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ISRAEL'S PEACE POLICY: TRYING TO WALK WITH ONE LEG

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Reciprocity and Full Peace

Arafat now has the upper hand because Netanyahu is using a one-legged policy. What Israel is doing would make sense as one side of a policy, but it cannot work unless it adds the other leg. The second leg is an Israeli initiative to use the Oslo permanent status negotiations to try to achieve a full peace with the Palestinians, an initiative that will start a new phase of the Oslo peace process and demonstrate that this government too is willing to take risks and make sacrifices to achieve peace with the Palestinians.

Netanyahu started out talking about "reciprocity," meaning that Israel would continue implementing the Oslo Interim Agreement (IA) if the Palestinians would also implement it, yet he was unable to get this position heard. In part, the reciprocity position was rejected because of the automatic opposition of Netanyahu's ideological and partisan opponents. But that automatic opposition had to be expected and could have been overcome. The reason reciprocity has so far failed is that reci-

procity means something quite different if Israel is not willing to move from the temporary IA into a real peace with the Palestinians.

As a one-legged policy, "reciprocity" is negative, an excuse for stalling or retreating; as part of a two-legged policy, the same "reciprocity" can be positive, an effort to build a solid base of experience for the new, permanent peace agreement.

So long as those Israelis and others who think that peace is possible believe that Israel is not eagerly pursuing peace, Israel can never get even faintly fair consideration on specific disputes with the Palestinians. That is why Arafat's violent attack on Israel in September, after Netanyahu committed the faux pas of opening the exit to the Hasmonean water tunnel at night, produced so much support for the Palestinians. And it is the reason Arafat has the upper hand now, and can and will do the same thing again whenever he wants, however careful Netanyahu is to avoid another faux pas.

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The key to negotiation strategy is to focus on the distinction between "full peace" and "partial peace." A "full peace" is one made after both parties have made concessions and each agrees to accept the other's concessions as a full and final settlement of the conflict and to relinquish any further claims against the other side. A "partial peace" is an agreement to refrain from some forms of conflict or to make some arrangement, although one or both sides continue to insist that it still has just and valid claims against the other.

A full peace is what Israel needs in order to have a relatively normal public life and to be a society that is not under political or physical attack by neighbors who regard it as illegitimate and who want to destroy it, a country in which security issues do not dominate all other political concerns. Even if a full peace turned out to be temporary, it would make a major permanent change in Israel's political and diplomatic situation.

Israel's Security Requires Consensus

For some years Israel has been deeply divided. During the first thirty-odd years of Israel's existence there was widespread agreement that Israel was in a long-term war (conflict) with the Arabs because the Arabs were unwilling to accept a Jewish state in the Middle East. Despite argument about policy, there was general agreement that Israel had no real choice about being in the conflict, and that consensus was the foundation of Israel's belief in the morality of its conduct in the conflict.

Perceptions in Israel and elsewhere have been changing; the primary conflict is increasingly seen as between Israel and the Palestinians, not between Israel and the Arabs. And since the Palestinians are obviously weak and unfortunate, they are seen as victims.

Now a major share of the Israeli population has come to think that Israel might be able to end the war with the Palestinians, and that therefore it is not a legitimate war for Israel. If the war is illegitimate, it does not justify risking Israeli lives, and anything Israel does to the Palestinians in that war is unnecessary and therefore immoral.

Israel's long-term security requires restoring the traditional consensus among Israelis about war and peace. Only with such a consensus will Israel be able to withstand Palestinian and world pressures. Furthermore, just as Israeli military weakness creates danger by encouraging Arab hopes that Israel can be defeated, so does Israeli division and political weakness. Ultimately, the effectiveness of the IDF is threatened by continued division.

Israel's negotiating strategy must be designed to either make a peace with the Palestinians that is supported by a healthy majority, or to make a sufficiently bold and generous effort to reach peace so that there is again an Israeli consensus that the reason that Israel continues to be in a conflict with the Palestinians is that the Palestinians are unwilling or unable to make peace.

The terms "hawks" and "doves" can be used not to condemn or caricature either group, but as convenient labels for parts of the argument. Consensus can be achieved because most Israelis are both doves and hawks; they want both peace and security; they understand that the Palestinians have been unjustly kept from normal freedoms and rights, and they know that many Palestinians are Israel's deadly enemy and have dangerous allies. Most Israelis are willing to make sacrifices for peace, but know that pursuing peace in the wrong way can lead to war.

Consensus is made more difficult, but not less necessary, because there are three parts of the population who cannot be convinced to join a consensus. There are some, mostly religious, who believe that Israel should not turn any of Judea and Samaria¹ over to the Arabs under any circumstances and, therefore, are not available for any consensus in support of any possible peace agreement.

The second group might be called the "media/intellectual left," or "ideological doves" who could never be convinced that the Palestinians are responsible for a failure to achieve peace because of the fundamental illegitimacy of a Jewish state built on colonial or imperialist invasion of Arab land. For someone who sees Palestinians as victims of Israeli aggression, any Israeli offer that the Palestinians do not accept is inadequate, and the conflict is Israel's fault.

Finally, there are the Arab Israelis who also would never join a consensus that the Palestinians are responsible for a failure to make peace.

Courting the "Pragmatic Doves"

In recent years, "ideological doves" who dominate the media and most of the intellectual/artistic community have been the main public articulators of the dovish side of the debate, although they are a minority of the doves. If, no matter how hard Israel tries to make peace, the ideological doves will never agree that it is the Palestinians who are preventing peace, the only way the government can achieve essential consensus is by following a policy that gives the pragmatic doves reason not to continue to follow the lead of the ideological doves if the Palestinians reject peace.

The question that most separates doves from hawks is whether Arafat is willing and able to make peace now. Most hawks think that there are not yet enough Palestinians ready to give up their long-term war to drive the Jewish state out of the region for a full peace to be possible. But this is such an old debate, no policy based on the conclusion that it is useless to try to make full peace with the Palestinians can give Israel enough support from the doves.

No matter how clear the facts may be, the problem is how to deal with the fact that the population is hopelessly divided about whether peace with the Palestinians is possible.

The only way to resolve this dilemma, and achieve consensus, is for the government to decide to act as if the Palestinians might be willing to make peace, and to try to reach a generous peace agreement with them. The government must say, in effect:

1. To you who think peace is possible: We are going to follow your advice to go very far to make peace, but if it turns out that the Palestinians are unwilling or unable to make a full peace, you owe it to your fellow Israelis, who accepted our effort to make full peace despite the evidence that the Palestinians are not yet willing to accept us, to then recognize that it is the Palestinians who are preventing peace and to support the country in the conflict until the Palestinians change.

2. To you who think peace is impossible: Because of the need to restore greater Israeli unity, we are going to put aside the evidence that you may well be right and try to negotiate an agreement to allow the establishment of some kind of Palestinian state, if and only if the Palestinians are truly willing and able to make peace with us. If you are right, and the Palestinians will not make a full peace with us, there will be no agreement and no state. And then those who thought we should try for peace will support the struggle to protect ourselves against the Palestinians.

Israel needs to have the support of the pragmatic doves *during* the negotiations, because their opposition could be used by the Palestinians and others to make the government's position untenable, but the government only needs to satisfy the hawks about its negotiating position *after* it succeeds in negotiating a peace agreement. The opposition of the hawks during negotiations does not hurt the government (or even helps).

Arafat now has the upper hand because it is clear that Israel will get the blame diplomatically if violence erupts from demonstrations he has encouraged. The reason — apart from those who will always blame Israel

— is that many genuine supporters of Israel see the "big picture" now as Israel not pursuing peace. Because the new government has not effectively presented a vision of peace, fulfilling the Interim Agreement is seen as fulfilling a legal requirement, not as the pursuit of peace.

So long as Israel is not seen as actively pursuing peace, the pragmatic doves and others are not prepared to hold Arafat or the Palestinians responsible for any clashes. Therefore, until Israel makes a convincing peace initiative that opens a new phase of the negotiations, it will receive a series of blows and be forced into a series of retreats because it lacks the support of an Israeli consensus that it is on the right track.

Essentials of a Peace Initiative

Israel needs to orchestrate an initiative that starts a new phase of the peace process. The main thrust of Israel's proposal should be that it seeks a complete end of the conflict with the Palestinians, and that the main point of the negotiations is to find out whether the Palestinians are really willing and able to end their war against Israel if they get their own state, because that is the main point that divides Israelis.

The essential elements that Israel has to assure Arafat will be included in a full peace are some form of a Palestinian state in Gaza and most of Judea and Samaria, an appropriate accommodation about refugees, the protection of Muslim interests in Jerusalem, some form of Palestinian capital in part of Jerusalem, and that Israel respects the Palestinians and will give a Palestinian state full dignity. Israel would of course also make it clear that it would need to negotiate agreements with a Palestinian state to protect Israeli security in light of the special geographic conditions and the fact that states to the east are still at war with Israel.

If both sides agree that they want to make a full peace with each other, there will have to be negotiations about the territorial division of Judea and Samaria. Israel's position in that negotiation should be that both the Palestinians and Israelis have legal, moral, and practical claims to the whole territory, and that Israel is prepared to relinquish its claims to the areas where substantial numbers of Palestinians are living or cultivating, and to negotiate a division of the part of the territory on which there are substantial numbers of neither Palestinians nor Israelis living.

While this position provides an adequate basis for a dramatic Israeli initiative to start a new phase of the peace process, it is not so simple to get such an initiative recognized enough to be effective. And it will take

a great deal of skill to make sure that the negotiations demonstrate whether or not the Palestinians are really willing to make peace.

One objection to this approach is that Arafat can change the focus to arguments about specific terms by quickly responding that he is willing to completely end the war against Israel if he gets a Palestinian state in Gaza and almost all of Judea and Samaria with East Jerusalem as its capital. But while Arafat might quickly say something like that to Western audiences, that would not be good enough. The idea of a full peace is a significant enough new feature so that wide discussion could not be avoided by a quick and meaningless acceptance. The point of the Israeli proposal would be that the negotiations, and Palestinian behavior during negotiations, need to demonstrate Palestinian willingness to make a full peace. Arafat could not easily agree to binding language that renounces any other Palestinian claims against Israel. And he would have to argue for such an agreement in Arabic to his Palestinian and other Arab constituencies. He would also have to come into compliance with the IA — including putting an end to terrorism by organizations openly tolerated in the territories. And in the negotiation on the territorial division of Judea and Samaria he would have to respond to Israeli legal, historical, and moral arguments that it also has valid claims of right to Judea and Samaria, not just pragmatic claims based on security needs or settlements.

Therefore, whatever Arafat's quick reaction to the Israeli proposal, there will be room for Israel to make the negotiations focus on the question of whether the Palestinians are willing and able to make peace. This focus has a great advantage compared to a focus on security guarantees or other specific terms, because Israel's main negotiating objective demonstrates Israel's commitment to peace. It means that Israel's pragmatic doves will see that the government's major demand is exactly what they want.

Israeli disagreement about terms is not nearly as sharp as it appears to be; much of it is really disagreement about whether the Palestinians are willing to make peace. Many people oppose a Palestinian state, for example, because they think that it will not mean peace. If the Palestinians showed that they were willing to make peace, many Israelis would be willing to make concessions that they now reject.

Those who think peace is still impossible have serious reasons for opposing an effort to find out by trying — it is not just that they are against peace or object to wasted effort. Some fear that this kind of

effort to change the current conflict into peace will instead lead to a new war. They are afraid that the Palestinians will try to make a false peace instead of openly rejecting a peace they are unwilling to make. And they are afraid that, either the government is not being candid when it says that the concessions it is discussing will only be made if the Palestinians make a real peace, or that it will be forced to yield the concessions in return for only a false peace.

Some people reject a full peace because they believe that even if the Palestinians make a full peace, and fully intend to accept Israel and live in peace, the peace is not likely to last very long because the region is too unstable and the Palestinian political system is not developed enough to make a decision that can bind the future. Therefore, they believe that Israel would not get enough benefit from a temporary peace to justify the necessary concessions. Also they believe that such an Israeli retreat would embolden many Arabs, and the result would be a new war. But there are not enough people for whom this long-term argument is decisive to prevent sufficient consensus for a peace. They may be right, but most Israelis do not appreciate this danger or are willing to take more risks for peace.

The big question is whether it is possible for the government to make a peace initiative that is dramatic enough to start a new phase of the peace process and convince people that it is genuinely trying to make peace with the Palestinians. If Netanyahu had put forth a vision of peace when he first came to office, he certainly could have convinced people that he was continuing the pursuit of peace, despite the initial suspicion of him and the widespread characterization of his election as a defeat for the peace process. But now, because the idea that this government is not pursuing peace (beyond complying with the Oslo IA) has become widely accepted, there will be great skepticism of any general vision of peace and proposals to negotiate that it makes.

There are four different approaches the government could try in order to establish the second leg of its policy, each of which has its own problems. One is to put enough intellectual and organizational substance and drama into the initiative so that it appears to people as a genuine new start. Second, the Labor party could be invited into the government so that the proposal came from both sides. Third, the government could try to find a way to associate either Peres or Labor or non-party doves with its initiative without forming a national government. Fourth, the government could try to convince either Arafat or the U.S. of its good

faith before going public.

Currently Arafat is delaying Israel's withdrawal from Hebron because he thinks that the appearance of Israeli reluctance to make peace is in his interest. But if Arafat overreaches or has some bad luck, new circumstances might be created in which he would find it in his interest to be seen as entering peace negotiations with good hopes of success, which is what Netanyahu needs (and will not get from the withdrawal from Hebron).

There is another way that Arafat might become more interested in negotiating peace with Netanyahu. Now he probably believes there is a real chance that Israel's current government will be changed or replaced fairly soon by one in which the Left has more influence. Therefore he has little reason to pay the internal political price required for serious negotiations. But if the U.S. and the Israeli opposition accept that the Netanyahu government will stay in power for its full term, and convinces Arafat of that, Arafat would have much more reason to negotiate, and to begin to give his constituents a sense that peace may be possible. This is much more likely if Netanyahu adds a second leg to his policy, and is an important additional advantage of the approach described here. If Arafat sees that Netanyahu is here to stay, he might be persuaded privately that it could be useful to him to take up a Netanyahu initiative to put permanent status negotiations in high gear. Otherwise it would be at least four years before he would have another chance to get his state.

The Question of Palestinian Statehood

The differences between statehood and other forms of self-rule are legal, political, and psychological. It is not possible to tell whether Arafat and the Palestinians highly value the difference between "real statehood" and what they have now, but it seems quite possible that they care about having the real thing.

Statehood implies the right to control the state's borders and to decide who or what can come in or go out of the state, including the right to admit new immigrants. But statehood is not incompatible with arms control agreements in which the state restricts its right to have certain weapons on its territory. However, such agreements would not necessarily be enforceable without treating their violation as a *casus belli*. It is clear, for example, that an agreement by a Palestinian state not to allow tanks and heavy artillery on its territory could not be relied on to prevent perhaps several dozen pieces of such equipment from being stationed there. However, such an agreement might

be used to prevent hundreds of tanks or pieces of heavy artillery from being deployed there.

Israel would have strong tools available to secure compliance by a Palestinian state with its legal commitments. But there can be no guarantee that such tools would be sufficient in all cases, and if the Palestinians fail to comply on their own, serious effort by Israel would be needed to obtain compliance.

One argument sometimes made against Palestinian statehood is that Israel would be less able to protect itself by military action against terror or other attacks from a Palestinian entity which was a sovereign state. There is no legal basis for this argument. Sovereign states have obligations to their neighbors, and any state has the right to protect itself if its neighbor fails to fulfill its obligations to police its borders. The steps Israel has taken against terrorists in the sovereign state of Lebanon demonstrate that Israeli action against sovereign neighbors who violate Israel's right to secure borders is not necessarily politically impossible. Israel's real political ability to take action against a Palestinian entity depends much more on the degree of agreement within Israel on the necessity for the action than it does on whether it is some kind of self-governing authority or a state. A united Israel will have more freedom of action against a Palestinian state than a divided Israel will have against a legally subordinate Palestinian Authority.

Pressing Israel's Legal and Moral Claims to Judea and Samaria

In the previous stages of the Oslo negotiations Israel never put forth the moral, historical, and legal reasons why it has the best claim of sovereignty of the area. The question was not discussed, in part because all questions of permanent status were postponed. However, the unexpressed political implication of the terms and structure of the IA is that basically Judea and Samaria are Palestinian but Israel will have various rights in particular parts of the area where required by special Israeli needs or interests, such as military security and existing settlements.

Based on the principle of self-determination, the Palestinians have a strong claim to the lands which they cultivate and on which they live. But that principle applies only to a fraction of Judea and Samaria. While the Palestinians will argue that Judea and Samaria should be treated as a single unit, as asserted in self-contradictory fashion by the IA, it is clear that the territories will be divided in some fashion, and they are not treated as a single unit in the IA.

In other areas, Israel has a much stronger claim to sovereignty of Judea and Samaria than do the Palestinians, according to usual standards of international law and practice.² The basis of Israel's claim to the right of sovereignty is not biblical or religious; it does not depend on agreeing that God granted the land to the Jewish people. Israel's claim is based on being the successor to the Jewish states that ruled the area, in various borders, off and on for most of 900 years until they were finally displaced by the Roman conquest, and who were the last local sovereigns of the area. Normally such old claims would be disregarded because there would be too many more recent sovereigns with claims. But in this case there is no state that was sovereign in the area after the Jewish states that is now claiming the land. And Jews have continually maintained their connection with the land, some living there at all times. During a minority of the time since the Jewish states were removed by conquest there were Arab sovereigns, but the Palestinians are no more the heirs of these Arab empires than are the Egyptians, Jordanians, or Syrians. Palestinians have never been sovereign in any part of Judea or Samaria — or anywhere else. There has never been any local Arab government sovereign over the area. For a while Jordan claimed sovereignty, but that claim was not recognized by any Arab or European government and Jordan has renounced it.

The other primary basis of Israel's claim is the decision of the League of Nations, partly in recognition of the Jewish connection to the ancient historical Jewish sovereigns of the area, that the land, which had been conquered from the Ottoman Empire by Britain as part of the Allied Powers, should be put under British sovereignty under a Mandate to provide for Jewish settlement (and protection of the individual rights of the local inhabitants) so that the land could become a Jewish homeland.

Israel also has other bases for claiming sovereignty, such as lawful conquest in a defensive war, the superior protection it has given to the rights and welfare of the inhabitants and of other religions, not using the land as a base for illegal war or terror, making the land fruitful while protecting historic and religious treasures, and absorbing refugees from Arab countries. And in much of the land Israelis are the predominant population.

Israel should not, of course, argue that its claims of right to sovereignty should be the sole basis of deciding what should happen to Judea and Samaria. Israel's position should be that the disposition of each dunam should be determined by negotiation between

Israel and the Palestinians, based on practical factors and the exchange of concessions. But Israel should argue that on the large part of the land on which practical factors do not clearly point one way or the other, the land should default to Israel because of its better legal, historical and moral claims, or be divided by negotiation. Of course Israel does not have to demand Palestinian agreement about the superiority of Israel's claims; it is enough if the Palestinians recognize that legal claims to sovereignty are disputed.

Asserting Israel's moral and legal claims must be done as part of a carefully prepared campaign. Israel's negotiating position concerning the division of Judea and Samaria is too weak if the underlying assumption is that it is "Palestinian land." One of the basic supports for "full peace" is that if one side breaches such a peace by reasserting the claims it surrendered in that peace agreement, then the claims the other side surrendered in return are restored. Israel must have potential legitimate claims on the territory of the Palestinian state to protect the peace with that state.

A large share of the basis of Israel's claims of right to Israel itself is the same as the basis for Israel's claims of right to sovereignty over Judea and Samaria. If Israel does not assert these claims in Judea and Samaria, it weakens its ability to use them to support its occupation of the formerly Arab lands on which Israel sits.

Finally, much of the basis of Israel's claim of right to Judea and Samaria derives from the basic Jewish character of Israel. In its Declaration of Independence Israel asserts its descent from the ancient historic Jewish states of the area. Israel also draws justification from the League of Nations decision to make Mandatory Palestine a Jewish homeland. If Israel makes a peace after a negotiation in which these rights and claims were not put forward, that peace will have a taint of illegitimacy that may become a future source of division. It is one thing for a government to compromise the nation's claims, trading concession for concession in order to end war; it is another thing for the government to make concessions without even presenting the nation's claims, and in effect concealing those claims from its citizens. It will be much harder to convince hawks to accept a peace made by concealing Israel's legal and moral claims.

A Palestinian Capital in Jerusalem?

Is there any hope of full peace without letting the Palestinians have their capital in Jerusalem? The weight of opinion is that the PLO/PA cannot afford to give up

their effort to have part of Jerusalem as the capital of a Palestinian state, but there is enough opinion the other way so that Israel can construct a genuine and serious effort to make a full peace which does not require the division of Jerusalem, although it may require some arrangement that allows the Palestinians to say that they have a capital in Jerusalem.

Israel need not agonize too much about whether unwillingness to divide Jerusalem would be the cause of continued war with the Palestinians. It is quite possible that the Palestinians are unwilling to make a full peace with Israel. And they may well say that they would make a full peace if and only if they can have East Jerusalem (including the Temple Mount and the Old City) as their capital. Regardless of what they say in bargaining, it is doubtful that they would really give up a Palestinian state only because they could not have a normal capital in Jerusalem. Although in recent years they have devoted much political effort to their claim to Jerusalem, the problem of back-tracking or inconsistency is not the same in Arab culture and politics as in Western. Since their claim owes much more to Palestinian nationalism's roots as a mirror of Zionism than to any Arab, Palestinian, or Muslim tradition of Jerusalem as a capital, one must recognize the possibility that insistence on dividing Jerusalem might come partly from realizing what a wound to Israel that would cause.

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In conclusion, the question is not whether the Palestinians will make a full peace, nor on what terms a full peace with a Palestinian state would be the best result for Israel. The question is what does the government of Israel have to do now to get in a position to be able to deal on a reasonable basis with the Palestinians and with its own people. The argument here is that to gain the political capital it needs to enforce the terms of the IA, to assert Israel's legal and moral claims to territory in Judea and Samaria, and to protect Israelis from Palestinian attacks, this government must

make a dramatic initiative that establishes that it too is genuinely pursuing peace with the Palestinians.

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Notes

1. One success of Palestinian political efforts is that the use of the names "Judea" and "Samaria" to refer to the territory between Israel's borders and the Jordan River, is regarded as tendentious and biased. The standard statement is that these are the "biblical names for the area." But they are not just biblical names, they are the standard names used by geographers, and the official names used by both the British Mandatory authority and the Israel government. It is the rejection of these traditional names because they are also used in the Bible that is tendentious and biased. This article will use various names at different times.

2. A strong presentation of these arguments is contained in Douglas Feith, "A Mandate for Israel," *The National Interest*, no. 33 (Fall 1993). The Palestinians of course also have legal arguments to support their claims. See, for example, Allan Gerson, "Trustee-Occupant: The Legal Status of Israel's Presence in the West Bank," *Harvard International Law Journal*, vol. 14, no. 1 (Winter 1973).

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