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WYE RIVER MEMORANDUM: A TRANSITION TO FINAL PEACE?

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Introduction

One of the most significant of a long series of agreements designed to foster peace and stability in the Middle East is the Wye River Memorandum ("WRM" or "Memorandum"). This agreement emerged as the Clinton Administration's solution to the nineteen month-long impasse in the peace process between Israel and the Palestinian Authority ("PA"). Since the signing of the major interim agreement ("Oslo II") in 1995, the peace process had been strained and frequently deadlocked. The subsequent Hebron Protocol ("Protocol"), intended to resolve implementation and interpretation difficulties, did not fully achieve these objectives, and, as a result, the permanent status talks failed to register any substantive progress. In March 1997, the negotiations came to a standstill. This stagnation persisted, threatening the entire edifice built over some five years.

Even by the unusual standards of Middle East diplomacy, the WRM was negotiated in peculiar political circumstances. In October 1998, President Clinton was plagued by a career-threatening scandal and the prospect of removal from office. With his presidency in jeopardy and the political naysayers calling for his resignation, Clinton set his sights on foreign affairs. And so, Prime Minister Binyamin Netanyahu and PA Chairman Yasser Arafat, neither of whom could afford not to heed the call of the President, were summoned to the Wye Plantation in Maryland. Clinton was decidedly intent on making some progress toward peace.

Sequestered on the serene plantation, Clinton sought to quell the fears and inspire the confidence of each side. The President, with his top foreign policy advisors in tow, distanced himself from the Lewinsky scandal and challenged Netanyahu and Arafat to make concessions that placed their political careers at risk. For his troubles, Netanyahu was labeled a "traitor" by some Israelis and faced the intense scrutiny of a nation plagued by the daily fear of terrorism.[1] At the same time, Arafat contended with threats on his life by Hamas, a

1. *See* Danna Harman, *A Patchy Deal Can Easily Unravel*, JERUSALEM POST, Nov. 6, 1998, at 13.

terrorist group based in the Gaza Strip, and demonstrations in Ramallah.[2] Nevertheless, intense negotiations ensued between the three parties.[3]

In spite of all obstacles, an innovative document was signed that was intended to reduce distrust between Israelis and Palestinians through the adoption of a timeline (intended to make tangible the fulfillment of reciprocal commitments) and by further involving an influential third party, the United States. Moreover, it was the United States' belief that an additional interim agreement might revive the stagnant peace process and thereby facilitate real progress in the critical final status negotiations.

To understand the significance of the WRM, one must examine the dynamics of the Israeli-American and Israeli-Palestinian relationships in its aftermath. The interim period, which began at the outset of the process in 1993, expired on May 4, 1999, leaving a vacuum of uncertainty in the region.[4] This had been the initial target date for completion of certain agreed aspects of the peace process. Arafat threatened, as the expiration date neared, to leave the Oslo framework altogether and to unilaterally declare a Palestinian State.[5] Israeli Prime Minister Binyamin Netanyahu met this challenge with the threat of dire consequences, possibly including annexation of those parts of the West Bank and Gaza Strip then under Israeli control.[6] Against this crosscurrent of political maneuvering, the United States attempted to cool passions and rhetoric by suggesting a one-year extension of the interim period to allow for the completion of the peace process.[7] By this suggestion, the United States, with diplomatic support from other states in the region and in Europe, attempted to return the parties to the constructive, step-by-step fulfillment of their obligations under the WRM.

Clinton did indeed endure, impeached but not convicted, while the Likud government of Binyamin Netanyahu was toppled by his right wing coalition partners, who initiated a vote of no confidence in

2. *See id.*
3. *See id.*
4. *See* Marwan Rajab, *No Sacred Dates*, JERUSALEM TIMES, Apr. 16, 1999, at 5.
5. *See* Ben Lynfield et al. *Palestinians Delay Decision on Statehood,* JERUSALEM POST, Apr. 29, 1999, at 1.
6. *See id.*
7. *See id.*

the Knesset (the Israeli Parliament).[8] The WRM was then effectively put on hold. Early elections followed and Netanyahu was decisively defeated.[9] Tired of the status quo, Israelis voiced their sentiments at the polls. Ehud Barak triumphed, emerging as Prime Minister, the choice of a nation in search of new leadership and a real, lasting peace with the Palestinians.[10] Hope for peace was quickly restored to many in the region, Jews and Arabs alike.

The outcome of the peace process remained uncertain, however, as many new controversies emerged from the ambiguous text of the WRM. Moreover, worldwide speculation focused on the dramatic regional developments after the signing of the agreement: the death of King Hussein of Jordan followed by the forging of new ties between his successor King Abdullah II and Syria,[11] the election of a new Israeli Prime Minister and his formation of a new coalition government,[12] the United Nations' heightened involvement in the peace process,[13] new Palestinian proposals calling for a heightened return to the 1947 General Assembly partition plan,[14] and Barak's request for change in the WRM implementation schedule.[15]

This Article will analyze the legal and political controversies, present from the inception of the earlier Oslo II agreement,[16] and which persist long after the expiration of the interim period on May 4,

8. *See* Gideon Alon et al., *Early Vote Called; Parties in Havoc* (Dec. 22, 1998) <http://www3.haaretz.co.il/eng/old-scripts/open.asp?datee=12/22/98>.

9. *See Final Vote Count, Prime Ministerial Race*, JERUSALEM POST, May 23, 1999, at 3.

10. Labor Party candidate Ehud Barak won a decisive victory over incumbent Likud Prime Minister Binyamin Netanyahu in the May 1999 nationwide general elections. In the author's opinion, Barak's victory is attributed to his status as the most highly decorated soldier in the history of the Israeli Defense Forces, his concentration on domestic rather than international social issues, and former Prime Minister Binyamin Netanyahu's inability to resolve disputes between himself and other Cabinet officials.

11. *See* Caroline Faraj, *King Begins 'Historic' Visit to Syria Today* (Apr. 21, 1999) < http://www.jordanembassyus.org/042199001.htm>.

12. *See* Lany Deifner, *Where is Barak Headed?*, JERUSALEM POST, May 20, 1999, at 1B.

13. *See* Marilyn Henry, *UN to Vote on PLO Bid to Denounce Israel*, JERUSALEM POST, Feb. 7, 1999, at 4.

14. *See generally* Sarah Honing, *Winning the World's Love*, JERUSALEM POST, June 11, 1999, at 8B.

15. *See* Danna Harman, *Arafat to Give Barak Reply on Wye in 2 Weeks*, JERUSALEM POST, July 28, 1999, at 1.

16. *See* discussion *infra* note 19.

1999.[17] Two further events, the signing of the September 4, 1999 Sharm el-Sheikh Memorandum on Implementation Timeline of Outstanding Commitments of Agreements Signed and the Resumption of Permanent Status Negotiations ("Sharm" or "Sharm Memorandum") and the July 2000 summit at Camp David will be analyzed and discussed, considering their prospects for overcoming the challenges left unmet by the WRM. Newly apparent obstacles that impede the ability to compromise will be evaluated in order to accurately depict the prospects for the current Middle East peace process. Part I examines the inception of the WRM and its position in the peace process, considers the terms of the Memorandum, and compares it to previous interim agreements. An analysis of the United States' expanded role, as defined by the WRM, is also included in Part I of this Article. Part II discusses the problems that have arisen since the signing of the Memorandum involving doubts fostered by each side, the difficult issue of gauging Palestinian compliance, and the repercussions that will affect the Jewish "settlements." Part III of this Article focuses on the end of the interim period. Part IV examines the Sharm Memorandum and new prospects for the peace process and permanent status issues. The Camp David II summit will also be discussed as it provides greater insight into the future of Israeli-Palestinian negotiations. The author concludes this Article by reviewing public opinion concerning the implementation of negotiated agreements and evaluating the viability of peace. The recent unrest, which has become known as the Al-Aqsa Intifada, is considered in a Postscript.

I. Inception of the Wye River Memorandum

A. The Memorandum's Position in the Peace Process

In order to fully appreciate the political and legal significance of the WRM, this document must be placed in its proper historical context. According to the Memorandum's preamble, its purpose is "to facilitate implementation of the Interim Agreement [Oslo II] on the West Bank and the Gaza Strip . . . and other related agreements . . . so that the Israeli and Palestinian sides can more effectively carry out their reciprocal responsibilities, including those

17. *See A Full Peace*, N.Y. TIMES, May 4, 1999, at 8.

relating to further redeployments and security."[18] This statement emphasizes the fact that the WRM is not an independent document but, rather, a segment of the larger Israeli-Palestinian peace process. To date, the parties have concluded eight transitional agreements. Five of these agreements, the Declaration of Principals ("DOP"), signed on September 13, 1993); the Oslo II Agreement, signed on September 28, 1995; the Protocol Concerning the Redeployment in Hebron and Related Documents ("Hebron Protocol"), signed on January 17, 1997; the subject of this review, the WRM, signed on October 23, 1998; and the Sharm Memorandum, signed on November 4, 1999, remain relevant as the other three have been superseded.[19] In

18. Wye River Memorandum, Oct. 23, 1998, Isr.-PLO, 37 I.L.M. 1251 (1998), *in* INFORMATION DIVISION, MINISTRY OF FOREIGN AFFAIRS, STATE OF ISRAEL, THE WYE RIVER MEMORANDUM, at 5 [hereinafter WRM].

19. Eight transitional agreements have been concluded between Israel and the Palestinian Liberation Organization ("PLO"). The first was the Declaration of Principles on Interim Self-Government Arrangements. Declaration of Principles on Interim Self-Government Arrangements, Sept. 13, 1993, Isr.-PLO, 32 I.L.M. 1525 (1993) *in* INFORMATION DIVISION, MINISTRY OF FOREIGN AFFAIRS, STATE OF ISRAEL, DECLARATION OF PRINCIPLES ON INTERIM SELF-GOVERNMENT ARRANGEMENTS [hereinafter DOP]. The Israel-PLO Agreement on the Gaza Strip and the Greater Jericho Area was the second agreement; it provides for the partial redeployment of Israeli administration and military forces from 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, 1999, Isr.-PLO, 33 I.L.M. 622 (1994) *in* INFORMATION DIVISION, MINISTRY OF FOREIGN AFFAIRS, STATE OF ISRAEL, AGREEMENT ON THE GAZA STRIP AND THE JERICHO AREA [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, Israel-PLO, 34 I.L.M. 455 (1995), *in* INFORMATION DIVISION, MINISTRY OF FOREIGN AFFAIRS, STATE OF ISRAEL, AGREEMENT ON PREPARATORY POWERS AND RESPONSIBILITIES [hereinafter Eretz Agreement]. The fourth agreement, the Protocol on 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.-PLO, *in* INFORMATION DIVISION, MINISTRY OF FOREIGN AFFAIRS, STATE OF ISRAEL, PROTOCOL ON TRANSFER OF POWERS [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. Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Sept. 28, 1995, Isr.-PLO, *in* MINISTRY OF FOREIGN AFFAIRS, STATE OF ISRAEL, ISRAELI-PALESTINIAN INTERIM AGREEMENT ON THE WEST BANK AND THE GAZA STRIP [hereinafter Oslo II]. It comprehensively structures the Israeli-PA relationship for the duration of the interim period. *Id.* The Hebron Protocol was the sixth interim agreement. Protocol Concerning the Redeployment in Hebron and Related Documents, Jan. 17, 1997, Isr.-PLO, 36 I.L.M. 650 (1997), *in* MINISTRY OF FOREIGN AFFAIRS, STATE OF ISRAEL, PROTOCOL CONCERNING THE REDEPLOYMENT IN HEBRON AND RELATED DOCUMENTS [hereinafter Hebron Protocol or Protocol]. The seventh agreement is the Wye River Memorandum, the subject of this review. WRM, *supra* note 18. The Sharm el-Sheikh Memorandum on Implementation Timeline of Outstanding Commitments of Agreements Signed and the Resumption of Permanent Status Negotiations of September 4, 1999, is the eighth. Sharm el-Sheikh Memorandum on Implementation Timeline of Outstanding Commitments of Agreements Signed and the Resumption of Permanent Status Negotiations, Sept. 4, 1999, Isr.-PLO, *in* MINISTRY OF FOREIGN AFFAIRS, STATE OF ISRAEL, SHARM EL-SHEIKH MEMORANDUM ON IMPLEMENTATION TIMELINE OF OUTSTANDING COMMITMENTS OF AGREEMENTS SIGNED AND THE RESUMPTION OF PERMANENT STATUS NEGOTIATIONS [hereinafter Sharm or Sharm Memorandum.]

20. Several Palestinian journalists have noted that Likud's commitment to withdraw troops from the West Bank, or Judea and Samaria, reverses its right wing's historic claims that these areas are an inherent part of Eretz Yisrael (i.e., the notion of "greater Israel"). *See, e.g.,* Abdel-Azim Hammad, *Giving It 100 Percent*, AL-AHRAM, Nov. 4, 1998, FBIS-NES-98-312, at 11.

21. As one observer has noted, as a result of the Wye negotiations, "Arafat may have won himself an ally upon whom he can depend in the White House." Hammad, *supra* note 20.

22. It should be noted that many Israelis bemoaned Clinton's visit since it diminished the "special" United States-Israeli relationship. *See* Hillel Kuttner, *A Warmth That Can Be Felt*, JERUSALEM POST, Feb. 26, 1999, at 17.

this context, the WRM was critical for tackling the intractable impasse, which overshadowed the Oslo process for nineteen months.

Although the primary focus of this Article is legal analysis of the WRM, it is also necessary to address the political significance of this document. The WRM marks the first time a Likud (Israeli right of center political party) government has initiated, negotiated and signed an agreement to withdraw from and transfer West Bank areas to the PA, which were historically part of the Biblical patrimony of the Jewish people. Many observers have argued, therefore, that the WRM symbolizes the abandonment of the Israeli right-wing's traditional dream to reside in *eretz yisrael hashlama*, which roughly translates to "the entire territory promised by God to the Jews for eternity."[20] In addition, the WRM has been instrumental in forging a closer relationship between the Palestinian and American leaderships.[21] This new rapport was epitomized by Clinton's unprecedented subsequent visit to the Palestinian-controlled area of Gaza in fulfillment of his WRM commitments.[22] The WRM gave new political life to the moribund Middle East peace process and, at least for a period, restored hope to the region.

B. *The Terms Agreed Upon*

1. *The Wye River Memorandum and Related Letters from the United States*

The Israeli Foreign Ministry's published version of the WRM is thirteen pages in length and consists of two parts: the text and the timetable, or timeline. The text of the Memorandum is divided into five articles. Article I, "Further Redeployments," states that Israel must redeploy from 13% of the West Bank.[23] Article II, "Security," is the longest section of the Memorandum and outlines specific "responsibilities for security" that the PA must assume in order to prevent future terrorist attacks against Israel.[24] Article III, "Interim Committees and Economic Issues," reactivates several bilateral committees, acknowledges the commitment to the construction and operation of the Port of Gaza,[25] concludes a "Protocol Regarding the Establishment and Operation of the International Airport in the Gaza Strip During the Interim Period,"[26] and resumes negotiations on the "Safe Passage," a road between Gaza and the West Bank.[27] It also requires the Palestinian Authority to provide a copy of all of its

23. WRM, *supra* note 18, art. I(A)(1), at 5. One percent of this territory will be transferred to Area A, territory under complete Palestinian control, and the remaining 12% will be transferred to Area B, territory under joint Palestinian and Israeli control. *See id.* After these transfers, the PA will have day-to-day control of approximately 40% of the West Bank. *See* William J. Clinton, Statements at the Signing of the Wye River Memorandum, *in* WRM, *supra* note 18, at 22. Area C will remain under both Israeli military and civil control. *See* Margot Dudkevitch, *Settlers Highlight Illegal Palestinian Building in Gush Etzion*, JERUSALEM POST, Nov. 23, 1999, at 4. The WRM also designated 3% of Area B as a Nature Reserve, which falls under Israeli jurisdiction. WRM, *supra* note 18, art. I(A)(1), at 5. Ninety-nine percent of the Palestinian population lives under areas A and B. *See* Binyamin Netanyahu, *The First Year—Last Time*, JERUSALEM POST, May 19, 2000, at A8.

24. WRM, *supra* note 18, art. II, at 6-9. The PA has agreed to outlaw and combat terrorist organizations, to prohibit illegal weapons, to prevent incitement to violence or terror, to conduct bilateral security cooperation with Israel, to provide a list of Palestinian policemen to Israel, and to "reaffirm" the PLO's commitment to amend the Palestinian National Charter. *See id.* Article II also addresses the PA's commitment to respond to "requests for arrest and transfer of suspects and defendants" and to abide by "internationally accepted norms of human rights" in the areas under their control. *Id.* art. II(C)(3)-(4), at 9. Article II also states that the PA must provide a list of their policemen to the Israelis and "reaffirm" the nullification of the PLO Charter. *Id.* art. II(C)(1)-(2).

25. *Id.* art. III(4), at 10.

26. *Id.* art. III(2), at 9-10.

27. *Id.* art. III(3), at 10.

current laws to the Israelis.[28] Article IV, "Permanent Status Negotiations," states that the parties will "immediately resume permanent status negotiations" in order to reach an agreement by May 4, 1999.[29] The final article, Article V, "Unilateral Actions," declares that "neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip."[30]

The second part of the WRM, the "Time Line," is "an integral attachment to the agreement" that provides a time frame for the implementation of each step of the agreement.[31] This is a new characteristic in the peace agreements, which will be examined in the next section of this Article. Although the WRM officially ends with the timetable, the booklet published by the Israeli Foreign Ministry includes five letters of assurance written by senior U.S. officials to the Israeli government.[32] One of these letters was written by U.S. Secretary of State Madeleine K. Albright, one by Special Middle East Coordinator Dennis B. Ross, and three by U.S. Ambassador to Israel Edward S. Walker, Jr.[33] These letters were meant to clarify or confirm the United States' official position on ambiguous aspects of the WRM.[34] They also demonstrated a heightened U.S. involvement in the peace process.

2. *The Intricate "Time Line"*

The purpose of the timeline was to structure chronologically the implementation of each step of the agreement. This concept is not entirely novel but extends the notion of reciprocity, which previously appeared in the Hebron Protocol. Reciprocity, however, was deemed too vague a concept to be accurately judged and bilaterally agreed upon, and thus the timeline was introduced to provide the Israeli

28. *Id.* art. III(5), at 10. Article III also requires that the Israeli government allow the opening of the Gaza Industrial Estate. *Id.* art. III(2), at 9-10. In addition, both sides agree to reopen economic dialogue and to "jointly approach the donor community to organize a Ministerial Conference . . . to seek pledges for enhanced levels of assistance." *Id.* art. III(6)-(7), at 10.

29. *Id.* art. IV, at 10-11.

30. *Id.* art. V, at 11.

31. *Id.*, Time Line at 12.

32. Statements at the Signing of the Wye River Memorandum, *in* WRM, *supra* note 18, at 14-18.

33. *Id.*

34. U.S. Letters of Assurance to Israel, Oct. 29-30, 1998, *in* WRM, *supra* note 18, at 15-18.

government and the PA with a system of checks and balances and to foster trust where it had been severely lacking. Essentially, the timeline allows each side to tangibly assess whether the other is incrementally fulfilling its part of the agreement. The United States' position is explained in a letter from Secretary of State Albright to Israeli Prime Minister Netanyahu: "We [the United States] believe its parallel phased approach will help provide greater confidence to both sides in the implementation process, since actions in each stage of the time line are to be completed by both sides before moving on to the next stage."[35]

The timeline was strategically designed to ensure that the PA fulfilled its obligations before the Israeli government moved forward to meet its further commitments. The timeline was structured in this fashion because the PA has had ongoing obligations (e.g., combating terrorism, reducing the number of active policemen, and collecting weapons) which are more difficult to monitor and assess.[36] By contrast, the Israeli government has had "one-shot" obligations, such as transferring land to the PA,[37] an action which, while easy to verify, would be politically and militarily difficult to reverse.

Although the notion of reciprocity or "parallelism" should theoretically benefit the peace process, it is equally prone to hampering it. The timetable has served as an excuse for regular breakdowns in the peace process because either side could halt the implementation of its commitments anytime it was unsatisfied with the way the other was fulfilling its commitments. For example, the government of Prime Minister Netanyahu and the PA reached an impasse in the implementation of obligations listed under Week 2-6.[38] This third stage of implementation required the Palestinian Central Council ("PCC") to reaffirm Arafat's January 22, 1998 letter to Clinton "concerning the nullification Palestinian National Charter provisions that are inconsistent with the letters exchanged between

35. Letter from Madeline K. Albright, U.S. Secretary of State, to Binyamin Netanyahu, Prime Minister of Israel (Oct. 23, 1998), *in* WRM, *supra* note 18, at 14.

36. *See* Israel Ministry of Foreign Affairs, *The Wye River Memorandum, October 23, 1998: An Analysis* (visited Nov. 29, 2000) <http://www.israel.org/mfa/go.asp?MFAH07ojO>.

37. *See id.*

38. *See* Israel Ministry of Foreign Affairs, *Wye River Memorandum: Status of Implementation as of April 1999* (visited Nov. 29, 2000) <http://www.israel.org/mfa/go.asp?MFAH0ef90>.

the PLO and the Government of Israel on 9/10 September 1993."[39] On December 14, 1998, the Palestinian National Council ("PNC") voted by an overwhelming majority to revoke sections of the Palestinian Covenant calling for Israel's destruction.[40] In spite of this historic vote, however, Netanyahu's government claimed that the PA had violated too many other aspects of the WRM for Israel to be obligated to proceed with its parallel commitment.[41] Netanyahu stated that Israel would not proceed with the second stage of redeployment until Arafat "'official[ly] and unequivocal[ly]'" renounced his plan to declare a Palestinian state on May 4, 1999, and the PA terminated its incitement of violence and restored security cooperation with Israel.[42] In addition, Netanyahu stated that Israel would not conduct the redeployment until the PA also confiscated illegal weapons and reduced the size of its police force.[43] Since these terms had not been met by December 18, 1998, Israel did not conduct the scheduled 5% transfer of territory and suspended the implementation of the WRM.[44]

39. WRM, *supra* note 18, art. II(C)(2), at 9.

40. *See* Danna Harman, *Netanyahu Praises Palestinian Vote*, JERUSALEM POST, Dec. 15, 1998, at 1. According to the precise wording of the WRM, the PNC did not have to formally vote to revoke the Palestinian Covenant. However, under pressure from Israel and the United States, Arafat convened the PNC to vote for the cancellation of the sections of the Covenant that called for Israel's destruction. *See id.* This dramatic event took place in Gaza as Clinton, the first American President ever to visit the Palestinian autonomous areas, looked on. *See id.* Both Netanyahu and Clinton praised the vote. *See id.*

41. *See* Danna Harman et al., *PNC Vote Not Enough For Withdrawl*, JERUSALEM POST, Dec. 14, 1998, at 1.

42. *Id.*

43. *See id.*

44. The precise obligations of Week 2-6 were as follows:
—Palestinian Central Council reaffirms Charter letter (weeks two to four) (II(C)(2))
—PNC and other PLO organizations reaffirm Charter letter (weeks four to six) (II(C)(2))
—Establishment of weapons collection program (II(A)(2)(b)) and collection stage (II(A)(2)(c)); committee starts and reports on activities.
—Anti-incitement committee report (II(A)(3)(b))
—Ad Hoc Economic Committee: interim report at week three; final report at week six (III)
—Policemen list (II(C)(1)(a)); Monitoring and Steering Committee review starts (II(C)(1)(c))
—Stage 2 of F.R.D. implementation: 5% C to B. Israeli officials acquaint their Palestinian counterparts as required with areas; F.R.D. carried out; report on F.R.D. implementation (I(A))

C. Wye as Compared to Previous Interim Agreements

Although this Article has thus far analyzed the new aspects of the WRM, it is also important to determine whether previously introduced problems have been effectively addressed. This Section will evaluate the changes (or lack thereof) in three high-profile areas: the size and composition of the Palestinian police force, violations of human rights, and the revocation of offensive provisions in the Palestinian National Covenant.

The matter of the Palestinian police force is rooted in the first Israeli-PLO agreement. Article VIII of the DOP vaguely states, "In order to guarantee public order and internal security for the Palestinians of the West Bank and the Gaza Strip, the Council will establish a strong police force."[45] The subject is clarified by Annex I, Article IV(3)(a) of the Oslo II Agreement:

> During the interim period, the total number of policemen of the Palestinian Police in all its branches in the West Bank and the Gaza Strip will be no more than 30,000 out of which up to 12,000 policemen may be deployed in the West Bank and up to 18,000 policemen in the Gaza Strip. These numbers may be changed by agreement, if necessary. The Palestinian side will notify Israel of the names of the policemen recruited to the Palestinian Police in the Gaza Strip.[46]

The WRM loosened Oslo II's stringent language. Instead of insisting that the Palestinian police force be reduced from more than 41,000, its actual figure, to 30,000, the Memorandum simply required that "[t]he Palestinian side . . . provide a list of its policemen to the Israeli side in conformity with the prior agreements."[47]

In the wake of criticism directed at Netanyahu for "skirting around the subject" of Palestinian police force numbers, Nabil Sha'th, the Palestinian Minister of Planning and International Cooperation, acknowledged that "the Palestinian police now number 36,000" but added that there are "really only weapons for 24,000."[48] The

WRM, *supra* note 18, Time Line § 3, at 12-13.

45. DOP, *supra* note 19, art. VIII, at 25.

46. Oslo II, *supra* note 19, Annex I, art. IV(3)(a), at 40.

47. WRM, *supra* note 18, art. II(C)(1)(a), at 8.

48. *Egypt: PA's Sha'th on Wye Accord, Statehood*, JERUSALEM POST, Nov. 9, 1998, at 3.

remaining force was doing "various administrative work."[49] He stated that the Palestinian side would circumvent the 30,000 limitation by only submitting a list of its armed policemen to the Israelis.[50] If the PA carried out this plan, they would be in clear violation of the Oslo II agreement. Netanyahu should have insisted, and his successor Barak should clearly insist, on explicit language and compliance with this provision, thus limiting the Palestinian police force to 30,000.

The issue of human rights was also largely overlooked or intentionally neglected in the WRM. Instead of including more specific language or detailed expectations, Article II(C)(4) of the Memorandum copies verbatim the core of the Oslo II Agreement's section on the same subject. Article XI(1) of Annex I of the Oslo II Agreement states,

> Subject to the provisions of this Agreement, the Palestinian Police and the Israeli military forces shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms of human rights and the rule of law, and shall be guided by the need to protect the public, respect human dignity and avoid harassment.[51]

The WRM failed to address specific human rights violations in the region or to delineate new guidelines for the protection and enforcement of human rights.

As with the section on human rights, the WRM did not substantially differ from previous agreements on the issue of the Palestinian Covenant. Arafat initiated the subject of amending the Covenant on September 9, 1993, before the DOP was signed.[52] In a letter written to Yitzhak Rabin, Arafat declared that the PLO would recognize the right of Israel to live in peace and security, and would be committed to a peaceful resolution to the Palestinian-Israeli conflict.[53] "Consequently," Arafat wrote, "the PLO undertakes to

49. *Id.*

50. *See id.*

51. Oslo II, *supra* note 19, Annex I, art. XI (1), at 64.

52. *See* Letter from Yasser Arafat, Chairman, PLO, to Yitzhak Rabin, Prime Minister of Israel (Sept. 9, 1993), *in* DOP, *supra* note 19, at 38.

53. *See* DOP *supra* note 19. According to Article 33 of the Covenant, however, changing the text would require two-thirds of the National Council of the Palestinian Liberation Organization to vote in favor of an amendment. The text of the Palestinian Covenant may be found in THE ARAB-ISRAELI CONFLICT, VOL. III: DOCUMENTS (John Norton Moore ed., 1974), at 706.

submit to the Palestinian National Council for formal approval the necessary changes in regard to the Palestinian Covenant."[54] The Oslo II Agreement reiterates this commitment, adding only that the PLO should undertake this step "within two months of the date of the inauguration of the Council."[55]

The WRM changed the wording of this obligation. Article II(C)(2) states,

> The Executive Committee of the Palestine Liberation Organization and the Palestinian Central Council will reaffirm the letter of 22 January 1998 from PLO Chairman Yasir Arafat to President Clinton concerning the nullification of the Palestinian National Charter provisions that are inconsistent with the letters exchanged between the PLO and the Government of Israel on 9/10 September 1993.[56]

According to this statement, then, the Palestinian National Council did not legally have to vote to amend the Charter, they just had to reaffirm a letter concerning it. Nonetheless, Israel pushed for a formal vote to take place.[57] Knesset member Natan Sharansky eloquently explained why Israel was so adamant about the PLO's full and public annulment of the Covenant:

> If Arafat and the Palestinian leadership were taking other steps that mark the transformation from war to peace, the covenant might truly be a "piece of paper." Whether by inculcating the value of peace in their children's educational curricula and TV programs, championing peace in Arabic speeches on Palestinian TV, or publicly denouncing extremism, there are countless ways to promote reconciliation. But so far, we have witnessed only the opposite.
>
> As it now stands, demanding that the Palestinians fulfill their obligation to change their covenant is the only instrument that Israel has to insist that the Palestinian people begin a genuine transformation [and embrace peace].[58]

54. Letter from Yasser Arafat, *supra* note 52.
55. Oslo II, *supra* note 19, art. XXXI (9), at 28.
56. WRM, *supra* note 18, art. II(C)(2), at 9.
57. In a television interview, Ilana Dayan posed the following question to Netanyahu: "And are you saying today that if the Palestinian Charter is not abrogated by the PNC by means of a legal voting procedure, Israel will not redeploy from the territories it has pledged to redeploy from in the framework of the Wye Memorandum?" *Netanyahu on Iraq Crisis, Wye Accord*, FBIS-NES-98-317, Nov. 13, 1998, at 4. Netanyahu answered, "That is correct." *Id.*

On December 14, 1998, Clinton watched as an overwhelming majority of the PNC stood up and raised their hands in favor of amending the Covenant.[59] Although the results of this vote were not formally tallied, Netanyahu deemed the process and its outcome satisfactory, and the issue was laid to rest.[60]

The WRM includes the most detailed section on security of any PLO-Israeli agreement to date. Security has become such a significant element of the peace process that political commentators mocked Netanyahu for effectively changing Israel's negotiating strategy from "land for peace" to "land for security." It is important to thoroughly examine the WRM's new security provisions in order to understand how they differ from the previous six interim agreements and to evaluate whether these changes will be effective.

The DOP's references to security matters were brief, vague, and relatively balanced. The Preamble states, "The Government of the State of Israel and the P.L.O. team . . . agree that it is time to . . . strive to live in peaceful coexistence and mutual dignity and security."[61] While striving for this ideal, Israel deemed it necessary to retain overriding responsibility for security while realizing the Palestinian need to secure its new autonomous areas. Article VIII, "Public Order and Security," reflected this policy:

> In order to guarantee public order and internal security for the Palestinians of the West Bank and the Gaza Strip, the Council will establish a strong police force, while Israel will continue to carry the responsibility for defending against external threats, as well as the responsibility for overall security of Israelis for the purpose of safeguarding their internal security and public order.[62]

Considering the historic magnitude of the DOP, the use of such general language is quite surprising. The PA is not expressly held

58. Natan Sharansky, *Not a Technicality*, JERUSALEM POST, Oct. 7, 1998, at 10.
59. *See* Harman, *supra* note 40.
60. *See id.*
61. DOP, *supra* note 19, at 21.
62. DOP, *supra* note 19, art.VIII, at 25. There was only one other reference to the issue of security in the DOP, which was in Annex II of the Agreed Minutes. *Id.*, Agreed Minutes to the Declaration of Principles on Interim Self-Government Arrangements, Annex II, at 37. It stated, "It is understood that, subsequent to the Israeli withdrawal, Israel will continue to be responsible for external security, and for internal security and public order of settlements and Israelis." *Id.*

responsible for preventing terrorists coming from the autonomous areas or for preventing incitement to violence.

By the time the Oslo II Agreement was signed in September 1995, however, the issue of terrorism had become for Israelis the litmus test in the peace process. One hundred thirty-seven Jews had been murdered in Israel by April 1995[63] in more than thirty terrorist attacks carried out since the peace process began.[64] These devastating attacks propelled the issue of security to the forefront of the Palestinian-Israeli dialogue. The language and content of the Oslo II Agreement's sections on security reflected Israel's heightened concern about terrorist attacks as well as the PA's failure to curtail terrorist organizations. Article XIII, "Security," reiterated the general security formula devised in the DOP but included a new ingredient: the mention of terrorism.[65] The article states, "Israel shall have the overriding responsibility for security for the purpose of protecting Israelis and confronting the threat of terrorism."[66]

The Oslo II Agreement also differed from the DOP by including a special section in Article XXII to address the problem of incitement to violence:

> Israel and the Council shall seek to foster mutual understanding and tolerance and shall accordingly abstain from incitement, including hostile propaganda, against each other and, without derogating from the principle of freedom of expression, shall take legal measures to prevent such incitement by any organizations, groups or individuals within their jurisdiction.[67]

This new theme was included in the Oslo II Agreement because of growing awareness that the PA did not deter but actually encouraged hateful statements against Israel.

Although in language and content the Oslo II Agreement is more detailed and extensive than the DOP, the overall tone of Oslo II is neutral. The emphasis on bilateral responsibility was demonstrated by the use of phrases such as "both sides" or "each

63. *See* Meir Indor, *Alisa's Last Journey, and Beyond*, JERUSALEM POST, April 20, 1995, at 5.

64. *See Previous Attacks with Casualties on or near Buses Since the Signing of the Oslo Accords*, JERUSALEM POST, July 25, 1995, at 4; *see also Recent Deadly Terrorist Incidents*, JERUSALEM POST, Aug. 22, 1995, at 4.

65. Oslo II, *supra* note 19, art. XIII, at 16.

66. *Id.* art. XIII(2)(a), at 16.

67. *Id.* art. XXII (1), at 24.

side" in reference to future efforts to combat violence and terrorism.[68] In addition to impartiality, the Oslo II Agreement explicitly showed the parties striving to "put an end to decades of confrontation and to live in peaceful coexistence, mutual dignity and security, while recognizing their mutual legitimate and political rights."[69]

The Hebron Protocol did not include any new sections on security. Article 2, "Security Powers and Responsibilities," merely stated that "both sides reaffirm their commitment to honor the relevant security provisions of the [Oslo II] Agreement."[70] Although the Protocol did specifically address the security of Hebron, the only other references to general security measures were presented in the Note for the Record.[71] According to the Note for the Record, the Palestinian side had to reaffirm its commitment to "[f]ighting terror and preventing violence[,] . . . [p]reventing incitement and hostile propaganda[,] . . . [c]ombat[ing] systematically and effectively terrorist organizations and infrastructure, [and] apprehend[ing], prosecut[ing] and punish[ing] . . . terrorists."[72] This statement did not add any new components to the Palestinian or Israeli responsibilities on the issue of terrorism. In fact, it virtually copied Section 3 of the Oslo II Agreement's Annex I, Article II, "Security Policy for the Prevention of Terrorism and Violence."[73]

68. *E.g., id.* art. XV, at 18; Annex I, art. II, at 33.

69. *Id.*, Preamble, at 6.

70. Hebron Protocol, *supra* note 19, art. 2(b), at 5.

71. *Id.*, Note for the Record, at 17-19. The Note for the Record is three pages in length and 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. *Id.*; *see also* Justus R. Weiner, *The Hebron Protocol: The End of the Beginning or the Beginning of the End of the Israeli-Palestinian Peace Process?*, 15 B.U. INT'L L.J. 373, 388-89 (1997).

72. Hebron Protocol, *supra* note 19, Note for the Record, at 18-19.

73. Oslo II, *supra* note 19, Annex I, art. II(3), at 33-34. Section 3 states,

> With a view to implementing the above, each side shall, in accordance with the provisions of this Agreement, carry out the following functions in the areas under its security responsibility:
>
> a. protect all residents of, and all other persons present in, these areas;
>
> b. actively prevent incitement to violence, including violence against the other side or persons under the authority of the other side;
>
> c. apprehend, investigate and prosecute perpetrators and all other persons directly or indirectly involved in acts of terrorism, violence and incitement; and
>
> d. prevent and deal with any attempt to cause damage or harm to infrastructure serving the other side, including, *inter alia*, roads, water,

In contrast to all of the interim agreements, including the Hebron Protocol, the WRM radically extends the Palestinian side's obligation to curtail terrorism and violence against Israel. The Memorandum requires the PA to take five specific steps in order to outlaw and combat terrorist organizations,[74] three specific steps to handle illegal weapons,[75] two specific steps to prevent incitement,[76]

electricity, telecommunications and sewage infrastructure.

Id.

74. WRM, *supra* note 18, art. II(A)(1), at 6-7. The full text of Article II(A)(1), "Outlawing and Combating Terrorist Organizations," states,

(a) The Palestinian side will make known its policy of zero tolerance for terror and violence against both sides.
(b) A work plan developed by the Palestinian side will be shared with the U.S. and thereafter implementation will begin immediately to ensure the systematic and effective combat of terrorist organizations and their infrastructure.
(c) In addition to the bilateral Israeli-Palestinian security cooperation, a U.S.-Palestinian committee will meet biweekly to review the steps being taken to eliminate terrorist cells and the support structure that plans, finances, supplies and abets terror. In these meetings, the Palestinian side will inform the U.S. fully of the actions it has taken to outlaw all organizations (or wings of organizations, as appropriate) of a military, terrorist or violent character and their support structure and to prevent them from operating in the areas under its jurisdiction.
(d) The Palestinian side will apprehend the specific individuals suspected of perpetrating acts of violence and terror for the purpose of further investigation, and prosecution and punishment of all persons involved in acts of violence and terror.
(e) A U.S.-Palestinian committee will meet to review and evaluate information pertinent to the decisions on prosecution, punishment or other legal measures which affect the status of individuals suspected of abetting or perpetrating acts of violence and terror.

Id.

75. *Id.* art. II(A)(2), at 7. The text of Article II(A)(2), "Prohibiting Illegal Weapons," states,

(a) The Palestinian side will ensure an effective legal framework is in place to criminalize, in conformity with the prior agreements, any importation, manufacturing or unlicensed sale, acquisition or possession of firearms, ammunition or weapons in areas under Palestinian jurisdiction.
(b) In addition, the Palestinian side will establish and vigorously and continuously implement a systematic program for the collection and appropriate handling of all such illegal items in accordance with the prior agreements. The U.S. has agreed to assist in carrying out this program.
(c) A U.S.-Palestinian-Israeli committee will be established to assist and enhance cooperation in preventing the smuggling or other unauthorized introduction of weapons or explosive materials into areas under Palestinian jurisdiction.

Id.

and to comply with several additional sections that address different aspects of security. Article II(A)(1)(c) effectively illustrates the WRM's more specific and detailed treatment of security matters:

> In addition to the bilateral Israeli-Palestinian security cooperation, a U.S.-Palestinian committee will meet biweekly to review the steps being taken to eliminate terrorist cells and the support structure that plans, finances, supplies and abets terror. In these meetings, the Palestinian side will inform the U.S. fully of the actions it has taken to outlaw all organizations (or wings of organizations, as appropriate) of a military, terrorist or violent character and their support structure and to prevent them from operating in the areas under its jurisdiction.[77]

In departure from past agreements, the WRM does not simply state that the PA must "fight terror and violence," but gives a detailed description of what particular steps the PA should take to combat and eliminate terrorism.[78]

The WRM's major restructuring of security issues has generated substantial commentary from the involved parties. The new security aspect of the WRM was so significant to the Israeli team that Netanyahu explicated its importance at the signing ceremony:

> We are more secure today because, for the first time since the signing of the Oslo accords, we will see concrete and verifiable commitments carried out. Our Palestinian partners will join us in fighting terrorism. They will follow a detailed and systematic plan to fight terrorists and their infrastructure, to jail killers that have so far roamed at large, to stop vitriolic incitement, and, above all,

76. *Id.* art. II(A)(3), at 7-8. Article II(A)(3), "Preventing Incitement," states,

(a) Drawing on relevant international practice and pursuant to Article XXII (1) of the Interim Agreement and the Note for the Record, the Palestinian side will issue a decree prohibiting all forms of incitement to violence or terror, and establishing mechanisms for acting systematically against all expressions or threats of violence or terror. This decree will be comparable to the existing Israeli legislation which deals with the same subject.
(b) A U.S.-Palestinian-Israeli committee will meet on a regular basis to monitor cases of possible incitement to violence or terror and to make recommendations and reports on how to prevent such incitement. The Israeli, Palestinian and U.S. sides will each appoint a media specialist, a law enforcement representative, an educational specialist and a current or former elected official to the committee.

Id.

77. *Id.* art. II(A)(1)(c), at 6-7.

78. *See supra* notes 74-77 and accompanying text.

> finally after 35 years, to cancel the articles in the Palestinian Charter which call for the destruction of Israel. This means that our world today will be safer for our children and for our neighbors' children.[79]

Some Palestinians also praised the security provisions, but for different reasons. Dr. Nabil Sha'th, Palestinian Minister of Planning and International Cooperation, argued, for example, that the Palestinians stood firm during tough security negotiations and were pleased with the results obtained. He explained that the security aspects of the WRM

> are based on a security plan drafted by the Palestinian side. The Palestinian side will then inform the U.S. side of this plan to enable the Americans to assess the results of its enforcement in the future. The Israeli side wanted the accord to specify a security plan, but this did not happen.[80]

In the Egyptian daily *Al-Ahram*, Abdel-Azim Hammad also argued that the PA did well in the bargaining sessions. He stated that the WRM affirmed that "Arafat is expected to commit himself 100 percent to the fight against terrorism; but he is not expected to guarantee 100 percent results."[81] This understanding appears to excuse in advance the Palestinian failure to curb terrorism.

Other Palestinians, however, were critical of the new security arrangements. A common view was expressed by Salama A. Salama:

> The Wye Accord will not only restrict the movement of the Palestinians and make Arafat and his National Authority hostages to harsh security considerations; it will not even permit the Palestinian opposition to make a sound. In contrast, the Israeli opposition is not prevented by the security agencies from demonstrating or resorting to violence.[82]

Hamas leader Shaykh Ahmad Yasin articulated a similar sentiment. He claimed, "They say that this [peace process] is about Israel's security interests, but in fact Yasser Arafat and his intelligence services are only to make sure that the resistance against

79. Benjamin Netanyahu, Statements at the Signing of the Wye River Memorandum, *in* WRM, *supra* note 18, at 25.

80. *Egypt: PA's Sha'th on Wye Accord, Statehood, supra* note 48.

81. Hammad, *supra* note 20.

82. Salama A. Salama, AL AHRAM, Nov. 4, 1998, at.11.

the Israeli occupiers ends."[83]

Perhaps Milt Bearden, the former Directorate of Operations for the CIA, can be credited with having made the most accurate, if not pragmatic, observation about the security provisions. He said that the WRM "is neither a great deal nor a particularly bad one. It is the first time that PA Chairman Yasser Arafat has put his signature to a document on key security issues, and that precedent must be viewed positively."[84] Realistically, Arafat's endorsement cannot be considered a major stride toward peace. Shortly after signing the DOP, which he called "the best possible agreement in the worst possible circumstances," Arafat subsequently referred to the agreement as the "first step 'in the 1974 plan'—known by Arabs as the 'plan of phases' for the destruction of Israel."[85]

The Memorandum, along with the six earlier Israeli-PLO transitional agreements, was the product of intense political negotiations. By virtue of this fact, each of the agreements includes some sections that are less favorable to Israel but more favorable to the Palestinians, and vice versa. Clearly, each party must yield on certain issues in order to get its way on other ones.

D. The United States' Expanded Role

1. The United States as "Peace Broker"

Initially, the United States played a very limited role in the Palestinian-Israeli peace process. Although the White House served as the "master of ceremonies"[86] during the September 1993 signing of the DOP, the Oslo negotiations were primarily bilateral, involving Israeli and Palestinian delegates with occasional intervention from their Norwegian hosts. Approximately four years later, with the signing of the Hebron Protocol, the United States emerged not only as an important broker of peace, but as the sole mediator of the peace

83. *West Bank and Gaza Strip: Shaykh Yasin Says Peace Process 'Has Definitely Failed*,' FBIS-NES-98-300, Oct. 27, 1998, at 1 (interview with Hamas leader Shaykh Ahmad Yasin).

84. Milt Bearden, *CIA as Honest Broker*, JERUSALEM POST, Nov. 11, 1998, at 8.

85. Justus R. Weiner, *Hard Facts Meet Soft Law—The Israeli-PLO Declaration of Principles and the Prospects for Peace: A Response to Katherine W. Meighan*, 35 VA. J. INT'L L. 931, 967 (1995).

86. Weiner, *supra* note 71, at 398.

process.[87] The WRM augmented the United States' dominant position in the peace process by giving the third party a crucial role in the implementation of the agreement.

The United States' expanded role in the WRM is evidenced by the unprecedented establishment of two bilateral U.S.-Palestinian committees and three trilateral U.S.-Israeli-Palestinian committees, designed to oversee and enforce Palestinian efforts to combat terrorism.[88] More specifically, one of the bilateral committees was established "to review the steps being taken to eliminate terrorist cells,"[89] while the other was created "to review and evaluate information . . . which affect[s] the status of individuals suspected of abetting or perpetrating acts of violence and terror."[90] The trilateral committees were aimed at implementing other aspects of the Palestinian security commitments.[91]

The WRM also gave the United States the critical push to supervise the implementation of commitments that fall outside of the bi- and tri-lateral committees' jurisdiction. For example, the Palestinians must provide the United States with a precise "work plan . . . to ensure the systematic and effective combat of terrorist organizations and their infrastructure,"[92] and provide the United States with biweekly briefings of their progress on this front.[93] The Monitoring and Steering Committee will also provide regular briefings to the United States on their efforts to compile a list of Palestinian policemen.[94] It is important to note that although the Central Intelligence Agency is never explicitly mentioned in the WRM, the United States' work in the region will be carried out under the auspices of the CIA.[95] The Agency's purpose is to help counter

87. *See id.*

88. *See* Arieh O'Sullivan, *Calling in the CIA*, JERUSALEM POST, Oct. 30, 1998, at 14.

89. WRM, *supra* note 18, art. II(A)(1)(c), at 6.

90. *Id.* art. II(A)(1)(d), at 7.

91. *See id.* art. II(A)(2)(c), at 7; art. II(A)(3)(b), at 7; art. II(B)(3), at 8.

92. *Id.* art. II(A)(1)(b), at 6

93. *Id.* art. II(A)(1)(c), at 6-7; *see also id.* art. II(A)(1)(e), at 7.

94. *See id.* art. II(C)(1)(c), at 8. It should be noted that the Monitoring and Steering Committee is one of the most senior committees which was created in Oslo II. *See* Oslo II, *supra* note 19, art. XXVI, at 25.

95. *See* Nasir Yasin, *West Bank and Gaza Strip: Role of the CIA in Palestinian-Israeli Accord*, AL-QUDS AL-ARABI (LONDON), FBIS-NES-98-301, Oct. 28, 2000.

terrorism and provide security-related intelligence.[96] Since the United States' role in the region is explicitly linked to these two issues, it is fitting that the United States assumes a degree of responsibility concerning supervision of the WRM. However, the CIA will not just decide whether the Palestinians are sufficiently implementing their responsibilities, but in addition will report back to the administration officials in the United States.

Beyond providing legal and security cooperation, the United States has committed itself to providing considerable financial support for the peace process. (It should be noted that this was not part of the text of the Memorandum but is a by-product of the agreement.) The United States has pledged $1.2 billion over five years to help defray the cost of Israeli redeployment and $400 million to boost the Palestinian economy.[97] The latter contribution came on November 30, 1998 at an international donor's conference during which approximately $3.2 billion was pledged for various Palestinian economic projects.[98]

There has been considerable review and analysis of the enhanced U.S. role by various Israeli journalists and military and political leaders. Some view this U.S. expansion as a gain for Israel, regarding U.S. involvement as a means of guaranteeing that the PA will fulfill its obligations. As one Israeli journalist has noted, Israel needs "someone with influence" to ensure Arafat carries out his promises.[99]

96. *See id.*

97. *See* Hillel Kuttler, *Redeployment Aid Agreement Near*, JERUSALEM POST, Jan. 5, 1999, at 2; *see also* Debra DeLee, *U.S. Must Make Good on Wye Vow*, NEWSDAY (NEW YORK), Nov. 3, 1999, at A47.

98. Delegates from over forty countries were present at the conference. *See* Hillel Kuttler, *Donor's Conference Raises $3.2b. for Palestinian Projects*, JERUSALEM POST, Dec. 2, 1998, at 2. The United States contributed $400 million to the Palestinians, along with an additional $100 million in annual aid. *See id.* Thus, the United States will contribute $900 million to the Palestinians over the next five years. *See id.* Other major conference donations included $500 million by the European Union, $200 million by Japan, and $170 million by Norway. *See id.* The funds are supposed to be used for "job creation, improving education and access to clean water, and strengthening law enforcement." Hillel Kuttler, *US Pledges to Give Palestinians $400m.*, JERUSALEM POST, Dec. 1, 1998, at 2. However, it is worthwhile to note that approximately $20 million of European aid, which was meant to provide cheap housing for Palestinians, was instead spent on luxury apartments for various supporters of the PA in 1998. *See* Douglas Davis & Hillel Kuttler, *Report: Arafat Spent EU $20m. on Luxury Homes for PA Officials*, SUNDAY TIMES (LONDON), Nov. 30, 1998, at 1.

99. Ron Ben-Yishai, *A Good Agreement, Difficulties in Implementation*, YEDIOT

Gidon Ezra, former deputy head of the General Security Service (known by the Hebrew initials "Shin Bet"), Israel's equivalent of the FBI, likewise has stated, "'When we told the Palestinians to fight terror, they didn't. There's a much better chance they'll listen to the Americans.'"[100] An aide to former Israeli Defense Minister Yitzchak Mordechai expressed a similar sentiment in an interview with *The Jerusalem Report*:

> "The Palestinian Authority is now an independent entity, and treated as such by the world community. We can't treat them as vassals and tell them how to run their security. But the Americans, an invited outside power, can." Without an objective third party, he sa[id], the Palestinians wouldn't do anything. "It's much better for us to have Americans there than Frenchmen or Egyptians," he argue[d].[101]

Not all Israeli observers, however, are optimistic about the expanded U.S. role. Some have complained, as it turns out with justification, that the American involvement is undesirable as it "prevents real dialogue and coexistence between us and the Palestinians, and since it makes us even more dependent on the United States."[102] Others consider America's presence in the region a political victory for the PA. As one observer has stated, "Arafat has consistently advocated an international presence—such as U.N. observers—in the territories in the transition phase from occupation to statehood. Now he has what amounts to American observers."[103] Former Shin Bet chief Carmi Gillon objected to the United States' increased authority in the region for political reasons.[104] He argued that Palestinians could use the WRM to complain to the Americans about every move that Israel makes, thereby straining American-Israeli relations.[105] "'The Palestinians have nothing to lose here. We do,'" he argued.[106] "'We cooperate with the Americans on things that

AHRONOT, Oct. 25, 1998, at A13, *available at* <http://www.israel.org/mfa/go.asp?MFAH07nt0>.

100. Leslie Susser, *The New Partnership*, JERUSALEM REPORT, Nov. 23, 1998, at 26.

101. *Id.*

102. Ben-Yishai, *supra* note 99.

103. Susser, *supra* note 100.

104. *See id.*

105. *See id.*

106. *Id.*

are really existential to us, like the Arrow anti-ballistic missile. Bringing in the CIA is a major political blunder.'"[107]

In addition to political concerns, security-related criticisms have also been common in Israeli media. A former senior member of the Mossad (Israeli intelligence agency, equivalent of the CIA) noted, "'The CIA, and not Israel, will decide whether the Palestinians are fulfilling their side of the bargain. The Americans, and not the Palestinians, will be [Israel's] counterparts in arguments over security defaults. They will either accept our complaints or dismiss them.'"[108]

Another observer stated that the American involvement "appears to break the long-standing Israeli protection of its security interests by allowing foreigners to have a say in determining whether its security is being harmed."[109] Former IDF intelligence director General (retired) Shlomo Gazit concurred with this analysis, asserting that the U.S.-Palestinian committees that were established by the WRM were the "'worst items'" in the agreement.[110] "'For the first time in 50 years we have agreed that we shall be totally out of the process of dealing with security problems,'" he argued.[111] He continued, "'It's a horrible mistake and contrary to our long experience.'"[112] Gazit cited Israeli-American experience during the War of Attrition to prove his point. In August 1970, Israel had great difficulty convincing America that Egypt had violated a cease-fire agreement by moving SAM-3 missiles into the Suez Canal.[113] "'The Americans didn't want to know about it. They were afraid of having to make a decision and we had enormous difficulties in convincing them,'" Gazit declared, noting that this type of scenario could recur.[114]

It soon became clear that the tri-lateral aspect of the WRM would not mean an end of conflict between Israeli and Palestinian assessments of the other side's actions. This was illustrated early in February 1999 when conflict arose not only between Israel and the PA, but also between Israel and the United States. Evidence of

107. *Id.*

108. David Kimche, *From Honest Broker to Judge*, JERUSALEM POST, Nov. 2, 1998, at 8.

109. Arieh O'Sullivan, *Calling in the CIA*, JERUSALEM POST, Oct. 30, 1998, at 14.

110. *Id.*

111. *Id.*

112. *Id.*

113. *See id.*

114. *Id.*

stressed U.S.-Israeli relations became apparent with Netanyahu's challenge to the CIA to disprove his claim that Palestinians had released Islamic militants, murderers not only of Israeli citizens, but also of five American citizens in Israel.[115] The CIA responded not with a denial, but with the statement that the "'US government has no firm information linking the individuals (named by the Israeli government) to the murders of . . . American citizens.'"[116] Indeed, this tension in the relationship between Israel and the United States became only more pronounced as the latter disagreed with the former's assessment of Palestinian violations of the Memorandum, and at the same time maintained its own fulfillment of commitments.[117] The United States in fact suspended its transfer of the $1.2 billion of special aid promised to Israel upon the signing of the WRM.[118] At the same time, the Palestinians were assured that their own special aid package would not be delayed.[119] Israel contended that it should be receiving commensurate funding, as it had carried out the first of three redeployments from territory in the West Bank.[120] In response to Israel's claim, Stuart Eizenstat, U.S. Undersecretary of State for Economic Affairs, extended the United States' view that Israel would receive aid only if all obligations were carried out.[121]

On the Palestinian side, reaction to the U.S. intervention has been predominately negative. Dr. Hanan Ashrawi, member of the Palestinian Legislative Council and former Palestinian Minister of Higher Education, stated, "Historically, the Palestinian people have not trusted the CIA, nor any other intelligence apparatus, since they see such trust as a historical irony . . . . Consequently, I imagine that the Palestinian people, in general, do not want the CIA to have this sort of presence in the region."[122]

115. *See* Danna Harman, *PM Insists PA Released Terrorist Bombers*, JERUSALEM POST, Feb. 2, 1999, at 2.

116. *Id.*

117. *See* Ze'ev Schiff, *U.S. Stops Payment on $1.2 Billion in Wye Aid to Israel* (Mar. 5, 1999) <http://www3.haaretz.co.il/eng/old-scripts/open.asp?date=3/5/99>.

118. *See id.*

119. *See id.*

120. *See id.*

121. *See id.*

122. Abir Aql et al., *Arab Leaders' Reactions to Wye Pact*, FBIS-NES-98-312, Nov. 8, 1998, at 2.

Indeed Ashrawi deemed the United States to be an unfair arbitrator since they failed "to put an end to the building of new settlements and . . . to take neutral positions on other issues."[123] This sentiment was echoed by Ghassan Khatib, a journalist for the *Palestine Report*, who argued that the U.S. role in the peace process is "unhealthy" since it "does not even try to compensate for the imbalance of powers,"[124] suggesting Israel's advantage in wooing American support. Al-Barghuthi, leader of the Palestinian People's Party (successor to the Palestinian Communist Party), also expressed fears of U.S. partiality:

> "The fact that the United States is single-handedly undertaking the role of the international mediator in the peace process, its bias in favor of Israel, and the White House's vulnerability to tremendous pressures from the Jewish lobby in the United States, makes it exceedingly difficult for this role to be entirely unbiased."[125]

Several commentators have also argued that the United States' intervention could infringe on Palestinian civil liberties. Dr. Bashir Musa Nafi, a researcher of modern history, succinctly summarized this oft-repeated theme:

> The second level [of U.S. intervention] pertains to giving the Americans the right to interpret the nature of the Islamic forces' infrastructures (the Palestinian popular institutions) and determine the dividing line between what is political and what is military in the work of these infrastructures, in the enactment of laws that deal with the Palestinian opposition forces, in determining the limits of legitimate political expression and the limits of incitement to violence, and in determining who is a political struggler and who is abetting military activity against the Israelis. This is an active multilevel role that affects the nature and scope of the work of the Palestinian police, the various security services, the prisons and detention camps, the media, and the parliament. This is a masked American hegemony affecting the essence of the Palestinian independence and sovereignty claims.[126]

123. *Id.*

124. Ghassan Khatib, *Compromising the Compromise*, PALESTINE REP., Nov. 13, 1998, at 16.

125. *Id.*

126. Dr. Bashir Musa Nafi, *Israel: Paper on the CIA Interference in PA Affairs*, FBIS-NES-98-312, Nov. 8, 1998, at 4. Dr. Nafi's argument continued as follows:

> The American intelligence's enthusiasm to assume its new role in Palestine

Although some observers of U.S. involvement are primarily concerned by the potential curtailment of freedom of expression in PA governed areas,[127] others have condemned the U.S. role for security reasons. Palestinian Legislative Council Member Hosam Khader, for example, stated, "I'm afraid our entire security apparatus will become an extra-territorial department of the CIA."[128]

The Islamic fundamentalist terrorist organization Hamas has categorically denounced the new U.S. role. A Hamas spokesman called the WRM "a security pact between Israel and the Palestinian Authority," where the "Israelis, Americans, and the PA are all after Hamas."[129] In a similar vein, Dr. Muhmud al-Zahhar, a leader of the Hamas movement in the Gaza Strip, noted that "'a new enemy—namely, the United States—has been mobilized in the region, which will create an unbalanced situation.'"[130] Furthermore, Hamas leader Shaykh Ahmad Yasin argued that Arafat made terrible concessions to Israel and the United States: "The Americans and Israelis have finally managed to turn the Palestinian autonomy government into Israel's watchdog .... The moment that Arafat sat down at the negotiating table with the Israelis he stopped being a liberation fighter."[131]

Aside from the extensive Israeli and Palestinian analysis and commentary on the United States' expanded role, there has been heightened American review of the subject. Initially, many political observers argued that Clinton was motivated to participate in Wye to deflect the nation's attention from the controversy concerning his highly publicized extra-marital affair with a White House intern. As

> reminds us of the ugly American legacy in the sixties and seventies when CIA agents from Indonesia to El Salvador were defending the values of the free world by strengthening military dictatorships, igniting civil wars, and participating in unlimited massacres of intellectuals, students and active trade union members in the Third World. The justification then was confronting the communist danger. Under what slogan will more Hamas and Islamic Jihad militants and more Fathi al-Shaqaqi, Yaya 'Ayyash, al-Sharif, and 'Awadallah be liquidated today?

Id.

127. *See, e.g.*, SAID K. ABURISH, ARAFAT: FROM DEFENDER TO DICTATOR 262-325 (1998).

128. Khaled Amayreh, *On the Seventh Day,* AL-AHRAM, Nov. 4, 1998, at 1.

129. *Id.*

130. Abir Aql et al., *supra* note 122.

131. *West Bank and Gaza Strip: Shaykh Yasin Says Peace Process Has 'Definitely Failed,' supra* note 83.

one journalist wrote, the President's involvement in Wye "provided a stage for Clinton ... to play statesman instead of defendant."[132] Indeed, Clinton himself played a major role in the WRM negotiations, much like Carter did twenty years ago at the Camp David negotiations.[133]

2. The CIA

The most discussed aspect of American participation in the WRM, however, was not Clinton's contribution to the negotiations, but rather the CIA's high level of involvement in the agreement's implementation. Edward Djerejian, Director of the Baker Institute for Public Policy at Rice University and former U.S. Ambassador to Israel, explained that "'the CIA would serve as the bridge between the two sides,' because the lack of confidence between the Palestinians and the Israelis had reduced the effectiveness of any security meeting between them."[134] Djerejian added that "'the CIA could play a role of agent or honest broker.'"[135] The American media has been so critical of this role that the CIA director, George Tenet, wrote an editorial for the *New York Times* clarifying the CIA's involvement:

> For many years the C.I.A. has been working with the Israeli Government and the Palestinian Authority to combat terrorists in their midst ....
>
> ... There is nothing new in this role for the CIA.
>
> Another part of our mission will be to keep American policy makers informed about how the agreement they brokered is being carried out. Again, there is nothing new in this. The agency has long assisted policy makers in their efforts to make international

132. J. F. O. McAllister, *Inside Wye Plantation*, TIME, Nov. 2, 1998, at 38, 40.

133. Although in both cases the Presidents of the United States cleared their schedules and became personally involved with the talks, there are some fundamental differences between the talks at Camp David and the negotiations at Wye Plantation. In the former case, Carter simply brought Egypt and Israel together. The actual agreement, however, was not negotiated and definitely not signed at Camp David. By contrast, Clinton not only brought the Palestinians and Israelis together, but also pushed them to sign an agreement under American auspices. In sum, their tactics were similar, but they yielded different results.

134. Yasin, *supra* note 95.

135. *Id.*

agreements viable.[136]

Tenet did acknowledge, however, a difference between this specific project and previous Agency assignments.[137] According to Tenet, "What is slightly unusual in the current case is that the agency's role has become widely publicized. But this won't change our role, which will continue as before."[138]

Tenet rebuffed the fear that the CIA's participation in the Middle East might be dangerous.[139] "The CIA is not interposing itself between combatants," he stated.[140] "We are not placing officers inside the security operations of either side. We will not arrest or interrogate people or assume any other direct role on the ground .... In sum, the C.I.A. is not making policy, but helping carry it out."[141] It is precisely this function, however, that certain observers have criticized. Senator Richard Shelby, chairman of the Senate Committee on Intelligence, expressed "concern[] about 'expanding the (CIA) role as the implementer of policy here, which is a big departure [from the past].'"[142] This concern was reiterated by Dov Zakim, former U.S. Defense Department official under Reagan. He argued that "restricting the CIA's work in this way is very serious because it will be blamed for any mistake that takes place in the Middle East."[143]

II. Problems Arising Since the Signing of the Memorandum

Since the signing of the WRM, the peace process has been plagued by breakdowns and disruptions. The first mini-crisis came less than a week after the Memorandum was signed. On October 27, 1998, according to Netanyahu's spokesman Aviv Bushinsky, the

136. George J. Tenet, *What 'New' Role for the C.I.A.?* N.Y. TIMES, Oct. 27, 1998, at A23.

137. *See id.*

138. *Id.*

139. This suggestion was made, for example, by Douglas Waller: "By helping Arafat crack down on Hamas, the CIA may invite attack against American targets, including strikes against CIA staff in the region." *See* Douglas Waller, *Coming in from the Cold,* TIME, Nov. 2, 1998, at 46, 46.

140. Tenet, *supra* note 136, at A23.

141. *Id.*

142. Frederic J. Frommer, *The CIA Role: Danger Ahead*, JERUSALEM REPORT, Nov. 23, 1998, at 28.

143. Yasin, *supra* note 95.

Palestinians had verbally agreed to present a detailed plan on combating terrorism to the Americans by the end of the week.[144] Israeli sources then learned that the PA had informed the American delegation that it would not be able to complete its work plan on time. However, the WRM requires that the agreement be implemented, regardless of whether the cabinet ratifies a deal, "[u]pon [e]ntry into [f]orce of the [m]emorandum," which meant ten days after the agreement was signed.[145] Nonetheless, the Prime Minister's Office declared that it would not "be able to begin implementation of the agreement until [the work plan of the Palestinians] is completed."[146] The following day, however, chief Palestinian negotiator Saeb Erekat announced that the PA "'will be sharing our security paper with the Americans when the implementation period begins—Monday [November 2, 1998]—as was agreed upon.'"[147] Bushinsky said that Israel had understood that the plan was to be presented by October 30, but would welcome it on November 2.[148] Arafat and Barak had met in order to discuss the outlined schedule for implementing the WRM.[149] While Barak preferred to defer the carrying out of the agreement, it was clear that the PA expected the WRM's full and immediate implementation.[150] Barak reiterated his promise to fulfill the agreement in any case, but added, "If it is decided not to adopt the variations we have brought up, both sides understand what this means. We will both have to carry the responsibility of the consequences."[151] Thus, even in the very first days of the WRM, the PA and Israel began jockeying for position. These typical inconsistencies added anxiety to the stressed Israeli-PA relations and weakened the peace process.

144. *See* Danna Harman, *Wye on Hold Until PA Produces Security Paper,* JERUSALEM POST, Oct. 28, 1998, at 1.

145. WRM, *supra* note 18, Time Line § 1, at 12.

146. Harman, *supra* note 144.

147. Danna Harman & Hillel Kuttler, *PA: Security Plan Will Be in on Monday*, JERUSALEM POST, Oct. 29, 1998, at 1.

148. *See id.*

149. *See* Harman, *supra* note 15.

150. *See* Danna Harman, *Barak to Woo Mubarak Over Wye Delay*, JERUSALEM POST, July 29, 1999, at 1.

151. *See* Harman, *supra* note 15.

A. Immediate Doubts

Violent terrorist clashes and political reverberation plagued the implementation of interim agreements including the WRM.[152] A dangerous crisis erupted less than a week after the signing of the WRM, on October 29, 1998, when a Hamas suicide bomber set out to blow up a school bus filled with children in the Gaza Strip's Gush Katif.[153] An Israeli soldier, driving an escort Jeep, intercepted the speeding van.[154] Though he was killed in the explosion, he managed to avert the greater calamity.[155] Netanyahu immediately called for Arafat to crack down on terrorism.[156] The following day, the PA claimed to have arrested dozens of Hamas activists.[157] In an unprecedented move, Hamas spiritual leader Sheikh Ahmad Yassin was also placed under house arrest.[158]

On November 6, 1998, Islamic Jihad staged its own suicide bombing attempt at the crowded outdoor market Machane Yehudah. Although only the two bombers died, twenty-four Israelis were injured.[159] As a result of the attack, Netanyahu canceled his next cabinet meeting, which was to precede the Knesset's ratification of the Memorandum. Once the Prime Minister's Office was assured that the PA was taking steps to prevent further attacks, it reconvened the cabinet on November 11.[160]

152. In the opinion of the author, the increasing violence of Palestinians against IDF soldiers may be due to the widespread anti-Semitism in Arab newspapers and textbooks. Jewish Knesset members discussed anti-Jewish statements in newspapers from Palestinian-controlled areas and surrounding Arab countries in a day-long study session with Arab Knesset members in May 2000. *MKs Study Arab Anti-Semitism*, JERUSALEM POST, May 23, 2000, at 5. Itamar Marcus, leader of the group, noted that the study "showed that 'the peace process has not had an effect on education.'" *Id.* Jewish Knesset members warned that such widespread anti-Semitic incitement could hurt the peace process. *See id.*

153. *See* Danna Harman et al., *PA Puts Yassin Under House Arrest*, JERUSALEM POST, Oct. 30, 1998, at 1.

154. *See id.*

155. *See id.*

156. *See id.*

157. *See id.*

158. *See id.*

159. *See* Said Ghazali, *The Ball is in Netanyahu's Court*, JERUSALEM TIMES, Nov. 13, 1998, at 3.

160. A senior Palestinian security officer warned that such violent attacks by Islamic militants are likely to increase due to Israel's withdrawal from Lebanon, which they view as proof of the effectiveness of Hizbullah tactics. *See* Lamia Lahoud & Margot Dudkevitch, *Palestinian Officer Warns of Hamas Attacks*, JERUSALEM POST, June 4, 2000, at 3.

The following day, however, another controversy broke out.[161] The Israeli government decided to issue tenders for 1,000 apartments at Har Homa in southeastern Jerusalem.[162] Although this step did not breach any aspect of the WRM, Clinton's spokesman denounced it for breaking the "'spirit of the Wye agreement'" and for inhibiting "'a positive atmosphere for permanent-status talks.'"[163] Arafat initially contained his rage, merely calling the move a "'big obstacle'" to peace.[164]

However, two days later, on the tenth anniversary of the PLO's declaration of independence, Arafat's words to thousands of Palestinians were more ardent: "'We are going to build our state with Jerusalem as its capital. . . . Centimeter by centimeter we will get land to build our state for May 1999.'"[165] On November 15, Arafat's language turned more aggressive and militant: "'Our rifles are ready, and we are ready to raise them if [the Israelis] try to stop us from praying in the holy city of Jerusalem.'"[166] He also declared that if Israel does not want to continue working toward peace, he would resume the intifada.[167] Netanyahu strongly condemned Arafat's statements while Foreign Minister Ariel Sharon reacted by telling Jewish "settlers to 'run and capture as many hills as possible . . . . Everything we don't take will eventually get into the hands of the Palestinians . . . .'"[168]

Despite this volley of verbal attacks, the Knesset ratified the Memorandum on November 17, 1998 and the following day Israel resumed negotiations with the Palestinians.[169] Three days later, Israel began Stage One of the Further Redeployments ("FRD") according

161. *See* Hillel Kuttler et al., *US Slams Har Homa Tenders*, JERUSALEM POST, Nov. 13, 1998, at 1.

162. *See id.*

163. *Id.*

164. *Id.*

165. Jerrold Kessel et al., *Arafat Assures Crowd He Will Declare Independent State* (Nov. 14, 1998) <http://www.cnn.com/WORLD/meast/9811/14/israel.arafat/>.

166. Danna Harman et al., *Arafat Warns: Our Rifles Are Ready*, JERUSALEM POST, Nov. 16, 1998, at 1.

167. In the light of subsequent events, this threat has been substantiated.

168. Danna Harman et al., *US: Halt the War of Words*, JERUSALEM POST, Nov. 17, 1998, at 1.

169. *See* Nina Gilbert et al., *Knesset Approves Wye*, JERUSALEM POST, Nov. 18, 1998, at 1.

to Article I(A) of the WRM.[170] This stage was completed on November 22, 1998; it was the first transfer of territory to the Palestinians in nearly two years.[171] At the same time that the FRD was taking place, Netanyahu also released 250 Palestinian prisoners from Israeli jails.[172] This move caused a major uproar by the PA because they claimed that 150 of these people were "'common criminals,'" not "'political prisoners.'"[173] Palestinian Security Chief Mohammed Dahlan called the prisoner release "'a scandal.'"[174] Netanyahu retorted by saying, "'What do they [the Palestinians] expect of us? That murderers of children and bombers be let out of jail soon after they attack us? I suggest that the Palestinians stop harboring illusions.'"[175]

Relations between Israel and the PA were increasingly strained as protests over the prisoner issue continued in the Palestinian-controlled areas. Tensions between Israel and the PA escalated after November 30, 1998 when Arafat referred to Jerusalem as an occupied area.[176] Pressures mounted after a Palestinian mob attacked an IDF soldier and an Israeli civilian driving near Ramallah.[177] The Israeli government warned the PA that Stage 2 of the redeployment would not take place "if it does not halt violence, accept that prisoners with blood on their hands will not be released, and renounce its intention to unilaterally declare a Palestinian state."[178] On December 7, 1998, former Israeli Foreign Minister Ariel Sharon officially announced that Israel would not conduct Stage 2 of the FRD on the eighteenth as scheduled by the WRM.[179] The reason, he said, was that the PA

170. *See West Bank Land Transfer Underway* (Nov. 20, 1999) <http://www.cnn.com/WORLD/meast/9811/20/mideast.01/index.html>.

171. *See id.*

172. This action was in accordance with Article XVI of the Oslo II Agreement, and was part of a verbal agreement made at the Wye Plantation negotiations. *See* Oslo II, *supra* note 19 art. XVI, at 19.

173. Danna Harman, *Dahlan: Prisoner Release a 'Scandal,'* JERUSALEM POST, Nov. 22, 1998, at 1.

174. *Id.*

175. *Id.*

176. *See* Hillel Kuttler, *US Officials Downplay Arafat J'lem Statement*, JERUSALEM POST, Dec. 2, 1998, at 2.

177. *See* Liat Collins et al., *Gov't Threatens to Halt Pullouts*, JERUSALEM POST, Dec. 3, 1998, at 1.

178. *Id.*

179. *See* Danna Harman & Hillel Kuttler, *Sharon Tells Albright: Redeployment Won't Take Place on Time*, JERUSALEM POST, Dec. 8, 1998, at 1.

had "violated 'each and every one of the sections of the Wye accord and because of the incitement by the PA for a new intifada.'"[180] In the following two days, two Palestinians were killed and 100 others were wounded during violent clashes over the Palestinian prisoner issue in the West Bank and Jerusalem.[181]

Despite Clinton's visit to the Middle East and the PLO's annulment of the Covenant,[182] Israel stood firm on its decision to defer Stage 2 of the FRD. Since then, no further steps were taken to implement the WRM. On December 21, 1999, Israel passed the first reading of a bill to hold new elections for the Knesset.[183] After being approved by the Knesset Constitution Committee, the government was dissolved and campaigning began.[184] Amidst this political turmoil, Netanyahu maintained his willingness to conduct the second redeployment on the condition that the PA curtail incitement to violence, reduce the Palestinian police force, and renounce their unilateral threat to declare a Palestinian state on May 4, 1999.[185]

180. *Id.*

181. *See* Margot Dudkevitch, *1 Killed in 'Intifada Day' Riots*, JERUSALEM POST, Dec. 10, 1998, at 1.

182. Alan Philps, *Palestinian Vote Clears Way for Summit*, DAILY TELEGRAPH (LONDON), Dec. 15, 1998, at 1.

183. *See Israel Poised to Hold Early Elections* (Dec. 21, 1999) <http://www.cnn.com/world/meast/9812/21/israel.04/>.

184. *See* Online NewsHour (PBS), *Back to the Polls* (Dec. 22, 1998) <http://www.pbs.org/newshour/bb/middle_east/july-dec98/israel_12.22.html/>.

185. Arafat declared Palestinian independence on Nov. 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." *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, 1996, 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. Liat Collins, *PM Says No to Fully Sovereign Palestinian State*, JERUSALEM POST, Jan. 21, 1997, at 1. His government's Infrastructure Minister Ariel Sharon acknowledged, however, that while he opposed Palestinian statehood, "[t]he Oslo Accords mean Palestinian statehood." Jay Bushinsky, *Sharon Map: Two Buffer Zones, PA 'Islands,'* JERUSALEM POST, Dec. 3, 1997, at 1. The Labor Party 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, 1997, at 1. Arafat subsequently changed the date of the unilateral declaration to declare a

questioned by a journalist concerning Arafat's statement, gave no response.[201]

III. A New Lease on Life for the Peace Process

In light of the unstable situation in the Middle East after the agreement was signed, one must question the effectiveness of the WRM. On the whole, the WRM created an ephemeral burst of energy in the region. It briefly revitalized the peace process after a nineteen-month impasse and made possible some important achievements,[202] among which were the annulment of the Palestinian National Covenant, the opening of the Gaza Airport, and the transfer of 2% of Area C to Area B, and 7.1% from Area B to Area A.[203]

Although each of these steps was significant, they only dealt with issues pertaining to the interim agreement phase. The WRM failed to bring the Palestinian and the Israeli sides closer to resolving final status issues, a fact that Prime Minister Barak highlighted and applied to the drafting of the September 4, 1999 Sharm Memorandum.[204] In direct relation to the WRM's inadequacies concerning these issues, Barak proposed that "'we must question what would be the best way to combine the final-status talks and the implementation of the Wye agreement.'"[205] The WRM's inability to directly deal with final status issues stemmed largely from the fact that neither party trusted the other, a weakness that was both the cause and the result of increased American intervention in the Middle East peace process. In response to this, the Sharm Memorandum attempted to marginalize American intervention, attempting to establish a new basis of trust between the Israeli and Palestinian leaderships.[206] The Sharm Memorandum also constructed a new timeframe for negotiating final status issues.[207]

The parties once again failed to adhere to the timeline and thus

201. *See id.*
202. *See What Does Wye Actually Say (Excerpts From A Jerusalem Post Backgrounder)* (visited Nov. 29, 2000) <http://www.ourjerusalem.com/documents/summer99/0831docs.htm>.
203. *See id.*
204. *See id.*
205. Harman, *supra* note 15.
206. *See* Mark A. Heller, *The Uniqueness of Wye-II*, JERUSALEM POST, Sept. 3, 1999, at 8; *see also* News Agencies, *Barak, Arafat Pledge Further Cooperation*, JERUSALEM POST, Sept. 5, 1999, at 3.
207. *See Finally, Final Status*, JERUSALEM POST, Sept. 14, 1999, at 8.

another round of talks was suggested by Clinton.[208] By convening a new summit at Camp David in July 2000, it seemed as if the President was seeking to ensure a favorable legacy for his presidency by capping it with a major achievement: final Israeli-Palestinian peace. A positive outcome of the summit might also have boosted his wife's appeal to Jewish New Yorkers, and thus her chances in the race for the U.S. Senate.[209]

A. Prospects for Continuation of the Peace Process

There was much speculation concerning the new Prime Minister's approach to the peace process and the future of Israeli relations with the United States.[210] Following the Israeli elections of May 17, 1998, the United States expressed cautious optimism about the future of the peace process under Barak.[211] An American official expressed hope that "negotiations could return to their pre-1996" form, which means that "America would not have to be the indispensable partner" that it had become with the Hebron talks, "and could revert to its role as 'facilitator' or outside advisor—a function U.S. officials said is healthier for the peace process."[212]

Toward the end of the interim period, many Palestinians expressed the belief that the peace process would crumble if Israeli government policies did not change with the new administration.[213] Following a day designated for protest, which the Palestinian leadership called a "Day of Anger," PLO Executive Committee member Faisal Husseini struck a somber tone: "'We consider the peace option as our strategic option, but if this policy continues, the Palestinian peace option will fall down and we will consider other options. If the Israelis continue like this, our leadership will lose its credibility among Palestinians.'"[214]

The new Labor Party coalition government of Israel immediately demonstrated a strong desire to overcome obstacles. Barak, in his address to the Knesset after being sworn in, pledged to take "bold

208. *See* Daniel Bloch, *Three to Blame*, JERUSALEM POST, July 30, 2000, at 6.
209. *See id.*
210. *See* Hillel Kuttler, *How Fast Will He Run*? JERUSALEM POST, May 28, 1999, at B1.
211. *See id.*
212. *Id.*
213. *See* Lynfield, *supra* note 198.
214. *Id.*

steps" to end the Israeli-Arab conflict.[215] However, as Barak pushed to bypass the WRM and move to final status negotiations, Hamas threatened terror in response.[216] Once again, security became the foremost issue as Hamas tested the PA's commitment to fight terrorism.[217] How could Israel continue its negotiations with the Palestinian Authority if Israeli citizens were simultaneously being targeted by terrorist organizations based in PA-controlled areas?

September 4, 1999 marked another historic moment as Israel and the PA signed a new agreement aimed at facilitating the implementation of the long stalled WRM: the Sharm Memorandum.[218] The Sharm Memorandum was designed with the goal of renegotiating major issues previously addressed by the WRM. A comparison of the memoranda makes clear the extent to which the Sharm Memorandum tackles the problems encountered by the WRM. On the issue of redeployment, the WRM called for a 13% pullback from the West Bank to be carried out in three stages over a three month period.[219] Initially, Israeli forces were withdrawn from only 2% of the West Bank.[220] Furthermore, some 3% of the remaining pullback (as agreed upon in the WRM) was designated to enable the creation of a nature reserve in the Judean Desert.[221] The Sharm Memorandum differs from the WRM in that Israel agreed to hand over the remaining 11% in three stages, without specifying any limitation concerning the development of the Judean Desert.[222]

Regarding the issue of prisoners, the WRM called for the release of 750 prisoners, of which 250 were subsequently released.[223] Disputes have ensued between the PA and Netanyahu (and now Barak) as to whether this referred to security prisoners or common criminals.[224]

215. *See* Liat Collins, *Barak Pledges 'Bold Steps' For Peace*, JERUSALEM POST, July 7, 1999, at 1.
216. *See* Ben Lynfield et al., *PA: Don't Bypass Wye*, JERUSALEM POST, July 8, 1999, at 1.
217. *See id.*
218. *See Wye Two: The Full Text*, MIDEAST MIRROR, September 6, 1999, at 170 [hereinafter *Wye Two*].
219. *See id.*
220. *See id.*
221. *See id.*
222. *See id.*
223. *See* Robert O. Freedman, *U.S. Policy Toward the Middle East in Clinton's Second Term*, 3 MIDDLE EAST REV. OF INT'L AFF. 1 (Mar. 1998).
224. *See id.*

This issue was one of the most contentious impediments to the implementation of the WRM. The Sharm Memorandum resolved this issue by determining that Israel would release 350 security prisoners.[225] This compromise represents an active willingness to meet in the middle. Furthermore, it seems that "Barak's generous initiatives regarding prisoners and contiguity of territory were . . . designed to persuade Palestinians" of the sincerity of the Israeli side.[226]

The Sharm Memorandum, which consistently goes a step further than the WRM, also advances the issue of the Gaza Port. The WRM merely prescribed committee discussion of the issue, stating that the Israelis and Palestinians "commit themselves to proceeding without delay to conclude an agreement to allow the construction and operation of the port,"[227] while the Sharm Memorandum calls for the planning of the port to begin immediately.[228]

The issue of "safe passage" was similarly advanced by the latter agreement.[229] The WRM expressed a need to continue working on the issue, while the Sharm Memorandum warranted that the southern route would open in October, pending protocol agreement.[230] It is interesting to note the differences of language and tone between the agreements. The WRM, with wording both ambiguous and non-committal, proposed that "the sides will make best efforts to conclude the agreement"[231] in regards to the southern route. The expression "best efforts" is ambiguous and non-committal. In contrast, the Sharm Memorandum decisively states, "The operation of the Southern Route of the Safe Passage for the movement of persons, vehicles, and goods will start on October 1, 1999. . . ."[232] The detailed commitment found in the Sharm Memorandum reflects a renewed will to work together and move forward, a resoluteness that was absent during the previous set of negotiations involving the

225. *See id.*
226. Joseph Alpher, *How Historic a Moment?,* THE JERUSALEM POST, September 14, 1999, at 1.
227. WRM, *supra* note 18, art. III(4), at 10.
228. *See Wye Two, supra* note 218.
229. Sharm Memorandum, *supra* note 19.
230. *See* Danna Harman, *Barak, Arafat Sign Sharm Accord*, JERUSALEM POST, Sept. 5, 1999, at 1.
231. WRM, *supra* note 18, art. III(3), at 10.
232. Sharm Memorandum, *supra* note 19, § 5(a).

Netanyahu administration.

Another striking difference between the two agreements involves the issue of Hebron. The WRM made no mention of Hebron. In contrast, the Sharm Memorandum specifically calls for the reopening of Shuhada Street, the entrance to Hasbahe market, and requests the establishment of a committee to review the situation at the Tomb of the Patriarchs.[233] This section of the Sharm Memorandum is a noteworthy gain for the Palestinian side.

On the issue of security, the Sharm Memorandum reiterates the exact sentiments expressed in the WRM: The two sides will act "in accordance with the prior agreements."[234] Security has remained a dominant issue throughout the peace process. Both sides continue to outwardly express their desire to secure the borders and provide a safe environment in which to establish peace. However, on this issue, public opinion has offered harsh criticism of the leaderships. Therefore, it becomes difficult to gauge whether the Palestinians' agreement to strict security commitments stems from goodwill toward the Israelis or from diplomatic pressure. Arafat's motives are particularly suspect on this point. As it is Arafat's responsibility to fight against terrorism from within, he plays a role of both leader and saboteur amongst a divided Palestinian population.

One of the most notable differences between the two agreements is apparent when considering the way they each approach the issue of final peace accords. The WRM concluded no specific target date for final status issues.[235] The Sharm Memorandum, however, demanded that within five or six months the two sides should negotiate the outline of a final status agreement.[236] Furthermore, by September 10, 2000, the accord was to have been concluded.[237] One assessment of Barak's effort to expedite final status negotiations stems from his awareness that if these issues are not resolved in a year's time they will not be resolved for many years to come.[238]

233. *Id.* § 7.
234. *Id.* § 8.
235. *See* Danna Harman, *What's in the Accord*, JERUSALEM POST, Oct. 25, 1998, at 1.
236. *See id.*
237. *See* Danna Harman, *Wye, Sharm—What's the Difference?*, JERUSALEM POST, Sept. 5, 1999, at 1.
238. *See* Samih Shabib, *Negotiations and After*, JERUSALEM TIMES, Oct. 8, 1999, at 5; *see also* al-Mashharawi, *supra* note 196. The coalition instability of the Barak government could result in early elections. This would lead to uncertain implications for the peace process.

Another important issue differentiating the WRM from the Sharm Memorandum is that of the U.S. role in the peace process. The heavy American involvement in the negotiation and implementation of the WRM was not looked upon favorably.[239] In her speech at the signing ceremony of the Sharm Memorandum, U.S. Secretary of State Madeleine Albright "welcomed Israeli and Palestinian willingness to do most of the negotiating without mediators, building trust and confidence after years of bitterness."[240] Despite the outward efforts to minimize American involvement, the loss of this involvement was not deemed beneficial by the Palestinian leadership.[241] Arafat told a group of American analysts that he was "seeking to draw in the U.S. at 'all levels' of the final-status talks."[242] Indeed, the Americans later vehemently reasserted their place in the peace process with Clinton virtually insisting that a summit between Israel and the Palestinians take place in July 2000.[243]

Nevertheless, at this point in the peace process, it has become crucial for Arafat to reassert his ability to act as a trustworthy partner. However, his behavior has thus far demonstrated just the opposite. During the Netanyahu administration, Arafat declared that peace must be based on U.N. General Assembly Resolution 181 of 1947.[244] A demand for peace based on Resolution 181 is in direct contrast to Oslo, which is explicitly based on U.N. Security Council Resolutions 242, 338 and 425.[245] These latter resolutions call for a return of territories captured in 1967 in exchange for peace.[246] Arafat's attempt to move the goal posts in the middle of the game created doubt as to his commitment to the terms of reference of the Oslo process. Some believe that Arafat "wants a peace process, not

239. *See* Abdallah Awwad, *US Role in Palestinian-Israeli Talks*, WORLD NEWS CONNECTION, Feb. 24, 2000.
240. Jonathan Wright, *Albright Sees New Trust Between Israel, Palestinians*, JERUSALEM POST, Sept. 5, 1999, at 3.
241. *See* Jerusalem Post Staff, *Arafat Seeks Deep US Role in Final-Status Talks*, JERUSALEM POST, Sept. 26, 1999, at 1.
242. *Id.*
243. *See id.*
244. *See* al-Mashharawi, *supra* note 196.
245. *See id.*; *see also* Eugene V. Rostow, *Resolved*, NEW REPUBLIC, Oct. 21, 1998, at 14.
246. *See id.*

peace. Because real peace—a real final status—means the obsolescence of the Palestinian cause and the end of the Palestinian dream. Those he is not prepared to give up."[247] To enjoy the outpouring of foreign support for the signing of the Sharm Memorandum, however, Arafat was forced to drop his claim to a Palestinian state based on Resolution 181 and reestablish a commitment to peace based on the framework of the Oslo agreements.[248] Still, at the Camp David summit, Arafat seemed to have had unrealistic goals in mind, insisting on full Palestinian sovereignty over Israel's capital, Jerusalem, and rejecting offers that would go so far as to give Palestinians sovereignty over the eastern sector, with PA civil administration in Arab quarters.[249]

B. Permanent Status Issues

1. Configuration of a Palestinian State

When considering the future of the Palestinian entity, one must focus on the basic elements of a state: infrastructure, educational system, police force, army, and judicial system. But equally crucial to a fledgling state is a sense of a common destiny. Moreover, a recognized leadership must mobilize the people to strive toward that end. It is in the area of leadership, more than any other, that the Palestinians are severely lacking. This was illustrated by the poor showing of Palestinian civilians at the "Day of Rage," when demonstrations against the West Bank Jewish settlement movement were organized by PA officials. There was, at the time, visible and "growing alienation between the Palestinian leaders and the general public."[250] Prior to the Al-Aqsa Intifada, a myriad of public opinion polls taken in the territories showed a sharp decline in support for

247. Charles Krauthammer, *Moving the Goal Posts*, JERUSALEM POST, June 8, 1999, at 8.

248. *See* Danna Harman, *US Said Pinning Hopes on Stockholm Talks*, JERUSALEM POST, May 19, 2000, at 3A. Led by Internal Security Minister Shlomo Ben-Ami and Palestinian Legislative Council Speaker Ahmed Qurie, in May 2000, Israeli and Palestinian officials met for secret talks in Stockholm (in place of official talks) to achieve a final framework agreement. *See id.*

249. *See* Ragheb Maraya, *Summit Ends Without Agreement*, JERUSALEM TIMES, July 21, 2000, at 1.

250. Danny Rubinstein, *Day of Alienation,* HA'ARETZ, June 7, 1999, at 4.

both the PA and its Chairman.[251] The masses simply did not seem willing to mobilize in support of either.[252] Undeniably, widespread corruption in the Palestinian leadership supports the notion of many that the Palestinian government is one of "thieves." One indication of the extent of the corruption was revealed when the former head of the Palestinian budget committee, Dr. Azmi Shuibi, noted, "'Last year, when we went to follow up their numbers, we found millions of dollars credited to various ministries and these ministries insist they never got them.'"[253] In an editorial in *Ha'aretz*, journalist Danny Rubinstein explains:

> The growing alienation between the Palestinian leadership and its public is significant in the diplomatic arena, because it weakens the Palestinian position. The Palestinian regime's sources of power and authority are very limited. It does not have financial resources and is completely dependent on hand-outs and contributions. It has almost no bargaining chips or tools for the negotiations and diplomatic struggle.[254]

In addition to a history of corruption since its founding in 1994, the PA has also built up a significant record of gross human rights abuses. A report by the human rights organization B'tselem, accusing the PA of neglecting basic human rights, blamed "the PA for imposing capital punishment, carrying out 'mass, arbitrary' detentions, imprisoning people without trial, using torture, denying due process of law, and imposing press censorship. 'Since its establishment in 1994, the PA has systematically violated the rights of residents under its control.'"[255]

The London Arabic daily *Al-Quds Al-Arabi* has no illusions about the future of a Palestinian state: "'Observers need no further proofs to get a gloomy picture of the future of the Palestinian entity now being forged. All the facts on the ground show that it will not be a democratic entity that respects the law and human rights.'"[256]

251. *See id.*

252. *See id.*

253. Daoud Kuttab, *Budgeting for the Future*, JERUSALEM POST, Feb. 3, 2000 at 8.

254. Rubinstein, *supra* note 250.

255. Ben Lynfield, *B'tselem Cites Human Rights Deterioration Since Oslo*, JERUSALEM TIMES, May 4, 1999, at 4. Barak has held that any final-status withdrawal will be dependent on a national referendum. *See* Herb Keinon, *Thinking the Unthinkable*, JERUSALEM POST, June 8, 2000, at B3.

256. Aluma Skolnik & Aaron Mannes, MIDDLE EAST MEDIA & RESEARCH

Nonetheless, support for a Palestinian state is strong among some. *The Jerusalem Times* reported, next to a picture of Jordanian King Abdullah II smiling next to Yasser Arafat, that Jordanian Foreign Minister Abdel Illah Al-Khatib indicated that "'Jordan stands behind the rights of the Palestinian people and endorses Palestinian aspirations for an independent state on the land occupied by Israel in June 1967 including East Jerusalem as capital.'"[257]

2. Palestinian Prisoners

Palestinians consider the release of Palestinian prisoners held in Israeli jails to be a crucial aspect of the final status negotiations.[258] Palestinian "Cabinet Minister Tayyeb Abdel Rahim[, speaking on behalf of Arafat] said . . . that no framework agreement for Final Status Negotiations could be signed unless all of the prisoners were released first."[259] To the Israelis, this is not even a possibility, as they decline to consider the issue of prisoners outside of the framework of constructing a final status agreement.

3. The Political and Religious Status of Jerusalem

In 1999, Barak's spokeswoman asserted that the then Prime Minister-elect's position on Jerusalem was clear: "'No one can tell us when and where to build.'"[260] Subsequently, in an attempt to appease Palestinian demands over Jerusalem, Barak announced that the neighborhood of Abu Dis would not be included in his vision of a united Jerusalem.[261] He said, "there is 'no interest' in annexing the

INSTITUTE, "*The Logic of Force and Violence": Beatings of Legislators and Executives in the Palestinian Authority* (May 18, 2000) <http://www.memri.org/ia/IA2700.html> (quoting AL-QUDS AL-ARABI, Apr. 21, 2000).

257. Nael Musa, *Jordan Endorses Palestinian State*, JERUSALEM TIMES, Apr. 28, 2000, at 1.

258. *See* Wael Tabari, *Erekat: Release of Prisoners Part of Interim Agreement*, JERUSALEM TIMES, May 26, 2000, at 1. The PA Minister of Local Government and head of the interim period talks, Sa'eb Erekat, wrote a letter on May 26, 2000 to his Israeli counterpart, Oded Eran, demanding that he make his best efforts to release all Palestinian prisoners in accordance with his understanding of the peace process. *See id.*

259. *PNA Links Prisoner Issue to Final Status Framework*, JERUSALEM TIMES, Apr. 21, 2000, at 1; *see also* al-Mashharawi, *supra* note 196.

260. Amy Klein, *Protesters Clash With Police at Ras Al-Amud Construction Site*, JERUSALEM POST, May 28, 1999, at 5A.

261. *See* Danna Harman, *Barak: United Capital Won't Include Abu Dis*, JERUSALEM POST, Apr. 10, 2000, at 1. Nabil Abu Rudeineh, a spokesman for Arafat,

approximately 50,000 Palestinians living in villages on the capital's outskirts, such as Abu Dis and Anata."[262] This announcement was not received well by members of Barak's Cabinet at that juncture. Interior Minister Natan Sharanksy, from the Yisrael Ba'aliya Party, said, "'To transfer Abu Dis and another two villages . . . as an advance payment means the main course will be east Jerusalem, which we oppose,'" adding that "it is 'a terrible mistake' to offer the PA military control of an area adjoining Jerusalem and that separates it from Ma'aleh Adumim."[263]

Apparently, Abu Dis is not enough. Responding to reports that Barak was intending to swap Arab villages surrounding Jerusalem for Israeli annexation of Jewish suburbs around the city, Palestinian Legislative Council Speaker Ahmed Qurei sounded an ominous note: "'Should the reports be true, it will be more than a crisis.'"[264] Nabil Amr, Palestinian Minister for Parliamentary Affairs, "said the decision could trigger open confrontation."[265]

Along these lines, the day that the Israeli Cabinet and Knesset voted to hand over Abu Dis and other villages to the PA, street violence erupted, apparently as a popular expression of frustration with the continued imprisonment of Palestinians convicted of security offenses.[266] Palestinian policemen fired live ammunition at Israeli soldiers.[267] After pushing the vote through the Cabinet and Knesset, Barak told Arafat that "there would be no handover of the villages unless quiet is restored to the territories."[268]

What has become clear from the latest round of trilateral negotiations, those of the two week long July 2000 summit at Camp David, Maryland ("Camp David II"), is that the key to achieving final

has since complained that Israel has not pulled out of Abu Dis, which was approved and subsequently delayed by the government. *See* Lamia Lahoud et al., *Israel Will Ask Albright to Press Palestinians on Ending Violence*, JERUSALEM POST, June 4, 2000, at 1.

262. Harman, *supra* note 261.

263. David Zev Harris, *Barak's Land 'Advance' Bid to PA Jolts Government*, JERUSALEM POST, May 1, 2000, at 1.

264. Lamia Lahoud, *Palestinians Warn of Violence If Jerusalem-Area Settlements Are Annexed*, JERUSALEM POST, Apr. 11, 2000, at 2.

265. *Id.*

266. *See* Nina Gilbert et al., *Barak to Arafat: No Abu Dis Handover Until Violence Stops*, JERUSALEM POST, May 16, 2000, at 1.

267. *See id.*

268. *Id.*

peace is indeed to resolve the question of sovereignty over Jerusalem.[269] One Israeli source speculating on the outcome of the summit declared, "'[I]f you solve Jerusalem, the other issues fall into place.'"[270] Unfortunately, the question of Jerusalem's future could not be determined in spite of the quiet, rural setting and intense, round-the-clock negotiations that hoped to write the final chapter of the long and arduous tale of reconciliation between Israelis and Palestinians. The Trilateral Statement issued by the White House[271] after the summit's end was neither innovative nor reassuring as regards the prospects for peaceful coexistence between Israelis and Palestinians. In fact, in the aftermath of Camp David II, Prime Minister Barak and Chairman Arafat returned to the Middle East to find the atmosphere more volatile and anger-driven than it was when they left. Clinton, however, maintained that progress had indeed been made, even though the talks collapsed before common ground could be reached on the subject of Jerusalem. In a discussion of Clinton's viewpoint at the Brookings Institute, Prime Minister Barak was applauded for demonstrating courage, vision and an understanding of the historical importance of this moment and it was implied that Chairman Arafat too remains committed to the path of peace.[272]

Despite Israel's offer of approximately 90% of the West Bank to Palestinians in exchange for their agreement that Jerusalem remain under Israeli sovereignty, the parties walked away, once again, empty-handed.[273] As PA Minister Jamil Tarifi explained, Palestinians would not accept "'anything less'" than a settlement placing Jerusalem under Palestinian authority.[274] He declared, "'Israel must return 100 percent of the West Bank, including east Jerusalem. We refuse to get into the game of percentages with the Israelis.'"[275] One

269. *See* Janine Zacharia & Danna Harman, *Summit Collapses Without Agreement*, JERUSALEM POST, July 25, 2000, at 1.

270. Janine Zacharia & Lamia Lahoud, *Parties Try To Draft Accord*, JERUSALEM POST, July 25, 2000, at 1.

271. *See Trilateral Statement Issued by the White House*, JERUSALEM POST, July 26, 2000, at 1.

272. *See* The Brookings Institute, *Camp David II: The Summit That Failed* (July 26, 2000) <http://www.brook.edu/comm/transcripts/20000726.htm>.

273. *See* Janine Zacharia et al., *Israeli Source in Contact with Barak: PM Ready to Trade 95% of W. Bank for J'lem*, JERUSALEM POST, July 18, 2000, at 1.

274. *Id.*

275. *Id.*

Arab journalist predicted that "'[v]iolence is certain'" in the aftermath of the summit, with Islamic radicals potentially using this latest failure of the peace process to achieve major gains for the Arabs to capitalize on the deep-rooted hatred of the Israelis and begin a new round of terrorism including bus bombings and other random violence against Jews.[276]

Clinton has been reluctant to deliver the message that Jerusalem is the undivided and eternal capital of Israel by moving the U.S. Embassy there as required by the 1995 Jerusalem Embassy Act passed by Congress.[277] He has repeatedly exercised his ability to issue a biannual waiver despite threats of several U.S. senators to amend the legislation and thereby force the move.[278] A marked change in Clinton's position on the embassy became clear after the close of Camp David II.[279] "I have always wanted to move our embassy to West Jerusalem," the President told Israel's Channel One Television.[280] He explained:

> I have not done so because I didn't want to do anything to undermine our ability to help to broker a secure and fair and lasting peace for Israelis and for Palestinians. But in light of what has happened [i.e., the failure of the summit], I've taken that decision under review, and I'll make a decision sometime between now and the end of the year on that.[281]

Attesting to the volatility of the Jerusalem issue, Clinton's statement was met with a threat to destroy the U.S. Embassy in Israel and murder the diplomats should the move to Jerusalem be carried out. He was warned, "'You can move your embassy to Jerusalem and send your diplomats there. But honest people can turn your embassy to rubble and send back your diplomats in coffins.'"[282] Similarly, Ahmed Azhar, a Hamas leader, declared that the move to Jerusalem "would put US interests in Arab countries 'at risk' and would

276. Janine Zacharia, *Finger-Pointing to an Uncertain Future*, JERUSALEM POST, July 26, 2000, at 1.

277. *See* Hillel Kuttler, *Senators Push Clinton To Put US Embassy in Jerusalem*, JERUSALEM POST, May 28, 1999, at 2.

278. *See id.*

279. *See* Etgar Lefkovits, *US Embassy: Move to Jerusalem Could Be Made in Weeks*, JERUSALEM POST, July 31, 2000, at 2.

280. *Id.*

281. *Id.*

282. *Id.*

threaten world stability."[283] Furthering this rhetoric, Arafat declared that the conflict with Israel cannot end without the transfer of East Jerusalem to Palestinian sovereignty and vowed to declare a Palestinian state on September 13, 2000 with Jerusalem as its capital.[284] "'Jerusalem is the capital of the state of Palestine and whoever does not like this,'" he said, "'may drink from the Gaza Sea.'"[285]

It appears, however, that the unilateral declaration of a state would be a detriment to the Palestinian cause. While Arafat has been trying to shore up support for international recognition of a state, should one be declared unilaterally, by making trips to Europe and throughout the Arab world, it is clear that the United States would not respond kindly to such actions and might even discontinue all financial aid to the Palestinians.[286] Clinton stated, "'If there is (such a declaration), our entire relationship would be reviewed.'"[287] He continued,

> "I think it would be a big mistake to take a unilateral action and walk away from the peace process. And if it happens, there will inevitably be consequences—not just here, but throughout the world, and things will happen. I would review our entire relationship, including, but not limited to [financial aid]."[288]

283. Danna Harman, *Clinton Warns Arafat Not to Declare State*, JERUSALEM POST, July 30, 2000, at 1.

284. *See* Hatem Lutfi, *Arafat: No Peace Without Jerusalem*, JERUSALEM TIMES, July 28, 2000, at 1.

285. *Id.* It is also worth noting here that this frequently used expression of Arafat's, "Whoever does not like this may drink from the Gaza Sea," which roughly signifies "Go fly a kite!," is not original to him. Jeff Green, *Reading From Right to Left*, JERUSALEM POST, Jan. 30, 1997, at 6. It was often used by President Nasser of Egypt. *See* PETER MANSFIELD, NASSER 104-05 (1969). In a famous speech by Nasser, made December 23, 1964, referring to the American ambassador's refusal to discuss material being obtained from America because "he does not like our conduct," Nasser informed the crowd, "I would like him to know that whoever does not like our conduct can go drink up the sea. If the Mediterranean is not sufficient, there is the Red Sea too." *Id.* He continued, "We are not ready to accept a single harsh word from any person. He who speaks a single harsh word to us will have his tongue cut off. This is how it is—clear and frank words." *Id.* It appears that Arabs and other people throughout the Third World were thrilled by Nasser's harsh wording and daring dismissal of the major world powers and thus "Drink from the sea!" became a statement of great pride and fearlessness to them. *Id.* Perhaps Arafat seeks to rally approval and demonstrate his own fearlessness in the face of criticism by frequently using this dismissive statement favored by one of his heroes from the time he himself lived in Egypt, variously interchanging "Gaza Sea" with "Mediterranean Sea" and "Dead Sea" in his own speeches.

286. *See* Danna Harman, *Clinton Warns Arafat Against Unilateral Statehood*, JERUSALEM POST, July 30, 2000, at 1.

287. *Id.*

Conclusion and Outlook

After careful examination of the peace process and its achievements, it is not certain that a continuation of such methods will lead to the ends sought by either Israel or the Palestinian Authority. According to an opinion poll of Palestinian residents of the West Bank and Gaza Strip just weeks before the expiration of the interim period, the familiar pre-WRM logic reemerged, as residents simultaneously support both the peace process and armed attacks against Israelis.[289] The Center for Palestine Research and Studies, which conducted the poll, attributes this finding to the fact that "many Palestinians view [attacks on Israelis] as a means of moving [the peace process] forward and not as an alternative to it."[290] This suggests that the peace process has not only missed achieving its goals in the eyes of the Israelis, but that it has even achieved just the opposite: promoting the idea that through terrorism, Palestinians will achieve political and territorial gains. It is important to note that what the Palestinians demand now is

> identical to what [they] were demanding when the talks began seven years ago. Over this period, public opinion in Israel has shifted radically, and a majority of Israelis now support much more far-reaching concessions than would have been dreamed of a decade ago. But the Palestinians have made no concomitant steps

288. *Id.*

289. Center for Palestine Research and Studies, *Public Opinion Poll 40, The Peace Process, Evaluation of PA Performance, Status of Democracy, Corruption, Death Penalty, Developments in Jordan, Elections for the President and Vice President, and Political Affiliation*, Apr. 15-17, 1999. The poll was conducted April 15-17, 1999, with a sample size of 1315 Palestinians 18 years of age and older, of which 820 reside in the West Bank and 495 reside in the Gaza Strip. *Id.* The margin of error and the non-response rate were both three percent. *Id.* Responses show 70 percent support the peace process with an approval rate of 78 percent among illiterates and 57 percent among BA degree holders. *Id.* This figure increases among farmers (86 percent) and housewives (79 percent), and decreases among students (61 percent). *Id.* It increases among those with the lowest income (73 percent) and decreases among those with the highest income (57 percent). *Id.* Support had grown for attacks against Israelis to 45 percent from 41 percent two months earlier, marking a return to pre-WRM statistics. *Id.*

290. *Id.*

in Israel's direction: They are still insisting on all or nothing.[291]

With a terrorist attack on November 7, 1999, those behind it expressed their opposition to the Sharm Memorandum.[292] Subsequently, two Palestinians were killed and 100 others were wounded during violent clashes over the Palestinian prisoners issue.[293] Once again, terror and violence threatened to seize the spotlight.[294] Agreements can offer hope for lasting peace, but cannot guarantee its fulfillment.

Many Israelis question what Israel has to gain by continuing with this process. If not true peace and the security for its citizens, is accommodation to international pressure enough of an incentive for the redeployment from territories captured in the Six Day War? What will be Israel's fate if it allows the creation of another hostile Arab state, this one on its doorstep? The United States' criticism of Israel when it responds to attacks launched from Lebanese territory indicates that Israel has negotiated itself into a "no win" situation. And now, the Palestinians have everything to gain and nothing to lose. Jordan also seems to be moving toward greater Arab unity, strengthening ties both with the PA and Syria.

Israeli consensus on the peace process was made clear with the

291. Evelyn Gordon, *A Deal in Vain*, JERUSALEM POST, Mar. 28, 2000, at 8.

292. *See* Margot Dudkevitch, *1 Killed in 'Intifada Day' Riots*, JERUSALEM POST, Dec. 10, 1998, at 1.

293. *See id.*

294. The overall instability of the region has recently been evidenced by a vote of no confidence in the Knesset of Prime Minister Barak's coalition and a subsequent call for new elections. Barak's questionable political future and his concentration on stabilizing his coalition overshadow the peace process. Furthermore, the instability of the region is underscored by Arafat's recent threat to U.S. Secretary of State Madeleine Albright that Palestinian riots similar to the May 2000 riots will occur again if Barak does not meet Palestinian expectations with the next Israeli redeployment, or decides to only transfer 1%. *See* Janine Zacharia et al., *US Hopeful Palestinian Talks Can Bridge Remaining Gaps*, JERUSALEM POST, June 14, 2000, at 1. Once it is underway, Arafat may be unable to control the violence among the Palestinians as exemplified by his calling for the May 2000 riots but later claiming he did not expect the degree of violence that occurred. Much of the street violence is no longer controlled by the PA, but by new armed activists, gaining popular support in the region, who do not adhere to the orders of the PA and are even feared by the PA. *See* Arieh O' Sullivan, *IDF Preparing for More Violence in Territories,* JERUSALEM POST, June 14, 2000, at 2. Fearful of the armed activists, PA security officials do not enter certain parts of areas A and B, which are ostensibly under their control. *See* Arieh O'Sullivan, *Are SLA Weapons Ending Up in Nablus?*, JERUSALEM POST, June 14, 2000, at 3.

stunning upset victory of Likud Party member Moshe Katsav over his opponent Shimon Peres in the Israeli presidential elections held at the end of July 2000.[295] Peres, who has been a staunch supporter of, and key participant in, the peace process, and who received a Nobel Peace Prize for his efforts, was deprived of the opportunity to crown his long service to Israel with the largely ceremonial role of Israel's eighth President.[296] Presumably, his loss reflected, as Likud Party chairman Ariel Sharon put it, "'an expression of deep disappointment and great worry about Barak's [recent peace process] activities.'"[297] Barak himself faced repeated "no-confidence" motions in the Israeli Knesset, preliminary legislation for his government to be dissolved, and early elections to be held as a result of what some Israelis believe was Barak's "willingness to make too many concessions."[298]

While Barak and Arafat must both consider the reaction of their constituents when negotiating further agreements after Camp David II, it is clear that Arafat is equally, if not more, concerned with the opinion of the surrounding Arab states when it comes to reaching a settlement on Jerusalem. According to Bilal al-Hassan of the newspaper *Al-Hayat*, Arafat, en route to Camp David II, told Egyptian President Hosni Mubarak that he had no intention of discussing either Jerusalem or refugees, but, rather, wished to focus on the interim status issues.[299] Arafat also stated that further agreements between himself and various Arab leaders would be necessary before the issues of Jerusalem and refugees could even be addressed.[300] This would account for Arafat's refusal to accept even the surprisingly generous concessions Barak was willing to make at Camp David II. The United States is now attempting to create an "'Arab umbrella of legitimacy'" for Palestinian concessions in future

295. *See* Nina Gilbert & Gil Hoffman, *Katsav Wins Upset Victory*, JERUSALEM POST, Aug. 1, 2000, at 1.

296. *See* Mark Lavie, *Israel Gets Hawkish President* (July 31, 2000) <http://detnews.com/2000/nation/0007/31/nation-98487.htm>.

297. Greer Fay Cashman, *Sharon Praises Peres*, JERUSALEM POST, Aug. 1, 2000, at 3.

298. David Franklin, *Levy Ultimatum Expires Today*, JERUSALEM POST, Aug. 2, 2000, at 1. Ultimately, Barak resigned, announcing his intention of seeking a new mandate from the electorate.

299. *See* Douglas Davis, *Report: Arafat Didn't Want Summit to Deal With Jerusalem, Refugees*, JERUSALEM POST, July 30, 2000, at 3.

300. *See id.*

talks.[301] Toward this goal, Clinton has called on the leaders of Morocco, Egypt, Saudi Arabia and Jordan to support a partial agreement between Palestinians and Israelis while Assistant Secretary of State Edward S. Walker visited various "Arab leaders 'to persuade them to soften Arafat's stance.'"[302] Only King Abdullah II of Jordan was forthcoming with his response, attempting to persuade Arafat to accept such a deal.[303] Palestinians say that Mubarak has begun a campaign in the Arab world to "'work out the Arab red lines,'" and that Arafat will not sign any agreement without first consulting the Egyptian President.[304] Meanwhile, four Kuwaiti Islamist groups condemned the negotiations at Camp David and claim that Moslems will not be bound to any agreement between Arafat and Israel.[305] In a joint statement published in local newspapers, they said, "The Palestinian cause is . . . the responsibility of all Moslems and any compromise by Arafat or any other Arab leader to the Jews on any part of Palestine has no legal value."[306] They further urge the use of force against Israel as the only means by which the Palestinians can "win back" Jerusalem.[307]

It is clear that the Arab world will have to come to some kind of consensus on the issues before the next round of talks take place if they are to have any sort of value as far as achieving a lasting peace with Israel. If not, Arafat may be unwilling to stand on his own in reaching a compromise with Israel that will ultimately create a better future for his people. So far it seems that Arafat is willing to risk neither his personal security nor his political popularity to ensure a lasting peace.[308]

What remains unclear is from what starting point the next round of talks will take place. Clinton has said that he does not expect that another summit will be held in the foreseeable future,[309] but when

301. Douglas Davis, *US seeking 'Arab Umbrella' for PA Concessions*, JERUSALEM POST, July 30, 2000, at 2.
302. *Id.*
303. *See id.*
304. Lamia Lahoud, *Mubarak Working out 'Arab Red Lines' for Camp David*, JERUSALEM POST, July 25, 2000, at 3.
305. *See id.*
306. *Id.*
307. *Id.*
308. *See* Janine Zacharia & Danna Harman, *Summit Collapses Without Agreement*, JERUSALEM POST, July 26, 2000, at 1.
309. *See* Harman, *supra* note 286.

further negotiations do take place, it will be interesting to see whether or not the three parties will hold to the idea that the concessions made at Camp David II would be "all or nothing" and thus that future negotiations would not start from suggestions put forth at the summit. This "all or nothing" formula was agreed to so that the individual parties "'wouldn't be exposed,'" as Clinton put it, and so that they could take back any offers made if no agreement emerged.[310] While Barak has repeatedly stressed that the offers he made at the summit are now "null and void," it will be difficult, if he is still the Israeli Prime Minister, to conceal his cards now that the Palestinians know just how far he was willing to go.[311]

Of course, the Sharm Memorandum, like the WRM before it, if carried out faithfully by both parties, could have given renewed momentum to the long dormant Oslo peace process. Clearly this was the hope of the Clinton Administration, which has made prodigious efforts, most recently the convening of the Camp David II summit, to prevent the entire process from breaking apart. These efforts proved insufficient and the timeframe for resolving the final status issues expired. The daunting complexity of these remaining issues makes it difficult to forecast a negotiated resolution of the 100-year-old conflict, especially within the constantly narrowing window of time. Perhaps what propels the two sides onwards, hopefully towards peace, is a sense that the current reality cannot long survive and that the status quo that preceded the peace process cannot, at a sustainable political cost, be restored. The outcome will unfold as the once taboo issues of borders, refugees, Jerusalem, and settlements, recently formally placed on the negotiating table at Camp David II, continue to be debated.[312]

Postscript: The Al-Aqsa Intifada

The Israel-PA relationship deteriorated almost beyond recognition during the period in which the author reviewed the proof copy of this Article. Daily Palestinian violence directed at Israeli targets[313] prompted Barak to publicly question whether Israel had a

310. *Id.*
311. *See After Camp David*, JERUSALEM POST, July 27, 2000, at 8.
312. *See* Saul Singer, *Israel's Bravest Soldier Took Too Many Risks*, WALL STREET J., July 26, 2000, at A26.
313. The Palestinians have almost invariably opened fire first. *See, e.g.*, Interview

partner for peace. Arafat's answer was blunt as, flush with support gathered during his frenetic travels around the Arab and Islamic worlds,[314] he responded by telling the television cameras that Barak could "go to hell."[315]

Notwithstanding the unparalleled unilateral concessions offered by Barak at the July 2000 Camp David II summit,[316] concessions intended to induce a reluctant Arafat to terminate the conflict with a final status agreement, the Palestinian leader apparently concluded that he can achieve more through confrontation and violence than through the give and take of a final round of negotiations.[317] Israeli Foreign Ministry Director General Alon Liel described Arafat's conduct as follows: "'Arafat, in the last kilometer of the marathon, at the finish line, turned around and started to run backward. Against history, against the will of the world, against the interests of his own people, and against logic. He didn't stop. He is running in the opposite direction.'"[318]

with Neil Macdonald, Reporter for Canadian Broadcasting Co. Television, *The World at Six* (Canadian Broad. Co. Radio Broadcast Transcript), Oct. 20, 2000.

314. *See* Herb Keinon, *Senior Security Official: Situation in Territories on Brink of Anarchy*, JERUSALEM POST, Nov. 30, 2000, at 1. Arafat was so preoccupied with his efforts to internationalize the conflict that he did not set foot in the West Bank between October 3, 2000 and November 30, 2000. *See id.*

315. Patrick Bishop, *Palestinian Teenagers Bear Brunt of Violence* (Oct. 23, 2000) <http://www.telegraph.co.uk/et?ac=005383914864783&rtmo=axaJ2JpL&atmo=ttttty Kd&pg=/et/00/10/23/wmid323.html>.

316. *See*, e.g., Marcus Gee, *Palestinians Squander Their Freedom*, GLOBE & MAIL (CANADA), Oct. 26, 2000; *see also* Charles Krauthammer, *Arafat's War*, JERUSALEM POST, Oct. 8, 2000, at 6.

317. *See* Lamia Lahood, *Fatah Promises Intifada Against Israeli Settlements*, JERUSALEM POST, Oct. 10, 2000, at 2. Prime Minister Barak stated,

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

Herb Keinon and Lamia Lahoud, *Egyptian Foreign Minister Moussa: Current Peace Process Is Over*, JERUSALEM POST, Oct. 25, 2000, at 1. Arafat may have a secondary motivation—to deflect unrest caused by his corrupt and heavy-handed governance in the PA. *See, e.g.*, Daniel Klaidman et al., *Something Rotten in Palestine*, NEWSWEEK, May 22, 2000, at 36. Palestinian activists, such as Tanzim leader Hussein a-Sheikh, believe that gains in future negotiations will be greater following the riots, which have made the Palestinians victims in the eyes of the world.

318. Herb Keinon, *New Government Message: Arafat Running Backward*, JERUSALEM POST, Nov. 2, 2000, at 4.

In the first two months, the new violence claimed some 260 Palestinian and thirty-five Israeli lives.[319] Despite recurrent efforts by Clinton, whose formidable powers of persuasion had moved the parties past previous impasses, the downward spiral toward armed conflict continues virtually without respite.

This outburst has been more violent and protracted than other episodes of violence during the peace process.[320] One major difference between the current Al-Aqsa Intifada and its predecessor, the original intifada of a decade ago, is the enormous increase of Palestinian firepower, primarily in the form of tens of thousands of assault rifles which were provided to their police and security forces to enable them to keep public order and deter anti-Israel terrorism by Hamas and Islamic Jihad. Israel has responded with a variety of weapons and tactics, including limited use of tanks and helicopter gunships, claiming that it was reacting with restraint given the circumstances.[321]

Acrimonious accusations crisscrossed the Israeli-Palestinian political divide as Palestinians preferred to focus attention on their mounting casualty toll rather than on larger questions like who started the violence and who could have stopped it early on.

Meanwhile, in the background, the dozens of bilateral (Israeli-Palestinian) and several trilateral (U.S.-Israeli-Palestinian) committees created by the interim agreements simply stopped functioning.[322] Sometimes this was with a bang, as when the

319. *See* Keinon, supra note 314.

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

321. *See* Daniel Pipes, *Intifada II: What the U.S. Should Do*, COMMENTARY, Dec. 2000, at 39. Two Israeli reserve soldiers were murdered by a Palestinian mob after they took a wrong turn into Ramallah. *See* Andrew Morse et al., *Israel Retaliates* (Oct. 12, 2000) <http://www.abcnews.go.com/sections/world/DailyNews/mideast_001012.html>. In retaliation Israeli helicopters fired missiles at PA targets in Ramallah, but only after giving advance warning to the PA to enable evacuation of the buildings. *See id.* Likewise, although handfuls of tanks have been posted at various defensive positions, such as the Jerusalem neighborhood of Gilo, they have generally served a symbolic role. *See* Hugh Dellios, *As Jerusalem Wall Rise, Israel Warns of Long Battle*, CHICAGO TRIBUNE, Oct. 25, 2000, at 1.

322. *See generally* Justus Reid Weiner, *The Implementation of Legal Structures for Israeli-Palestinian Cooperation Pursuant to the Interim Peace Agreements*, 26

Palestinians bombed the District Coordination Office;[323] more often it was with a whimper, as by simple failure to conduct meetings. Either way, the net effect was that structures that were designed to work through day-to-day problems proved useless precisely when they were needed most.

Despite the violence, Israeli opinion polls revealed that 60% of the public was still committed to the peace process.[324] By contrast, a public opinion poll of Palestinians living on the West Bank revealed alarming results. Eighty percent supported armed attacks against Israeli targets, compared to 33% in 1995. Forty-one percent favored attacks against any Israeli target, including civilians. Seventy-five

BROOKLYN J. INT'L L. 591 (2000). The Oslo peace process introduces a new angle to the persistent conflict between the two populations and their stakes in the land they consider their ancestral home. Distinct from earlier attempts at negotiating a Middle Eastern peace, the Oslo interim agreements have developed a comprehensive institutional structure and shared administrative control, principally in the form of committees that were designed to work, out of the limelight, at solving day-to-day problems. They were to address practical concerns, primarily the welfare and security of both sides, and also to deal, inter alia, with the distribution of resources, control of holy sites, economic development, airports, harbors, tourism, ecology and archaeology. They were designed to bring together former enemies in their new role as partners seeking to develop pragmatic solutions to the challenges they faced. Prior to the current intifada some of the committees were successful in working through problems; others were not. Since the outbreak of violence, these structures have been essentially useless. *See generally id.*; *see also* Margot Dudkevitch, *Violence Persists, But Less Intense*, JERUSALEM POST, Nov. 5, 2000, at 2; Margot Dudkevitch, *Palestinians Ransack Evacuated Joseph's Tomb*, JERUSALEM POST, Oct. 8, 2000, at 1; Nina Gilbert, *Peres Slams Arafat's Handling of Joseph's Tomb*, JERUSALEM POST, Oct. 8, 2000, at 3; Margot Dudkeveitch, *Border Policeman Murdered by Palestinian Counterpart*, JERUSALEM POST, Oct. 2, 2000, at 5; Arieh O'Sullivan, *IDF Considering Ending Joint Patrols*, JERUSALEM POST, Oct. 5, 2000, at 2; Margot Dudkevitch & Lamia Lahoud, *Fatah Calls to Continue the Intifada*, JERUSALEM POST, Oct. 25, 2000, at 1; Hanan Sher, *Brief Encounter: Col. Gal Hirsch*, JERUSALEM REP., Nov. 20, 2000, at 16.

323. District Coordination Offices, like the one in the Gaza Strip at Neve Dekalim, which was bombed, were set up under the interim peace agreements to facilitate problem-solving via meetings between IDF officers and their Palestinian counterparts. *See* Margot Dudkevitch, *Two Soldiers Killed in Gaza*, JERUSALEM POST, Nov. 24, 2000, at A1. These offices were a place where, even after the new intifada started, a certain degree of cooperation in the field still existed. In the aftermath of the bombing in which one IDF soldier was killed and two were wounded, Israel declared, "The Palestinians carried out a despicable attack on Military personnel with whom they worked side by side over the past seven years." In response, the IDF submitted a formal request for the Palestinians to remove their personnel from such coordination offices in the West Bank and Gaza Strip. *See id.*

324. *See Latest on the Peace Process* (Nov. 28, 2000) <http://www.southwestern.edu/~kotarskj/latest.html>.

percent favored the continuation of the Intifada and 60% said there is no chance for peaceful co-existence between Palestinians and Israelis.[325] These statistics are all the more shocking in that they were collected after the progressive redeployment of the IDF had taken the army out of the cities, towns and villages where the vast majority of Palestinians live and work. Underlining this reality is the fact that about 98% of Palestinians live in areas under PA civil administration which have their local needs addressed by the PA, without interacting with the IDF.[326]

It is beyond the scope of this Article to delve in depth into the reasons for, and nature of, this new phase of the conflict. Suffice it to state that the Palestinian violence[327] and ongoing incitement[328] negates the original purpose of the Oslo peace process—to resolve differences through negotiation rather than violence. As Arafat proclaimed in

325. *See* Lamia Lahoud, *Bir Zeit Poll Shows Rising Support for Armed Attacks*, JERUSALEM POST, Nov. 14, 2000, at 3; *see also* Gil Hoffman, *Palestinian Poll Result Worries Politicians on Right and Left*, JERUSALEM POST, Nov. 15, 2000, at 4.

326. *See* Krauthammer, *supra* note 316; *see also* Dan Izenberg, *Israel Searches for More Humane Riot Control Tools*, JERUSALEM POST, Nov. 16, 2000, at 2.

327. *See, e.g.*, IDF Spokesman's Office, *supra* note 320; Dudkevitch, *supra* note 320.

328. *See* Steve Weizman, *All the News That's Fit to Incite*, JERUSALEM POST, Nov. 17, 2000, at B2. In some instances, children have in fact been given or have otherwise obtained guns. *See, e.g.*, *Arab Boy Caught With Gun*, JERUSALEM POST, Nov. 20, 2000, at 4. According to a report published by the International Christian Embassy in Jerusalem, the frequently made claim that Israeli opposition leader Ariel Sharon caused the riots by his visit to the Temple Mount on the eve of the Jewish new year (Rosh Ha'shana) ignores the evidence that the Palestinians were planning to launch a jihad. *Try to Remember Those Threats in September* (Oct. 10, 2000) <http://www.icej.org/cgi-local/icej_goto.pl?type=NEWS&artid=20001010OeOT6dimhMIAAHnigRw>. The report notes:

> A simple pilgrimage by a Jew to Judaism's holiest site has starkly exposed Muslim intolerance and Arafat's feigned commitment to peace, as he has used it as a ruse for enflaming an uprising under the supreme rallying cry—"defend Al-Aqsa."
>
> The morning after Sharon's visit, over 20,000 Muslim radicals—many youths ferried in from Islamic hotbeds in the PA areas and the Galilee—converged at the Al-Aqsa mosque for Friday prayers. The Grand Mufti, Sheikh Ibrahim Ekrima, referred to Sharon as the "Jewish butcher of Muslims," who was challenging more than one billion Muslims all over the world. The acid-tongued Mufti appealed for a pan-Islamic ruler to declare a Jihad "to eradicate the Jews from Palestine." As the throng emerged from the mosque, they set off a lethal rampage of violence that is proving to be an unremitting flame.

Id.

his September 9, 1993 letter to Yitzhak Rabin:

> The PLO considers that the signing of the Declaration of Principles constitutes a historic event, inaugurating a new epoch of peaceful coexistence, free from violence and all other acts which endanger peace and stability. Accordingly, the PLO renounces the use of terrorism and other acts of violence and will assume responsibility over all PLO elements and personnel in order to assure their compliance, prevent violations and discipline violators.[329]

And as discussed above, the Oslo II Agreement, the Hebron Protocol, the WRM, and the Sharm Memorandum were dedicated, in large part, to giving concrete expression to the PA's obligation to combat terrorism and incitement to violence.[330] The WRM, in

329. *See* Letter from Yasser Arafat, *supra* note 52.

330. *See* Hillary Mann, *Sharm El Sheikh Revisited—One Year Later* (Mar. 13, 1997) <http://www.washingtoninstitute.org/watch/Policywatch/policywatch1997/240.htm>. Article II(A)(3)(a) of the WRM, captioned "Preventing Incitement," states that

> pursuant to Article XXII(1) of the Interim Agreement and the Note for the Record, the Palestinian side will issue a decree prohibiting all forms of incitement to violence or terror, and establishing mechanisms for acting systematically against all expressions or threats of violence or terror. This decree will be comparable to the existing Israeli legislation which deals with the same subject.

WRM, *supra* note 18, art. II(A)(3)(a), at 7. Arafat has personally engaged in incitement with regularity, despite his commitments under the interim peace agreements. *See* Israel Government Press Office, Palestinian Non-Compliance with the Wye River Memorandum (Feb. 2, 1998) <http://www.likud.nl/viol25.html>. For example, a few months after signing the Declaration of Principles, he was taped during a speech in a Mosque exhorting those present to wage a jihad with the goal of liberating Jerusalem. *See* Yasser Arafat, *Speech on Jerusalem to South African Muslims in Johannesburg, South Africa (May 10, 1994), in* 24 J. OF PALESTINIAN STUD. 131, 132 (1994). Arafat also likened the Declaration of Principles to the peace agreement signed by the Prophet Mohammed with the Quraysh tribe, which was abrogated by Mohammed ten years later. *See id.* Arafat has honored the memory of slain Palestinian master terrorists by publicly referring to them as martyrs. *See* Ze'ev B. Begin, *Oslo and Mideast Logic*, JERUSALEM POST, Jan. 17, 1996, at 6. 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. *See* Munir Abu Rizek, *Shin Bet Agent Accused of Planning Suicide Bombings*, JERUSALEM TIMES, May 9, 1997, at 1. PA propaganda even included an accusation by the Palestinian Representative to the U.N. Commission on Human Rights that Israel had infected by injection 300 Palestinian children with HIV. *See* Uriel Heilman, *UN Won't Counter Palestinian AIDS Allegation,* JERUSALEM POST, Apr. 11, 1997, at 2. The most recent example of Arafat's attitude towards the ongoing incitement and violence is his carrying a submachine gun when he appears in public. *See* Margot Dudkevitch, *Arafat Brandishes Weapon on His Return to Gaza*, JERUSALEM POST, Dec. 5, 2000, at 1. This was viewed as a call to arms. *See* Lamia Lahoud, *Palestinians See Gun-Toting Arafat as Making a Call to Arms*, JERUSALEM POST, Dec. 6, 2000, at 2.

particular, specified five separate, quite explicit steps that the Palestinians agreed to implement.[331]

Yet in today's explosive political climate, and at the very time restraint and fidelity to signed agreements is most needed, and when incitement and terrorism pose the greatest threat, the solemn, signed documents appear altogether ineffective. Rather than preventing armed gunmen from taking over the streets, Arafat appears to be pandering to them in order to preserve his role as the indispensable leader of the Palestinian masses. Reconciliation, in Arafat's parlance, appears to apply to his efforts to mend fences with his Islamist and left-wing Palestinian critics, rather than to bridge the PA-Israeli chasm.[332] Thus, instead of honoring the interim peace agreements by jailing known terrorists or transferring them to Israel to face trial, the PA has thrown open the doors of its jails, permitting them to once

331. Article II(A)(1) of the WRM, titled "Outlawing and Combating Terrorist Organizations," states,

> (a) The Palestinian side will make known its policy of zero tolerance for terror and violence against both sides.
>
> (b) A work plan developed by the Palestinian side will be shared with the U.S. and thereafter implementation will begin immediately to ensure the systematic and effective combat of terrorist organizations and their infrastructure.
>
> (c) In addition to the bilateral Israeli-Palestinian security cooperation, a U.S.-Palestinian committee will meet bi-weekly to review the steps being taken to eliminate terrorist cells and the support structure that plans, finances, supplies and abets terror. In these meetings, the Palestinian side will inform the U.S. fully of the actions it has taken to outlaw all organizations (or wings of organizations, as appropriate) of a military, terrorist or violent character and their support structure and to prevent them from operating in the areas under its jurisdiction.
>
> (d) The Palestinian side will apprehend the specific individuals suspected of perpetrating acts of violence and terror for the purpose of further investigation, and prosecution and punishment of all persons involved in acts of violence and terror.
>
> (e) A U.S.-Palestinian committee will meet to review and evaluate information pertinent to the decisions on prosecution, punishment or other legal measures which affect the status of individuals suspected of abetting or perpetrating acts of violence and terror.

WRM, *supra* note 18, art. II(A)(1), at 6-7.

332. *See* Michael Widlanski, *Special Report: Voice of Palestine Coverage of Peres-Arafat Agreement and Follow-up Announcement* (Nov. 2, 2000) <http://www.israelbehindthenews.com/Nov-02-00.htm#Contents>.

again ply their deadly trade.[333] Times like this remind this author of Ambrose Bierce's cynical definition of "peace" as "a period of cheating between two periods of fighting."[334]

333. The PA's sudden release of Hamas senior leaders and bomb-makers prompted warnings that Arafat has given the green light for renewed suicide attacks. *See* David Zev Harris et al., *Hamas Political Leader: All Israelis Are Legitimate Targets*, JERUSALEM POST, Oct. 12, 2000 at 1; *see also* Jonathan Krashinsky, *IDF: Senior PA Officials Involved with Hamas*, JERUSALEM POST, Oct. 17, 2000, at 4. Subsequent car bombings by Islamic Jihad in Jerusalem and Hadera claimed numerous Israeli casualties. *See* David Rudge, *Car Bombing Kills Two in Hadera,* JERUSALEM POST, Nov. 23, 2000, at 1. The PA denied responsibility for the bombings. *See* Lamia Lahoud, *PA Disavows Attack*, JERUSALEM POST, Nov. 23, 2000, at 3. By disclaiming knowledge of or responsibility for these attacks, Arafat raises further doubts regarding what might, in the best of circumstances, be gained from negotiating with him. Moreover, The PA's obligation to pursue those who perpetrate acts of terror against Israeli targets is unequivocal. The Oslo II Agreement and its predecessor, the Cairo Agreement, give Israel exclusive criminal jurisdiction over terrorist attacks against Israelis. *See, e.g.*, Oslo II, *supra* note 19, Annex IV, art. II(7)(f)(2); Cairo Agreement, *supra* note 19, Annex III, art. (II)(7)(f)(2); Peace Watch, *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*, Sept. 19, 1995.

334. AMBROSE BIERCE, THE DEVIL'S DICTIONARY (T. Y. Crowell 1979) (c. 1911), *available at* (last modified Jan. 31, 1997) <http://www.rabi.phys.columbia.edu/~matmat/html/dict/p.html>.