palestinians, the Protocol's position in the peace process, the terms ultimately agreed to in the Protocol and related documents, and the difficulties both sides have experienced in complying with their agreements. Part II examines the problems that have arisen since the signing of the Hebron Protocol, in particular the Har Homa controversy, allegations that Yasser Arafat had granted approval for the renewal of terrorism, and the dispute over the extent of Israel's post-Hebron Protocol redeployments. Part III focuses on the impeding struggle over the issues that were postponed until the final status negotiations, the complex role of the United States in brokering the peace process and the declining popularity of the peace process among Israelis and Palestinians. Part IV contains conclusions drawn from the Protocol and the actions of both the Palestinian Authority and Israeli governments, as well as predictions for the future of the peace process.

1 See discussion infra note 29.

2 According to the timetable set out in the Declaration of Principles, arrangements for the interim period are to be replaced by those established in the permanent status agreements no later than May 4, 1999. Declaration of Principles on Interim Self-Government Arrangements, Sept. 13, 1993, 1st-Palestine Liberation Organization, 32 I.L.M. 1525 [hereinafter DOP]. The permanent (or final) status negotiations are intended to resolve the major remaining issues, including "Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors." Id. at 1529. The objective is to "put an end to decades of confrontation and conflict . . . live in peaceful coexistence and mutual dignity and security and achieve a just, lasting and comprehensive peace settlement and historic reconciliation." Id. at 1527.

3 Some modern writers have taken note of the "Hebron syndrome" of violent fanaticism as hard-line Islamists live in reciprocal animosity only blocks away from militant Jewish settlers. See Amos Oz, A Way to Ease the Pain, THE GUARDIAN, Jan. 16, 1997, at 15.

4 More than one city has been written by European Christian travelers who experienced intolerance and fanaticism at the hands of the Muslim custodians of the Tombs of the Patriarchs and the population of Hebron in general. See, e.g., Elizabeth Butler, LETTERS FROM THE HOLY LAND 37 (1906); H. W. Dunning, TO-DAY IN PALESTINE 61 (1907); Harry Emerson Fosdick, A PILGRIMAGE TO PALESTINE 106 (1927); Henry Van Dyke, OUT-OF-DOORS IN THE HOLY LAND 99 (1908).

5 Palestinians claim that the transferrer was actually a Palestinian Arab. See Ahmad Abdallah Yusef, Islamic Perspectives: The Al-Aqsa Mosque, BILADI JERUSALEM TIMES, Apr. 17, 1996, at 8. This, despite the fact that until the Muslim conquest in 624 A.D., there were no Palestinians or Arabs in Hebron. See Y. Porat, THE EMERGENCE OF THE PALESTINIAN-ARAB NATIONAL MOVEMENT 1918-1929, at 40 (1974). Only then, ten years after the Prophet Muhammad's death, did Arabs commanded by Khalid al-Walid conquer Palestine. See Saul S. Friedman, LAND OF DUST: PALESTINE AT THE TURN OF THE CENTURY 6-8 (1982).


7 See 2 Samuel 4:8-5:1; Amos Oz, supra note 3, at 15.


9 See Keinon, supra note 8, at 4. Pogroms are the mass killing of Jewish people. Major pogroms occurred in 1100, 1517, 1834 and in 1929. See id.

10 See Moshe Dayan, A CITY, and a Symbol, JERUSALEM POST, Sept. 19, 1995, at 6. The details of the mistreatment of the 38 victims who were killed in a Rabbin's house were recorded by an eyewitness who visited the scene shortly thereafter. See Pierre
ple, fled the town.\textsuperscript{11} In the aftermath of Israel's capture of Hebron in the 1967 Six-Day War, Jews returned in numbers to the center of Hebron.\textsuperscript{12} The following year, Jewish settlers moved into the heart of the city, taking up residence on land that had been owned by Jews prior to the massacre of 1929\textsuperscript{13} and reestablishing one of their destroyed yeshivas.\textsuperscript{14} Muslims also venerate Abraham\textsuperscript{15} and through him, Hebron. The Arabic name of Hebron, \textit{Khallil al-Rahman}, means "friend of Allah the Merciful," and refers to Abraham, who was also the father of Ishmael, from whom the Arabs claim descent.\textsuperscript{16} The Qur'an reworks the biblical material on Abraham within its text.\textsuperscript{17} Palestinians have attempted to grandfathers their roots in the region, by claiming that they are also

\textit{Van Pausen, A Pilgrim's Vow} 122-24 (1956). A "yeshiva" is a Jewish religious school where students, usually in their teens or twenties, pursue full-time studies.\textsuperscript{11} See Norman & Helen Bentwich, \textit{Mandate Memories}, 1918-1948, at 154 (1965).


\textsuperscript{13} See Keinon, supra note 8, at 4.

\textsuperscript{14} See Friedman, supra note 5, at 136-37.


\textsuperscript{16} See Keinon, supra note 8, at 4. Actually the Bible makes clear that Ishmael's father was Abram, subsequently, God changed Abram's name to Abraham and he became the father of the Jews through his son Isaac. See \textit{Genesis} 17:5, 7-8. Despite this distinction which is clear in the Bible, the Jews and Arabs are frequently referred to as the "children of Abraham." See President Bill Clinton, Speech at Signing of the Israel-PLO Accord (DOP), Sept. 13, 1993, reprinted in \textit{Ministry of Foreign Affairs, Government of Israel, Declaration of Principles on Interim Self-Government Arrangements} 8 (Sept. 1993). While not diminishing the Muslim or Palestinian commitment to Hebron, a literal reading of the Bible indicates that God's covenant for the land of Canaan, including Hebron, was with Abraham and his descendants through his son Isaac, rather than with Abram through his son Ishmael. See \textit{Genesis} 17:18-21.

\textsuperscript{17} See Andrew Rippin, \textit{Interpreting the Bible Through the Qur'an}, in \textit{Approaches to the Qur'an} 251 (G.R. Hawting & Abdulkader A.-K.A. Shariff eds., 1993). According to Professor Rippin, the tendency to incorporate biblical materials into the Islamic tradition, and to Islamize them in doing so (and thus, it might be suggested, picking up on the Qur'an's own way of restating biblical stories), sees its ultimate manifestations in the genre of literature known as the \textit{dala'il al-mubawwa}, the 'proofs of prophesy', and especially the \textit{gnea al-anbiya}, the stories of the prophets.\textsuperscript{18} Those latter tales, several of which are available in whole or in part in English translation, display the end result of the exegetical process: a history of the prophets of the past, recounted in an order which for the most part accepts the biblical chronology, focused around passages of the Qur'an supplemented by the biblical and most especially biblically-exegetical tradition.\textsuperscript{19} In the recounting of the prophets of the past, there is certainly a tendency to avoid any Christian symbolic preoccupations" in the events of the 'Old Testament.' Likewise there is no emphasis on Israel as a land and Judaism's connection to it.

1d. at 252-55.


\textsuperscript{19} See Keinon, supra note 8, at 4.

\textsuperscript{20} See M. S. H. Evirgen, \textit{Hebron Protocol} 377 (1979). Hebron Protocol descended from various tribes that resided in Canaan such as the Hittites, Jebusites, and Amorites.\textsuperscript{18}

Muslim Arabs have lived continuously in Hebron for approximately 1300 years.\textsuperscript{19} About 650 years ago, Muslims converted the tomb of the Jewish Patriarchs and the surrounding compound into the al-Ahrami mosque.\textsuperscript{20} In 1266 AD, the Mameluke rulers issued a decree which forbade non-Muslims from entering the tomb.\textsuperscript{21} Until 1862 when the Prince of Wales was permitted entry to the complex to see the tombs, non-Muslims were denied entry beyond the seventh step outside the structure.\textsuperscript{22} After 1967, Jews were once again to pray inside parts of the tomb; although this has been challenged by Hassan Tahboob, the Palestinian Authority Minister of Waqf and Religious Affairs.\textsuperscript{23}

Palestinians currently constitute the overwhelming majority of the city's population.\textsuperscript{24} Since Jews returned to downtown Hebron in 1968 after the war, there have been frequent violent encounters between the Jewish and Palestinian residents.\textsuperscript{25} In 1980, six students at a Hebron yeshiva, returning from Sabbath services, were killed in an ambush by Palestinian terrorists.\textsuperscript{26} In 1995, Dr. Baruch Goldstein killed 29 Muslim worshippers in a shooting spree at the al-Ahrami mosque.\textsuperscript{27} Due to concerns for the safety of the approximately 500 Jews that reside in downtown Hebron as well as the desire to protect Jewish religious sites, Hebron was the last of the major cities in the West Bank which was

\textsuperscript{18} See Shlomo Porath, supra note 5, at 40. According to Professor Porath, "[the] Palestinian link to a Canaanite heritage is tenacious, if not downright silly and irrational. It cannot be taken seriously; nonetheless, it cannot be ignored since it has taken root as an ideological element among the Palestinian masses, and has become a part of the contemporary political discourse." Yehoshua Porath, \textit{Who is a Canaanite?}, \textit{Jerusalem Post Mag.}, Sept. 27, 1996, at 5.

\textsuperscript{19} See Keinon, supra note 8, at 4.


\textsuperscript{21} See Friedman, supra note 5, at 135-37. Despite the liberalizing influence of the British Mandate, in practice, Jews were forbidden from crossing the green line of paint on the seventh step, on pain of death, until after the 1967 War.


\textsuperscript{23} See Keinon, supra note 14, at 4; Keinon, supra note 8, at 4.

\textsuperscript{24} For a description of the numerous violent occurrences, see Keinon, supra note 8, at 4.

\textsuperscript{25} See Conner Cruise O'Brien, \textit{The Siege: The Saga of Israel and Zionism} 603 (1986).

turned over to the Palestinian Authority ("PA") by the Israeli Defense Force ("IDF").

The Protocol's Position in the Peace Process

The Israeli-Palestinian peace process began with clandestine meetings in London and Oslo four years ago and thus far, has yielded six interim agreements. Each agreement has incrementally advanced the peace process. At this time, only the Declaration of Principles ("DOP"), the Interim Agreement, and the Hebron Protocol are relevant, since the other agreements have been superseded.

These agreements should not be merely evaluated as legal documents, since each arose out of a larger local and international political context, and were designed as stages in a broader dynamic process. Specifically, the Hebron Protocol was intended to take the IDF out of daily contact with most Palestinian residents of Hebron while simultaneously protect-

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35 Six transitional agreements have been concluded between Israel and the Palestinian Liberation Organization ("PLO"). The first was the DOP. DOP, supra note 2. The Israel-PLO Agreement on the Gaza Strip and Jericho Area was the second agreement, and provides for the partial redeployment of Israeli administration and military forces in the Gaza Strip and Jericho area, and allows the PA to assume most functions of local governance in those areas. Agreement on the Gaza Strip and the Jericho Area, May 4, 1994, Isr.-Palestine Liberation Organization, 53 I.L.M. 622 (signed at Cairo) [hereinafter Cairo Agreement]. The first agreement allows for the transfer of authority to the PA in six 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. Agreement on Preparatory Powers and Responsibilities, Aug. 29, 1994, Isr.-Palestine Liberation Organization, 34 I.L.M. 455 (signed at the Erez checkpoint between Israel and the Gaza Strip, Aug. 29, 1994) [hereinafter Erez Agreement]. The fourth agreement, the Protocol on Further Transfer of Powers and Responsibilities, transfers 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. Protocol on Transfer of Powers, Aug. 27, 1995, Isr.-Palestine Liberation Organization (signed in Cairo, Aug. 27, 1995) (on file with the Boston University Int'l Law Journal) [hereinafter Transfer Agreement]. The fifth agreement, generally referred to as the Interim Agreement or Oslo II, was concluded between the parties on September 28, 1995. It comprehensively structures the Israeli-PA relationship for the duration of the interim period. Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Sept. 28, 1995, Isr.-Palestine Liberation Organization, 36 I.L.M. 557 [hereinafter Interim Agreement]. The Hebron Protocol, the subject of this review, was the sixth interim agreement. Ministry of Foreign Affairs, State of Israel, Protocol Concerning the Redeployment in Hebron and Related Documents, Jan. 7, 1997, Isr.-Palestine Liberation Organization, 36 I.L.M. 653 [hereinafter Hebron Protocol or Protocol].
37 See Black, Likud Government Crosses the Rubicon, supra note 12, at 12. 1997] 

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ing the small Jewish community and its religious sites in that city. Moreover, the Protocol was envisioned as a bridge to a new phase in the negotiations aimed at tackling the most difficult issues and ultimately reaching a "permanent status agreement.

Prior to the May 1996 Israeli national elections, Prime Minister Shimon Peres's Labor Party-led coalition government represented the Israelis at the negotiations and was responsible for negotiating the bulk of the Hebron Protocol. After the election of Benjamin Netanyahu and the formation of a new Likud-led coalition government, Israel sought to renegotiate key provisions of the Protocol. At this point, the Palestinians insisted that the Protocol be linked to the question of three further IDF redeployments.

Following extended delays, punctuated by periods when it appeared the entire peace process would collapse, the Hebron Protocol was finally signed on January 17, 1997. The Israeli Cabinet voted narrowly, eleven to seven, to endorse the Hebron Protocol after an intense twelve-hour debate. The Minister of Science, Benjamin Begin, resigned in protest after accusing Netanyahu of "giving away sections of the Jewish homeland" while getting "zero from [PA and PLO Chairman Yasser] Arafat" in return. The Protocol was subsequently approved by a lopsided majority in the Knesset (the Israeli parliament), although this was due to the affirmative votes cast by the Labor Party and other opposition par-

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31 See Hebron Protocol, supra note 29, at 660.
32 Officially commenced on May 5, 1996, the permanent status talks have been stalled or suspended nearly ever since. See DOP, supra note 2, at 1572; Cairo Agreement, supra note 29, at 657. See also Guy Behar, At Permanent Status Talks Palestinians Demand State with Jerusalem as its Capital, Ha'ARETZ, May 6, 1996, at A1.
33 See Interim Agreement, supra note 29, at 588; Protocol, supra note 29, at 656.
34 Israel sought stronger security guarantees from the Palestinians. See Marie Colvin, Arafat Fights for Hebron Full-Out at Peace Talks, SUNDAY TIMES, Oct. 6, 1996, at 18.
35 See Black, Likud Government Crosses the Rubicon, supra note 12, at 12.
36 Hebron Protocol, supra note 29, at 660. Unlike the DOP, Cairo Agreement and Interim Agreement, the signing for the Protocol was a low-key affair held in a suite at the Lorraine Hotel in Jerusalem rather than an international ceremony with pomp and ceremony at the White House. Interview with Gideon Avrani, Assistant Manager, Lorraine Hotel, in Jerusalem (Apr. 26, 1997). Not only was the usual cast of heads of state absent, but even Netanyahu and Arafat chose to forego the ceremony. Id. Signed by the negotiators who struggled through months of grueling negotiations, the Protocol was not witnessed by representatives of any other government (or the European Union). See Daniel Reimer, The Hebron Agreement, 12 JUSTICE 12, 14 (1997).
ties. Without their support, the Hebron Protocol would have been rejected. Netanyahu felt compelled to justify his action to angry party loyalists by claiming, "I haven't changed . . . . It is the reality that has changed."

No comparable legislative approval was forthcoming from the Palestinian leadership. Pursuant to the Interim Agreement, the Palestinian Legislative Council ("PLC"), which was elected on January 27, 1996 in accordance with the DOP, is not empowered to vote on agreements between the PA and Israel. This provision has caused Members of the Legislative Council to complain that they have no say in the decision making process. The PA has yet to allow the Council to ratify a constitution and has repeatedly failed to submit its budget for a vote. Moreover, none of the 132 regulations passed by the PLC have been implemented by the PA.


O'Sullivan, IDF Begins Hebron Redeployment, supra note 40, at 1.

Id.

See Interim Agreement, supra note 29, at 561.

See id.; Jon Inman, Hebron Agreement: PA Councillors Decry Lack of Debate, Jerusalem Post, Jan. 17, 1997, at 3. Three members of the Legislative Council stormed out of a ratification session to protest the Hebron Protocol. Palestinian Parliament Meeting Adjourned Following Members' Protests Over Hebron (BBC Broadcast, MED/2820/MED/1, Jan. 16, 1997). See id. Urayagat, a Council member and Hebron Protocol negotiator, tried to address the session, but was repeatedly interrupted by members, some of whom protested that they had not received copies of the Protocol. After these disturbances, the session was canceled and adjourned for four days. See id. The following session, scheduled for January 30, 1997, was canceled when it was learned that the Council was not authorized to ratify the Hebron Protocol and could only express their opinion on it. See Palestinian Legislative Council Not Authorized to Ratify Hebron Accord (BBC Broadcast, MED/2822/MED/1, Jan. 20, 1997).

See Palestinian Legislative Council Not Authorized to Ratify Hebron Accord, supra note 44. Palestinians claim that the PA is run by Arafat and his security officers, primarily Jibril Rajoub, Muhammad Dahlan and Amin al-Hindi. See Palestinian Security Head Rajoub on the Situation After Hebron Withdrawal (BBC Broadcast, MED/2827/MED/1, Jan. 27, 1997). Dissent from the terms of the Protocol was voiced in Arafat's PLO Executive Committee as five members, including then Justice Minister Freih Abu Medein either expressed opposition or voiced reservations about the Protocol. See Palestinian Radio Names Leadership Members Opposed to Hebron Protocol (BBC Broadcast, MED/2819/MED/1, Jan. 16, 1997).

See Palestinian Radio Names Leadership Members Opposed to Hebron Protocol (BBC Broadcast, MED/2819/MED/1, Jan. 16, 1997).


C. The Terms Agreed Upon

The Hebron Protocol specifies that the IDF would be "redeployed" from most of Hebron within 10 days. It is significant that the term used was "redeployment" rather than "withdrawal," as the latter term could be understood to imply an irreversible waving of Israel's claim to the city. This distinction is also implied in the Protocol's declaration, which states that "[b]oth sides reiterate their commitment to the unity of the City of Hebron, and their understanding that the division of security responsibility will not divide the city." Thus, perhaps for the sake of political expediency (i.e., not to embarrass Arafat in the eyes of some Palestinians who accuse him of ignoring their interests), it was not expressly declared, all of Hebron remains legally under Israeli occupation. However, this interpretation follows from the belief that the PLO is not a state, and the Interim Agreement expressly negates the assumption by the PA of any major powers and responsibilities in the realm of foreign relations. The Palestinians counter this argument by claiming that the source of the PA's international legal legitimacy lies outside the interim agreements and rests principally in the diplomatic relations the PLO enjoys with scores of countries. It also notes its recognition by the United Nations General Assembly as the "representative of the Palestinian People."

The Protocol contains an intricately redlined map of Hebron that indicates the boundaries of H-1 and H-2, the Palestinian-controlled sectors, respectively, as well as numerous checkpoints, police stations, routes for the Joint Patrols and various other features. The Palestinian Police are assigned public order responsibilities in H-1 similar to those it already assumed in other cities in the West Bank pursuant to

40 Hebron Protocol, supra note 29, at 653.
42 Hebron Protocol, supra note 29, at 651. Significantly the DOP states, "[t]he two parties agree that the outcome of the permanent status negotiations should not be prejudiced or preempted by agreements reached for the interim period." DOP, supra note 2, at 1529.
43 See Interim Agreement, supra note 29, at 561; 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, 269 (1994). Any further discussion of the conflict regarding the PA's legal status lies beyond the scope of this article.
46 See Hebron Protocol, supra note 29, at 661.
earlier interim agreements.\textsuperscript{55} Israel retains responsibility for the overall security of Israelis as well as all powers and responsibilities for internal security and public order in H-2.\textsuperscript{56} Both sides “reaffirm their commitment to honor the relevant security provisions of the Interim Agreement.”\textsuperscript{57} In addition, the Protocol sets up Palestinian Police checkpoints in H-1, forming a buffer zone adjacent to H-2 “to enable the Palestinian Police, exercising their responsibilities under the Interim Agreement, to prevent entry of armed persons and demonstrators or other people threatening security and public order, into the abovementioned area.”\textsuperscript{58} “Joint Mobile Units” and “Joint Patrols”\textsuperscript{59} have been created to assist the checkpoints in maintaining security along the line that divides H-1 from H-2 and on major roads.\textsuperscript{60} The type of firearms to be carried by the Palestinian and Israeli members of the Joint Mobile Unit is specified.\textsuperscript{61} A “Joint Coordination Center,” headed by senior officers of both sides, is established to coordinate the mutual security measures in Hebron.\textsuperscript{62} Palestinian Police stations or posts, staffed by a total of up to 400 police, with specified permitted weaponry, are created in area H-1.\textsuperscript{63} The Palestinian Police are to set up four “Rapid Response Teams” each with up to sixteen members in H-1 to handle special security situations.\textsuperscript{64} The Protocol requires the Palestinian Police to “ensure that all Palestinian policemen, prior to their deployment in the City of Hebron, will pass a security check in order to verify their suitability for service, taking into account the sensitivity of the area.”\textsuperscript{65} Specific responsibility is assigned to the Palestinian Police to protect four Jewish holy sites in H-1 and the visitors to these sites are to be accompanied and protected by a Joint Mobile Unit.\textsuperscript{66} In an article entitled “Normalization of Life in the City,” both sides “reiterate their commitment to maintain normal life throughout the City of Hebron and to prevent any provocation or friction that may affect the normal life in the city.”\textsuperscript{67} This end is to be achieved by taking “all steps and measures necessary.”\textsuperscript{68}

The Protocol also transfers certain civil powers and responsibilities to the PA for all residents of Hebron except for the Israelis living in H-2.\textsuperscript{69} Also specified are limitations on the heights of newly constructed buildings in H-1 and on the construction of factories that could adversely affect the environment.\textsuperscript{70}

D. Pivotal Related Documents and Compliance Difficulties With These Related Documents

Three “Related Documents” accompanied the Hebron Protocol: a Note for the Record prepared by U.S. Special Middle East Coordinator Dennis Ross,\textsuperscript{71} the Agreed Minute regarding the American Plan on Al-Shuhada Street,\textsuperscript{72} and a Letter from [then] U.S. Secretary of State War...
Netanyahu, in particular, reciprocity has become a precondition for Israel's willingness to proceed with the entire peace process. This point was repeatedly emphasized in his successful electoral campaign. It also strikes a chord with the significant proportion of the Israeli public which believes that Israel has continued to make concessions to the Palestinians, while the Palestinians have failed to uphold their preliminary promises.

1. Palestinian Responsibilities Under the Note for the Record

The Note for the Record delineates "Palestinian Responsibilities" and "Israeli Responsibilities." It calls upon the Palestinian side to reaffirm its commitment in accordance with the Interim Agreement of "comple[ting] the process of revising the Palestinian National Charter." The Palestinians' failure to amend their Charter is of fundamental importance to the Israelis, since the Charter is an affront to the very existence of Israel. The Palestinians have repeatedly failed to comply with their promises to amend the Charter. In his exchange of letters with Rabin on September 9, 1993, Arafat wrote:

"[The PLO] affirms that those articles of the Palestinian Covenant which deny Israel's right to exist, and the provisions of the Covenant which are inconsistent with the commitments of this letter are now ineffectual and no longer valid. Consequently, the PLO undertakes to submit to the Palestinian National Council for formal approval the necessary changes in regard to the Palestinian Covenant."
Two years later, the Covenant had still not been changed, but a new deadline was fixed in the Interim Agreement signed on September 28, 1995. The elected Palestinian Legislative Council ("PLC"), which came into being after the Palestinian elections of January 20, 1996, was formally inaugurated on March 7, 1996. Under the terms of the Interim Agreement, the PLC was obligated to amend the Covenant by no later than May 7, 1996. The Palestinian National Council did in fact convene in April 1996 and resolved on April 24, 1996, to amend the Palestinian National Council as required; this vote, however, did not actually change the Covenant. Thereafter, three different deadlines for the completion of a new covenant were announced by different Palestinian officials and all expired without any new version of the Covenant being submitted to or approved by the Palestinian National Council. In the Note for the Record which accompanied the Protocol, the PLO again reaffirmed its commitment to "[c]omplete the process of revising the Palestinian National Charter" and thereby, by implication, admitted that it had not fulfilled its obligations.

The PLO undertakes that, within two months of the date of the inauguration of the [Palestinian Legislative] Council, the Palestinian National Council will convene and formally approve the necessary changes in regard to the Palestinian Covenant, as undertaken in the letters signed by the Chairman of the PLO and addressed to the Prime Minister of Israel, dated September 9, 1993 and May 4, 1994. Interim Agreement, supra note 29, at 568.

Israel Government Press Office, State of Israel, Amending the PLO Covenant: An Unfulfilled Commitment, Press Bull., Jan. 26, 1997, at 3. Indications that the old Covenant remains in force include the fact that the resolution does not specify the date which articles were annulled, the revelation of an internal Fatah (the largest faction of the PLO) document affirming that the Covenant was frozen rather than annulled, and a videotaped interview by Arafat's Spokesman Marvin Kalifani indicating that the vote characterizing the resolution as a "license to start a new charter," (emphasis supplied). Id. See Internal Fatah Document: The Text of the Palestinian National Covenant Remains As It Was and No Changes Were Made to it. This Has Caused It to be Frozen but Not Annulled, PEACE WATCH, May 21, 1996; Updated Assessment Regarding the Palestinian Covenant, PEACE WATCH, May 2, 1996.

Israel Government Press Office, State of Israel, Amending the PLO Covenant: An Unfulfilled Commitment, supra note 86, at 5. Even this new reaffirmation was almost immediately put in doubt, however, when in late January 1997 Arafat told the French daily newspaper Le Monde: We have already canceled the articles that were in contradiction to the Oslo agreements. We have fulfilled our commitments. The rest of it concerns us only. The Israelis want us to adopt a new charter. As far as I know, the Israelis do not have a constitution. When they will have one, we will do the same.


In addition, the Note for the Record calls for the Palestinians to honor their commitments in "fighting terror and preventing violence, ... combat[ting] systematically and effectively terrorist organizations and infrastructure, and the [a]pprehension, prosecution and punishment of terrorists." Arafat's reluctance to challenge the Islamic opposition is generally understood to be based on his fear of provoking a Palestinian civil war. Even after the most recent suicide bombings in Tel Aviv and the Gaza Strip, Arafat continues to hold meetings with leaders of Hamas and other groups that utilize terror. Instead of dismantling the infrastructure of Hamas and other organizations sponsoring suicide bombings, the PA has adopted a policy of conciliation backed by limited force. Although the Palestinian Police and security services have carried out arrests and held perpetrators and suspects in custody, officially banned...
the organizations, and punished some of those responsible for terrorist attacks, the PA generally favors accommodation and has never comprehensively liquidated the infrastructure of the terrorist organizations. Terrorist suspects arrested by the PA have routinely been released after the public outcry from the particular attack(s) has passed. Terrorists who have been prosecuted and convicted in the PA State Security Court are often released before completing their prison sentences.

The Note for the Record also reiterates the Palestinians' commitment to strengthen security cooperation with Israel. In mid-April 1997, a media report indicated that Arafat had finally ordered Palestinian security forces to renew cooperation with their Israeli counterparts, ending a one-month break in contacts. However, reports indicated that the PA officially denied any cooperation was taking place, and that Dennis Ross was dispatched to the Middle East in an attempt to persuade the Palestinians to resume security ties. Finally in October, under American auspices, Arafat officially agreed to resume security cooperation. Israel's security situation is aggravated by the fact that individual Palestinians who provide information to Israel are branded as "collaborators" and treated severely by the PA's security apparatus. When Israel passes on information to PA officials concerning planned attacks, the Palestinians take action against the intelligence source rather than the terrorists.

The Note for the Record also reaffirmed the Palestinian commitment to act on Israeli requests for the transfer of suspects to be tried "in accordance with Article II(7)(f) of Annex IV to the Interim Agreement. Perpetrators of terrorist attacks within Israel are often released upon a plea bargain, and Israel has not had to success persuading Arafat to transfer them for trial in accordance with the interim agreements. The Interim Agreement and its predecessor, the Cairo Agreement, give Israel exclusive criminal jurisdiction over terrorist attacks against Israelis. Yet from the outset of the peace process, the PA has refused to implement mandatory provisions requiring the transfer for trial of persons suspected of terrorism against Israel. At first, the rationale for non-compliance was found in the PA's interpretation that only offenses perpetrated after the signing of the Cairo Agreement were covered. When Israel subsequently requested the transfer of suspects in attacks carried out after the signing of the Cairo Agreement, the suspects were hastily brought to trial in PA courts, convicted and imprisoned. In December 1996, the Israeli Government Press Office, a division of the Prime Minister's office, issued a Press Bulletin which detailed the PA's continued failure to honor its obligation to transfer suspects to face trial in Israel. The Bulletin noted that in all but two instances of the twenty-seven persons whose transfer was sought by.
Israel, the PA had not even responded to Israel's request. Moreover, at that time ten of the twenty-seven terror suspects were either serving in the Palestinian Police, the PA Preventative Security Service or Palestinian Military Intelligence or were in the process of joining their ranks. Shortly before the signing of the Hebron Protocol, the PA's Preventative Security Chief Jabril Rajoub refused to transfer two Palestinians who killed two Israeli civilians in a drive-by shooting. He said that any request for transfer, "is a dream and won't happen. You can forget about it." Despite Rajoub's attitude which apparently represents the mainstream viewpoint of the PA's leadership, the Note for the Record reiterated the PA's obligation to transfer suspects. Shortly afterwards, Minister of Justice Hanegbi threatened that he would "demand a unilateral freeze on all negotiations with the Palestinians" unless the "Palestinian Authority begins fulfilling this part [the transfer of suspects] of the agreement." Hanegbi indicated he would bring a list of thirty-three Palestinians suspected of murder and other serious crimes against Israelis to his next meeting with the PA Justice Minister.

The Palestinians also reaffirmed their commitment to "preventing incitement and hostile propaganda, and confiscation of illegal firearms [e.g., those held by Hamas cells]." These have been issues of contention. Arafat himself has been a major source of incitement throughout the peace process. A few months after signing the DOP, he was taped during a speech in a mosque exhorting those present to wage a jihad with the goal of liberating Jerusalem. Arafat also likened the DOP to the peace agreement signed by the Prophet Mohammed with the Quraysh tribe, and then abrogated ten years later. Arafat has lauded the memory of slain Palestinian terrorists by referring to them as martyrs. In September 1996, in the midst of the tension that followed Israel's opening of an exit to an underground tunnel in Jerusalem, Arafat incited Palestinian security forces to "fight for Allah, and they will kill and be killed, and this is a solemn oath . . . Our blood is cheap compared with the cause which has brought us together and which at moments separated us, but shortly we will meet again in heaven." Despite recriminations, Arafat continues to frequently call for jihad and the use of violence against Israel. In November 1996, Netanyah's office prepared a paper featuring ten such statements that Arafat had made in the previous months. A new low in inciting propaganda was reached in April 1997, when Palestinian Representative to the United Nations Commission on Human Rights Nabil Ramlawi accused Israel of "infecting by injection 300 Palestinian children with the HIV virus during the years of the intifada. Also, the PA's security chiefs organized weeks of low-intensity intifada-type violence after the Har Homa controversy erupted, enabling Arafat to use violence as he condemned it. The PA is also responsible for reducing the size of the Palestinian Police force to the numbers permitted in the Interim Agreement, and for exercising PA "governmental activity" or "governmental offices" in compliance with the geographic limitations in the Interim Agreement, which is short-hand for removing them from Jerusalem. The PA rejected

112 Jihad is Arabic for "to strive" or "war against the unbeliever." See David Pryce-Jones, The Closed Circle 322 (1989).
114 See Ze'ev B. Bogenic, Oslo and Mideast Logic, JERUSALEM POST, Jan 17, 1996, at 6. This reference was to Yihye Ayash, the master bomb-maker whose suicide bus bombings killed scores of Israelis.
115 See Israel's Aim to Embarrass Arafat Over Remarks on Jihad (BBC Broadcast, Nov. 27, 1996, ME/2781 MEDS). Arafat now has between 35,000 and 70,000 armed men, of which Israeli Labour Party Chairman Eshkol was used to initiate a guerrilla war against nearby Israeli targets. See Sarah Horng & Arieh O'Sullivan, Barak Warns of 'Guerrilla War' in the Territories, JERUSALEM POST, Nov. 27, 1997, at 2.
116 Uriel Heilman, UN Won't Count Palestinian AIDS Allegation, JERUSALEM POST, Apr. 11, 1997, at 18.
117 See Declaration Details Hammered Into Coffin, supra note 58, at 7.
118 Interim Agreement, supra note 29, at 573. Israel has indicated its intention to close four Palestinian institutions in eastern Jerusalem on the grounds that they are part of the PA and therefore in violation of the Interim Agreement which prohibits...
Netanyahu’s decision to close down Palestinian institutions in Jerusalem. Ahmad Abd al-Rahan, Secretary General of the PA’s Cabinet, claimed that Israel was destroying the peace process with measures that violate the agreements signed between the two sides and the international community’s resolutions. Al-Rahan made no specific reference to which “agreements” or “international community’s resolutions” supported this understanding. Al-Rahan also claimed that the Palestinian institutions serve the daily needs of the Palestinian population, and the Israeli institutions do not extend similar services to the Palestinians. Israel claims that twenty institutions, all of which are either official ministries of the PA or offices linked to it, are operating in eastern Jerusalem in violation of the Interim Agreement.

2. Israeli Responsibilities Under the Note for the Record

The Note for the Record required the Israelis to implement the first phase of further redeployments during the first week of March 1997 and that “[p]risoner release issues will be dealt with in accordance with the Interim Agreement’s provisions.” However, Palestinians are more concerned with a key provision of the Interim Agreement regarding three such offices from operating outside the PA administered areas. See Elias Zanunni, Targeted Institutions, BILAD JERUSALEM TIMES, Mar. 7, 1997, at 3.

118 See PNA General Secretary’s Words of Jihad if Jerusalem Offices are Closed (BLC Broadcast, ME/2861 MED/L, Mar. 7, 1997).

119 See id. He warned of a possible jihad to drive house points.

120 They are: the Palestinian Ministry of Religious Affairs, the Office of the Mufti of Jerusalem and the Holy Land, several offices of Palestinian Security Forces, Orient House, the Palestinian Ministry of Education, the Palestinian Ministry of Youth and Sport, the Office of Mapping and Geography, the Office of Palestinian Legislative Council Member Hatam Abdel-Kader, the Palestinian Housing Council, the Jerusalem Committee of the Elected Palestinian Council, the Palestinian Small Business Project, the National-Islamic Committee to Confront the Settlemens, the Palestinian Institute for the Wounded, the Palestinian Energy Center, the WAFA News Agency, the Al-Quds University, the Al-Modassa Hospital, the Augusta Victoria Hospital, the Jerusalem District Governor and the Supreme Islamic Council. See Israel Government Press Office, State of Israel, Security Sources: Palestinian Authority Institutions’ Activity Intended to Undermine Israel’s Sovereignty in Jerusalem, PRESS BULL., Feb. 12, 1997.

121 See Note for the Record, supra note 72, at 665.

122 Id. at 665. The vague language chosen, “will be dealt with,” arguably gives Israel leeway in determining the timing and priority of the prisoner releases despite the provision at the end of the Note for the Record that “[t]he aforementioned commitments will be dealt with immediately and in parallel.” Id. at 666. The Interim Agreement provides for early release of various categories of Palestinian inmates. Interim Agreement, supra note 29, at 564. Thus far there has been no first stage redeployment of the IDF. It is possible that when there is coordination with the PA so that the latter can assume responsibility for the areas the IDF exits. Interview with IDF Spokesperson, in Jerusalem (May 5, 1997).

123 Interim Agreement, supra note 29, at 559-60; David Makovsky, Beyond Hebron...The Future is Now, JERUSALEM POST, Dec. 13, 1996, at 8.

124 Interim Agreement, supra note 29, at 562. Israel is also not required to redeploy from the Jewish settlements and Jerusalem under the Interim Agreement. See id.

125 Id. The Palestinian interpretation of the Interim Agreement term “military locations” as describing land from which Israel does not have to pull back seems to have been implicitly accepted by the international media. See Mark A. Heller, Room to Negotiate Creatively, JERUSALEM POST, Jan. 10, 1997, at 5. The first of these pullbacks was to have taken place within six weeks of the signing of the Hebron Protocol, the second stage within eight months, and the final withdrawal in August 1998. See Peace Process Timeline, JERUSALEM POST, Jan. 16, 1997, at 1.

126 Mark A. Heller, Room to Negotiate Creatively, supra note 125, at 5. This view ignored Israel’s defensive positions in the Jordan River Valley, and its use of training areas and roads in the Judean Desert. See id.

127 Palestinian Minister: We Demand Withdrawal from 91 Per Cent of West Bank (BBC Broadcast, ME/2825 MED/L, Jan. 24, 1997).

128 Id. This position is supported by an influential and politically unlikely source, Amnon Rubinstejn, who is a law professor and leading left-wing Member of Knesset. See Evelyn Gordon, Rubinstejn: Arafat Wrong on Pullbacks, JERUSALEM POST, Jan. 15, 1997, at 2. Rubinstejn bases his interpretation on the text of the Interim Agreement, which states that the PA will control all of the West Bank except “issues that will be negotiated in the permanent status negotiations.” Interim Agreement, supra note 29, at 564. It then lists those issues: Jerusalem, the Jewish settlements, “specified military locations” and borders. Rubinstejn states that there is no reason for the Netanyahu government to give a narrow interpretation to the phrase “specified military locations” and noted that the previous Rubin-Peles government construed it “liberally and broadly.” Gordon, supra, at 2. Furthermore, Rubinstejn points out that the Interim Agreement refers to “Borders” as being a permanent status issue and reasoned that if disagreement exists as to the location of the
United States wrote a letter committing itself to back Israel's definition of its own "security needs." This implies that Israel can unilaterally determine, on perceived security grounds, the territory from which it will withdraw in the three stages of further redeployment.

Moreover, the Interim Agreement is silent as to the extent of the further redeployments. According to Article XI, paragraph 2(f) of this agreement, the "specified military locations" will be negotiated in the permanent status negotiations. Arguably, if Palestinians are boycotting these negotiations, Israel can either delay its redeployments until the negotiations actually take place to designate the military locations or undertake such withdrawals as it unilaterally considers to be justified.

It is evident that significant further redeployments by the IDF would change the overall situation dramatically. Instead of the current situation in which Palestinian-controlled cities are akin to islands in an Israeli-controlled sea, the Israeli-held pockets would begin to resemble islands in a Palestinian sea, the anathema to some ministers in Netanyahu's cabinet, which would leave Israel holding few territorial cards when negotiating the complex permanent status issues. Alternatively, Netanyahu wants to skip the interim stage and its intended redeployments and go directly to the permanent status issues. He suggested that the talks culminate with a Camp David style summit.

Arafat objected and asserted, "[w]e should not begin the final phase before we have tackled all the 34 outstanding points concerning Oslo I [the DOP and Oslo II [Interim Agreement]." He identifies as among those points the "safe corridors", the airport, the seaport, prisoners, female prisoners, water and sewage, financial and economic talks.

See David Makovsky, Beyond Hebron... The Future is Now, supra note 134, at 8; David Makovsky & Michal Yedulman, PM: Accelerate Final Status: Pledges Palestinians Won't Lose Pullbacks if Talks Fail, JERUSALEM POST, Mar. 20, 1997, at 1. Dr. Henry Kissinger described the Palestinian peace process tactic during the interim period they could just go on "nibbling." See Salma Shoval, After Hebron: Prospects for the Peace Process, JERUSALEM LETTER/VIEWPOINTS, Mar. 16, 1997, at 1, 136. See Makovsky & Yedulman, PM: Accelerate Final Status: Pledges Palestinians Won't Lose Pullbacks if Talks Fail, supra note 135, at 1. Arafat comments on implementation of Hebron Accord, Other Issues (BBC Broadcast, MB12383 MEDI, Feb. 3, 1997). See Department of Negotiations of the PLO & Palestinian National Authority, 34 Violations of the Interim Accords, BILAL JERUSALEM TIMES, Mar. 28, 1997, at 8. Arafat's spokesman said, "[w]e have a signed agreement and American and European letters of assurance. We don't have enough trust to change tracks now. Trust must be built up. We have none." David Makovsky & Michal Yedulman, PM: Accelerate Final Status: Pledges Palestinians Won't Lose Pullbacks if Talks Fail, supra note 135, at 1.

In the Interim Agreement, Israel agreed to create a "safe passage connecting the West Bank with the Gaza Strip for movement of persons, vehicles and goods." Interim Agreement, supra note 29, at 584. This agreement has been almost ready for some time. See Jon Immanuel, Netanyahu-Christophor Meeting Disappoints PA, JERUSALEM POST, June 26, 1996, at 2.

The interim agreements give Israel the right to suit operation of Arafat's Dehnia airport to its security needs. Nevertheless, Arafat and the PA accuse Israel of violating the Interim Agreement, despite the fact that it contains nothing mandating that Israel permit the airport to operate. The Interim Agreement simply states that "arrangements regarding the establishment and operation of airports...will be discussed and agreed." See Interim Agreement, supra note 29, at 587; Moshe Zak, It Takes Two to Reconcile, JERUSALEM POST, Mar. 19, 1997, at 6.

Although in the Interim Agreement, Israel pledged to discuss and agree upon the establishment of a seaport in Gaza, it is unclear how the responsibility should be apportioned as regards the failure to implement these plans. Israel clearly has security concerns that the port not be used by the PA or Palestinian opposition groups to smuggle weapons into the Gaza Strip. Interim Agreement, supra note 29, at 566. See The Timing of the Rocket, JERUSALEM POST, Jan. 16, 1995, at 6. In addition, donor nations would prefer that the Palestinians spend their grants on less grandiose projects that will improve the economy for the residents of Gaza. See The Economics of Terror, JERUSALEM POST, June 26, 1996, at 6.
nomics matters,\textsuperscript{144} crossings with Jordan and Egypt, and the issue of displaced persons.\textsuperscript{145} Arafat asserts that the negotiations regarding these matters should have been completed in 1996, and he does not want Israel to be able to bargain over them in the context of the permanent status negotiations.\textsuperscript{146} Most of the violations that are blamed on Israel are not, if one is precise, literal transgressions of the text of agreements signed by Israel,\textsuperscript{147} although they may be viewed as contrary to the spirit of the peace process.\textsuperscript{148} It is impossible to know whether those who level these charges have actually read and understood the relevant agreements or whether they are engaged in a cynical political effort to deflect criticism to consider as eligible for release prisoners in other categories (i.e., sick prisoners and detainees and those over age 50). Israel has in fact released thousands of Palestinian prisoners and detainees, but the PA wants all of them to be released. See David Makovsky, Inside Look At What Oslo II Says, JERUSALEM POST, Oct. 8, 1995, at 3. See also Terrorists as POWs, JERUSALEM POST, Oct. 10, 1995, at 6.

143 The release of Palestinian women prisoners was delayed by the initial refusal of Israeli President Ezer Weizman to approve the amnesty of individuals convicted of murdering Israelis. See Immanuel, Netanyahu-Christopher Meeting Disappoints PA, supra note 138, at 2. According to Peace Watch, this was one of "a dozen or two minor exceptions" to Israel's record of full compliance with the various interim agreements. See Michael Widlanski, Broken Agreements?, JERUSALEM POST, Mar. 8, 1996, at 8. See Steve Rodan, Peace Watch Grades, Israel Pass, PLO Fail, JERUSALEM POST, Dec. 15, 1995, at 8. Subsequently their release was facilitated. See Israel Government Press Office, State of Israel, Netanyahu Press Conference, Washington D.C., July 28, Press Briefing, Apr. 9, 1997, at 2; 30 Palestinian Women Prisoners Freed, JERUSALEM POST, Feb. 12, 1997, at 1. Each of the 30 released women was greeted by Arafat who gave them a "fatherly kiss on the forehead." Elias M. Zanarini, Women Prisoners Go Free, BILADI JERUSALEM TIMES, Feb. 14, 1997, at 1.

144 The topic of water rights was deferred to be settled in the context of the permanent status negotiations. See Interim Agreement, supra note 29, at 625. Hence, it is difficult to determine the basis for Arafat's claim that Israel is in violation of the interim agreements on this issue. See generally Joyce Shira Starr, Fight for a Fair Share of Water, JERUSALEM POST, Aug. 18, 1995, at 7.

145 Arafat has called the Israeli measures "a black day," and he claims, "we are on the verge of an economic catastrophe." Arafat Comments on Implementation of Hebron Accord, Other Issues (BBC Broadcast, ME/2835 MED/1, Feb. 3, 1997). He claims only a small group of donor nations have met their pledges and that starvation has been prevented by the transfer of remittances from Palestinians working abroad, amounting to $1.6 billion. Jihad Khazen, Arafat: A State by 1999, BILADI JERUSALEM TIMES, Feb. 14, 1997, at 6 (interview with Yasser Arafat). Yet Israel's closure policy is attributable to the PA's failure to combat acts of terror against Israeli targets effectively. See Aniza Hass, Drop of 23% in Employment in Gaza Due to Closure, Ha'ARETZ, Oct. 20, 1995, at A2.

146 Khazen, supra note 144, at 6.

147 See id.

148 See Michael Widlanski, Broken Agreements?, supra note 142, at 8.

149 See, Zak, supra note 139, at 6.

150 Israel's Prime Minister's News Conference on Hebron Accord (BBC Broadcast, ME/2820 MED/2, Jan. 16, 1997).
Immediately after the Hebron Protocol, Arafat and Netanyahu began to refer to each other in more positive terms, using expressions such as “partner” and “friend.” Yet days after the Hebron Protocol was signed, Arafat gave a speech to a group of students in Hebron propounding a provocative theme he has frequently touched upon before Arab audiences, “Holy Jerusalem is the capital of the State of Palestine, come what may! Anyone who does not like this can drink from the Dead Sea.” Two weeks after approving the Hebron Protocol, he accused Israel of “procrastination” and “evasion” to avoid implementing the Hebron protocol. Arafat then began appealing for support from the “states guaranteeing the agreement and sponsoring the peace process” as well as “Arab brothers and the Islamic states” regarding his disagreements with Israel.

Arafat also made references to a secret letter written to him from Warren Christopher that apparently had not been shown to Netanyahu. The existence of this letter caused a crisis during the Israeli Cabinet deliberations on approving the Hebron Protocol, raising the suspicion that the United States was not conducting itself in good faith vis-a-vis its Israeli ally. The role of the United States had grown from a master of ceremonies for the signing of the DOP, to a facilitator or broker in the Hebron Protocol, to the role of sole mediator. This expansion of the U.S. role made many Israelis uncomfortable. Even Ross himself admitted, “[i]t’s not a role we want to play for the long term.” The difficulty is that the parties are unwilling to do much without a strong nudge from the United States, as even minor concessions are labeled as betrayals by many Palestinians and Israelis.

B. The Har Homa Controversy and Jewish “Settlements”

Few international agreements have been negotiated in such an atmosphere of mistrust and ill-will as that which prevailed during the four months it took to reach the Hebron Protocol. One journalist aptly referred to the Protocol as “a peace agreement with a fuse attached.” Just how short the fuse was has been demonstrated by the subsequent virtual paralysis of the peace process following the Netanyahu government’s decision to go ahead with Israel’s longstanding intention to develop a new neighborhood in Jerusalem. This decision was greeted with vocal Palestinian protests against what was invariably referred to as “Jewish settlement” activity on an empty hill in southern Jerusalem called Har Homa. In the aftermath of Israel’s commencing construction of Har Homa, the on-again off-again permanent status talks have been suspended by Arafat.

According to a detailed report by a senior Israeli source, after Arafat learned that Israel was planning to go ahead with construction at Har Homa, he called a meeting with representatives of the Islamic left-wing

168 Patrick Cockburn, A Peace Deal With a Fuse Attached, supra note 28, at 19.
170 In Arabic, the hill is known as Jebel Abu Ghneim. The PA advances the position that when the DOP was signed, “one major element that led the Palestinians into accepting the agreement was the understanding that no more Jewish settlements were to be built. [However] when the former Labor government lost the elections and the Likud formed the current one under Netanyahu, settlement activities increased.” Elias M. Zanarini, PNA: Peace Dilemma, BILADI JERUSALEM TIMES, May 16, 1997, at 3. Unable to point to any specific provision in the DOP or the Interim Agreement that limits Israeli construction, the Palestinians portray the Har Homa decision as contrary to the “spirit” of the peace process. The problem with this highly elastic concept is that it allows Arafat to introduce new demands at will. See Zanarini, supra note 139, at 6. In the meantime, the Jerusalem Regional Planning Council approved a plan for the construction of 3,000 new apartments in the Palestinian neighborhood of Sur Bahir which faces Har Homa. See Elli Wehlgeler, 3,000 Arab Homes Approved. New Jerusalem Housing Units to Face Har Homa, JERUSALEM POST, May 23, 1997, at 2. Also, the PA’s official responsible for the Jerusalem file has announced that the PA is trying to settle 250,000 Palestinians in Jerusalem. Official Says PNA Plans to Settle 250,000 Palestinians in Jerusalem (BBC Broadcast, ME/2889 MED/5, Apr. 8, 1997). Moreover, it stands to reason that if, contrary to both Israeli and Palestinian efforts, a freeze on new construction is to be imposed for the remainder of the interim period, it should apply to the Palestinians as well as to Israel.
171 See Michal Yudelman & Jon Immanuel, “No Progress” in Ross Talks, JERUSALEM POST, May 9, 1997, at 1. The Palestinians have frequently punctuated their demands by walking out of peace talks. See Nicolas Tibbo, Palestinians Walk Out of Peace Negotiations, THE GUARDIAN, Oct. 22, 1996, at 12. This disruptive tactic was used during the months of wrangling over the terms of the Hebron Protocol. It is unclear that until the Palestinians act to prevent terrorism no progress is possible in the talks. See A Symbolic Thaw, JERUSALEM POST, May 6, 1997, at 6.
opposition organizations and the “Tanzim” Fatah group. In the meeting, which took place on the night of March 9-10, 1997, Arafat ordered Tanzim to organize tumultuous mass demonstrations throughout the West Bank and Gaza Strip. By the time the meeting ended, all the participants understood that Arafat was giving them free rein to carry out terrorist attacks against Israel. The following day, Arafat released from prison Ibrahum Maqadmah, despite the opposition of the heads of the Palestinian Preventative Security Service and other Palestinian security personnel. Maqadmah is the leader of the secret military wing of Hamas, which is responsible for launching many attacks against Israelis and Palestinian policemen. They released dozens of other security prisoners as well.

Contrary to Arafat’s claims, nowhere in the Interim Agreement is Israel forbidden to build either individual homes or entire neighborhoods. Israel could be faulted for ignoring the need to coordinate its actions with the PA, although it is highly unlikely that the PA would have lent a hand to what it frequently criticizes as the “Judaization of Jerusa-


179 See Immanuel, Arafat: Peace Process Near Breakdown, supra note 173, at 1. This was contrary to Arafat’s earlier agreement with these organizations that they must avoid terrorism until Israel completes the third stage of its redeployments. See id. Arafat denied giving a “green light” to resume terrorism. Elias M. Zannanir, Security Co-ordination Renewed, Biladi: Jerusalem Times, May 9, 1997, at 1. In response, one Palestinian journalist alleged that “[t]he Israeli government has created a situation which can only lead to violence . . . in order to accuse Arafat and dedicate his responsibility for this situation . . . Arafat is in a critical situation. Even if he does not want violence to break out, in order that the peace process be saved, violence will break out, in spite of him,” Jihad Khazen, Netanyahu’s Impudence, Biladi: Jerusalem Times, Mar. 21, 1997, at 5 (emphasis supplied).


181 See id.

182 See GSS Confirms Palestinians Released Prisoners, Jerusalem Post, Mar. 9, 1997, at 2.

183 Likewise, no Israeli government would agree to any external limitations, much less a veto, on Israel’s unfettered right to build in its capital, the disposition of which the DOP expressly postponed for discussion in the permanent status talks.

C. The Stages of Further IDF Redeployment

Before the Har Homa dispute could be resolved, a different controversy arose over the extent of Israel’s first stage of further redeployment. Both the DOP and the Intermediate Agreement state that during the interim period Israel will pull back its troops in the West Bank to the settlements, borders, and “specified military locations.” The Intermediate Agreement also specified that the pullback would take place in three additional stages and that they would be completed by mid-1997. This timetable proved untenable in light of the suicide bombings and other events which extended the Hebron Protocol negotiations, so it was decided to postpone the deadlines for the three redeployments for one year. Pursuant thereto, on March 7, 1997, Israel announced that it would withdraw from 9.1% of the West Bank in the first of the three scheduled further redeployments. The United States State Department considered this a demonstration of Israel’s commitment to the peace process. The United States government’s initial position was that no more than 2% of the occupied land and that it was “again a gross violation of what has been agreed.” Palestinian public opinion was nearly totally opposed to Israel’s decision on this issue, with 95% of those polled belie-
ing it as unsatisfactory. The Palestinians had been hoping for a transfer of some 30% of the land.

The American position was nearly a foregone conclusion. As a part of the Hebron Protocol, then Secretary of State Warren Christopher wrote a letter endorsing Israel’s right to specify what were its military locations. A similar struggle is shaping up over the second redeployment, with widely divergent figures being discussed by Israeli Cabinet ministers, none of which are likely to satisfy the Palestinians.

D. Threats of Assassination

The assassination of then Israeli Prime Minister Yitzhak Rabin on November 4, 1995 by an Israeli opposed to the peace process offered a reminder that assassination of heads of state who opt for peace is not uncommon in this region. The risk is inherent in any Middle Eastern peace process, but is likely to increase when leaders make, or are in negotiations with the prospect of making meaningful concessions.

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187 Makovsky, US Backs Israel’s Right to Designate Extent of Pullbacks, supra note 185, at 2. Martin Indyk, then the United States Ambassador to Israel, was forthright when he stated in a radio interview, “It’s clear [sic] that the agreement that Israel designates the specified military locations. So the amount of territory handed over is Israel’s decision.” See Makovsky, supra at 2. President Clinton, however, expressed his view that the pullback must be “credible,” which suggests that the U.S. will ultimately be called upon to be the arbiter of the reasonableness of Israel’s pullbacks. Id. The worth of this letter was called into question when Christopher’s secret letter to Arafat, dated the day before the signing of the Hebron Protocol, was leaked to a journalist. See “Secret” Letter to Arafat Says USA “Committed” to Implementing Peace (BBC Broadcast, ME/2832/MED1, Jan. 31, 1997). While not contradicting his assurances to Israel, Christopher’s secret letter stated that the United States is committed to assist in the implementation of the accord. This demonstrated one of the pitfalls of the extensive American involvement in the peace process. See id.

190 Among the victims were King Abdullah of Jordan (King Hussein’s grandfather), see O’Brien, supra note 26, at 308, 363; President Anwar Sadat of Egypt; see id. at 319; and President-elect Beji Caid Essebsi of Tunisia; see Richard B. Parker, The Politics of Miscalculation in the Middle East 179-80 (1992).
191 It is significant, in this regard, how Middle Eastern entities that have sponsored terrorism reacted to the Hebron Protocol. The Syrian government attacked the permanent status talks cannot possibly succeed without both sides making far-reaching concessions.
192 Many Israelis and Palestinians bitterly oppose the process, even in its interim stage. The opposition includes intellectuals as well as people motivated by religious doctrine. For example, Palestinian-American Professor Edward Said bemoans the “truly astonishing proportions of the Palestinian capitulation,” and refers to the DOP as “an instrument of Palestinian surrender, a Palestinian Versailles.”
193 Despite Netanyahu’s pleas that he must honor the agreements signed by his predecessors, a significant sector of Netanyahu’s electorate believe that he has sold them out by joining the peace process bandwagon, albeit reluctantly. A right-wing Israeli intellectual reasoned:

The most dramatic example in this century of morality being bent, or even abandoned, in pursuit of larger goals was Roosevelt’s and Churchill’s forging of an alliance with a monster, Stalin, against a more menacing monster, Hitler. Few would deny that it was justified.

In the name of the Oslo peace process, Yasser Arafat and his PLO cronies were given a blanket amnesty for decades of terrorism and thousands of murders.

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The Hebron Protocol as “peace by subjugation,” and Hamas vowed to continue the fight against Israel. See Block, Israel Government Crosses the Rubicon, supra note 12, at 12. Israeli government radio described it as “another humiliating setback” for the “Palestinian nation.” Iranian Radio Commentary Says Hebron Agreement Another Humiliating Setback (BBC Broadcast, ME/2832/MED1, Jan. 15, 1997). Weeks before the Hebron Protocol, Hamas claimed that such an agreement would not end their conflict with Israel. Immediately following the signing of the Agreement, Hamas, Islamic Jihad, and the Unified Command of the Popular Front for the Liberation of Palestine and the Democratic Front for the Liberation of Palestine condemned it. A Hamas spokesman said that leaving the al-Ibrahimi mosque under Israeli control constitutes a dangerous precedent and a forfeiture of rights that amounts to a national crime and reflects a flagrant submission to the plans to Judaize the [al-Ibrahimi] mosque.” He pledged that acts of resistance would continue regardless of all barriers and obstacles.” Even within Arafat’s own Fatah branch of the PLO there are new stirrings of discontent. They are alarmed by what the masses see as Arafat’s endless concessions and fear that Hamas will overtake them in popularity. Consequently, parts of Fatah now urge a return to “armed struggle,” a euphemism for terrorism. See Werner Cohn, Partners in Hate: Noam Chomsky and Holocaust Deniers (1995); William V. O’Brien, The PLO in International Law, 2 B.U. INT’L L.J. 363 (1984).

The Israeli electorate was bamboozled. Labor had won the 1992 elections by showcasing Rabin as a centrist hawk; its platform promised no talks with the PLO, no retreat from the Golan, and a united Jerusalem.

... Oslo - an agreement that profoundly affects the future of Israel and the Jewish people - was opposed by a majority of Zionist MKs, but squeaked through the Knesset on the strength of the votes of the anti-Zionist Arab parties and the two turncoats from Tiomet, Gonen Segel and Alex Goldfarb.

Netanyahu claims he has no choice but to continue to slide to moral chaos. So he has allowed more Israelis to be murdered, and released murderers and prisoners.

... If so, one could look at it another way: that having stood so many moral principles on their heads in the pursuit of a warped pragmatism, it is very hard to dig ourselves back out of the hole.  

Arafat and Netanyahu must be aware of the risk they run. Arafat, in particular, is surrounded by many armed individuals who are completely alienated from the peace process or hold a personal grievance against him. Not surprisingly, a number of plots to kill him have been intercepting including some during his frequent trips abroad. After the

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198] HEBRON PROTOCOL

signing of the Hebron Protocol there was a report of an extremist group threatening Netanyahu's life. Consequently, the IDF issued nearly a dozen administrative detention orders against right-wing Israeli activists in Hebron and the vicinity. Also in danger are the ministers, senior peace negotiators and others identified with the peace process. For example, Muhammad Abbas ("Abu Mazen") , the head of the Palestinian negotiating team to the permanent status talks, was the target of an assassination plot by three men who were followers of "Islamic trends." When in March 1997, he resigned from his position, ostensibly to protest Israeli moves, an obvious alternative explanation existed for Abu Mazen's departure. Political demonstrations in Israel against the signing of the Oslo II accord witnessed the physical harassment of several members of the Israeli cabinet. Several members of the cabinet of Rabin's successor Prime Minister Shimon Peres (and Peres himself) were the objects of death threats.

Arafat's survival, in particular, is essential for the peace process. Fatah, which he heads, is the only major faction within the PLO which supports

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200 See Arie O'Sullivan, IDF Begins Hebron Repatriation, supra note 40, at 1; See Patrick Cockburn, Israeli Troops Begin Hebron Pull-out, supra note 40, at 14.

201 Most of the PLO leadership assumed a nom de guerre, frequently the name of the eldest son according to the Arab custom. Abu Mazen was a founding member of the Fatah movement, who has filed a number of senior posts at Arafat's behest. Within Fatah, he is regarded as Arafat's likely successor as Chairman of the PA. See PLO Official: Abbas Named Arafat's Deputy and Successor, JERUSALEM POST, May 23, 1996, at 2. At a respected pragmatist, Abu-Mazen's book Through Secret Channels reenacts the clandestine diplomatic activities that led to the DOF. MAHMOUD ABUS. THROUGH SECRET CHANNELS (1995).


203 See Hillel Cohen, Number 2 Talks, KOL HA'IR, Jan. 12, 1996, at 52.

204 Nabil A'Ino, Abu Mazen's Resignation, BILADI JERUSALEM TIMES, Mar. 21, 1997, at 5. Abu Mazen reportedly resigned because he had "become convinced that the negotiating process is without benefit . . . because the Israeli side is violating the bases of the negotiating process . . . [and] it is completely deviating from the agreements." Palestinian Minister Says Abbas Resigned Because Talks With Israel "Worthless" (BCC Broadcast, ME/2865 MED/3, Mar. 10, 1997).


the current peace process. Should he meet an untimely end, his likely replacement is a radical cleric from the Islamic fundamentalist Hamas organization,[207] who for core doctrinal reasons refuses to recognize Israel’s legitimacy[208] regardless of its boundaries and regularly takes “credit” for terrorist activities against Israeli targets.[209] This person would almost certainly precipitate the abandonment or complete breakdown of the peace process.[210]

Interrelated with the overarching threat of assassination, is the issue of the extent of public support for and opposition to the peace process. Simply put, neither Arafat nor Netanyahu can afford to get too far ahead of the public he was elected to serve.

E. Public Support for the Hebron Protocol and the Peace Process

Many of the Palestinian residents of Hebron were unhappy with the Hebron Protocol[211] even though it provided the Palestinian Authority with new authority to rule over 80% of the city.[212] A leading Palestinian newspaper referred to the long-awaited redeployment as “semi-liberation” and reported that already on the first day Palestinians were throw-


208 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 FNTA (PA).” Ziad Abu-Amr, Report from Palestine, 94 J. PALESTINIAN STUD. 45, 45 (1995). See also Hamas Has Plans to Topple Palestinian Authority, JERUSALEM POST, May-June 1993, at 8.


211 This area houses 100,000 Palestinian Hebronites. See Patrick Cockburn, A New Berlin on the West Bank, THE INDEPENDENT, Jan. 18, 1997, at 11.

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ing stones at Jewish settlers.[214] Their dissatisfaction stemmed from the fact that some 20% of the city, including the al-Abraham mosque, remained under Israeli control.[215] Contained in this area are approximately 450 Jews, 15,000 Palestinians and the Tomb of the Patriarchs, holy to both Islam and Judaism.[216] Israels living in Hebron were despondent, discouraged that Netanyahu had wielded in under overpowering pressure.[217] Noam Armon, the leader of the Jewish settlers in Hebron said the Protocol marked “the surrender of the free world to terrorism.”[218] Former Prime Minister Yitzhak Shamir said that Netanyahu had betrayed nationalist ideals.[219] Right-wing Member of Knesset Benny Elion categorized Netanyahu as a “Neville Chamberlain,” and equated the Hebron Protocol to Chamberlain’s appeasement of Hitler at Munich.,[220] and forecasted war.[221]

The Israeli public’s support for the peace process has fluctuated dramatically since the signing of the DOP.[222] This reversal was probably the reason why former Labor party Prime Minister Peres and parties on the left lost the 1996 national elections to Likud leader Netanyahu and the parties on the right.[223] A poll taken immediately after the Hebron Protocol indicated that 67% of Israelis were satisfied with the accord and only 25% were dissatisfied.[224] Israeli support for the peace process has declined in recent months to 48%.[225] Nearly three quarters of those polled were concerned that they or their families could become victims of terrorist attacks[226]


212 See id.

213 See id.


216 See id.


219 See id.


222 Id.
F. Public Support for Arafat and Netanyahu

Neither Netanyahu nor Arafat can afford to get too far ahead of his constituents. In his pronouncements, Arafat regularly commits the Palestinian nationalist movement to achieving "[a] pluralistic, democratic state which will devote all its resources and energies and the creative work of its citizens to contribute to world progress and to enrich the human march towards a world dominated by security, peace, justice and prosperity." Yet, independent of the Hebron Protocol, Arafat's autocratic government, inefficient administration, and widespread violation of human rights have generated considerable public dissatisfaction and translated into a decline in popular support for the peace process among Palestinians.

The economic travails of the PA and the consequent deprivation of the Palestinian public are widely attributed to Israel's closure policy


After three years there is no evidence that the Palestinian leadership can create a viable economic foundation for a state. The per capita GNP in Gaza is approximately $1000 and has declined under Palestinian control, while the very high jobless rate increased. The hundreds of millions of dollars in foreign aid that have already been transferred disappeared without accountability, and without any significant new investment in infrastructure or job-producing industry. As a result, many foreign donors have stopped providing funds, as there is no evidence that the money is being used for the purposes for which it was intended — namely to provide a foundation for economic development and stability in the areas under Palestinian control. The ritual of blaming Israel for this condition is no longer credible, and there is no evidence to conclude that the annexation of a state, under such conditions, would change this.

Gerald M. Steinberg, Palestinian Statehood, Autonomy or Confederation: The Impacts on Israeli Security, JERUSALEM LETTERS/VIEWPOINTS, May 1, 1997, at 5-6. A recent 600-page report by the PA's auditing office found that almost 40% of the budget was wasted or misused. Jon Immelman, PA Auditor Finds 40% of Budget Wasted or Misused, JERUSALEM POST, May 25, 1997, at 1.

279 In a May 1997 public opinion poll, 39% of Palestinians expressed belief that there is a great deal of corruption in the PA. See Jon Immelman, Poll: Palestinians
which has kept most Palestinians out of the Israeli labor market since the wave of suicide bombings in February and March 1986. While Israel's closure policy intended to keep out terrorists, is not a violation of the interim agreements, the resentment of a Palestinian laborer is unlikely to be placated by this explanation when he is turned back at the IDF checkpoint, particularly if he once was employed in Israel.

A recent public opinion poll revealed that 72% of the Palestinians queried believe that negotiations should be suspended until Israel reverses its decision on Har Homa and 48% think there should be a new intifada (uprising) because of it. Even more troubling for the future of the peace process as a whole, almost 41% favor suicide attacks against Israel.

Another survey indicated that support for the peace process among Palestinians is at an all-time low and support for suicide bombings is at an all-time high (almost 49%) according to a poll published on April


234 See The Economics of Terror, supra note 140, at 6. The Dean of the Economics Department at Najah University in Nablus has claimed that the GNP had dropped by 25% in 1996 and that investment in the areas under PA authority had fallen to a record low. See Inad Sa'ada, 1996-GNP Dropped By 25%, BIRNIDI JERUSALEM TIMES, Jan. 10, 1997, at 10. He blamed this primarily on various Israeli restrictions including the closure, but also attributed it to the failure of the donor countries to fulfill their pledges. Id.

235 Netanyahu, however, insists "the closure is a direct result of the breakdown of security conditions. I have no particular affection for the idea of closure. I don't want to press the Palestinian population, deprive of them the ability to earn a living." David Makovsky, Netanyahu: Contacts with Palestinians at All Levels, JERUSALEM POST, June 28, 1996, at 7.


237 Palestinian job seekers are generally unaware that much of their suffering could be alleviated if Arafat and his colleagues were to transfer the PLO's enormous overseas assets to the ownership of the PA. Israel Government Press Office, State of Israel, Flourishing Deals Overseas, PRESS BULL., Apr. 15, 1997, at 3. Khamis Hadad, a member of the Palestinian Legislative Council claims, "[o]f the greatest disasters of our economy is that Arafat and his friends are not transferring the PLO's overseas assets to the ownership of the [Palestinian] Authority, a step which could greatly aid economic development here." Id. at 4. Although the PLO suffered a financial setback when Arafat supported Saddam Hussein's invasion of Kuwait, during much of the 33 years of its existence, it was a economic powerhouse receiving billions of dollars from Saudi Arabia and the Gulf states. See id. Much of these assets were invested in real estate, companies and businesses by various front organizations (including the BCCI bank which was closed in 1992 by a joint operation of the World Bank and Interpol). Id. at 3. Arafat has so much money at his disposal that in addition to owning airlines and duty free shops in the Third World, he was able to loan money to several countries. Id. at 4.


239 See id.
the political opposition for Netanyahu to resign and to hold new elections. Although he was not indicted some of Netanyahu's coalition partners and even some ministers in his cabinet have called into question his credibility as leader of the coalition government. Although for the moment Netanyahu seems to be riding out this crisis, further revelations could bring down the government.

In Washington, the White House press secretary Mike McCurry said that the United States regarded the Bar-On affair as a domestic Israeli legal matter and would not speculate on whether it would delay peace efforts. Palestinian officials were careful to avoid public comment on Netanyahu's problems; however chief negotiator Saeb Erekat expressed fear that Netanyahu "will try to repair his credibility by escalating measures against Palestinians, expanding settlements, confiscating land and not implementing the agreement." If the pressure on the government continues, it may be harder for Netanyahu and his ministers to devote themselves fully to the permanent status negotiations. A politically weakened Israeli Prime Minister is less likely to make concessions to the Palestinians that will further alienate his right-wing political power base, such as compromising on the Har Homa construction. He is therefore even less likely to budge from his gestalt of the recent crisis in the peace process—that Israel should not agree to concessions which would permit Arafat to gain from reactivating terrorism and violence. Moreover, even

G. Dispute Resolution Mechanisms

The DOP and the Interim Agreement provide, in virtually identical language, a three-tiered blueprint for dispute resolution. The first 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. These agreements also allow for the creation of a conciliation mechanism for disputes that the Joint Liaison Committee cannot resolve. Should conciliation prove ineffective in resolving the parties' differences, the agreements provide for, as a final built-in recourse, the formation of an Arbitration Committee. Each of the parties has unilaterally discretion to refuse to utilize these mechanisms or to comply with the decision arrived at by the conciliator(s) or arbitrator(s).

To date, 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. The parties have not invoked the optional conciliation and arbitration mechanisms, although Arafat and the PA have voiced occasional demands for arbitration of various Palestinian claims. The sides seem to have failed to invoke these mechanisms because of a common lack of faith in their efficacy. Both sides prefer to make their case to the United States and in

248 See Larry Derfner, No Reason to be Proud, Jerusalem Post, Apr. 25, 1997, at 7. See also Larry Derfner, Because of Land and Peace, Jerusalem Post, Apr. 25, 1997, at 7; Sarah Honig, End of the Presidential Reign, Jerusalem Post, Apr. 15, 1997, at 8.
249 See Larry Derfner, No Reason to be Proud, supra note 248, at 7. A Palestinian attorney employed by the PA Planning Ministry, Jamal Salameh, was detained for ten days by the PA on account of an article he wrote for publication in the quarterly journal of the bar association. See Jon Immanuel, Admitting Democracy from a Distance, Jerusalem Post, May 9, 1997, at 8. PA Attorney General Khaled Qdeh claimed that, "what Salameh had written added up to pure slander [but] he was arrested for possession of politically sensitive material that touched on national security." See Munir Abu Rizek, Attorney Salameh Released, Biladis Jerusalem Times, May 9, 1997, at 2. The article compared the Israeli judicial system's handling of the Bar-On affair with the way in which political scandals are covered up by the PA. Immanuel, supra, at 8.
252 DOP, supra note 2, at 1533; Interim Agreement, supra note 28, at 567.
253 Id. 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 2, at 1531. In addition, the DOP provides that "[d]isputes arising out of the application or interpretation of this Declaration of Principles, or any subsequent agreements pertaining to the interim period" are to be settled through negotiations by the same Joint Liaison Committee. Id. at 1533.
254 Id. at 1533. The DOP states, "[d]isputes which cannot be settled by negotiations may be resolved by a mechanism of conciliation to be agreed upon by the parties." Id.
255 See id.
256 See id.
257 See id.
258 Jon Immanuel, iPhone Interview With Dan Pollard, Director, Peace Watch, in Jerusalem (June 12, 1995). The Joint Liaison Committee has been convened on numerous occasions. Id.
259 Id. An Arafat aide, however, recently called for arbitration of the outstanding controversies including Har Homa. Arafat's Adviser Calls for Arbitration by Oslo Signatory States (BBC Broadcast, ME/992 M394, Apr. 19, 1997).
addition, Arafat frequently takes his case to more sympathetic international forums such as the United Nations Security Council and General Assembly, the Arab League, the Non-aligned Movement, the Organization of the Islamic Conference, and the Gulf Cooperation Council. This underscores major weaknesses in the interim agreements: the dispute resolution mechanisms are ineffective and the agreements provide no sanctions for violations.

The United States is placed in an awkward position. Over time, it has assumed the role of not merely a facilitator or broker for Israeli-Palestinian direct negotiations, but as the central proponent of the process. As Meirion Benvenisti, a former Deputy Mayor of Jerusalem and expert on the West Bank, observed in the aftermath of the Hebron Protocol sign-

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ing: “The agreement is not an Israeli-Palestinian agreement, rather an Israeli-American and a Palestinian-American agreement.” Indeed, during the negotiation of the Protocol, the U.S. was catalyzing parties, drafting proposal papers, and even acting as a virtual guarantor to both sides through Dennis Ross’s “Note for the Record” and Warren Christopher’s “Letter(s) of Assurance.” The result is that the United States has virtually taken on the role of judge and jury, and perhaps even enforcer of each party’s good conduct.

Moreover, instead of being forced to work out their differences and compromise their conflicting interests, Israel and the PA are tempted to posture to the United States, Europe, the United Nations and, in the case of the PA, Arab and Muslim governments, in order to mobilize international support. Instead of proposing arrangements that the other side can accept, the parties put forward demands that they hope the United States and other international players will pressure the other side into accepting. Brinkmanship is thus rewarded, and the fear of precipitating a fatal crisis is virtually eliminated due to the expectation that the United States will bail either side out of any emergency.

This is hardly a blueprint for success in the permanent status negotiations, which will bring to the forefront issues of great political and legal complexity. If the parties know they must reach an accommodation between themselves, or face the unraveling of the peace process, they have a powerful incentive to compromise. If, however, as a final resort or perhaps even as a continual tactic they can appeal over each other’s head, even concerning very minor issues, to the United States and other international intermediaries, little incentive exists to make concessions.

It should be noted that nothing in international law obligates states (ignoring, for the moment, the PLO’s non-sovereign nature) to resolve their differences. Article 2(3) of the United Nations Charter stipulates that “[a]ll members shall settle their international disputes by peaceful means in such a manner that international peace and security are not endangered.” Moreover, the 1970 Declaration on Principles of International Law develops this principle and notes that “states shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies, or arrangements or other peaceful means.”

267 See id.
268 See id.
269 See id.
271 U.N. CHARTER, art. 2(3).
means of their choice." Even these mechanisms, however, are not compulsory. Although contemporary world leaders generally find it embarrassing not to pay at least lip service to the pursuit of peace, the authenticity of this commitment and their willingness to compromise and take risks remains in the realm of politics, not law. Thus nothing in the dispute resolution mechanisms of the interim agreements, the conduct of the parties, or in general international law, compels the parties to settle their differences.

III. The Beginning of the End of the Peace Process

A. Efforts to Get the Process Back on Track

The purpose of the interim agreements was to create a momentum that would push Israel and the Palestinians toward a final settlement. They also were intended to build confidence and trust, which could be applied to overcome future difficulties. At this stage, there should be no illusions about the future of the Oslo peace process. Israeli and Palestinian nationalism have been in conflict over essentially the same land for a century. The tempo of this conflict and its modes of expression have mutated over time. With the DOP breakthrough in 1993, hopes blossomed that an era of trust could, within the modest period of less than six years, write a new page of history and result in an enduring permanent status agreement resolving all dimensions of the conflict. Disillusionment with both the process and its sponsors, however, has increasingly replaced the initial hope.

The United States has tried, thus far unsuccessfully, to get both sides to drop their preconditions and resume negotiations. Dennis Ross returned to the region several times during the spring of 1997, determined to make the peace process work again. At one point, Arafat complained to President Clinton that Ross was biased in Israel's favor and at one point even declined to meet with him. State Department spokesman Nicholas Burns replied, saying "these ridiculous allegations that somehow he is prejudicial toward some party versus another don't really deserve much comment." Meanwhile, the usually optimistic U.S. Ambassador to Israel, Martin Indyk, had conceded that "[t]he core bargain of Oslo has broken down." Cautioning against an "unpredictable and dangerous" situation, Secretary of State Albright stated the obvious: "[t]he reason is that Arabs and Israelis alike have begun to lose their faith in one another." Albright added, "[t]he Oslo process and the working partnership between Israelis and Palestinians has broken down and she postponed making her first visit to the region until "the parties are prepared to really make some of the decisions that are required." When she finally visited in September 1997 the relations between the parties were so strained that she felt compelled to call for "a time-out." This was rejected by the Senior Palestinian Peace Negotiator Sa'eb Erekat. Meanwhile, Netanyahu's coalition partners from the National Religious Party have publicly warned that they will quit the governing coalition if the Prime Minister agrees to a time-out in settlement construction.

Clearly, the United States can, if it is willing to continue its major commitment of diplomatic and economic resources, make a difference in instances where the distance separating the parties is narrow enough. This looks increasingly doubtful, however, and it appears that further

275 Ross to Return to Region, JERUSALEM POST, Apr. 15, 1997, at 1. A Palestinian delegation that met with Ross was reported to have come away empty-handed. See Elia M. Zananiri, Palestinian Delegation Returns Empty-Handed, BILADI JERUSALEM TIMES, Apr. 17, 1997, at 3. According to a senior member of the Palestinian cabinet, "the US Administration has proved to be incapable of imposing any pressure on the Israeli government [on Har Homa] and has even brought the European countries closer to its stand." Id.


277 Id.


279 Id.

280 Hillel Kuttler, Albright Won't Visit Until Stalemate Ends, supra note 276, at 1.


American arm twisting is likely to backfire and precipitate alienation from both Israel and the Palestinians. According to William B. Quandt, a former senior American diplomat who has written extensively about Arab-Israeli peacemaking, as distinct from the principals at the Camp David conference (which Quandt played a major role in shaping), Netanyah and Arafat do not have "in the back of their minds a similar looking map, a similar set of relations" where each side can trade off the remaining issues. This was not the case with Begin and Sadat. Moreover, Quandt believes that Clinton, unlike former President Carter, is neither inclined to press the parties nor to offer dramatic proposals to stimulate negotiations. At Camp David, "[t]here was a deal waiting to be struck" but with Israel and the Palestinians "going into final status the gap between the parties is ... 50 or 60%-that's quite a bridge. And Clinton is frankly not a great bridge builder." Thus Quandt forecasted that a Camp David-style summit, of the kind suggested by Netanyahu for the final status issues, "would probably fail, the gap is so enormous."

B. Struggling With the Permanent Status Issues

In the Hebron Protocol negotiations, Arafat and Netanyahu sought to demonstrate their toughness to their respective constituencies, but in the end they needed to reach an agreement. The Hebron Protocol was a watershed in that for the first time a Likud-led coalition government negotiated with PA Chairman Arafat and thereafter handed over physical day-to-day control of most of the city of the Jewish Patriarchs. The Protocol overcame what, at the time, were considered to be major ideological and personal difficulties in the peace process. In addition, although

some misgivings were voiced over the expanded United States role, common wisdom was that the peace process had passed perhaps its most difficult test. Before the post-Protocol impasse, Arafat indicated that the permanent status negotiations would not resume until "we have tackled all the 34 outstanding points" concerning the DOP and Interim Agreement. He said this prior to his suspending the negotiations, first over Har Homa and later over the extent of Israel's first stage redeployment. Additionally, Israel had not yet indicated it would boycott the negotiations over Arafat's "green light" to resume terrorism.

The rhetoric has escalated on both sides. Arafat has given many speeches about how the Palestinians will not rest until their flag is hoisted on the minarets of Eastern Jerusalem. Set behind Arafat's desk is a picture of Jerusalem's al-Aksa mosque. A PA minister accused Israel of responsibility for two of the Islamic Jihad suicide bombers in Gaza who had exploded themselves near buses filled with Israeli schoolchildren. Palestinian leaders, religious and political, all the way up to Arafat the ability of both sides to claim victory increases. For example, a Palestinian journalist claimed that the U.S. tried to save the peace process after the Har Homa controversy, "by bribing Arafat with a port, an airport or a safe corridor between Gaza and the West Bank." Ishshah, N. Netanyahu's Impudence, 174, at 174. When Netanyahu's government was formed in 1996, it was clear that the government was determined to solve the conflict without surrendering to Arafat's demands.

285 A radical departure from America's diplomatic hyperactivity and military commitment in the region was suggested by one expert. See Leon T. Hadar, QUAGMIRE: AMERICA IN THE MIDDLE EAST (1992). Richard Hasia, former head of the Middle East office on the National Security Council staff, claimed that "openness" is the key to successful negotiations. Hasia urged a low-profile approach to the Middle East and said that if the U.S. is to ever make the situation worse... RICHARD N. HASIA, CONFLICTS UNRESOLVED: THE UNITED STATES AND REGIONAL DISPUTES 30-56 (1990).


288 See id.

289 Id. Clinton, in discussions with Israeli President Ezer Weizman, expressed reluctance at getting personally involved in pushing Israeli-Palestinian talks forward without adequate assurances that it would succeed. See Hillel Kuttner, Weizman: Clinton Favors Getting Back to Talks, JERUSALEM POST, Oct. 6, 1997, at 1.

290 Various crises in the peace process, such as the one that preceded the Hebron Protocol, have been solved by widening the negotiations beyond the immediate sticking point. As the stakes rise, the importance of each issue becomes blurred and
himself, announced that various Israeli policies were a “declaration of war.” Arafat also declared that Israeli independence day constitutes, “the Day of the Palestinian Holocaust.” Israeli Justice Minister Tzahi Hanegbi turned up the pitch of the crisis when he threatened that if Arafat uses force against Israel that Israel’s reaction would reach Arafat himself. Hanegbi said that Arafat would be forced out of Gaza and return to wandering “between Tunis and Baghdad” with a suitcase, if violence breaks out. Netanyahu, commenting on the merger of two Palestinian land dealers after the PA announced that Palestinians selling land to Jews would be executed, stated, “I think it is ghastly...monstrous...a racist law, a Nazi law, a Nuremberg law.”

Secretary of State Albright’s visit improved Israeli-Palestinian atmospheres and facilitated high level meetings between the sides, but little substantive progress has materialized. Halting the erosion was, in the circumstances, an achievement. If and when forward movement is resumed, the parties can hardly hope for easier times. Just the opposite is almost certain in light of the daunting agenda that awaits the resumption of the permanent status talks. While the parties succeeded, at least on paper, in devising temporary fixes in the form of interim agreements, this stratagem will no longer be effective in the permanent status talks. At

—America is the chief of the terrorists...Oh, Allah, destroy America, her agents and her allies. Cast them into their own trap and paint the White House black...[The purpose of Albright’s visit is to support the Israeli position...Oh, Allah, destroy America, her agents and her allies. Allah, raise the flag of Islam over the Al-Aqsa Mosque, Jerusalem and Palestine.”


PA Minister in Charge of Jerusalem Faisal al-Husayni made such a declaration regarding the construction on Har Homa. See PNA’S Husayni: Har Homa Settlement Would Be Declaration of War on Palestinians (BBC Broadcast, ME/2281/ME/D, Feb. 25, 1997).

—Arafat Tells Arab League Israeli Moves are Declaration of War (BBC Broadcast ME/2281/ME/D, Apr. 1, 1997); Arafat Tells NAM Meeting Israeli Practices “Declaration of War” (BBC Broadcast, ME/2287/ME/D, Apr. 3, 1997); Arafat Appeals for Funds to Be Raised to Protect Palestinians’ Ararat Identity (BBC Broadcast, ME/2287/ME/D, Apr. 8, 1997).


—See id.


making, the apportionment of scarce fresh water sources, the custody of religious sites holy to two or more faiths, the future of the Jewish settlements, and the desire of many Palestinian refugees (from the 1948 War) and displaced persons (from the 1967 War) to return — either to the Palestinian entity or to Israel, are issues that could trigger by corridors to the rest of Israel, see id., would be difficult for the Palestinians to swallow. Imposed Arafat's succession and partner in the peace endeavor, Shimon Peres, was voted out of office along with his party in the May 1996 Israeli national elections. Their successor, Benjamin Netanyah, whose initial ideological opposition to the peace process has been tempered by realism, has had his ability to lead weakened by the Bar-on affair and other setbacks.

On the Palestinian side, Arafat remains in control but has to rely on increasingly autocratic methods to do so. Arafat regularly berates Israeli policies, criticizing them for punctuating with threats of jihad. If Israel's intelligence service is correct, Arafat has permitted opposition groups to return to terrorism while officially condemning their attacks.

championed the cause of the return of the Palestinians from their dispersion, will have great difficulty compromising on this issue, although some means for a compromise can be identified. See id.

The decision to leave the outstanding issues for the permanent status negotiations was an undoubtedly wise one for both sides from a domestic political perspective. Each of these issues is extremely sensitive to the Israeli and the Palestinian political constituencies. Not to have postponed the negotiations concerning these topics would likely have placed crippling pressures on the talks by dominating public opinion. See generally PAUL R. PILLAR, NEGOTIATING PEACE: WAR TERMINATION AS A BARGAINING PROCESS 223 (1983). See also AMOS PERLMUTTER, THE ISRAEL-PLO Accord is Dead, FOR. AFF., May/June 1993, at 61-62.

Written before he became Prime Minister, Netanyah's book on Israel's relations with the Arab world contains a chapter entitled "A Durable Peace." In it, he expands on the centrality of democracy to lasting peace:

To advance democracy in the Arab world, the West must promote the concepts of individual rights and constitutional limits on governmental power, without which the existence of any genuine democracy is impossible. Without real and concerted steps in this direction, the perennial search for Arabs willing to make a permanent (as opposed to a tactical) peace with Israel will be ultimately futile. The prevalence of radicalism in the Middle East—and the danger that, in the absence of any democratic traditions, a nonradical regime can turn radical overnight—means that peace in the Middle East must have security arrangements built into it. I have already noted that for the foreseeable future the only kind of peace that will endure in the region between Arab and Arab and between Arab and Jew is the peace of deterrence.

NATAN.INDUSTRY 134, at 342 (emphasis supplied). Despite Netanyah's adoption of the peace process, in the reviewer's opinion, the quoted passage likely reflects Netanyah's true views about the possibility for lasting peace with the Palestinians for the foreseeable future.

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Nevertheless, Arafat, whose health is in doubt, is widely regarded as indispensable to the peace process. Arafat’s subordinate, Abu Mazen, generally considered a moderate and a pragmatist, resigned from his role as the head of the Palestinian negotiating team over frustration with Israel. Still more alienated from the peace process are the opposition in the PLC, such as the former Chair of the High Committee, Abdel Haider al-Shafi. This says nothing for the opposition groups such as Hamas and the smaller Islamic Jihad, Popular Front and Democratic Front, which have been opposed to the peace process from its inception. Egypt, at peace with Israel for nearly twenty years, has taken a very stringent anti-Israel line in international, regional, Arab and Islamic gatherings. Even Jordan’s King Hussein, the most pro-peace process Arab leader, has felt it necessary to publicly air his opposition to Netanyahu’s policies.

IV. Conclusion and Outlook

Official optimism was expressed by American officials who played a major role in putting together the Hebron Protocol. Martin Indyk, then the American Ambassador to Israel, confidently told Israeli journalists, “we are now taking the first step towards the building of trust. Concerning Hebron, the agreement is just and balanced. It gives Jews security and allows Arabs to return to normal life.” President Clinton heralded the pact as a step toward “a lasting, secure Middle East peace,” but cautioned that hard work remained ahead and that “this is not a time to relax.” British Foreign Secretary Malcolm Rifkind “warmly welcome[d]” the accord, which he described as “a major step towards unblocking the Middle East peace process.” Hans van Mierlo, Foreign Minister of Holland, who currently holds the European Union presidency, said, “[this agreement marks an important step on the road towards a just and stable peace in the Middle East. It can provide the new momentum that is necessary to reinvigorate the peace process.” Israeli supporters of the peace process were also jubilant, gratified that Netanyahu and his Likud party had, in agreeing to withdraw from territory that they once insisted was God-given, arrived at a new and realistic attitude toward the Palestinians. One of the peace process’ architects, Member of Knesset Yossi Beilin, said, “I would like to welcome Netanyahu to the Oslo club. The process is the only game in town.” In the opinion of this reviewer, however, these efforts to put a positive spin on the outcome, if anyone believed them at the time, had a very brief life span.

It is important to review the situation in a realistic light. In years to come, the Hebron Protocol may be remembered as the zenith of the peace process from which the likely direction, for reasons that the Protocol has made apparent, is toward confrontation. The Hebron Protocol was intended to wrap up loose ends in the Interim Agreement and clear the table to begin the critical permanent status talks. While on paper it could be claimed that these objectives were achieved, the Note for the Record makes clear that even matters that were supposedly settled by earlier agreements fester as sources of conflict. Interim Agreement friction over relatively minor items on the agenda, issues that were to have been settled early and that were often touted as “confidence building measures,” have instead destroyed trust as wrangling has convinced the parties they are being entrapped and cheated. Perhaps the only real progress the Protocol represents is the addition of Netanyahu and the Likud party to the “Oslo Club.” It should be remembered, however, that they joined reluctantly without committing to a lifetime membership. Moreover, the founding members accepted their affiliation with anxiety and skepticism.

313 Arafat’s aides have diminished or denied frequent media and intelligence that he is seriously ill and that they are searching for his successor. See, e.g., Arafat “A Strong and Health Horse-Palestinian Security Chief” (BBC Broadcast, ME/3031 MED/9, Sept. 23, 1997).

314 In the opinion of the reviewer, an absurd syllogism may follow from Arafat’s indispensability. First, Israel has signed interim peace agreements with Arafat. Second, for the agreements to be implemented, Arafat must survive. Third, to survive given the high expectations of the Palestinians, Arafat must violate the agreements. The conclusion: for Arafat to keep the agreements, he must violate them.

315 See Abu al-Shafi Calls on Arafat to Quit Talks (BBC Broadcast, ME/2315/ MED/1, May 28, 1995). See also Al-Shafi resigned in frustration at corruption in the PA and Arafat’s relegation of the PLC to an insignificant role. See Ahmad Bukhari, First to Resign, BIJAL JERUSALEM TIMES, Oct. 10, 1997, at 6.

316 See Hamas Leader Urges Continued Jihad; Abu al-Shafi Calls on Arafat to Quit Talks (BBC Broadcast, ME/2352/MED/1, May 28, 1995).


318 Recently nearly 5,000 Cairo University students demanding a “holy war” against Israel were driven back by Egyptian riot police. See Robert Fisk, A New Partner for the Middle East, THE INDEPENDENT, Apr. 1, 1997, at 14.


320 See id.


322 Id.

323 Id. As any physicist could have explained to Mr. Van Mierlo, however, momentum works in different directions.


325 See id.

326 Arafat identified this as the “first” achievement of the Protocol. Arafat Comments on Implementation of Hebron Accord, Other Issues (BBC Broadcast, ME/2835, MED/1, Feb. 3, 1997).
Whether the process is indeed irreversible, as the preamble to the Interim Agreement confidently asserts, remains dubious. Aside from historians and diplomats, few people recall the numerous unsuccessful and/or completed efforts to secure Israeli-Palestinian or Arab-Israeli peace agreements. They include the 1949 Armistice Agreements, the Jarring mission of 1967, the United Nations Security Council Resolutions 242 of November, 1967, the Allon Plan of 1967, Johnson's Five Point Plan of June 1968, the USSR's Three Point Plan of September 4, 1968, and the Arab states, justice for the Palestinian refugees, limits of the arms race and political independence and territorial integrity for all states in the region. See PARKER, supra note 190, at 132. These principles were the basis for a draft resolution presented to the UN General Assembly but it was never brought to a vote. Id. at 132.

Pursuant to this proposition, the Arabs and Israelis would accept Resolution 242, a time table would be devised for Israeli withdrawal and both sides would sign a multilateral document committing them to respect all the provisions of Resolution 242. See PARKER, supra note 190, at 132. Yitzhak Rabin, then the Israeli Ambassador to the United States, urged the U.S. to reject the proposal, restating Israel's insistence on a bilateral, contractual peace agreement. See id. The U.S. rejected the proposal on the ground that it preferred to follow the original principles articulated in the Johnson Five Point Plan. See id.

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

The Soviet Union, disconcerted by the lack of progress made in the peace negotiations, decided to restart deliberations with its own formal initiative. In another formal note, it proposed a strategy which included provisions for formal recognition of UN Security Council Resolution 242, commitment of Israel to withdraw from the seized territories in exchange for an Arab declaration of readiness to reach a peaceful settlement, and a just solution to the Palestinian refugee problem. Israel would withdraw to the pre-1967 lines and these borders would be guaranteed by the U.S., the USSR, France and Portugal. See LAWRENCE L. WRIGHTEN, THE CANAL WARS: FOUR POWER CONFLICT IN THE MIDDLE EAST 68-69 (1974).

Less than a month after the Soviet proposal, the U.S. answered with a 12-point counterplan, which called for, inter alia, cessation of Arab terrorism, the Arab belligerents to clarify their position on Resolution 242, Israeli withdrawal from the occupied territories, the boundaries not to conform to the pre-June 1967 lines, Resolution 242 not to be construed to state that Israeli troops must be withdrawn from all the occupied territories, and peace to be agreed upon and not imposed. See id. at 128.

Secretary of State William Rogers' plan, which involved a secure international frontier between Egypt and Israel and a formal state of peace, was "so watered down in the name of realism that it was not enough in it for either side." See id. O'BRIEN, supra note 26, at 495. Although in retrospect the plan appears favorable to the Arabs, at the time Egypt was not ready to consider real peace with Israel and rejected it. PARKER, supra note 190, at 128.
Peace Agreement, the 1987 London Agreement Between Israeli Foreign Minister Peres and Jordanian King Hussein, the Shultz Initiative of 1988, the Cairo Dialogue of May 1989 and the 1991 Madrid Con-

This peace agreement between Israel and Lebanon never entered into force because it was not ratified by Lebanon. Lebanon, weakened by a long civil war and shocked by the assassination of president-elect Bashir Gemayel, forebore from jointly sponsored agreement due to intensification by Syria. See Parker, supra note 191, at 189, 195. In light of the dominant U.S. involvement in the current peace process, it is interesting to note one of the clauses of this earlier agreement: "Having delegated their undersigned representative plenipotentiaries, provided will full powers, in order to sign, in the presence of the representative of the United States of America." Thus, heavy U.S. pressure is no guarantee that the resulting agreement will be enforced. Draft Agreement Between Israel and Lebanon, reprinted in The Arab-Israeli Conflict and Its Resolution: Selected Documents 299 (Ruth Lapidoth & Moshe Hirsch, eds., 1992).

Then Israeli Foreign Minister Peres and Jordanian King Hussein conducted secret meetings in April 1987. They arrived at a vague understanding that embodied the following seven points: (1) an international conference (attended by the permanent members of the UN Security Council and the Middle Eastern states in the conflict) would convene but would not impose a solution and would not veto any agreement reached by the sides; (2) that negotiations would be conducted in bilateral committees in a direct manner; (3) that the Palestinian issue would be discussed in a meeting of the Jordanian, Palestinian, and Israeli delegations; (4) that the representatives of the Palestinians would be included in the Jordanian-Palestinian delegation; (5) that participation in the conference would be based upon the renunciation of violence and terror, acceptance of UN Security Council Resolutions 242 and 338 by the sides; (6) that each committee would conduct negotiations independently; and (7) that other issues would be resolved through mutual agreement between Jordan and Israel. Israeli Prime Minister Shamir, who opposed even indirect negotiations with the PLO, rejected the understanding, and Peres was publicly accused of negotiating "behind the back" of the government and of conducting his own "private, independent foreign policy." KLEIMAN, supra note 328, at 129.

Conversely, Peres blamed American Secretary of State George Shultz for the failure of the London Agreement. See QUANDT, supra note 286, at 334.

In March 1988, American Secretary of State George Shultz proposed a modified version of the Camp David Accords to attract the participation of the Palestinians, who under pressure of the PLO, had boycotted the autonomy talks. See Weiner, Human Rights in the Israeli Administered Areas During the Intifada: 1987-1990, supra note 339, at 195-94. Shultz sought to allay Palestinian fears that their going along with the Camp David Accords would enable Israeli to forestall final status talks indefinitely by delaying the implementation of the autonomy period. Shultz therefore suggested interlocking the two phases: final status talks would begin shortly after an autonomy agreement regardless of whether it was fully implemented. The initiative was premised on Palestinian acceptance of UN Security Council Resolution 242 and envisioned a joint Jordanian-Palestinian delegation to represent the Palestinians. Prime Minister Shamir rejected the initiative on the grounds that it invalidated the autonomy phase and "would pre-determine a territorial compromise" which he opposed. MAKOVSKY, supra note 207, at 8. The PLO were critical because
ference.\textsuperscript{346} Despite the auspicious beginnings and international backing that many of these efforts enjoyed, success was rare and, in some cases, vaporized when confronted with resurgent reality in the region. Notwithstanding decades of "process," there has been scant evidence of "peace," even inchoate peace.

There are indications that the current crisis may be surmounted. Under American pressure, Arafat renewed some aspects of PA-Israeli security cooperation\textsuperscript{347} and Israel dramatically eased its closure enabling tens of thousands of Palestinians to enter Israel.\textsuperscript{348} Still, as of this writing, the major issues of Har Homa, the extent and implementation of the first and second stages of Israeli further redeployment and the PA's attitude toward terror remain unresolved.

Although the peace process is already in intensive care, the definitive climax is liable to come when the Palestinians deduce that they cannot negotiate a permanent settlement that meets their minimal requirements. This is not likely to occur before May 5, 1999, the deadline for the conclusion of the permanent status arrangements. At that point, having gained whatever possible from the interim agreements, Arafat is likely to carry through with his frequent threat to declare a Palestinian state.\textsuperscript{349} He is they objected to having their delegation linked with the Jordanians, and the USSR was enthusiastic about the concept of an international conference. The foundations of the plan collapsed when King Hussein relinquished his legal claim to sovereignty in the West Bank. See Quandt, supra note 286, at 366-67.

\textsuperscript{346} In 1989, the question, "who will represent the Palestinians?" remained unresolved. Prime Minister Shamir favored holding independent elections in the West Bank, while Mubarak proposed a 10-point peace plan, formulated by two of Shimon Perez's aides. Eager to advance Israel-Palestinian peace making, Egypt agreed to be the site of what became known as the "Cairo Dialogue." The PLO, however, wanted several members of the Palestinian National Council to participate in a meeting with Israeli officials in Cairo in order to demonstrate that Israel was actually dealing with the PLO. Prime Minister Shamir was unwilling to recognize and/or negotiate with the PLO, and the Cairo Dialogue soured, see Makovsky, supra note 207, at 9, 10.

\textsuperscript{347} The Madrid Conference, under the joint chairmanship of President Bush and Premier Gorbachev, was attended by all of the major states in the region, as well as a joint Palestinian-Jordanian delegation. Although bilateral and multilateral meetings followed the plenary session, perhaps because the parties expected the U.S. to take a more active role, no agreements were reached. See Quandt, supra note 286, at 404-06.

\textsuperscript{348} See Arafat Orders Renewal of PA-Israel Security Cooperation, JERUSALEM POST, Apr. 20, 1997, at 1.

\textsuperscript{349} The Wall O'Sullivan, Mordechai: Closure to be Drastically Eased, JERUSALEM POST, Apr. 30, 1997, at 2.

\textsuperscript{350} Arafat regularly announces that a Palestinian state will be declared "soon." See Arafat Says Palestinian State to Be Declared Soon (BBC Broadcast, ME/DS842/ME/DE/1997).

\textsuperscript{351} In response, Netanyahu warned the Palestinians not to make a "unilateral declaration" of statehood because "our reaction would be very serious," Palestinian Legislative Council Not Authorized to Ratify Hebron Accord (BBC Broadcast, ME/DS822/ME/DS, Jan. 20, 1997). Recently, Netanyahu warned that Israel would respond to a unilateral declaration with one of its own—annexing the Jordan Valley and other parts of the territories. See Zvi Honig, PM Warns Arafat: If PA Declares State, I'll Annex Territories, JERUSALEM POST, Dec. 2, 1997, at 1.

\textsuperscript{352} Arafat may well be aware that ethnic groups that provoke wars, especially when they do so under the banner of self-determination and cast themselves as the underdogs, do not necessarily incur condemnation, whether in the United Nations or the media. For example, the bitter and seemingly endless fighting that has torn apart the former Yugoslavia commenced with the declaration of independence by Slovenia in June 1991. See Warren Zimmerman, The Last Ambassador: A Memoir of the Collapse of Yugoslavia, Fore. Aft., Mar./Apr. 1995, at 2, 12. Although the Slovenes provoked the war, they won the sympathy of the foreign media by welcoming journalists and sympathizing with their struggle as that of a tiny republic against the Yugoslav colossus. See id. at 13. After ten days of fighting at a cost of only 37 dead, the Yugoslav army withdrew for political reasons. See id. Slovenia, moreover, was not supported by powerful blocks of states as the Palestinians would be if they chose to pursue a similar path. In any event, even most members of Israel's governing Likud party do not advocate returning to either Gaza or the Palestinian-populated centers recently evacuated in the West Bank. See Shahar Illan, 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 Not Act Against Terror, JERUSALEM POST, June 6, 1995, at 3; Sarah Honig, Netanyahu Aims to Adapt Party Line to Oslo Reality, JERUSALEM POST, Jan. 29, 1996, at 2; Yehoyakh Tal, Netanyahu Meets With Gore: Oslo Accords Are Bad, But Will Honor Them, HA'ARETZ, Jan. 17, 1996, at A4.

\textsuperscript{353} Arafat has been publicly warned by Congressional leaders that the PLO is in danger of losing U.S. support if it uses or sanctions violence to attempt to influence the peace process. See Hillel Kuttner, Congress Seeks Tight Rules on Aid to PA, JERUSALEM POST, June 15, 1997, at 1; Jesse Helms, Resist Arafat's Blackmail, JERUSALEM POST, Apr. 25, 1997, at 6.
not to imply that the Hebron Protocol is the sole derivation of all of these calamities. Rather, it is merely the latest agreement which, in attempting to bridge the widely divergent Israeli and Palestinian interests, reflects the critical internal contradictions of the Israeli-Palestinian peace process as a whole. This process has become a political Rorschach test which each of the parties understands differently. It further demonstrates the diminished ability of the United States, the process’s paramount international sponsor, to close the gap that divides Israel and the Palestinians four years and six interim agreements after the historic handshake of the late Prime Minister Yitzhak Rabin and PLO Chairman Yasser Arafat at the signing of the DOP.

In years to come, the Hebron Protocol and the peace process that began in Oslo will be regarded as another of the highly variegated and virtually perennial efforts that, despite prodigious efforts, fell short of initial hopes and expectations. This failure, moreover, will not be primarily attributable to the text of the Protocol, or, for that matter, to the earlier interim agreements. The epitaph will place the onus for the breakdown of the process on the unrealistic and naïve expectations among proponents of peace. An additional cause for the breakdown was the non-fulfillment by the parties of their written promises throughout the interim period. A further factor, the limited utility of the dispute resolution provisions to solve highly-charged, zero sum conflicts may also be blamed for undermining the process.

A generation ago, Secretary of State Henry Kissinger, the genius of incremental Middle East diplomacy, opined that the objective was for the parties to the negotiation to gain confidence, become committed to achieving results, and be carried along by the momentum of peacemaking to resolve issues that had previously seemed intractable. Yet despite his prodigious efforts, he learned that some issues were so complex and emotional that peace between the sides was unattainable in that generation. Kissinger concluded after much shuttle diplomacy that the diplomat aspiring to mediate between Arabs and Israelis would have to be satisfied with small achievements, which were better than nothing.

Acknowledging the chimera of peace and the failure of the interim process begun in Oslo will not permanently terminate efforts, international and/or local, to settle the Israeli-Palestinian conflict. Precedent suggests that within a few years, perhaps sooner if a crisis again focuses world attention on the chronic instability of the region, a new American President or Secretary of State will reengage in Israeli-Palestinian peacemaking. In the alternative, perhaps the parties themselves will moderate their claims, and having become familiar with each other during the negotiation of the interim agreements, embark on a new beginning.

352 See Quandt, supra note 286, at 243.
353 See id.