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

Justus R. Weiner



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* The following is a review essay of the Israeli-Palestinian *Protocol Concerning the Redeployment in Hebron and Related Documents*, published by the Israel Ministry of Foreign Affairs, Jerusalem, 1997, p. 28 (Paperback). Distributed free of charge. The *Protocol* is reprinted in 36 I.L.M. 653.

** The reviewer is an international human rights lawyer and a member of the Israel and New York Bar Associations. He is currently a Scholar in Residence at the Jerusalem Center for Public Affairs and an adjunct lecturer at Hebrew and Tel Aviv Universities. During 1987-88, the reviewer was a visiting Assistant Professor at Boston University School of Law. The reviewer expresses his indebtedness to Jonathan Jacobson, Lila C. Corwin, Dori Kornfeld and Donyelle Werner for their assistance in this project.

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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 II)¹ and to facilitate success in the permanent status negotiations,² 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 impending 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 time-table 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, Isr.-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.

I. INCEPTION OF THE HEBRON PROTOCOL

A. The Significance of Hebron

The city of Hebron resonates in Jewish and Islamic history. Ironically, in light of repeated bloodletting,³ the city derives its name from the Hebrew word *chaver* or "friend."⁴ Hebron is where the Jews established their oldest legal deed more than 4000 years ago. The Bible tells that the Jewish Patriarch Abraham purchased the cave at Machpela from a Hittite⁵ for 400 pieces of silver.⁶ This cave was used as the burial site for Abraham and his Jewish progeny Isaac and Jacob, as well as their wives.

Approximately 1000 years later, Hebron served as King David's initial seat of government.⁷ Hebron remained one of Judaism's four holy cities, even after David moved his capital to Jerusalem.⁸ Since this time, Jews have continued to live in Hebron, except for the periods when the Jews were driven out by the pogroms.⁹ The 1929 pogrom resulted in the murder of sixty-seven Jews and the destruction of their synagogues and yeshivas.¹⁰ Nearly the entire surviving Jewish population, some 400 peo-

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 Mordechai Beck, 'Friendly' City That Has Been a Source of Strife, JEWISH CHRON., Jan. 3, 1997, at 2. Much has been written by European Christian travelers who experienced intolerance and fanaticism at the hands of the Muslim custodians of the Tomb 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 transferor was actually a Palestinian Arab. See Hamad Abdallah Yusef, *Islamic Perspectives: The Ibrahimi Mosque*, BILADI JERUSALEM TIMES, Apr. 17, 1996, at 8. This, despite the fact that until the Muslim conquest in 634 A.D., there were no Palestinians or Arabs in Hebron. See Y. PORATH, 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).

⁶ See Genesis 23:8-16.

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

⁸ See Genesis 23:2. See also Herb Keinon, *Jerusalem's Elder Sister*, JERUSALEM POST, Jan. 17, 1997, at 4.

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 Dann, *A City, and a Symbol*, JERUSALEM POST, Sept. 19, 1995, at 6. The details of the mutilation of the 38 victims who were killed in a Rabbi's house were recorded by an eyewitness who visited the scene shortly thereafter. See PIERRE

ple, fled the town.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.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 1929¹³ and reestablishing one of their destroyed yeshivas.¹⁴

Muslims also venerate Abraham,¹⁵ and through him, Hebron. The Arabic name of Hebron, *Khalil 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.¹⁶ The Qur'an reworks the biblical material on Abraham within its text.¹⁷ Palestinians have attempted to grandfather their roots in the region, by claiming that they are also

VAN PAASSEN, 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:

¹¹ See NORMAN & HELEN BENTWICH, MANDATE MEMORIES, 1918-1948, at 134 (1965).

¹² See Ian Black, *Likud Government Crosses the Rubicon*, THE GUARDIAN, Jan. 16, 1997, at 12.

¹³ See Keinon, *supra* note 8, at 4.

¹⁴ See Friedman, *supra* note 5, at 136-37.

¹⁵ See Ian Black, *Hebron Deal Signed*, THE GUARDIAN, Jan. 15, 1997, at 2.

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 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 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 Genesis 17:18-21.

¹⁷ See Andrew Rippin, *Interpreting the Bible Through the Qur'an*, in APPROACHES TO THE QUR'AN 251 (G.R. Hawting & Abdulkader A.-K.A. Shareef eds., 1993). According to Professor Rippin:

The tendency to incorporate biblical materials into the Islamic tradition, and to Islamicize them in doing so (and thus, it might be suggested, picking up on the Qur'an's own way of retelling biblical stories), sees its ultimate manifestations in the genre of literature known as the *dala'il al-nubuwwa*, the 'proofs of prophesy', and especially the *qisas al-anbiya*, the stories of the prophets. These 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. . . . In the recounting of the lives of the prophets, there is certainly a tendency to avoid any Christian symbolic prefigurements in the events of the 'Old Testament.' Likewise there is no emphasis on Israel as a land and Judaism's connection to it.

Id. at 252-53.

descended from various tribes that resided in Canaan such as the Hittites, Jebusites, and Amorites.¹⁸

Muslim Arabs have lived continuously in Hebron for approximately 1300 years.¹⁹ About 650 years ago, Muslims converted the tomb of the Jewish Patriarchs and the surrounding compound into the al-Ibrahimi mosque.²⁰ In 1266 AD, the Mameluke rulers issued a decree which forbade non-Muslims from entering the tomb.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.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.²³

Palestinians currently constitute the overwhelming majority of the city's population.²⁴ Since Jews returned to downtown Hebron in 1968 after the war, there have been frequent violent encounters between the Jewish and Palestinian residents.²⁵ In 1980, six students at a Hebron yeshiva, returning from Sabbath services, were killed in an ambush by Palestinian terrorists.²⁶ In 1995, Dr. Baruch Goldstein killed 29 Muslim worshippers in a shooting spree at the al-Ibrahimi mosque.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

¹⁸ See PORATH, *supra* note 5, at 40. According to Professor Porath, "[t]he Palestinian link to a Canaanite heritage is tenuous, 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, *Who is a Canaanite?*, JERUSALEM POST MAG., Sept. 27, 1996, at 5.

¹⁹ See Keinon, *supra* note 8, at 4.

²⁰ See KARL BAEDER, PALESTINE AND SYRIA: HANDBOOK FOR TRAVELLERS 115 (1906).

²¹ Keinon, *supra* note 8, at 4.

²² 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.

²³ See Aaron Lerner, *On the Table*, JERUSALEM POST, Dec. 3, 1997, at 10.

²⁴ See *Hebron as a Parable*, JERUSALEM POST, May 3, 1996, at 4; Keinon, *supra* note 8, at 4.

²⁵ For a description of the numerous violent occurrences, see Keinon, *supra* note 8, at 4.

²⁶ See CONOR CRUISE O'BRIEN, THE SIEGE: THE SAGA OF ISRAEL AND ZIONISM 603 (1986).

²⁷ See Jon Immanuel, *Hebron: Two Inseparable Peoples*, JERUSALEM POST, Aug. 3, 1995, at 2; Keinon, *supra* note 8, at 4.

turned over to the Palestinian Authority ("PA") by the Israeli Defense Force ("IDF").²⁸

B. *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.²⁹ 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.³⁰

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-

²⁸ See Patrick Cockburn, *A Peace Deal With a Fuse Attached*, THE INDEPENDENT, Jan. 16, 1997, at 19.

²⁹ 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 Greater 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.-Palestinian Liberation Organization, 33 I.L.M. 622 (signed at Cairo) [hereinafter Cairo Agreement]. The third agreement allows for the transfer of authority to the PA in certain limited spheres, such as health, social welfare, direct taxation, tourism, education, and culture in the parts of the West Bank outside of the Jericho area. Agreement on Preparatory Powers and Responsibilities, Aug. 29, 1994, Isr.-Palestinian Liberation Organization, 34 I.L.M. 455 (signed at the Eretz checkpoint between Israel and the Gaza Strip, Aug. 29, 1994) [hereinafter Eretz 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.-Palestinian 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. 17, 1997, Isr.-Palestinian Liberation Organization, 36 I.L.M. 653 [hereinafter Hebron Protocol or Protocol].

³⁰ The Interim Agreement superseded the Cairo Agreement, the Eretz Agreement and the Further Transfer Protocol. See Interim Agreement, *supra* note 29, at 557.

ing the small Jewish community and its religious sites in that city.³¹ 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."³²

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.³³ 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.³⁴ At this point, the Palestinians insisted that the Protocol be linked to the question of three further IDF redeployments.³⁵

Following extended delays, punctuated by periods when it appeared the entire peace process would collapse, the Hebron Protocol was finally signed on January 17, 1997.³⁶ The Israeli Cabinet voted narrowly, eleven to seven, to endorse the Hebron Protocol³⁷ after an intense twelve-hour debate.³⁸ 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.³⁹ 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-

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 1529; Cairo Agreement, *supra* note 29, at 637. See also Guy Bechor, *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 Pull-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 Laromme Hotel in Jerusalem rather than an international ceremony with pomp and ceremony at the White House. Interview with Gideon Avrami, Assistant Manager, Laromme 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 Reisner, *The Hebron Agreement*, 12 JUSTICE 12, 14 (1997).

³⁷ See Shyam Bhatia, *The Compromised Land*, THE OBSERVER, Jan. 19, 1997, at 1.

³⁸ See Black, *Likud Government Crosses the Rubicon*, *supra* note 12, at 12.

³⁹ *Id.*

ties.⁴⁰ Without their support, the Hebron Protocol would have been rejected.⁴¹ Netanyahu felt compelled to justify his action to angry party loyalists by claiming, "I haven't changed It is the reality that has changed."⁴²

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,⁴³ is not empowered to vote on agreements between the PA and Israel.⁴⁴ This provision has caused Members of the Legislative Council to complain that they have no say in the decision making process.⁴⁵ The PA has yet to allow the Council to ratify a constitution and has repeatedly failed to submit its budget for a vote.⁴⁶ Moreover none of the 132 regulations passed by the PLC have been implemented by the PA.⁴⁷

⁴⁰ Eighty-seven members of the Knesset voted in support, seventeen voted against and one abstained. See Arieth O'Sullivan, *IDF Begins Hebron Redeployment*, JERUSALEM POST, Jan. 17, 1997, at 1. See also Patrick Cockburn, *Israeli Troops Begin Hebron Pull-out*, THE INDEPENDENT, Jan. 17, 1997, at 14.

⁴¹ O'Sullivan, *IDF Begins Hebron Redeployment*, *supra* note 40, at 1.

⁴² *Id.*

⁴³ See Interim Agreement, *supra* note 29, at 561.

⁴⁴ See *id.*; Jon Immanuel, *Hebron Agreement: PA Councilors 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, ME/D2820/MED, Jan. 16, 1997). Saeb Urayqat, 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 20, 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, ME/D2822/MED1, Jan. 20, 1997).

⁴⁵ 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 Jabril Rajoub, Muhammad Dahlan and Amin al-Hindi. See *Palestinian Security Head Rujub on the Situation After Hebron Withdrawal* (BBC Broadcast, ME/D2827 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, ME/D2819/MED, Jan. 16, 1997).

⁴⁶ See *Palestinian Radio Names Leadership Members Opposed to Hebron Protocol* (BBC Broadcast, ME/D2819/MED, Jan. 16, 1997).

⁴⁷ See Ahmad Bukhari, *Ineffective Machinery*, BILEDI JERUSALEM TIMES, May 16, 1997, at 6.

C. The Terms Agreed Upon

The Hebron Protocol specifies that the IDF would be "redeployed" from most of Hebron within 10 days.⁴⁸ It is significant that the term used was "redeployment" rather than "withdrawal," as the latter term could be understood to imply an irreversible waiving of Israel's claim to the city.⁴⁹ 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."⁵⁰ 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.⁵¹ The Palestinians counter this argument by claiming that the source of the PA's international legal legitimacy lies outside the interim agreements and rest principally in the diplomatic relations the PLO enjoys with scores of countries.⁵² It also notes its recognition by the United Nations General Assembly as the "representative of the Palestinian People."⁵³

The Protocol contains an intricately redlined map of Hebron that indicates the boundaries of H-1 and H-2, the Palestinian- and Israeli-controlled sectors, respectively, as well as numerous checkpoints, police stations, routes for the Joint Patrols and various other features.⁵⁴ 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

⁴⁸ Hebron Protocol, *supra* note 29, at 653.

⁴⁹ See INFORMATION SERVICE OF THE ISRAELI AMBASSADOR TO FRANCE, ANALYSIS OF THE HEBRON PROTOCOL AND THE CONTINUATION OF THE PEACE PROCESS BETWEEN ISRAEL AND THE PALESTINIANS 16 (1997).

⁵⁰ 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.

⁵¹ 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.

⁵² See Justus R. Weiner, *Human Rights in Limbo During the Interim Period of the Israeli-Palestinian Peace Process: Review, Analysis and Implications*, 27 NYU J. INT'L L. & POL. 761, 795-818 (1995).

⁵³ G.A. Res. 158, U.N. GAOR, 48th Sess., Supp. NO. 35, at 1, 5, U.N. Doc. A/RES/48/158 (1994).

⁵⁴ See Hebron Protocol, *supra* note 29, at 661.

earlier interim agreements.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-2.⁵⁶ Both sides "reaffirm their commitment to honor the relevant security provisions of the Interim Agreement."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."⁵⁸ "Joint Mobile Units" and "Joint Patrols"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.⁶⁰ The type of firearms to be carried by the Palestinian and Israeli members of the Joint Mobile Unit is specified.⁶¹ A "Joint Coordination Center," headed by senior officers of both sides, is established to coordinate the mutual security measures in Hebron.⁶² Palestinian Police stations or posts, staffed by a total of up to 400 police, with specified permitted weaponry, are created in area H-1.⁶³ The Palestinian Police are to set up four "Rapid Response Teams" each with up to sixteen

⁵⁵ *Id.* at 653.

⁵⁶ *Id.* Although Israel dropped its demand for specific authorization in the Hebron Protocol, see Eric Silver, *Hebron Deal Ends Months of Wrangling*, THE INDEPENDENT, Jan. 1, 1997, at 7, Israel reserves the right to conduct hot pursuit and pre-emptive raids inside H-1 based on the Interim Agreement. See Herb Keinon & Alon Pinkas, *IDF Removes 2 Roadblocks in Hebron: Biran Attempts to Reassure Settlers But Presents No Maps*, JERUSALEM POST, Oct. 3, 1995, at 1. See also Reisner, *supra* note 36, at 14; Interim Agreement, *supra* note 29, at 561. Thus far, Israel has not made use of this right in other evacuated cities. Keinon & Pinkas, *supra*, at 1.

⁵⁷ See Hebron Protocol, *supra* note 29, at 653. Among the commitments specifically reiterated are those dealing with prevention of hostile acts and terrorism. See *id.*

⁵⁸ Hebron Protocol, *supra* note 29, at 653; Silver, *supra* note 56, at 7. This has not proven to be an effective deterrent during the weeks of daily Palestinian rioting that followed the disagreement over *Har Homa*. Indeed the entire structure of security cooperation in the Protocol which is aimed at "preventing any provocation or friction that may affect the normal life in the city," Hebron Protocol, *supra* note 29, at 658, appears to have been ignored by the PA in permitting, and according to some reports, encouraging these rioters. See Ian Black, *Nails Hammered into Coffin of Peace*, THE GUARDIAN, Apr. 2, 1997, at 7.

⁵⁹ Joint Patrols and Joint Mobile Units are comprised of approximately four IDF soldiers and four Palestinian Police. They travel in 4-wheel drive vehicles along designated routes with the responsibility of keeping the roads open and responding to incidents. Interim Agreement, *supra* note 29, at 572.

⁶⁰ See Hebron Protocol, *supra* note 29, at 654-55; Silver, *supra* note 56, at 7.

⁶¹ See *id.*

⁶² See *id.*

⁶³ See *id.*

members in H-1 to handle special security situations.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."⁶⁵

Specific responsibility is assigned to the Palestinian Police to protect four Jewish holy sites in H-1,⁶⁶ and the visitors to these sites are to be accompanied and protected by a Joint Mobile Unit.⁶⁷ 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."⁶⁸ This end is to be achieved by taking "all steps and measures necessary."⁶⁹

The Protocol also transfers certain civil powers and responsibilities to the PA for all residents of Hebron except for the Israelis living in H-2.⁷⁰ 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.⁷¹

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,⁷² the Agreed Minute regarding the American Plan on Al-Shuhada Street,⁷³ and a Letter from [then] U.S. Secretary of State War-

⁶⁴ See *id.*

⁶⁵ *Id.* at 656.

⁶⁶ See *id.*

⁶⁷ See *id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ These powers and responsibilities encompass sanitation, health, postal delivery, traffic and education services. See Hebron Protocol, *supra* note 29, at 657, 659.

⁷¹ The limitations on the height of buildings in H-1 are due to concerns over the possibility that snipers in the H-1 area could use tall buildings to shoot into the H-2 area. See *id.* at 657; Silver, *supra* note 56, at 7. Additional specific provisions apply to the infrastructure such as the electricity grid and the flow of traffic on the roads, municipal inspectors, the location of offices of the Palestinian Council, the provision of municipal services, and the creation of a Temporary International Presence team of observers to promote a feeling of security and stability among Palestinians in Hebron. See *id.* at 658-60.

⁷² Dennis Ross, Note for the Record, Related Document to Hebron Protocol, Jan. 15, 1997, 36 I.L.M. 665 [hereinafter Note for the Record].

⁷³ Agreed Minute, American Plan on Al-Shuhada Street, Related Document to Hebron Protocol, 36 I.L.M. 663 [hereinafter Agreed Minute]. This is a plan of infrastructure improvements financed by American aid, on one of the main streets in

ren Christopher to Netanyahu.⁷⁴ An understanding of the first and third of these documents is critical to understanding the severe compliance difficulties that have beset all of the interim agreements, and the highly problematic role the United States has assumed as the broker of the peace process.⁷⁵ The future of the peace process is, in fact, likely to hinge more on Ross's Note for the Record and Christopher's Letter than on the deployment of forces and division of responsibilities in the city of Hebron.

The Note for the Record, three pages in length, contains a summary of the agreements reached by Arafat and Netanyahu during a meeting on January 15, 1997, in the presence of Ambassador Dennis Ross.⁷⁶ This document focuses on issues that have proven frustrating because of the perceived failure of one of the parties to honor its previous commitments.

The Note for the Record begins with a statement of purpose labeled "Mutual Undertakings," in which "[t]he two leaders agreed that the Oslo peace process must move forward . . . [and they] reaffirmed their commitment to implement the Interim Agreement on the basis of reciprocity."⁷⁷ While reciprocal performance is intrinsic in any agreement, the specific mention of the principle of "reciprocity" can also offer each of the sides an excuse for nonperformance. This situation may occur, as will be discussed *infra*, when each side considers the other to have repeatedly and flagrantly violated material terms of the earlier agreements. Thus, this mutual understanding is a double-edged sword that may, especially given the backlog of grievances, be used to justify non-compliance just as readily as it can be used to encourage full performance by both sides. For

Hebron. *Id.* Ten days after the signing of the Hebron Protocol, Arafat began criticizing Israel for not immediately reopening Al-Shuhada Street, *Arafat Criticizes Israeli "Delay" in Implementing Hebron Accord* (BBC Broadcast, ME/D2833/MED, Jan. 31, 1997), which according to the Protocol's terms was to be fully reopened within four months. Agreed Minute, *supra*, at 663. Charges and counter-charges of violations have become almost routine. See *Palestinian Leadership Condemns Israeli "Violations" of Signed Agreements* (BBC Broadcast, ME/D2833/MED/1, Feb. 1, 1997). PA officials have come to defend their violations by saying that Israel is also violating the agreement in various spheres. See *Ahmad Auray Rules Out Peace Without Jerusalem* (BBC Broadcast, ME/2830 MED/6, Jan. 29, 1997).

⁷⁴ Letter from Warren Christopher, U.S. Secretary of State, to Benjamin Netanyahu, Israeli Prime Minister, available at <<http://www.israel.mfa.gov.il/peace/hebltr.html>> (visited Jan. 10, 1997). In addition, an agreement was reached for the insertion of a civilian non-UN peacekeeping force in Hebron. See Justus R. Weiner, *The Temporary International Presence in the City of Hebron ("TIPH"): A Unique Approach to Peacekeeping*, 16 WIS. INT'L L.J. (forthcoming Fall 1997).

⁷⁵ Whereas the appendices to the Protocol are deemed to "constitute an integral part" of the agreement, no instructions are provided as to the legal weight or priority of the three Related Documents. See Hebron Protocol, *supra* note 29, at 660.

⁷⁶ See Note for the Record, *supra* note 72, at 665.

⁷⁷ *Id.*

Netanyahu, in particular, reciprocity has become a precondition for Israel's willingness to proceed with the entire peace process.⁷⁸ This point was repeatedly emphasized in his successful electoral campaign.⁷⁹ 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 elementary promises.

1. Palestinian Responsibilities Under the Note for the Record

The Note for the Record delineates "Palestinian Responsibilities" and "Israeli Responsibilities."⁸⁰ It calls upon the Palestinian side to reaffirm its commitment in accordance with the Interim Agreement of "complet[ing] the process of revising the Palestinian National Charter."⁸¹ 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.⁸² 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:

[T]he 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 inoperative 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.⁸³

⁷⁸ See David Makovsky, *Netanyahu: Contacts with Palestinians at All Levels*, JERUSALEM POST, June 28, 1996, at 7. Netanyahu stated in an interview shortly after being elected Prime Minister, "[w]e seek a genuine reciprocity in this area, [which means a] full fulfillment of commitments. That should be a mutual policy. So far the balance of failure to do so is tilting very heavily on the other side." *Id.*

⁷⁹ See David Makovsky, *The Candidate Now Becomes the Leader*, JERUSALEM POST, June 7, 1996, at 11.

⁸⁰ See Note for the Record, *supra* note 72, at 665-66.

⁸¹ *Id.* The Palestinian National Covenant ("Covenant") has served as the PLO's manifesto since its inception in 1964. See PALESTINIAN NATIONAL CHARTER OF 1964, PALESTINIAN CHARTER OF 1968, reprinted in 3 THE ARAB-ISRAELI CONFLICT 699, 706 (John Norton Moore ed., 1974).

⁸² By declaring the establishment of the State of Israel illegal, and calling for its destruction and "reject[ing] all solutions which are substitutes for the total liberation of Palestine," the PLO justified its terrorist attacks against Israeli targets. *Id.* at 702, 709. Israel therefore regarded it essential that the PLO publicly repudiate the Covenant's aggressive and offensive provisions at the beginning of the Oslo process in 1993.

⁸³ Yasser Arafat, Chairman of the PLO, *Letter to Israeli Prime Minister Yitzhak Rabin*, Sept. 9, 1993, reprinted in MINISTRY OF FOREIGN AFFAIRS, GOVERNMENT OF ISRAEL, DECLARATION OF PRINCIPLES ON INTERIM SELF-GOVERNMENT ARRANGEMENTS 38 (1993).

Two years later, the Covenant had still not been changed, but a new deadline was fixed in the Interim Agreement signed on September 28, 1995.⁸⁴ 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, 1996.⁸⁵ 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.⁸⁶ 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.⁸⁷ 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.⁸⁸

⁸⁴ 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.

⁸⁵ *Id.*

⁸⁶ 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 specifically state 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 Marwan Kanafani immediately after 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.

⁸⁷ Israel Government Press Office, State of Israel, *Amending the PLO Covenant: An Unfulfilled Commitment*, *supra* note 86, at 5.

⁸⁸ 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.

Quoted in Jon Immanuel & Eldad Beck, *Arafat: No New PLO Charter Until Israel has a Constitution*, JERUSALEM POST, Jan. 26, 1997, at 2. The government of Israel has declared this is a "gross violation of the Oslo Accords." Evelyn Gordon, *Gov't: PA Charter Must be Amended*, JERUSALEM POST, Jan. 30, 1997, at 12.

In addition, the Note for the Record calls for the Palestinians to honor their commitments in "fighting terror and preventing violence, . . . combat[ing] systematically and effectively terrorist organizations and infrastructure, [and the] [a]pprehension, prosecution and punishment of terrorists."⁸⁹ Arafat's reluctance to challenge the Islamic opposition is generally understood to be based on his fear of provoking a Palestinian civil war.⁹⁰ 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.⁹¹ 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,⁹² officially banned

⁸⁹ Note for the Record, *supra* note 72, at 665. The PA's ineffectual response to the terrorists' suicide bombings, drive-by shootings, roadside bombs, kidnappings and knife attacks has contributed to delays in the peace process and has threatened its continuance. See Derek Brown, *Israeli Fears Put Pact With P.L.O. At Risk*, THE GUARDIAN, Dec. 7, 1994, at 14; Bill Hutman & Raine Marcus, *25 Killed in Jerusalem, Ashkelon*, JERUSALEM POST, Feb. 26, 1996, at 1; Jon Immanuel, *Israel Suspends Talks in Cairo*, JERUSALEM POST, Oct. 12, 1994, at 2; "A Majority of One," TIME, Nov. 13, 1995, at 64; Eytan Rabin, *Two Hikers Murdered in Wadi Kelt; Gang of Terrorists Escaped to Jericho*, HA'ARETZ, July 19, 1995, at A1; Serge Schmemmann, *Bus Bombing Kills Five in Jerusalem; 100 are Wounded*, N.Y. TIMES, Aug. 22, 1995, at A1; Moshe Toubal, Reuven Shapira et al., *5 Killed in Suicide Bombing of Bus in Ramat-Gan*, HA'ARETZ, July 25, 1995, at A1.

⁹⁰ See James Bruce, *The PLO, Israel and Security - Part 2: The Peace Process Under Attack*, JANE'S INTELLIGENCE REV., May 1, 1996, available in LEXIS News Library, Curnws File.

⁹¹ Hamas is an Arabic acronym meaning "zeal" or "fervor." The movement's full Arabic name is *Harakat al-Muquwama al-Islamiyya* which translates as the "Islamic Resistance Movement." See Justus R. Weiner, *Israel's Expulsion of Islamic Militants to Southern Lebanon*, 26 COLUM. HUM. RTS. L. REV. 357, 357, 380 (1995); Arie O'Sullivan, *Hamas Activists Arrested*, JERUSALEM POST, Apr. 23, 1997, at 2. In the view of one Israeli critic of the peace process, Arafat derives political advantage from Hamas terrorism:

It allows him to play a "good cop-bad cop" game. The worse Hamas looks, the more appealing Arafat is in contrast. Arafat can play the terror card and weaken Israeli resolve by backing Hamas in private, while reaping the benefits of Israeli concessions in the public negotiations. Arafat will be able to claim that he is doing his best to control terrorism—after all, even Israel could not block all attacks—and to do a better job he needs more forces, more equipment, and more authority.

YECHIEL LEITER, *CRISIS IN ISRAEL: A PEACE TO RESIST* 57-58 (1994).

⁹² See Jon Immanuel, *PA Releases Three Hamas Prisoners*, JERUSALEM POST, Apr. 28, 1996; Jon Immanuel, *Arafat Pledges To Fight Terror With Israel*, JERUSALEM POST, Mar. 5, 1996, at 2; Margot Dudkevitch et al., *PA Captures 100 Kilograms of Explosives*, JERUSALEM POST, Dec. 3, 1997, at 1.

the organizations,⁹³ and punished some of those responsible for terrorist attacks,⁹⁴ the PA generally favors accommodation and has never comprehensively liquidated the infrastructure of the terrorist organizations.⁹⁵ Terrorist suspects arrested by the PA have routinely been released after the public outrage from the particular attack(s) has passed.⁹⁶ Terrorists who have been prosecuted and convicted in the PA State Security Court are often released before completing their prison sentences.⁹⁷

The Note for the Record also reiterates the Palestinians' commitment to strengthen security cooperation with Israel.⁹⁸ 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.⁹⁹ Finally in October, under American auspices, Arafat officially agreed to resume security cooperation.¹⁰⁰ 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 Palestinian

⁹³ See Jon Immanuel, *Arafat Bans Armed Groups, Promises 'Serious Steps'*, JERUSALEM POST, Mar. 4, 1996, at 2.

⁹⁴ See Amira Hess, *Head of Hamas Ring in Ramallah Sentenced to Life Imprisonment in Palestinian Court*, HA'ARETZ, Mar. 7, 1996, at A1.

⁹⁵ See *The 6 Core Members of Hamas' Military Wing Have Not Yet Been Arrested by PA*, PEACE WATCH, April 1, 1996. But see *Palestinian Authority Arrested Number 2 on Israeli Wanted List, Muhammed Dief's Subordinate*, HA'ARETZ, Apr. 26, 1996, at A6.

⁹⁶ See Jon Immanuel, *PA Frees Hamas Activists*, JERUSALEM POST, Jan. 29, 1996, at 2; Steve Rodan & Mohammed Najib, *PA Considers Release of Hamas Prisoners*, JERUSALEM POST, Oct. 19, 1997, at 2.

⁹⁷ The following conclusions were reached through an investigation conducted by Peace Watch, an independent organization which monitors violations of the agreements:

Out of 26 cases in which the individuals sentenced by the PA court should still have been in jail at the time of the investigation, *Peace Watch* found that 11 of the 26 were either out of jail at the time, were formally in jail but actually held positions in the Palestinian security forces, or had previously been released from jail, and were rearrested only under Israeli pressure.

Peace Watch Report Reveals Major Flaws in PA Policy on Punishing Terrorists, PEACE WATCH, May 15, 1996 (emphasis in original). See Alon Pinkas, *Arrests Are Only Temporary Setback For Hamas Operations*, JERUSALEM POST, Aug. 24, 1995, at 1.

⁹⁸ Note for the Record, *supra* note 72, at 666.

⁹⁹ See Hillel Kuttler, *Ross to Present New Peace Proposals*, JERUSALEM POST, May 4, 1997, at 1.

¹⁰⁰ Arie O'Sullivan, *Israel, PA to Resume Security Cooperation*, JERUSALEM POST, Oct. 22, 1997, at 7.

police takes action against the intelligence source rather than the terrorists.¹⁰¹

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."¹⁰² Perpetrators of terrorist attacks within Israel often escape punishment by fleeing to the PA self-governed areas, and Israel has had no success persuading Arafat to transfer them for trial in accordance with the interim agreements. The Interim Agreement and its predecessor, the Cairo Agreement, give Israel exclusive criminal jurisdiction over terrorist attacks against Israelis.¹⁰³ 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.¹⁰⁴ 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.¹⁰⁵ In December 1996, the Israel 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

¹⁰¹ See generally Boaz Ganor, *Israeli Counterterrorism in the Shadow of Oslo*, in THE SHALEM CENTER, POLICY VIEW (Dec. 10, 1995). The Head of the Palestinian General Intelligence Amin Al-Hindi told an interviewer, "[i]t is wrong to say that the Israeli side benefited from these arrangements [security coordination], as we have never revealed any piece of information that could harm the Palestinian side. Neither [two leaders of Hamas] . . . a detainee inside a PNA [PA] prison, nor any other Palestinian will be handed over to Israel. Interview with Amin Al-Hindi, *Security Demands*, BILADI JERUSALEM REP., Jan. 24, 1997, at 6.

¹⁰² Note for the Record, *supra* note 72, at 666; Interim Agreement, *supra* note 29, at 637.

¹⁰³ See *Disturbing Pattern of PA Non-Compliance Concerning the Transfer of Terror Suspects to Israel; None of the 16 Terror Suspects Requested by Israel Have Been Turned Over*, PEACE WATCH, Sept. 19, 1995.

¹⁰⁴ See *Transfer of Suspects in Criminal and Terrorist Acts Between Israel and the Palestinian Authority*, PEACE WATCH, Dec. 6, 1994.

¹⁰⁵ The PA claims to rely on a loophole in both the Cairo and the Interim Agreements that permits "the side receiving the request . . . [to] delay the transfer [of the suspect] for the duration of the detention or imprisonment." Thus, under this bad faith practice, a suspect requested by Israel is protectively sentenced by the PA courts, even though the relevant provisions in the agreements only permit the PA to delay transfer when the suspect is detained in connection with another crime. Interim Agreement, *supra* note 29, at 637; Cairo Agreement, *supra* note 29, at 693; Israel Government Press Office, State of Israel, *Transfer of Terror Suspects to Israel by the Palestinian Authority-Update*, PRESS BULL., Dec. 18, 1996, at 1.

Israel, the PA had not even responded to Israel's request.¹⁰⁶ 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.¹⁰⁷ 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."¹⁰⁸ 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.¹⁰⁹ 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.¹¹⁰

The Palestinians also reaffirmed their commitment to "preventing incitement and hostile propaganda, and confiscation of illegal firearms [e.g., those held by Hamas cells]."¹¹¹ 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

¹⁰⁶ See Israel Government Press Office, State of Israel, *Transfer of Terror Suspects to Israel by the Palestinian Authority-Update*, *supra* note 105, at 1.

¹⁰⁷ See *id.*

¹⁰⁸ See Jon Immanuel & Herb Keinon, *Rajoub: Israel Can Forget About Asking PA to Extradite PFLP Killers*, JERUSALEM POST, Dec. 19, 1996, at 1.

¹⁰⁹ See Note for the Record, *supra* note 72, at 665.

¹¹⁰ See Batsheva Tsur & Jon Immanuel, *Hanegbi to Demand Extradition of 33 Palestinian Suspects*, JERUSALEM POST, Feb. 28, 1997, at 20. Apparently a list of 31 such requests was submitted to the PA in late February. See Margot Dudkevitch, *Palestinian, Israeli Police Officials Meet*, JERUSALEM POST, May 14, 1997, at 2.

¹¹¹ See Note for the Record, *supra* note 72, at 666. The Interim Agreement requires the PA to disarm the rejectionist Palestinian groups. See Interim Agreement, *supra* note 29, at 563. See also Jon Immanuel, *PA's Gun-Licensing Campaign Lacks Pop*, JERUSALEM POST, May 12, 1995, at 9; *Weapons Control and the Palestinian Authority*, PEACE WATCH, June 1995 (underlining that Palestinian security services have failed to disarm militias in Gaza); *Palestinian Security Chief Blames "Foreign Quarters" for Gaza Bombs* (BBC Broadcast, ME/2275/MED/6, Apr. 10, 1995). PA officials, including Arafat, have been caught smuggling wanted terrorists, arms and explosives into PA-administered territory. See Yossi Ben Aharon, *The Bomb on Our Doorstep*, JERUSALEM POST, Nov. 5, 1997, at 8. The PA has failed to undertake a systematic crackdown on the thousands of unlicensed firearms held by Hamas, Islamic Jihad, the PFLP, the DFLP, and Fatah. See Israel Government Press Office, State of Israel, *Major PLO Violations of the Oslo Accords*, PRESS BULL., Oct. 25, 1996, at 2.

the goal of liberating Jerusalem.¹¹² Arafat also likened the DOP to the peace agreement signed by the Prophet Mohammed with the Quraysh tribe, and then abrogated ten years later.¹¹³ Arafat has lauded the memory of slain Palestinian terrorists by referring to them as martyrs.¹¹⁴ In September 1996, in the midst of the tension that followed Israel's opening of an exit to an archaeological 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, Netanyahu's office prepared a paper featuring ten such statements that Arafat had made in the previous months.¹¹⁵ 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."¹¹⁶ 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.¹¹⁷

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 shorthand for removing them from Jerusalem.¹¹⁸ The PA rejected

¹¹² *Jihad* is Arabic for "to strive" or "war against the unbeliever." See DAVID PRYCE-JONES, *THE CLOSED CIRCLE* 322 (1989).

¹¹³ See P.L.O. Chairman Yasser Arafat, *Speech on Jerusalem to South African Muslims in Johannesburg, South Africa* (May 10, 1994), in 24 J. PALESTINIAN STUD. 131, 132 (1994); David Makovsky, *Rabin: Arafat's Call for "Jihad" Puts Peace Process in Question*, JERUSALEM POST, May 18, 1994, at 1. But see Walid Awad, *Jihad of Peaceful Struggle*, JERUSALEM POST, Oct. 6, 1995, at 7.

¹¹⁴ See Ze'ev B. Begin, *Oslo and Mideast Logic*, JERUSALEM POST, Jan. 17, 1996, at 6. This reference was to Yihye Ayash, the master bomb-maker whose suicide bus bombings killed scores of Israelis.

¹¹⁵ See *Israelis Aim to Embarrass Arafat Over Remarks on Jihad* (BBC Broadcast, Nov. 27, 1996, ME/2781 MED/5). Arafat now has between 35,000 and 70,000 armed men, of which Israeli Labour Party Chairman fears will be used to initiate a guerrilla war against nearby Israeli targets. See Sarah Honig & Arich O'Sullivan, *Barak Warns of 'Guerrilla War' in the Territories*, JERUSALEM POST, Nov. 27, 1997, at 2.

¹¹⁶ Uriel Heilman, *UN Won't Counter Palestinian AIDS Allegation*, JERUSALEM POST, Apr. 11, 1997, at 18.

¹¹⁷ See Black, *Nails 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-Rahman, 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.¹¹⁹ Al-Rahman made no specific reference to which "agreements" or "international community's resolutions" supported this understanding. Al-Rahman 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.¹²⁰ 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.¹²¹

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 1997,¹²² and that "[p]risoner release issues will be dealt with in accordance with the Interim Agreement's provisions."¹²³ 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 Zananiri, *Targeted Institutions*, BILADI JERUSALEM TIMES, Mar. 7, 1997, at 3.

¹¹⁹ See PNA General Secretary Warns of Jihad if Jerusalem Offices are Closed (BBC Broadcast, ME/2861 MED/1, Mar. 7, 1997).

¹²⁰ See *id.* He warned of a possible *jihad* to drive home his point.

¹²¹ 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 Settlements, the Palestinian Institute for the Wounded, the Palestinian Energy Center, the Wafa News Agency, the Al-Quds University, the Al-Modassad 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.

¹²² See Note for the Record, *supra* note 72, at 665.

¹²³ *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 Palestinians in Israeli prisons. Interim Agreement, *supra* note 29, at 563. Thus far there has been no first stage redeployment of the IDF. It will happen only 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).

further Israeli redeployments (IDF pullbacks), which the Palestinians claim entitle them to exercise local self-rule over nearly the entire West Bank before September 1998.¹²⁴ Major differences exist between the sides over what constitutes a "military location," one of the categories of locations from which Israel is not required to pullback.¹²⁵ The Senior Palestinian negotiator, Ahmed Qreia, narrowly interprets the term.¹²⁶ Qreia stated, "[i]f Israel needs to keep soldiers on a certain mountain or patrolling borders in the Jordan Valley, we can discuss this. But we cannot discuss this if the Israelis want to use this clause in such a way which makes it clear that they are not serious [about redeploying]."¹²⁷ Dr. Nabil Sha'ath, the Minister of Planning and International Cooperation of the PA, demanded that Israel withdraw from 91% of the West Bank.¹²⁸ By contrast, Joel Singer, the former Legal Advisor to the Israeli Foreign Ministry who negotiated the Interim Agreement, wrote, "Israel has the right to unilaterally 'specify' which parts of the West Bank it considers to be a military location," noting that the accord does not use the usual adjective "agreed upon" before the term "military locations."¹²⁹ The

¹²⁴ Interim Agreement, *supra* note 29, at 559-60; David Makovsky, *Beyond Hebron . . . The Future is Now*, JERUSALEM POST, Dec. 13, 1996, at 8.

¹²⁵ 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.*

¹²⁶ *Id.* The Palestinian interpretation of the Interim Agreement term "military locations" as describing land from which Israel does not have to pullback 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 Timetable*, JERUSALEM POST, Jan. 16, 1997, at 1.

¹²⁷ Mark A. Heller, *Room To Negotiate Creatively*, *supra* note 126, at 5. This view ignores Israel's defensive positions in the Jordan River Valley, and its use of training areas and ranges in the Judean Desert. See *id.*

¹²⁸ *Palestinian Minister: We Demand Withdrawal from 91 Per Cent of West Bank* (BBC Broadcast, ME/2825 MED/1, Jan. 24, 1997).

¹²⁹ *Id.* This position is supported by an influential and politically unlikely source, Amnon Rubinstein, who is a law professor and leading left-wing Member of Knesset. See Evelyn Gordon, *Rubinstein: Arafat Wrong on Pullbacks*, JERUSALEM POST, Jan. 15, 1997, at 2. Rubinstein 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. Rubinstein 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 Rabin-Peres government construed it "flexibly and broadly." Gordon, *supra*, at 2. Furthermore, Rubinstein 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."¹³⁰ 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.¹³¹

Moreover, the Interim Agreement is silent as to the extent of the further redeployments.¹³² According to Article XI, paragraph 2(f) of this agreement, the "specified military locations" will be negotiated in the permanent status negotiations.¹³³ 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,¹³⁴ 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

permanent border, Israel would not be required to withdraw from that area during the interim period. *See id.*

¹³⁰ *A Halting Step Forward*, THE GUARDIAN, Jan. 17, 1997, at 18.

¹³¹ *See id.*

¹³² *See* Mark A. Heller, *Room To Negotiate Creatively*, *supra* note 126, at 5.

¹³³ Interim Agreement, *supra* note 29, at 562.

¹³⁴ Israeli National Infrastructure Minister Ariel Sharon, who voted against the Hebron Protocol in the Cabinet favors a permanent settlement that limits the Palestinians to "cantons" of territory comprising their cities and surrounding areas of dense population. The idea is to ensure that they have no territorial contiguity, to prevent them from establishing a viable state and to facilitate the IDF in carrying out security operations, even within the autonomous Palestinian cantons. *See* Silver, *supra* note 56, at 7. Interestingly, Prime Minister Netanyahu, before his election, wrote a book which advocated that the IDF have access to every part of the territory and that Palestinian autonomy should be limited to a system of four self-managing counties, each comprising a city and the adjacent towns and villages. BENJAMIN NETANYAHU, *A PLACE AMONG THE NATIONS: ISRAEL AND THE WORLD* 352-53 (1993). By yielding no more than twenty percent of the land area, this conception would place the vast majority of the Palestinian population under Palestinian administration, while facilitating IDF freedom of action against terrorists. *Id.* More recently, an official in the Prime Minister's office has indicated support for limiting Israeli territorial presence in the West Bank to two columns, one in the hill country north and south of Jerusalem and the other in the Jordan River Valley. *See* David Makovsky, *Beyond Hebron . . . The Future is Now*, JERUSALEM POST, Dec. 13, 1996, at 8. By controlling nearly 50% of the territories, Israel would retain most of the substantial Jewish Settlements and enjoy a strong defensive border to deter attack from the east. *Id.*

directly to the permanent status issues.¹³⁵ He suggested that the talks culminate with a Camp David style summit.¹³⁶

Arafat objected and asserted that, "[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]."¹³⁷ He identifies as among those points the "safe corridor,"¹³⁸ the airport,¹³⁹ the seaport,¹⁴⁰ prisoners,¹⁴¹ female prisoners,¹⁴² water and sewage,¹⁴³ financial and eco-

¹³⁵ *See* David Makovsky, *Beyond Hebron . . . The Future is Now*, *supra* note 134, at 8; David Makovsky & Michal Yudelman, *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* Zalman Shoval, *After Hebron: Prospects for the Peace Process*, JERUSALEM LETTER/VIEWPOINTS, Mar. 16, 1997, at 1.

¹³⁶ *See* Makovsky & Yudelman, *PM: Accelerate Final Status: Pledges Palestinians Won't Lose Pullbacks if Talks Fail*, *supra* note 135, at 1.

¹³⁷ *Arafat comments on implementation of Hebron Accord, Other Issues* (BBC Broadcast, ME/2835 MED/1, Feb. 3, 1997). *See* Department of Negotiations of the PLO & Palestinian National Authority, *34 Violations of the Interim Accords*, BILADI 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 Yudelman, *PM: Accelerate Final Status: Pledges Palestinians Won't Lose Pullbacks if Talks Fail*, *supra* note 135, at 1.

¹³⁸ 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-Christopher Meeting Disappoints PA*, JERUSALEM POST, June 26, 1996, at 2.

¹³⁹ The interim agreements give Israel the right to suit operation of Arafat's Dehania 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.

¹⁴⁰ 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.

¹⁴¹ *See* Interim Agreement, *supra* note 29, at 569. The Interim Agreement commits Israel to release male prisoners in certain categories (i.e., detainees and prisoners imprisoned for security offenses not involving death or serious injury and persons who have served more than two thirds of their sentence) and requires Israel

conomic matters,¹⁴⁴ crossings with Jordan and Egypt, and the issue of displaced persons."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.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,¹⁴⁷ although they may be viewed as contrary to the spirit of the peace process.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.

¹⁴² 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 "one 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 effectuated. See Israel Government Press Office, State of Israel, *Netanyahu Press Conference, Washington D.C.*, 7.4.97, PRESS BULL. 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. Zananiri, *Women Prisoners Go Free*, BILADI JERUSALEM TIMES, Feb. 14, 1997, at 1.

¹⁴³ 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.

¹⁴⁴ Arafat has called the Israeli measures "a blockade," 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 Amira Hess, *Drop of 25% in Employment in Gaza Due to Closure*, HA'ARETZ, Oct. 20, 1995, at A2.

¹⁴⁵ Khazen, *supra* note 144, at 6.

¹⁴⁶ See *id.*

¹⁴⁷ See Michael Widlanski, *Broken Agreements?*, *supra* note 142, at 8.

¹⁴⁸ See Zak, *supra* note 139, at 6.

of the PA.¹⁴⁹ However, it is clear that certain provisions of the Hebron Protocol go beyond the management of the city of Hebron during the interim period, and involve issues which have far more reaching consequences.

II. PROBLEMS ARISING SINCE THE SIGNING OF THE PROTOCOL

A. Immediate Doubts

Arafat gave a conciliatory speech on his arrival in the "liberated" sector of Hebron.¹⁵⁰ Clearly, the Palestinians registered one major gain in the Hebron Protocol. With considerable help from the United States,¹⁵¹ they forced Netanyahu (and by extension his Likud party)¹⁵² to alter his previous public opposition to the peace process by having him affirm his commitment to the peace process,¹⁵³ and its underlying concept commonly called "land-for-peace."¹⁵⁴ The Voice of Palestine radio station noted that "Netanyahu, who came to power with anti-peace slogans and refusing to meet brother Yasser Arafat, now smilingly shakes hands with Arafat and signs the Hebron agreement with him."¹⁵⁵

Netanyahu's news conference on the Hebron Protocol emphasized that the IDF was not "leaving Hebron" but rather "redeploying in a part of Hebron."¹⁵⁶ He denied that he had abandoned his party's ideology and asserted that "[w]e found a certain reality on election's eve and we had to contend with a new situation."¹⁵⁷ He claimed to, through negotiation, have improved the original terms negotiated by the predecessor government regarding Hebron.¹⁵⁸

¹⁴⁹ When the PA heard that Israel was preparing a list of alleged Palestinian violations of the interim agreements, it drew up its own list of Israeli violations to present in response. "If they have 49 objections, then we have 490, but let's sit down and negotiate," said Arafat aide Nabil Abu Rudeineh. Immanuel, *Netanyahu-Christopher Meeting Disappoints PA*, *supra* note 138, at 2. This artifice is indicative of the unraveling of the peace process. Instead of defending its conduct, both parties, when criticized for non-compliance, have assumed a damage control mode that can be summed up by the retort, "So what-the other side violates more than we do."

¹⁵⁰ *Id.*; Elias M. Zananiri, *Hebron Under the PNA-the First Three Days*, BILADI JERUSALEM TIMES, Jan. 24, 1997, at 8.

¹⁵¹ See Black, *Likud Government Crosses the Rubicon*, *supra* note 12, at 12.

¹⁵² See *id.*

¹⁵³ See A Halting Step Forward, THE GUARDIAN, Jan. 17, 1997, at 18.

¹⁵⁴ Melinda Liu & Joseph Contreras, *On to the Next Step*, NEWSWEEK, Jan. 30, 1997, at 46.

¹⁵⁵ *Palestinian Minister Explains Reasons for Opposition to Hebron Deal* (BBC Broadcast, ME/2820 MED/6, Jan. 16, 1997).

¹⁵⁶ *Israeli Prime Minister's News Conference on Hebron Accord* (BBC Broadcast, ME/2820 MED/2, Jan. 16, 1997).

¹⁵⁷ *Id.*

¹⁵⁸ See *id.*

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."¹⁵⁹ 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."¹⁶⁰ Two weeks after approving the Hebron Protocol, he accused Israel of "procrastination" and "evasion" to avoid implementing the Hebron protocol.¹⁶¹ 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.¹⁶²

Arafat also made references to a secret letter written to him from Warren Christopher that apparently had not been shown to Netanyahu.¹⁶³ 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-à-vis its Israeli ally.¹⁶⁴ 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.¹⁶⁵ 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."¹⁶⁶ 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.¹⁶⁷

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

¹⁵⁹ See *Palestinian Minister: We Demand Withdrawal from 91 Percent of West Bank* (BBC Broadcast, ME/2825 MED/1, Jan. 22, 1997).

¹⁶⁰ See *Arafat Says Jerusalem is Palestinian Capital "Come What May"* (BBC Broadcast, ME/2827 MED/1, Jan. 25, 1997).

¹⁶¹ *Arafat Comments on Implementation of Hebron Accord, Other Issues* (BBC Broadcast, ME/2835 MED/1, Feb. 3, 1997).

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Arafat Criticizes Israeli "Delay" in Implementing Hebron Accord* (BBC Broadcast, ME/D2833/MED, Jan. 31, 1997).

¹⁶⁵ Liu & Contreras, *supra* note 154, at 46. Dennis Ross even drafted the language of the Hebron Protocol.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 47.

referred to the Protocol as "a peace agreement with a fuse attached."¹⁶⁸ 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 intention¹⁶⁹ 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*.¹⁷⁰ In the aftermath of Israel's commencing construction of *Har Homa*, the on-again off-again permanent status talks have been suspended by Arafat.¹⁷¹

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.

¹⁶⁹ See Bill Hutman, *Jerusalem Building Plans Speeded Up*, JERUSALEM POST, Dec. 23, 1993, at 2; Bill Hutman, *Panel Okays Building Plans for Har Homa*, JERUSALEM POST, Mar. 20, 1996, at 1.

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] [w]hen the former Labor government lost the elections and the Likud formed the current one under Netanyahu, settlement activities increased." Elias M. Zananiri, *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 Zak, *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 Wohlgelemer, *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 Tatro, *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. *Id.* Israel has since announced 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.¹⁷² 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.¹⁷³ By the time the meeting ended, all the participants understood that Arafat was giving them free rein to carry out terrorist attacks against Israel.¹⁷⁴ The following day, Arafat released from prison Ibrahim Maqadimah, despite the opposition of the heads of the Palestinian Preventative Security Service and other Palestinian security personnel.¹⁷⁵ Maqadimah is the leader of the secret military wing of Hamas, which is responsible for launching many attacks against Israelis and Palestinian policemen.¹⁷⁶ They released dozens of other security prisoners as well.¹⁷⁷

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-

¹⁷² Arafat Gives "Green Light" for Attacks (BBC Broadcast, Mar. 17, 1997, ME/2871 MED/6).

¹⁷³ In late March and April, fierce Palestinian riots continued on a daily basis in Hebron. See Margot Dudkevitch, *Hebron Clashes Continue Over the Weekend*, JERUSALEM POST, Apr. 13, 1997, at 2; Jon Immanuel, *Riots Continue in the Territories*, JERUSALEM POST, Mar. 27, 1997, at 1. Palestinian Policemen were, in certain instances, throwing rocks and firebombs at the IDF and Israeli Border Police. See *id.* Arafat's Security Chief in Hebron, Jibril Rajoub, organized the recent riots over *Har Homa*. See P. David Hornick, *Yes, Aren't Dreams Lovely?*, JERUSALEM POST, Mar. 26, 1997, at 6. Arafat equated Israeli settlements with Palestinian terrorism when he explained, "while peace and terrorism cannot go hand in hand, nor can peace and settlements." Jon Immanuel, *Arafat: Peace Process Near Breakdown*, JERUSALEM POST, Mar. 16, 1996, at 1.

¹⁷⁴ 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. Zananiri, *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 declare 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).

¹⁷⁵ See Zananiri, *Security Co-ordination Renewed*, *supra* note 174, at 1.

¹⁷⁶ See *id.*

¹⁷⁷ See GSS Confirms Palestinians Released Prisoners, JERUSALEM POST, Mar. 9, 1997, at 2.

lem."¹⁷⁸ 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.¹⁷⁹

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 Interim 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."¹⁸⁰ The Interim Agreement also specified that the pullback would take place in three additional stages and that they would be completed by mid-1997.¹⁸¹ 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.¹⁸² 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."¹⁸³ Arafat rejected Israel's announcement, claiming that it involved "no more than 2% of the occupied land" and that it was "again a gross violation of what has been agreed."¹⁸⁴ Palestinian public opinion was nearly totally opposed to Israel's decision on this issue, with 95% of those polled label-

¹⁷⁸ Sarah Honig & Michal Yudelman, *PM: No Halt to Har Homa*, JERUSALEM POST, Apr. 4, 1997, at 1. Even as Prime Minister Netanyahu was in the White House, discussing *Har Homa* and the peace process with President Clinton, Israeli Housing Ministry officials were putting the finishing touches on plans for a new, and potentially controversial neighborhood in Jerusalem. See Steve Leibowitz, *The Infinite Plan*, IN JERUSALEM, Apr. 17, 1997, at 1. Detailed maps have already been prepared for a new Jewish neighborhood on *Givat Hamatos* where currently some 200 Jewish immigrant families live in mobile homes. See *id.*

¹⁷⁹ DOP, *supra* note 2, at 1530. See Israel Government Press Office, State of Israel, *Netanyahu Press Conference, Washington D.C.*, 7.4.97, *supra* note 142, at 2.

¹⁸⁰ DOP, *supra* note 2, at 1533. See Interim Agreement, *supra* note 29, at 569.

¹⁸¹ See Interim Agreement, *supra* note 29, at 569.

¹⁸² See Reisner, *supra* note 36, at 15.

¹⁸³ Charles Krauthammer, *Final Status, Final Peace*, JERUSALEM POST, Apr. 8, 1997, at 6.

¹⁸⁴ See Palestinian President Yasir Arafat's Address (BBC Broadcast, FE/D2876/S3, Mar. 23, 1997).

ing it as unsatisfactory.¹⁸⁵ The Palestinians had been hoping for a transfer of some 30% of the land.¹⁸⁶

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.¹⁸⁷ 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.¹⁸⁸

D. Threats of Assassination

The assassination of then Israeli Prime Minister Yitzhak Rabin on November 4, 1995 by an Israeli opposed to the peace process¹⁸⁹ offered a reminder that assassination of heads of state who opt for peace is not uncommon in this region.¹⁹⁰ 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.¹⁹¹ Clearly

¹⁸⁵ See Immanuel, *Arafat: Peace Process Near Breakdown*, *supra* note 173, at 1; David Makovsky, *US Backs Israel's Right to Designate Extent of Pullbacks*, JERUSALEM POST, Mar. 11, 1997, at 2.

¹⁸⁶ Elias M. Zananiri, *Gaza Conference to Address Future of Peace Process*, BILADI JERUSALEM TIMES, Mar. 14, 1997, at 1.

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] in 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/MED/1, 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.*

¹⁸⁸ See David Makovsky, *Netanyahu Believes U.S. Will Demand 12 Percent Pullback*, HA'ARETZ (Eng. ed.), Dec. 9, 1997, at A1.

¹⁸⁹ See Raine Marcus & Herb Keiron, *Assassin: God Told Me To Kill Rabin*, JERUSALEM POST, Nov. 5, 1995, at 1. Ironically, Rabin was largely oblivious to the risk he ran. See Yossi Hatoni, "I Feel Good and Secure" Says Rabin at Visit, Heavily Surrounded by Bodyguards, HA'ARETZ, Oct. 13, 1995, at A2.

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 Bashir Gemayel of Lebanon. See RICHARD B. PARKER, *THE POLITICS OF MISCALCULATION IN THE MIDDLE EAST* 179-80 (1993).

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

the permanent status talks cannot possibly succeed without both sides making far-reaching concessions.

Many Israelis and Palestinians bitterly oppose the process, even in its interim stage.¹⁹² 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,"¹⁹³ and refers to the DOP as "an instrument of Palestinian surrender, a Palestinian Versailles."¹⁹⁴

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.

Hebron Protocol as "peace by subjugation," and Hamas vowed to continue the fight against Israel. See Black, *Likud Government Crosses the Rubicon*, *supra* note 12, at 12. Iranian government radio described it as "another humiliating setback" for the "Palestinian nation." *Iranian Radio Commentary Says Hebron Agreement Another Humiliating Setback* (BBC Broadcast, ME/2818 MED/5, 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, 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).

¹⁹² See Justus R. Weiner, *Peace and Its Discontents: Israeli and Palestinian Intellectuals Who Reject the Current Peace Process*, 29 CORNELL INT'L L.J. 501 (1996).

¹⁹³ EDWARD SAID, *PEACE AND ITS DISCONTENTS: ESSAYS ON PALESTINE IN THE MIDDLE EAST PEACE PROCESS* 7 (1996).

¹⁹⁴ *Id.*

....
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 2 - 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 Tsomet, Gonen Segev 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 from prison.

....
... 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.¹⁹⁵

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.¹⁹⁶ Not surprisingly, a number of plots to kill him have been intercepted¹⁹⁷ including some during his frequent trips abroad.¹⁹⁸ After the

¹⁹⁵ P. David Hornik, *Before the Heavens Close*, JERUSALEM POST, Feb. 25, 1997, at 6.

¹⁹⁶ See Lisa Beyer, *Caution: Speed Bumps Ahead*, TIME, Sept. 27, 1993, at 30; Mary Curtius, *Crowd Assaults Arafat as He Tries to Pray for Slain Activist*, L.A. TIMES, Nov. 4, 1994, at 1; Douglas Davis, *Report: Rabin told Arafat of Plans by Hamas, Jihad to Assassinate*, JERUSALEM POST, Dec. 20, 1993, at 2; *PLO Reports Recent Plot to Blow Up Arafat's Plane*, JERUSALEM POST, Oct. 10, 1993, at 1; Russell Watson & Jeffrey Bartholet, *They've Got a Deal*, TIME, Sept. 20, 1993, at 11, 12; Ahmad Jibril's PFLP-GC Attacks Arafat, *Calls for Support for Syrian Line on Peace* (BBC Broadcast, ME/D2684/ME1, Aug. 5, 1996); *Hamas Leaflet Condemns Arrests by PNA, Warns of Civil War* (BBC Broadcast, ME/2232/MED1, Feb. 18, 1995); *Islamic Jihad Warns Palestinian Authority Against Detentions* (BBC Broadcast, ME/2274/MED1, Apr. 10, 1995); *Palestinian Sources Report Attempt on Life of PNA Military Commander* (BBC Broadcast, ME/2276/MED/1, Apr. 11, 1995); *Report on Ahmad Jibril's Views on Opposition to Arafat, Assassination Plans* (BBC Broadcast, ME/1828/MED1, Oct. 25, 1993). Israeli radicals have also called for Arafat's assassination. See Herb Keinon, *Gonen: Every Jew Commanded to Kill Arafat*, JERUSALEM POST, June 9, 1994, at 2.

¹⁹⁷ See Alon Pinkas & Jon Immanuel, *Israeli Sources: Bomb Defused in Arafat's Office*, JERUSALEM POST, May 24, 1995, at 1. See also *Hamas Agrees With Iranian Proposal to Assassinate Arafat*, JERUSALEM POST, Sept. 10, 1995, at 1; Hillel Kuttler, *Arafat Tells Congressmen of Assassination Attempt*, JERUSALEM POST, Mar. 6, 1997, at 2.

signing of the Hebron Protocol there was a report of an extremist group threatening Netanyahu's life.¹⁹⁹ Consequently, the IDF issued nearly a dozen administrative detention orders against right-wing Israeli activists in Hebron and the vicinity.²⁰⁰

Also in danger are the ministers, senior peace negotiators and others identified with the peace process. For example, Muhammad Abbas ("Abu Mazen"),²⁰¹ 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."²⁰² When in March 1997, he resigned from his position,²⁰³ ostensibly to protest Israeli moves,²⁰⁴ 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.²⁰⁵ Several members of the cabinet of Rabin's successor Prime Minister Shimon Peres (and Peres himself) were the objects of death threats.²⁰⁶

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

¹⁹⁸ See *Arafat Says He Was Also on Hit List at African Summit*, JERUSALEM POST, July 2, 1995, at 2; *Arafat Says Pakistan Thwarted Assassination*, JERUSALEM POST, Apr. 3, 1997, at 2.

¹⁹⁹ See Theodore Levite, *Israel Seals Historic Deal to Secure Peace*, EVENING STANDARD, Jan. 15, 1997, at 1; *Report: Extremist Group Threatens PM*, JERUSALEM POST, Jan. 21, 1997, at 2.

²⁰⁰ See Arie O'Sullivan, *IDF Begins Hebron Redeployment*, *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 filled 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. A respected pragmatist, Abu-Mazen's book *Through Secret Channels* reconstructs the clandestine diplomatic activities that led to the DOP. MAHMOUD ABBAS, *THROUGH SECRET CHANNELS* (1995).

²⁰² See *Islamists Plotted to Kill Me*, JERUSALEM POST, Feb. 25, 1997, at 4.

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

²⁰⁴ Nabil A'mro, *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][t]he Israeli side is violating the bases of the negotiating process . . . [and] [i]t is completely deviating from the agreements." *Palestinian Minister Says Abbas Resigned Because Talks With Israel "Worthless"* (BBC Broadcast, ME/2865 MED/3, Mar. 10, 1997).

²⁰⁵ See Reuven Shapira, *Police: Right Organized for Violent Activity and Harassment of Elected Officials*, HA'ARETZ, Aug. 4, 1995, at A2.

²⁰⁶ See David Makovsky, *PM and Ministers Targets of Death Threats*, JERUSALEM POST, Feb. 19, 1996, at 1.

the current peace process.²⁰⁷ Should he meet an untimely end, his likely replacement is a radical cleric from the Islamic fundamentalist Hamas organization,²⁰⁸ who for core doctrinal reasons refuses to recognize Israel's legitimacy²⁰⁹ regardless of its boundaries and regularly takes "credit" for terrorist activities against Israeli targets.²¹⁰ This person would almost certainly precipitate the abandonment or complete breakdown of the peace process.²¹¹

Interrelated with the overhanging 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 Protocol²¹² even though it provided the Palestinian Authority with new authority to rule over 80% of the city.²¹³ A leading Palestinian newspaper referred to the long-awaited redeployment as "semi-liberation" and reported that already on the first day Palestinians were throw-

²⁰⁷ See NEIL C. LIVINGSTONE & DAVID HALEVY, *INSIDE THE PLO* 72 (1990); DAVID MAKOVSKY, *MAKING PEACE WITH THE PLO: THE RABIN GOVERNMENT'S ROAD TO THE OSLO ACCORD* 2 (1996).

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 PNA [PA]." Ziad Abu-Amr, *Report From Palestine*, 94 J. PALESTINIAN STUD. 40, 45 (1995). See also *Hamas Has Plans to Topple Palestinian Authority*, JERUSALEM DISPATCH, May-June 1995, at 8.

²⁰⁹ See Douglas Davis, *Hamas Activist Rantisi Vows to Continue Fight Against Israel*, JERUSALEM POST, Apr. 25, 1997, at 17; Jon Immanuel, *Hamas Official: Strategy Towards Israel Remains Unchanged*, JERUSALEM POST, Apr. 23, 1997, at 2.

²¹⁰ Article 13 of the Hamas Covenant, for example, denounces all peace initiatives stating, "[t]here is no solution to the Palestinian problem except by jihad." *The Charter of Allah: The Platform of the Islamic Resistance Movement (Hamas)*, 2 ISR. AFF. 273 (1995). See generally RONNI SHAKED & AVIVA SHABI, *HAMAS, PALESTINIAN ISLAMIC FUNDAMENTALIST MOVEMENT* (1994); Justus R. Weiner, *Israel's Expulsion of Islamic Militants to Southern Lebanon*, 26 COLUM. HUM. RTS. L. REV. 357, 380-85 (1995).

²¹¹ While serving as Foreign Minister, Shimon Peres said that should Hamas win the elections for the PLC, the Israeli Government would cancel the interim peace agreements. See *Peres: If Hamas Wins Elections In Territories - We Will Cancel Agreement*, DAVAR, Dec. 2, 1993, at A1.

²¹² See Ian Black, *Muted Hebron Greets Arafat the Diplomat*, THE GUARDIAN, Jan. 30, 1997, at 1; Elias M. Zananiri, *Hebron Under the PNA-the First Three Days*, BILADI JERUSALEM TIMES, Jan. 24, 1997, at 8.

²¹³ This area houses 100,000 Palestinian Hebronites. See Patrick Cockburn, *A New Berlin on the West Bank*, THE INDEPENDENT, Jan. 18, 1997, at 11.

ing stones at Jewish settlers.²¹⁴ Their dissatisfaction stemmed from the fact that some 20% of the city, including the al-Ibrahimi 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

Israelis living in Hebron were despondent, discouraged that Netanyahu had caved in under overpowering pressure.²¹⁷ Noam Arnon, 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 Eilon 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

²¹⁴ Elias M. Zananiri, *Hebron Under the PNA-the First Three Days*, BILADI JERUSALEM TIMES, Jan. 24, 1997, at 8.

²¹⁵ See *id.*

²¹⁶ See *id.*

²¹⁷ See *id.* Palestinian-American Professor Edward Said accused Dennis Ross of adopting "Israel's political concerns and exaggerated obsessions with security and terror" and "plac[ing] Arafat under impossible pressure." Edward W. Said, *No Reason to Rejoice*, THE GUARDIAN, Feb. 15, 1997, at 21.

²¹⁸ See Patrick Cockburn, *Palestinians Await Fruits of Hebron Deal*, THE INDEPENDENT, Jan. 18, 1997, at 11.

²¹⁹ See Ian Black, *Likud Government Crosses the Rubicon*, *supra* note 12, at 12.

²²⁰ Ian Black, *Bad Old Days Cast a Shadow over Hebron's New Dawn*, THE GUARDIAN, Jan. 18, 1997, at 13.

²²¹ See *id.*

²²² See Yosef Goell, *Polls, Policy & The Public*, JERUSALEM POST, June 3, 1996, at 6; Dan Leon, *Israeli Public Opinion Polls on the Peace Process*, 2 PALESTINE-ISR. J., 56, 57 (1995).

²²³ See Uri Avnery, *And the Peace Camp Slept*, JERUSALEM POST, July 1, 1996, at 6.

²²⁴ Patrick Cockburn, *Israeli Troops Begin Hebron Pull-out*, *supra* note 40, at 14.

²²⁵ *Majority Supports Palestinian State, Fears War-Poll*, JERUSALEM POST, Apr. 3, 1997, at 1.

²²⁶ *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."²²⁷ Yet, independent of the Hebron Protocol, Arafat's autocratic governance,²²⁸ inefficient administration,²²⁹ and widespread violation of human rights²³⁰ have generated considerable public dissatisfaction and

²²⁷ See *Arafat Marks Independence Declaration Anniversary* (BBC Broadcast, ME/2772/MED/5, Nov. 15, 1996). Arafat's advisors have been accused by a leading Palestinian-American intellectual of accepting "material advantages . . . in return for continuing to work for a man whose tactics they loathe and whose mistakes over the past few years they know-and say openly-have brought us as Palestinians and Arabs to one of the lowest points in our history." Edward W. Said, *No Reason to Rejoice*, THE GUARDIAN, Feb. 15, 1997, at 21. Other than the "tiny handful of wealthy businessmen, security chief and PA employees," the daily lives of Palestinians "have become a good deal worse." *Id.*

²²⁸ Like other Middle Eastern autocrats, Arafat has even taken to having out-size portraits of himself placed around the self-rule territories. See David Hirst, *Arafat in Quandary as Dream Fades*, THE GUARDIAN, Mar. 29, 1997, at 19. During Christmas, bunting bearing the photographs of Arafat was strung across Manger Square in Bethlehem, and a three-story high likeness of him was affixed prominently to a building across from the Church of Nativity. See Shyam Bhatia, *No Room at the Inn for Anyone but Arafat*, THE GUARDIAN, Dec. 27, 1996, at 1; Interview with Paul Lambert, Legal Researcher, Jerusalem Center for Public Affairs, in Jerusalem (Jan. 2, 1997).

²²⁹ A Palestinian study on the performance of the PA has uncovered widespread incompetence and corruption. Some 55% of those surveyed said they never received the services for which they applied. Muhsen Ifranji, *PNA Bureaucracy Under Fire*, BILADI JERUSALEM TIMES, Jan. 3, 1997, at 7. In addition 65% complained that the officials were absent during office hours and 43% observed that the majority of officials were inefficient or incompetent. See *id.*

²³⁰ Although the PA is not bound by the body of customary and conventional law pertaining to observance of human rights by sovereign entities, Arafat gave an indication on September 30, 1993 that the PA accepted human rights standards and would ensure their respect in the self-ruled areas. PALESTINIAN CENTRE FOR HUMAN RIGHTS, *CRITIQUE OF PRESS LAW 1995*, at 30 (1995). Abu Mazen wrote forcefully in his book that the Palestinian entity "must, before all else, respect human rights . . . and [be] establish[ed] . . . on the bases of modern democratic principles, total freedom." ABBAS, *supra* note 201, at 223. While the scope of this article prevents discussion of this problem in depth, suffice it to note that Arafat's representations and Abu Mazen's hopes have not been realized in practice. See HUMAN RIGHTS IN THE OCCUPIED TERRITORIES SINCE THE OSLO ACCORDS: STATUS REPORT (Palestinian Human Rights Monitoring Group & B'Tselem, 1996); Justus R. Weiner, *An Analysis of the Oslo II Agreement in Light of the Expectations of Shimon Peres and Mahmoud*

translated into a decline in popular support for the peace process among Palestinians.²³¹

The economic travails of the PA²³² and the consequent deprivation of the Palestinian public²³³ are widely attributed to Israel's closure policy

Abbas, 17 MICH. J. INT'L L. 667 (1996); Justus R. Weiner, *Human Rights in Limbo During the Interim Period of the Israeli-Palestinian Peace Process: Review, Analysis and Implications*, *supra* note 51, at 795-818; Jon Immanuel, *PA: Prisoner Killers Will be Prosecuted*, JERUSALEM POST, Feb. 4, 1997, at 2. One of the most blatant manifestations of the depth of the problem was the announcement by then PA Justice Minister Freih Abu Medein that Palestinians selling "even one inch" of land to Jews or Israelis would be extrajudicially executed. See Associated Press, *Israel: Arafat's Guard Murdered Land Broker*, May 13, 1997, <iris@shamash.org>. Abu Medein's announcement was seconded by the PA appointed Mufti of Jerusalem, Ikrameh Sabri, who added a religious edict that such persons were infidels and could not be buried in Moslem cemeteries. See Nabil Atallah, *Fatwa on Land Deals*, BILADI JERUSALEM TIMES, May 16, 1997, at 2. Shortly thereafter, two Palestinian land dealers were kidnapped and murdered gangland-style by Force 17, Arafat's personal bodyguard. See Jon Immanuel, *Death of a Land Salesman*, JERUSALEM POST, May 23, 1997, at 8; Hillel Kuttler, *Gilman Slams PA Death Penalty for Selling Land to Jews*, JERUSALEM POST, May 14, 1997, at 2. The U.S. State Department called the decree "reprehensible." *Independence Without Freedom*, JERUSALEM POST, May 23, 1997, at 4.

²³¹ See Uri Nir, *The Euphoria is Over in Gaza*, HA'ARETZ, July 12, 1995, at B2. Arafat himself has declined in popularity as well. See Jon Immanuel, *Poll: Palestinians Losing Faith in Peace Process*, JERUSALEM POST, May 27, 1997, at 2.

²³² See Alon Gideon et al., *Shahak Warns: Continuing Closure Might Cause Fall of P.A.*, HA'ARETZ, Apr. 26, 1995, at A1; Nadav Haetzni, *Gaza is on the Brink of Bankruptcy*, MA'ARIV, May 5, 1995, (Supp.) at 18; UN: *Palestinian Income Down 23% Since '92*, JERUSALEM POST, Nov. 3, 1996, at 2. In the estimation of Professor Gerald Steinberg:

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 have 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 creation of a state, under such conditions, would change this.

Gerald M. Steinberg, *Palestinian Statehood, Autonomy or Confederation: The Impacts on Israeli Security*, JERUSALEM LETTER/ 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 Immanuel, *PA Auditor Finds 40% of Budget Wasted or Misused*, JERUSALEM POST, May 25, 1997, at 1.

²³³ 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 Immanuel, *Poll: Palestinians*

which has kept most Palestinians out of the Israeli labor market since the wave of suicide bombings in February and March 1986.²³⁴ While Israel's closure policy²³⁵ intended to keep out terrorists, is not a violation of the interim agreements,²³⁶ 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.²³⁷

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.²³⁸ Even more troubling for the future of the peace process as a whole, almost 41% favor suicide attacks against Israelis.²³⁹ 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

Losing Faith in Peace Process, *supra* note 231, at 2.

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 Imad Sa'ada, *1996-GNP Dropped by 25%*, BILADI 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 "[t]he 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 of the ability to earn a living." David Makovsky, *Netanyahu: Contacts with Palestinians at All Levels*, JERUSALEM POST, June 28, 1996, at 7.

²³⁶ See *Easing the Tension*, JERUSALEM POST, Oct. 13, 1996, at 6.

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. Khosam Hadad, a member of the Palestinian Legislative Council claims, "[o]ne of 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, 4. 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.

²³⁸ See Jon Immanuel, *Arafat: Peace Process Near Breakdown*, *supra* note 185, at 1.

²³⁹ See *id.*

5, 1997.²⁴⁰ This poll also found that 30% favor continued negotiations, while 37% want to abandon the peace process, and 19% want to continue it with new delegates. The survey indicated growing support for Hamas, with 18% saying they would support it in local elections and 13% more supporting Islamic independents. Support for Arafat's Fatah branch of the PLO was 26.6%.

However, cause for optimism for the peace process arose out of a recent survey of Palestinian public opinion suggesting that, by a narrow majority, most would accept a Palestinian state comprising less than all of the West Bank and Gaza Strip.²⁴¹ The strongest opposition was registered in the responses to the question as to whether Jerusalem should remain united under Israeli control, with the establishment of a Palestinian capital in neighborhoods that are outside the current municipal boundaries. This proposal, which also posited that the Muslim and Christian holy sites would come under Palestinian control, was favored by 27% and opposed by 68%.²⁴²

Netanyahu, who was elected Prime Minister by a narrow majority in May 1996²⁴³ on a platform that was highly critical of the peace process as conducted by his predecessors,²⁴⁴ has been weakened by a domestic political scandal known as the Bar-On affair.²⁴⁵ This crisis led to calls from

²⁴⁰ Jon Immanuel, *Palestinians Favor Bombings Over Peace Process-Poll*, JERUSALEM POST, Apr. 6, 1997, at 1.

²⁴¹ See Jon Immanuel, *Poll: Most Palestinians Would Accept Limited State*, JERUSALEM POST, Apr. 17, 1997, at 2.

²⁴² See *id.*

²⁴³ In the contest for Prime Minister, Netanyahu defeated Peres by less than one percent of the vote cast. See Gerald M. Steinberg, *Let the Healing Begin*, JERUSALEM POST, June 2, 1996, at 6.

²⁴⁴ See Barry Rubin, *Turn Right at Oslo, or Continue Down the Road*, JERUSALEM POST, May 31, 1996, at 11.

²⁴⁵ The Bar-On affair concerned an apparent deal between senior Netanyahu aides and the head of the *Shas* religious party whose votes the government sought (and received) in the Knesset ballot to ratify the Hebron Agreement. Roni Bar-On is an underqualified lawyer who was appointed Attorney General but was forced to resign 48 hours later due to a public outcry over his meager qualifications. See Raine Marcus, *Anatomy of the Affair*, JERUSALEM POST, Apr. 16, 1997, at 2. Shortly thereafter, an Israel Television journalist alleged that Member of Knesset Aryeh Deri (the head of *Shas* religious party who is currently on trial for corruption) made his party's votes on the Hebron Protocol contingent upon the appointment of Bar-On as Attorney General, in the belief that Bar-On would authorize a plea bargain. See *id.* This scandal has been labeled "Israel's Watergate" by some in the international media, although the Prime Minister was apparently only blameworthy for poor judgment rather than actual criminal conduct aggravated by a coverup. See Calev Ben-David, *The Nixon Syndrome*, JERUSALEM POST MAG. Apr. 25, 1997, at 4; Herb Keinon, *Israel's Watergate*, JERUSALEM POST, Apr. 18, 1997, at 3. But see Elli Wohlgelehter, *Bar-On=Watergate? No Comparison*, JERUSALEM POST, Apr. 25, 1997, at 8.

the political opposition for Netanyahu to resign and to hold new elections.²⁴⁶ Although he was not indicted,²⁴⁷ 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.²⁴⁸ Although for the moment Netanyahu seems to be riding out this crisis, further revelations could bring down the government.²⁴⁹

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.²⁵⁰ 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."²⁵¹ 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

²⁴⁶ See Sarah Honig, *An Earthquake Shakes the Political Arena*, JERUSALEM POST, Apr. 17, 1997, at 3.

²⁴⁷ Government Press Office, State of Israel, *Excerpts From the Decision of the Attorney-General and the State Attorney Regarding the Inquiry Into the Bar-On Affair*, PRESS BULL., Apr. 20, 1997. Insufficient evidence was found to indict the Prime Minister for breach of trust. *Id.*

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. 25, 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, Jamil 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, *Admiring Democracy from a Distance*, JERUSALEM POST, May 9, 1997, at 8. PA Attorney General Khaled Qidreh 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*, BILADI 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.

²⁵⁰ See Marilyn Henry, *US to Continue Peace Drive Despite Bar-On Affair*, JERUSALEM POST, Apr. 18, 1997, at 5.

²⁵¹ Jon Immanuel, *Hamas Official: Strategy Towards Israel Remains Unchanged*, JERUSALEM POST, Apr. 23, 1997, at 2.

if Netanyahu were forced to resign, there is no certainty that his successor in office, whether from the Likud or Labor party, would prove more accommodating to the Palestinians.

G. Dispute Resolution Mechanisms

The DOP and the Interim Agreement provide, in virtually identical language, a three-tiered blueprint for dispute resolution.²⁵² 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.²⁵³ These agreements also allow for the creation of a conciliation mechanism for disputes that the Joint Liaison Committee cannot resolve.²⁵⁴ 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.²⁵⁵ Each of the parties has unfettered discretion to refuse to utilize these mechanisms or comply with the decision arrived at by the conciliator(s) or arbitrator(s).²⁵⁶

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.²⁵⁷ The parties have not invoked the optional conciliation and arbitration mechanisms,²⁵⁸ although Arafat and the PA have voiced occasional demands for arbitration of various Palestinian claims.²⁵⁹ 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

²⁵² DOP, *supra* note 2, at 1533; Interim Agreement, *supra* note 29, 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 Telephone Interview with Dan Polisar, Director, *Peace Watch*, in Jerusalem (June 12, 1995). The Joint Liaison Committee has been convened on numerous occasions. *Id.*

²⁵⁸ *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/2892 MED/14, Apr. 19, 1997).

²⁵⁹ See Jon Immanuel, *PA to Request Arbitration in July 1 Deadline Isn't Met*, JERUSALEM POST, June 11, 1995, at 1. See also David Makovsky, *Hebron Issue Keeps Taba Talks Deadlocked*, JERUSALEM POST, Sept. 8, 1995, at 1.

addition, Arafat frequently takes his case to more sympathetic international forums such as the United Nations Security Council and General Assembly,²⁶⁰ the Arab League,²⁶¹ the Non-aligned Movement,²⁶² the Organization of the Islamic Conference,²⁶³ and the Gulf Cooperation Council.²⁶⁴ 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 Meiron Benvenisti, a former Deputy Mayor of Jerusalem and expert on the West Bank, observed in the aftermath of the Hebron Protocol sign-

²⁶⁰ *The PLO Campaign*, JERUSALEM POST, Feb. 24, 1995, at 4. In early April 1997, Arafat called for an emergency session of the UN General Assembly after the United States vetoed two Security Council resolutions that were critical of Israel. See *Arafat Calls for UN Emergency Session*, JERUSALEM POST, Apr. 8, 1997, at 3. It was the first time since 1982 that the General Assembly met in emergency session and the fourth time the UN debated the *Har Homa* project. See Marilyn Henry, *Israel Slams UN Emergency Debate*, JERUSALEM POST, Apr. 25, 1997, at 2. By overwhelming majority, the General Assembly passed a resolution calling Israel to reverse its decision on *Har Homa*. *General Assembly Urges Israel to Reverse Har Homa Decision*, JERUSALEM POST, Mar. 14, 1997, at 20. Israel criticized the session "a relic of the Cold War era" and accused the PA of "clear incitement to violence." Henry, *supra*, at 2. In November 1997, the government of Israel rejected a vote by the UN General Assembly, meeting in special emergency session, that condemned Israel for failing to comply with demands to halt the construction at *Har Homa*. See Marilyn Henry, *Gov't Condemns UN Vote on Har Homa*, JERUSALEM POST, Nov. 16, 1997, at 2.

²⁶¹ At a recent Arab League meeting, Egypt took the lead in reaching a recommendation that member states freeze Arab-Israeli relations and restore the Arab boycott against Israel. See Steve Rodan, *US-Egyptian Ties Under Growing Strain*, JERUSALEM POST, Apr. 18, 1997, at 14. This is yet an additional manifestation of the decay of the peace process.

²⁶² See Moshe Zak, *Is Israel Really Isolated?*, JERUSALEM POST, Apr. 11, 1997, at 5.

²⁶³ See *Palestinian President Yasir Arafat's Address* (BBC Broadcast, FE/2876/S3, Mar. 2, 1997). In his speech before the Islamic Conference, Arafat repeated three times, "there can be no peace without the holy Al-Qods [Jerusalem] and insisted that the city" and "all the surrounding area are trusts which have been entrusted by God to us to rescue them from the settlements and from the danger of Judaization." *Id.* It is not clear what Arafat means by this since Jews have constituted a majority of the population of the city ever since the 1870 census. See Israel Ministry of Foreign Affairs, *Jerusalem: The City's Development from a Historical Viewpoint*, available at (visited Nov. 15, 1997) <<http://www.israel-mfa.gov.il/news/jerdev.html>>. In recent decades, the ratio between Jews and Arabs has been approximately 3 to 1. See *id.* Arafat alleged that Israel is attempting through "treachery" and "conspiracy" to "Judaize" and "isolate" Jerusalem, which he characterizes as a "Palestinian," "Arab" and "Islamic city." *Palestinian President Yasir Arafat's Address*, *supra*.

²⁶⁴ See Moshe Zak, *Is Israel Really Isolated?* *supra* note 262, at 5.

ing: "The agreement is not an Israeli-Palestinian agreement, rather an Israeli-American and a Palestinian-American agreement."²⁶⁵ Indeed, during the negotiation of the Protocol, the U.S. was cajoling parties, drafting bridging proposals, 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.²⁶⁶

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.²⁶⁷ 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.²⁶⁸

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.²⁶⁹ 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.²⁷⁰ 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 and justice are not endangered."²⁷¹ 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

²⁶⁵ Patrick Cockburn, *Israeli Troops Begin Hebron Pull-out*, *supra* note 40, at 14.

²⁶⁶ See Barry Rubin, *America as a Middleman: A Mixed Bag*, JERUSALEM POST, Jan. 24, 1997, at 10.

²⁶⁷ See *id.*

²⁶⁸ See *id.*

²⁶⁹ See *id.*

²⁷⁰ See IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 708 (4th ed. 1990); MALCOLM N. SHAW, *INTERNATIONAL LAW* 631 (3d ed. 1995).

²⁷¹ U.N. CHARTER, art. 2(3).

means of their choice."²⁷² 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 history²⁷³ 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.²⁷⁴ Dennis Ross returned to the region several times during the spring of 1997, deter-

²⁷² Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 18, at 121, U.N. Doc. A/8082(1970). See also Manila Declaration on the Peaceful Settlement of International Disputes, U.N. GAOR 6th Comm., 37th Sess., Supp. No. 33, Annex, Agenda Item 122, at 4, U.N. Doc. A/37/590 (1980).

²⁷³ In the words of Professor Aharon Klieman,

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

AHARON S. KLIEMAN, *APPROACHING THE FINISH LINE: THE UNITED STATES IN POST-OSLO PEACE MAKING* 7 (Begin-Sadat Center for Strategic Studies ed., 1995).

²⁷⁴ See *Sieze the Moment*, JERUSALEM POST, May 14, 1997, at 6.

mined to make the peace process work again.²⁷⁵ 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.²⁷⁶ 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."²⁷⁷ Meanwhile, the usually optimistic U.S. Ambassador to Israel, Martin Indyk, had conceded that "[t]he core bargain of Oslo has broken down."²⁷⁸ 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."²⁷⁹ Albright added, "[t]he Oslo process and the working partnership between Israelis and Palestinians has broken down"²⁸⁰ 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."²⁸¹ 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."²⁸² Even this was rejected by the Senior Palestinian Peace negotiator Sa'eb Ereikat.²⁸³ 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.²⁸⁴

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 Elias 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.*

²⁷⁶ Hillel Kuttler, *Albright Won't Visit Until Stalemate Ends*, JERUSALEM POST, May 18, 1997, at 1.

²⁷⁷ *Id.*

²⁷⁸ *Albright Warns of Mideast Danger*, JERUSALEM POST, Apr. 11, 1997, at 1.

²⁷⁹ *Id.*

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

²⁸¹ Margot Dudkevitch & Marilyn Henry, *U.S. Slams Netanyahu Over Efrat Expansion*, JERUSALEM POST, Sept. 26, 1997, at 1.

²⁸² See Ragheb Maraya, *Palestinian-Israeli Talks to Resume*, BILADI JERUSALEM TIMES, Oct. 3, 1997, at 1.

²⁸³ See Margot Dudkevitch, *Settlers: Building Time-Out in Territories Unacceptable*, JERUSALEM POST, Oct. 21, 1997, at 2.

²⁸⁴ Arie O'Sullivan & Margot Dudkevitch, *Indyk: Oslo has Broken Down*, JERUSALEM POST, May 19, 1997, at 1.

American arm twisting is likely to backfire and precipitate alienation from both Israel and the Palestinians.²⁸⁵

According to William B. Quandt, a former senior American diplomat who has written extensively about Arab-Israeli peacemaking,²⁸⁶ as distinct from the principals at the Camp David conference (which Quandt played a major role in shaping), Netanyahu 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.²⁸⁷ 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.²⁸⁸ 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."²⁸⁹ 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 wanted 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.²⁹⁰ In addition, although

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 Haass, former head of the Middle East office on the National Security Council staff, claimed that "ripeness" is the key to successful negotiations. Haass urged a low-profile approach to the Middle East and said that if the U.S. is overeager, it can actually make the situation worse. RICHARD N. HAASS, CONFLICTS UNENDING: THE UNITED STATES AND REGIONAL DISPUTES 30-56 (1990).

²⁸⁶ See WILLIAM B. QUANDT, PEACE PROCESS: AMERICAN DIPLOMACY AND THE ARAB-ISRAELI CONFLICT SINCE 1967 (1993).

²⁸⁷ See Hillel Kuttler, *An Old New Idea*, JERUSALEM POST, Apr. 11, 1997, at 7.

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 Kuttler, *Weizman: Clinton Fears Getting Burned Again*, JERUSALEM POST, Oct. 8, 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

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.²⁹¹ 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.²⁹²

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.²⁹³ 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.²⁹⁴ Palestinian leaders, religious²⁹⁵ and political,²⁹⁶ 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." Jihad Khazen, *Netanyahu's Impudence*, *supra* note 174, at 5. This method of overcoming difficulties by mortgaging future issues has reached the point of diminishing effectiveness as the parties enter the permanent status negotiations.

²⁹¹ See *Arafat Comments on Implementation of Hebron Accord, Other Issues* (BBC Broadcast, ME/2835, MED/1, Feb. 3, 1997).

²⁹² Prime Minister Netanyahu alleged:

I am saying that our intelligence shows very clearly, unmistakably, that the Palestinian leadership has given the green light to the worst terrorist organizations in the world to go ahead with the kind of bus bombings and suicide attacks—the kind of mass killings that brought a halt to the peace process.

David Makovsky & Jon Immanuel, *Building at Har Homa Begins*, JERUSALEM POST, Mar. 19, 1997, at 5.

²⁹³ See David Makovsky, *The Last Bastion of the Likud*, JERUSALEM POST, Feb. 28, 1997, at 7.

²⁹⁴ See Munir Abu Rizek, *Shin Bet Agent Accused of Planning Suicide Bombings*, BILADI JERUSALEM TIMES, May 9, 1997, at 1. He also claimed that this was done to place the PA in a bad light and damage the credibility of Arafat. See *id.* Netanyahu's office rejected this claim as "a grotesque lie." Jon Immanuel, *PA Holds 'Israeli Bombing Agent'*, JERUSALEM POST, May 5, 1997, at 2.

²⁹⁵ The senior Islamic religious leader, Mufti Ikrameh Sabri of Jerusalem, claimed that Israeli construction on *Har Homa* constitutes a declaration of war against "the city and its residents, and against all Arabs and Muslims." He went on to forecast, "[w]e cannot foretell what will result from any explosion in the Middle East if Israel insists on its provocative policy." *Mufti of Jerusalem: Israeli Settlements are 'Declaration of War'* (BBC Broadcast, ME/2854 MED/2, Feb. 25, 1997). This PA-appointee has also recently broadcast on Voice of Palestine radio:

himself, announced that various Israeli policies were a "declaration of war."²⁹⁷ Arafat also declared that Israeli independence day constitutes, "[t]he Day of the Palestinian Holocaust."²⁹⁸ 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.²⁹⁹ 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.³⁰⁰ Netanyahu, commenting on the mercer 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."³⁰¹

Secretary of State Albright's visit improved Israeli-Palestinian atmospherics and facilitated high level meetings between the sides, but little substantive progress has materialized.³⁰² Halting the erosion was, in the circumstances, an achievement.³⁰³ 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 traps and paint the White House black . . . [T]he 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 Aksa Mosque, Jerusalem and Palestine."

Quoted in Moshe Kohn, *Of Lies and Conspiracies*, JERUSALEM POST, Sept. 26, 1997, at 13.

²⁹⁶ PA Minister in Charge of Jerusalem Faysal 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/D2854/MED/1, Feb. 25, 1997).

²⁹⁷ *Arafat Tells Arab League Israeli Moves are Declaration of War* (BBC Broadcast ME/D2881/MED1, Apr. 1, 1997); *Arafat Tells NAM Meeting Israeli Practices "Declaration of War"* (BBC Broadcast, ME/2887 MED/1, Apr. 7, 1997); *Arafat Appeals for Funds to Be Raised to Protect Jerusalem's Arab Identity* (BBC Broadcast, ME/D2887/MED1, Apr. 8, 1997).

²⁹⁸ See Elias M. Zananiri, *Peace Talks Still at an Impasse*, BILADI JERUSALEM TIMES, May 16, 1997, at 1.

²⁹⁹ See Michal Yudelman, *Hanegbi Blasted for Arafat Threats*, JERUSALEM POST, Mar. 17, 1997, at 12.

³⁰⁰ See *id.*

³⁰¹ Liat Collins, *PM: Palestinians are to Blame for Impasse*, JERUSALEM POST, May 20, 1997, at 2.

³⁰² See Jay Bushinsky, *Little Progress in Arafat-PM Summit*, JERUSALEM POST, Oct. 9, 1997, at 2.

³⁰³ See Jay Bushinsky, *All Sides Upbeat About Renewed Negotiations*, JERUSALEM POST, Oct. 7, 1997, at 1.

this point, the parties will no longer be able to avoid or postpone the ultimate political, historical, doctrinal and security implications of their common venture. Clearly extraordinary and unprecedented concessions will have to be made.³⁰⁴ The intensity of disagreement about Jerusalem, which both parties claim as their capital,³⁰⁵ could easily precipitate the denouement of the entire peace process. The Jewish settlements,³⁰⁶ Israeli recognition of the Palestinian state-in-the-

³⁰⁴ Since the DOP, Arafat has frequently claimed that the Palestinians will not agree to a permanent peace agreement unless it includes Jerusalem, or at least part of Jerusalem, as the capital of a sovereign state of Palestine. See, e.g., Hagai, *The Words*, DAVAR, Sep. 10, 1995, at 9, translated in Government Press Office, State of Israel, *Selections from the Hebrew Press*, PRESS BULL., Sept. 11, 1995; Eytan Rabbi, *Arafat Toned Down Declarations on Jerusalem After Message from Senior Ranks in Israel*, HA'ARETZ, Jan. 2, 1996, at A1. Israeli leaders, including current Prime Minister Netanyahu, former Prime Minister Peres, and the late Prime Minister Rabin, reject this outright and have announced their refusal to cede any part of Israel's capital to the Palestinians. See NETANYAHU, *supra* note 134, at 346-48. See also Helen Kaye & Bill Hutman, *Undivided Jerusalem Is Ours - Rabin*, JERUSALEM POST, Sept. 5, 1995, at 1; Peres, *'Jerusalem Not Up for Negotiations'*, JERUSALEM POST, Jan. 28, 1996, at 1.

³⁰⁵ Converging the issues of prestige, religious sanctity and security, the future status of Jerusalem is unquestionably the most vexatious issue the parties must address in the peace process. According to one public opinion poll, 65% of Israelis support Israeli sovereignty over the united city, while 90% of Palestinians oppose such an idea. See Yosef Algazi, *Poll: 65 Percent of Israeli Jews Support Israeli Sovereignty Over Jerusalem*, HA'ARETZ, June 5, 1995, at A6. A bill, passed recently in the U.S. Senate, to move the U.S. embassy from Tel Aviv to Jerusalem caused much agitation among Palestinians and was perceived as posing a serious threat to the peace process. See *Appeasement on Jerusalem*, JERUSALEM POST, June 22, 1995, at 6; Karen Farrell, *Jerusalem Overshadows Talks*, BILADI JERUSALEM TIMES, May 10, 1995, at 3; Hillel Kuttler, *Senate Easily Passes Embassy Move 93-5*, JERUSALEM POST, Oct. 25, 1995, at 1. As a presidential candidate in 1992, Bill Clinton stated that he supports Jerusalem as Israel's undivided capital. See RAPHAEL DANZIGER & ARTHUR RUBIN, *THE CLINTON-RABIN PARTNERSHIP IN THE MIDEAST PEACE PROCESS* 28 (American-Israeli Public Affairs Commission ed., 1993). Yitzhak Rabin made an identical pledge during Israel's 1992 national election campaign. See ROBERT SLATER, *RABIN OF ISRAEL* 401 (rev. ed. 1993). However, the fourth draft of the Basic Law that is to form the constitution of the PLC during the interim period states, "Jerusalem shall be the capital of Palestine." See *Draft Basic Law For the National Authority In The Transitional Period*, May 1, 1994, art. 5, reprinted in *DRAFT BASIC LAW FOR THE NATIONAL AUTHORITY IN THE TRANSITIONAL PERIOD 3* (Jerusalem Media & Communication Centre ed., 1994). By contrast, Netanyahu continues to insist that the future of Jerusalem "will never be negotiated." Arie O'Sullivan, *PM: Golan is Not Negotiable*, JERUSALEM POST, Jan. 19, 1997, at 1.

³⁰⁶ Israelis involved in drafting permanent status positions envision annexing no less than 30%, see Steve Rodan, *The Road Ahead*, JERUSALEM POST, Jan. 24, 1997, at 10, and often upwards of 50%, of the West Bank. A territorial concession of this magnitude, arguably necessary to protect Israel's narrow pre-1967 borders from invasion and shelling with security zones and to connect the larger Jewish settlements

making,³⁰⁷ the apportionment of scarce fresh water sources,³⁰⁸ the custody of religious sites holy to two or more faiths,³⁰⁹ 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,³¹⁰ are each issues that could trigger

by corridors to the rest of Israel, *see id.*, would be difficult for the Palestinians to swallow. Impassioned Palestinian views on this issue, as demonstrated in the *Har Homa* controversy, will collide directly with equally intense convictions of many Israelis. According to one public opinion poll, over 75% of the settlers remain opposed to any territorial concessions to the Palestinians. *See* Uzi Benzamin, *Weekly Column*, HA'ARETZ, Sept. 1, 1995, at B3. Certain Rabbinic legal rulings forbid the withdrawal of both Jewish settlements and Israeli military bases from all areas in the West Bank. More than 1000 religious Jewish soldiers expressed their intention to resist any military order to evacuate settlements. *See* Nadav Shargai, *5 Reserve Officers Call for Refusal to Serve, "Army Serves Our Enemies, This is a Cultural War,"* HA'ARETZ, July 20, 1995, at A4; Nadav Shargai, *Over A Thousand Soldiers and Officers in Letter to Rabin: We Will Resist Orders to Evacuate Settlements*, HA'ARETZ, Sept. 9, 1995, at A1; Nadav Shargai, *Rabbi Govern Ruled in '93 that Soldiers Must Refuse to Evacuate Settlements*, HA'ARETZ, July 9, 1995, at A2; Nadav Shargai, *"There is a Prohibition in the Torah to Transfer Military Bases to Non-Jews," Ruled Right-Wing Rabbis*, HA'ARETZ, July 13, 1995, at A2.

³⁰⁷ Arafat declared Palestinian independence on November 15, 1988, but the declaration was widely perceived as a symbolic act. *See Arafat Plans to Declare Statehood* in 1999, JERUSALEM POST, Nov. 14, 1997, at 2. The Palestinians never delineated the boundaries of their "state" and most countries have not recognized it. *See id.* Prime Minister Netanyahu's senior advisor David Bar-Illan indicated support for a demilitarized Palestinian state. *See* David Makovsky, *Likud's Silence Hints Approval of Bar-Illan Views on Palestinian State*, JERUSALEM POST, Dec. 23, 1997, at 2. This trial balloon, which Netanyahu did not disavow, is evidence of further ideological evolution on the part of Israel's right-wing away from the concept that Israel must prevent Palestinian statehood. *See id.* Netanyahu also denied that Israel wanted there to be a "fully sovereign" Palestinian state which could threaten Israeli security. *See* Liat Collins, *PM Says No to Fully Sovereign Palestinian State*, JERUSALEM POST, Jan. 21, 1997, at 1. His government's Infrastructure Minister Ariel Sharon has acknowledged, however, that while he opposes Palestinian statehood, "The Oslo Accords mean Palestinian statehood." Jay Bushinsky, *Sharon Map: Two Buffer Zones, PA 'Islands'*, JERUSALEM POST, Dec. 3, 1997, at 1. The Labor party, however, recently voted that it would be willing to accept a Palestinian state if it had limited sovereignty, was demilitarized, was prevented from forming military alliances with other states and its air space was open to the Israel Air Force. *See* Sarah Honig, *Labor Plank Allows for Palestinian State*, JERUSALEM POST, May 15, 1977, at 1.

³⁰⁸ *See* Gazit Heads Water Negotiating Team, PEACE WATCH, Oct. 1995, at 12.

³⁰⁹ *See* Danny Rubinstein, *Bethlehem Does Not Want To Be Berlin*, HA'ARETZ, Feb. 16, 1996, at B2.

³¹⁰ *See* Justus R. Weiner, *The Palestinian Refugees' "Right to Return" and the Peace Process*, 20 B.C. INT'L. & COMP. L. REV. 1 (1997). Israeli resistance to the return of the Palestinian refugees from 1948 reflects apprehension of being inundated by a massive Palestinian repatriation. The PLO, however, an organization that for decades

the breakdown, freezing or repudiation of the negotiations or the entire process.³¹¹

C. The Leaders Who Made The Peace Process Work

It is useful to reflect on the personalities that made the peace process work. Yitzhak Rabin is dead, killed by an assassin who opposed his policies. Rabin's successor 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 Netanyahu, 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.³¹² Arafat regularly berates Israeli policies, criticism he often punctuates 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.*

³¹¹ 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 for 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 domestic 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 1995, at 61-62.

³¹² Written before he became Prime Minister, Netanyahu's book on Israel's relations with the Arab world contains a chapter entitled "A Durable Peace." In it, he expounds 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.

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

Nevertheless, Arafat, whose health is in doubt,³¹³ is widely regarded as indispensable to the peace process.³¹⁴ 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.³¹⁵ This says nothing for the opposition groups such as Hamas,³¹⁶ and the smaller Islamic Jihad,³¹⁷ 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 strident anti-Israel line in international, regional, Arab and Islamic gatherings.³¹⁸ 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.³¹⁹

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."³²⁰ President Clinton heralded

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 *Abd al-Shafi Calls on Arafat to Halt Talks* (BBC Broadcast, ME/D2315/MED1, May 28, 1995). 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*, *BILADI JERUSALEM TIMES*, Oct. 10, 1997, at 6.

³¹⁶ See *Hamas Leader Urges Continued Jihad; Abd al-Shafi Calls on Arafat to Halt Talks* (BBC Broadcast, ME/2315/MED/1, May 28, 1995).

³¹⁷ Islamic Jihad threatened more suicide attacks in response to the construction of *Har Homa*. See *Islamic Jihad Threatens More Attacks*, *JERUSALEM POST*, Apr. 8, 1997, at 2.

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.

³¹⁹ See David Makovsky & Arie O'Sullivan, *Hussein: PM's Policy Leading to Bloodshed*, *JERUSALEM POST*, Mar. 12, 1997, at 1.

³²⁰ See *id.*

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."³²¹ British Foreign Secretary Malcolm Rifkind "warmly welcome[d]" the accord, which he described as "a major step towards unblocking the Middle East peace process."³²² Hans van Mierlo, Foreign Minister of Holland, who currently holds the European Union presidency, said, "[t]his 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."³²³

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.³²⁴ 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."³²⁵ 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. Interminable 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."³²⁶ 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.

³²¹ See Theodore Levite, *supra* note 199, at 1.

³²² *Id.*

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

³²⁴ See Patrick Cockburn, *A Peace Deal With a Fuse Attached*, *THE INDEPENDENT*, Jan. 16, 1997, at 19.

³²⁵ *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,³²⁷ remains dubious. Aside from historians and diplomats, few people recall the numerous unsuccessful and/or uncompleted efforts to secure Israeli-Palestinian or Arab-Israeli peace agreements. They include the 1949 Armistice Agreements,³²⁸ the Jarring mission of 1967,³²⁹ the United Nations Security Council Resolution 242 of November, 1967,³³⁰ the Allon Plan of 1967,³³¹ Johnson's Five Point Plan of June 1968,³³² the USSR's Three Point Plan of September 4,

³²⁷ Interim Agreement, *supra* note 29, at 558.

³²⁸ Hashemite Jordan Kingdom-Israel General Armistice Agreement, 42 U.N.T.S. 304-20 (1949), reprinted in THE JERUSALEM QUESTION AND ITS RESOLUTION: SELECTED DOCUMENTS 33 (Ruth Lapidoth & Moshe Hirsch eds., 1992). In retrospect it is interesting to highlight some of the provisions in these agreements that were not observed. For example, the Egyptian-Israeli agreement states the objective of "facilitat[ing] the transition from the present truce to a permanent peace in Palestine," *id.* at 39, and that "[t]he right of each Party to its security and freedom from fear of attack by the armed forces of the other shall be fully respected." *Id.* at 33. Members of the Israeli delegation to the armistice agreements viewed peace as imminent since reason left the Arabs no alternative but to accept the reality of Israel's existence. AARON S. KLIEMAN, ISRAEL & THE WORLD AFTER 40 YEARS 18 (1990). This optimism was quickly dispelled, however, as the Arab leaders refused to reconcile themselves with Israel's existence and no progress was made toward peace in the following years. *See id.*

³²⁹ Gunnar Jarring, a UN mediator, attempted to work out a *modus vivendi* under which Israel would withdraw from the territory captured in the 1967 War in return for an Arab commitment to peace. When the Arab states were unwilling to give the kind of commitments upon which Israel insisted, such as a peace agreement, the mediation effort failed. Thereafter Israel became more reluctant to exchange land for promises. PARKER, *supra* note 190, at 128.

³³⁰ Passed in the aftermath of Israel's stunning victory in the 1967 War, this landmark resolution enshrined the notion of Israel relinquishing captured Arab lands in exchange for peace and agreements on secure and recognized borders. Article 1, paragraphs (i) and (ii) call for the removal of Israeli forces from territory occupied during the war in exchange for "respect and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area." S.C. Res. 242, U.N. SCOR, 22d Sess., 1382d mtg., at 1, U.N. Doc. S/8289/ (1967). The Arab states and the Palestinians rejected Resolution 242 and at the subsequent 1967 Arab League Summit Conference in Khartoum, they proclaimed they would not recognize, negotiate with or sign peace treaties with Israel. MAKOVSKY, *supra* note 207, at 3, 4.

³³¹ The Allon Plan called for Israel to withdraw from the densely populated Palestinian areas comprising approximately 60 percent of the West Bank, but to annex strategic military positions around Jerusalem and the Jordan Valley. O'BRIEN, *supra* note 26, at 459-60. Never fully adopted by Israel's government, the Allon Plan was considered inconceivable to Jordan's King Hussein. *See id.* Hussein turned down an Israeli proposal for a comprehensive settlement based on the Allon Plan several years later. *See* NADAV SAFRAN, ISRAEL: THE EMBATTLED ALLY 537 (1978).

³³² This general proposal, which was presented by President Lyndon Johnson to Soviet Chairman Kosygin, embodied recognizing the right of national life for Israel

1968,³³³ Rusk's Seven Point Plan of November 2, 1968,³³⁴ the Soviet Peace Proposal of December 1968,³³⁵ the U.S. 12-Point Counterplan, January 15, 1969,³³⁶ the Rogers Plan of 1970,³³⁷ the 1973 Geneva Peace Con-

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.*

³³³ Pursuant to this proposition, the Arabs and Israelis would accept Resolution 242, a timetable would be devised for Israeli withdrawal and both sides would sign a multilateral document committing them to respect all the provisions of Resolution 242. *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 "fished out of his pocket a piece of paper that came to be known as Rusk's seven points," although it actually included eight points. *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.*

³³⁵ 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, Britain and France. *See* LAWRENCE L. WHETTEN, THE CANAL WAR: FOUR-POWER CONFLICT IN THE MIDDLE EAST 68-69 (1974).

³³⁶ 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.

³³⁷ Secretary of State William Rogers' plan, which involved a secure international frontier between Egypt and Israel and a formal state of peace, was "so watered down in the name of realism that there was not enough in it for either side." *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.

ference,³³⁸ the 1978 Camp David Accords and the ensuing Israel-Egypt Peace Treaty of 1979,³³⁹ the Reagan Plan of 1982,³⁴⁰ the Arab League's Fez Peace Plan of 1982,³⁴¹ the abortive May 17, 1983 Israel-Lebanon

³³⁸ The "first ever" Middle East Peace Conference opened in Geneva in December 1973. Initiated by the United States in the aftermath the 1973 War, the Palestinians were represented in conjunction with Jordan. After the initial speeches, the conference devolved into bilateral Israeli and Egyptian negotiations on disengagement and never resumed its plenary session. The United States proposed a separate scheme for Israel to cede Jericho to Jordan, but Israel rejected this. The failure of the American effort to appease the joint Jordanian-Palestinian delegation angered the Arab League, and served as the basis for its 1974 declaration that henceforth the PLO would be the only legitimate representative of the Palestinian people. See MAKOVSKY, *supra* note 207, at 4.

³³⁹ The Israel-Egypt peace treaty, long the shining example of what *could* be achieved in Middle Eastern peacemaking, is part of this list, due to its failure to facilitate a more comprehensive peace and the low ebb of bilateral Israeli-Egyptian relations in recent years. See Steve Rodan, *Camp David: Is There Life 18 Years Later?*, JERUSALEM POST, Sept. 20, 1996 at 8. At Camp David, the goal was to establish a "self-governing authority" for the Palestinians as an interim arrangement, pending a final resolution of the issues of peace and territory. Exchange of Remarks Between the President, President Sadat, and Prime Minister Begin at the Signing of the Camp David Agreements, Sept. 17, 1978, 17 I.L.M. 1463. This autonomy was to have been negotiated by Egypt, Israel and representatives of the Palestinians. Under pressure from the PLO, prospective Palestinian participants boycotted the negotiations from the outset. Egypt initially participated in the negotiations, but then walked out before an agreement could be reached. Subsequently, Israel, of its own accord, took a major step toward creating autonomy by replacing the military government with a Civil Administration. In an effort to normalize the daily life of the Arab residents of the Administered Areas by diminishing their interaction with the Israel Defense Forces. See Justus Reid Weiner, *Human Rights in the Israeli Administered Areas during the Intifada: 1987-1990*, 10 WIS. INT'L L.J. 185, 191-92 (1991). Israeli-Egyptian relations have been very troubled in recent years, see Steve Rodan, *US-Egyptian Ties Under Growing Strain*, JERUSALEM POST, Apr. 18, 1997, at 14, and Egyptian President Hosni Mubarak recently said they had reached a 20-year low. See Black, *Hammered Into Coffin of Peace*, *supra* note 58, at 7.

³⁴⁰ After the Israeli invasion of Lebanon, U.S. President Ronald Reagan proposed his vision for "the peaceful and orderly transfer of authority from Israel to the Palestinian inhabitants of the West Bank and Gaza." QUANDT, *supra* note 287, at 480. Reagan stated the U.S. would not support "annexation or permanent control by Israel," or an independent Palestinian state. Reagan also proposed a freeze on the building of Israeli settlements in the occupied territory and stated, "We base our approach squarely on the principle that the Arab-Israeli conflict should be resolved through negotiation involving an exchange of territory for peace." *Id.* at 481-82. This plan failed primarily because Israel viewed it as pro-Arab and contrary to Israeli security. See QUANDT, *supra* note 286, at 334; O'BRIEN, *supra* note 26, at 637-38.

³⁴¹ The idea of a Palestinian state, then completely unacceptable to Israel, was central to the Fez Plan. See O'BRIEN, *supra* note 26, at 647; HAROLD H. SAUNDERS, RECONSTITUTING THE ARAB-ISRAELI PEACE PROCESS 422-23 (1988).

Peace Agreement,³⁴² the 1987 London Agreement Between Israeli Foreign Minister Peres and Jordanian King Hussein,³⁴³ the Shultz Initiative of 1988,³⁴⁴ the Cairo Dialogue of May 1989,³⁴⁵ and the 1991 Madrid Con-

³⁴² 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, froze the U.S.-brokered agreement due to intimidation 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 with full powers, in order to sign, in the presence of the representative of the United States of America." Thus, heavy American 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 Lapidot & Moshe Hirsch, eds., 1992).

³⁴³ 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." KLIEMAN, *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.

³⁴⁴ 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 193-94. Shultz sought to allay Palestinian fears that their going along with the Camp David Accords would enable Israel to forestall final status talks indefinitely by delaying the implementation of the autonomy period. Shultz therefore suggested interlocking the two phases: final status talks would begin shortly after an autonomy agreement regardless of whether it was fully implemented. The initiative was premised on Palestinian acceptance of UN Security Council Resolution 242 and envisioned a joint Jordanian-Palestinian delegation to represent the Palestinians. Prime Minister Shamir rejected the initiative on the grounds that it invalidated the autonomy phase and "would pre-determine a territorial compromise" which he opposed. MAKOVSKY, *supra* note 207, at 8. The PLO were critical because

ference.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-Israel security cooperation³⁴⁷ and Israel dramatically eased its closure enabling tens of thousands of Palestinians to enter Israel.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.³⁴⁹ He is

they objected to having their delegation linked with the Jordanians, and the USSR was unenthusiastic 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.

³⁴⁵ In 1989, the question, "who will represent the Palestinians?" remained unresolved. Prime Minister Shamir favored holding independent elections in the West Bank and Gaza Strip to choose a Palestinian delegation to negotiate an autonomy arrangement with Israel on the basis of Camp David. Egyptian-Israeli relations had improved and at the time Egyptian President Hosni Mubarak proposed a 10-point peace plan, formulated by two of Shimon Peres' aides. Eager to advance Israeli-Palestinian peacemaking, Egypt agreed to be the sight of what became known as the "Cairo Dialogue." The PLO, however, wanted several members of the Palestinian National Council to participate in a meeting with Israeli officials in Cairo in order to demonstrate that Israel was actually dealing with the PLO. Prime Minister Shamir was unwilling to recognize and/or negotiate with the PLO, and the Cairo Dialogue floundered. See MAKOVSKY, *supra* note 207, at 9, 10.

³⁴⁶ 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.

³⁴⁷ See *Arafat Orders Renewal of PA-Israel Security Cooperation*, JERUSALEM POST, Apr. 20, 1997, at 1.

³⁴⁸ See Arie O'Sullivan, *Mordechai: Closure to be Drastically Eased*, JERUSALEM POST, Apr. 30, 1997, at 2.

³⁴⁹ Arafat regularly announces that a Palestinian state will be declared "soon." See *Arafat Says Palestinian State to Be Declared Soon* (BBC Broadcast, ME/D2842/MED/

unlikely to initiate large-scale fighting with Israel as his forces are nowhere near a match for the IDF.³⁵⁰ Arafat might not even officially abandon the peace process that the West has underwritten, both in political and economic terms. Such a move would likely cost the PA its international backing³⁵¹ without gaining significant tangible support from the Arab and Muslim world. Instead he will simply blame Israel for the failure of the process and allege that he had no alternative but to move forward in building his state without Israeli interference.

The Hebron Protocol has become the vortex of controversy that will ultimately precipitate the unraveling of the Israeli-Palestinian peace process. In addition, the fallout from the political deal concerning the Knesset vote on the Protocol may bring down the Netanyahu government. The Protocol may even threaten the personal survival its negotiators. This is

1, Feb. 11, 1997). 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/D2822/MED/5, 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 Liat Collins et al., *PM Warns Arafat: If PA Declares State, I'll Annex Territories*, JERUSALEM POST, Dec. 2, 1997, at 1.

³⁵⁰ 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*, FOR. AFF., Mar./Apr. 1995, at 2, 12. Although the Slovenes provoked the war, they won the sympathy of the foreign media by welcoming journalists and portraying 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 Eilan, *Sharon: "Not Responsible to Withdraw From Oslo 2. I Wouldn't Return to Self-governed Areas"*, HA'ARETZ, Dec. 12, 1995, at A4; Jeni Frazer, *Likud Will Accept Self-Rule But Will Act Against Terror*, JEWISH CHRON., June 6, 1995, at 3; Sarah Honig, *Netanyahu Aims to Adapt Party Line to Oslo Reality*, JERUSALEM POST, Jan. 29, 1996, at 2; Yarayach Tal, *Netanyahu Meets With Gore: Oslo Accords Are Bad, But Will Honor Them*, HA'ARETZ, Jan. 17, 1996, at A4.

³⁵¹ 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 Kuttler, *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 naive 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.³⁵² 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.³⁵³

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.*