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A SPECIAL REPORT

THE PEACE PROCESS IN THE MIDDLE EAST — A STOCKTAKING

Ruth Lapidoth

Progress Toward Conflict Management / The Israel-Palestinian Track: The 1993 Exchange of Letters / The 1993 Declaration of Principles / The May 1994 Cairo Agreement on the Gaza Strip and the Jericho Area / The 29 August 1994 Agreement on Preparatory Transfer of Powers and Responsibilities in the West Bank / The Israel-Jordan Track / Important Steps Toward the Future

[Editor's Note: The *Survey of Arab Affairs* is pleased to publish this chronicle and analysis of the agreements between Israel, the PLO, and Jordan by one of the leading students of international law in the world today. Much has happened with regard to the implementation of these agreements. We are providing this information to enable our readers to better evaluate the processes of implementation or lack of same in light of the agreements themselves.]

Progress Toward Conflict Management

For almost a hundred years the Arab-Israel conflict seemed to be intractable. But, as the saying goes, even in international relations a miracle sometimes happens. Thus, since 1978, slow progress toward management of the conflict and reconciliation has taken place.

The first major step on the long road to peace was made by Egypt and Israel in 1978, with the conclusion of the two Camp David Frameworks,¹

followed by the 1979 Treaty of Peace.² Although it has been considered to be a cold peace, it has nevertheless withstood a number of severe challenges.

The second step was taken in 1991, when Israel and her neighbors, responding to a joint invitation from the United States and the Soviet Union,³ convened in Madrid for a peace conference. This short two-day conference was followed by a number of bilateral series of negotiations between Israel and each of her neighbors, as well as by multilateral talks on issues which are of common concern to the peoples of the region: water resources, the environment, arms control and regional security, refugees, and regional economic development. In these multilateral working groups not only Israel and her neighbors (so far except Syria and Lebanon) have participated, but also a considerable number of states of the region as well as other countries including the Great Powers.

In 1993 a breakthrough in the bilateral talks

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between Israel and the Palestinians occurred, and since then great progress has been made in the relations between Israel and the Palestinians, as well as between Israel and Jordan.

The Israel-Palestinian Track: The 1993 Exchange of Letters⁴

The bilateral talks that followed the 1991 Madrid conference dragged on, and there was hardly any progress by 1993. In the summer of that year, as a result of secret negotiations held in Norway, Israel and the PLO reached agreement on certain matters. This agreement was included in an exchange of letters and in a Declaration of Principles.

In his letter of 9 September 1993, PLO Chairman Y. Arafat stated that "the PLO recognizes the right of the State of Israel to exist in peace and security." He renounced the use of terrorism and other acts of violence by the PLO, and affirmed that "those articles of the Palestinian Covenant⁵ which deny Israel's right to exist...are now inoperative and no longer valid." Consequently the PLO would initiate the necessary changes in that covenant.

Y. Rabin, Israel's Prime Minister, confirmed in his reply that, in light of the PLO commitments included in the above letter, "the Government of Israel has decided to recognize the PLO as the representative of the Palestinian people...."

In addition, Arafat sent a letter to the Foreign Minister of Norway, Mr. Johan Jorgen Holst, expanding his commitments by undertaking to include in his public statements an appeal to the Palestinian people in the West Bank and the Gaza Strip (i.e., not only the PLO) "to take part in the steps leading to the normalization of life, rejecting violence and terrorism, contributing to peace and stability...."

The 1993 Declaration of Principles⁶

A few days after the above mentioned letters were exchanged, the parties signed in Washington the Declaration of Principles on Interim Self-Government Arrangements. This Declaration is the framework for all the negotiations that have taken and are taking place between Israel and the Palestinians since its signing.

According to the Declaration, a timetable has been set for various sets of negotiations intended to lead to a staged transfer of powers from the Israeli Military Government to the Palestinians, accompanied by a withdrawal and redeployment of Israel's forces.

The first stage concerned the transfer — subject to certain limitations — of most powers in the Gaza Strip

and the Jericho area, except for external security, settlements, Israelis, and foreign relations. This stage, which has already been completed, also involved a substantial withdrawal and redeployment of Israel's army.

The second stage (not involving changes in the deployment of the army) concerned an early transfer of certain powers in the rest of the West Bank: education and culture, health, social welfare, direct taxation, and tourism. This stage, too, has already been completed.

As this article goes to press, the parties are negotiating on the third stage: a large-scale transfer of powers in the West Bank to be preceded by the election of a "Council." On the eve of those elections, the Israeli army is to redeploy outside populated areas. The parties are negotiating about the structure and number of members of the Council, about the transfer of powers, and about the redeployment.

According to the Declaration of Principles, the Council will not have powers in the spheres of Jerusalem, refugees, settlements, security arrangements, borders, or relations and cooperation with other neighbors.

These subjects, which are expressly excluded from the powers of the "Council," shall be the subject of the negotiations on the "permanent status" — i.e., the fourth stage — which are to start in 1996. Those negotiations are to be based on Security Council Resolutions 242 (1967)⁷ and 338 (1973),⁸ and should not be prejudiced by agreements reached for the interim period.

The above "transitional" arrangements are to be in force for a five-year period, to start with the withdrawal from the Gaza Strip and the Jericho area. This withdrawal took place in May 1994, somewhat later than the originally foreseen date. The delay was caused by the complexity of the negotiations.

Of special interest is the division of responsibilities foreseen by the Declaration of Principles in matters of security: Israel is to be responsible for external security as well as for the security of Israelis (public order and internal security), while a Palestinian police force is to be responsible for public order and internal security of the Palestinians. The parties agreed to cooperate and coordinate in matters of security.⁹

The Declaration also foresees the establishment in Gaza and Jericho of "a temporary international or foreign presence, as agreed upon."

Much emphasis is put on the need for cooperation in the various fields, e.g., security and economics

(water, electricity, energy, finance, transport, trade, industry, labor relations, human resources development, environmental protection, communications, and media). The text also deals with regional cooperation. In order to enhance the desired collaboration, the establishment of joint bodies has been foreseen.

The parties agreed to settle disputes by negotiations while leaving the door open for conciliation and arbitration if both parties agree.

The delicate problem of the refugees was also dealt with: the modalities of the admission of persons displaced from the West Bank and Gaza Strip in 1967 are to be decided by agreement in a Continuing Committee consisting of representatives of Israel, the Palestinians, Egypt and Jordan, while the other refugees (mainly those of 1948) are to be discussed in the negotiations on the permanent status to start in 1996.

The May 1994 Cairo Agreement on the Gaza Strip and the Jericho Area¹⁰

Shortly after the signing of the Declaration of Principles, negotiations commenced in Cairo and in Paris between Israeli and PLO delegations on the implementation of the first stage of the interim arrangements, namely, establishing self-government in the Gaza Strip and the Jericho area. The long and detailed ensuing text deals with the withdrawal and redeployment of Israeli military forces, with the transfer of powers from the Civil Administration of the Israeli Military Government to a Palestinian Authority to be established — a body of 24 persons appointed by the PLO and enumerated in an exchange of letters between the PLO and Israel, with security arrangements, matters related to the jurisdiction of the courts, and economic relations.

The Israeli forces were to redeploy into the "Military Installation Area" along the border of Egypt, and into the areas of the Israeli settlements, including the Gush Katif, Kfar Darom, Netzarim, and Erez areas. Authority in matters of security is divided in accordance with the above mentioned provision of the Declaration of Principles, namely, overall Israeli responsibility for external security, while internal security and public order are divided between Israel (responsible for Israelis, the settlements, and the Military Installation Area) and the Palestinian police (responsible for the Palestinians in the Gaza Strip and Jericho area). For the preservation of security and public order among the Palestinians, a strong police force — the Palestinian Directorate of Police Force — has been established. Special arrangements have been made for particularly

sensitive areas ("yellow" areas), and for joint patrols and mobile units on the principal roads leading to Israeli settlements and to the Military Installation Area. Israel retains full authority over the air space, and — subject to certain economic rights and limited police powers of the Palestinians in areas close to the shore — also over the sea.

The Palestinians have been assured "safe passage" between the Gaza Strip and the Jericho area, as well as the release by Israel of a considerable number of Palestinian prisoners and detainees.

In civilian matters (Annex II), Israel has agreed to transfer powers in the following spheres: interior affairs (including, inter alia, municipal affairs, licensing of newspapers and publications, censorship of films and plays, and appointment of Mukhtars. In the Gaza Strip, this sphere also includes fire fighting and Ottoman societies); fisheries; surveying; statistics; civil administration employees; legal administration; labor; education; social welfare; housing; tourism; parks; religious affairs; employee pensions; commerce and industry; health; transportation; agriculture; land registration; nature reserves; electricity; public works; postal services; population registry and documentation; telecommunications; archaeology; water and sewage; planning and zoning; direct and indirect taxation; environmental protection;¹¹ gas and petroleum; insurance; and treasury (this enumeration follows the detailed list in Annex II, Article II of the Agreement).

In some of these spheres the transfer is subject to certain limitations, e.g., the Palestinian postal authority may not design stamps which involve incitement or hostile propaganda against Israel, and in matters of population registry the Palestinian Authority has to coordinate its activity very carefully with Israel.

The Palestinians have been granted powers of legislation, adjudication, and implementation in the above spheres, but in matters of legislation a joint body of Israel and the Palestinians retains a limited power of supervision.

Although in principle the Palestinian Authority does not have powers and responsibilities in the sphere of foreign relations, the PLO may sign certain categories of agreements with states or international organizations for the benefit of the Palestinian Authority: economic agreements; agreements with donor countries; agreements for the implementation of regional development plans; and cultural, scientific and educational agreements.¹²

Annex III of the Agreement deals with the jurisdiction of the courts in criminal and civil matters, as well

as with questions of legal assistance and the transfer of suspects.¹³ The basic principle is that in criminal cases Israel has jurisdiction over all offenses committed by Israelis, and over all offenses committed in the settlements or in the Military Installation Area, while the Palestinian courts have criminal jurisdiction over offenses committed by non-Israelis in the Gaza Strip and the Jericho area, except for the above localities.

In civil matters the Palestinians have jurisdiction over Israelis only if the subject matter of the action is an ongoing Israeli business situated in the territory, or real property located in the territory, or the Israeli party has consented to the jurisdiction of the Palestinian court. The enforcement of judgments against Israelis has to be effected by Israel. The Palestinian courts have no jurisdiction for actions against the State of Israel and its organs and agents.

Of special interest is Annex IV — the Protocol on Economic Relations, which was negotiated in Paris. The parties agreed that at a later stage its provisions would also apply to the rest of the West Bank.¹⁴

In principle, the Palestinian Authority has been authorized to deal with economic matters. However, in order to encourage the Palestinian economy, and to prevent smuggling between Israel and the self-governing areas, certain arrangements have been agreed upon. An analysis of all these arrangements would be beyond the scope of this article. Therefore, only the main points can be mentioned.

a) A free trade area for both industrial and agricultural products has been established, subject to local legislation (e.g., on matters of standards). With regard to certain agricultural produce, the Israeli market will open gradually to Palestinian imports: poultry, eggs, potatoes, cucumbers, tomatoes, and melons. In addition, detailed provisions on the prevention of animal and plant disease have been agreed upon.

b) As to the importation of goods into the Gaza-Jericho area, the general scheme is that Israeli rates of customs duties should apply as a minimum, but the Palestinian Authority has full discretion with regard to the importation of a certain amount of specific goods (mainly food and raw materials), and to a certain amount of additional goods from Arab countries. The amount permitted is to correspond to the needs of the Palestinian market. In particular, the Palestinian Authority is free to import goods needed for the Palestinian development program. With regard to the importation of motor vehicles, the Palestinian Authority will determine its own rates of customs and purchase tax.

c) On all goods and services, whether locally

produced or imported, a Value Added Tax of 15-16 percent has to be imposed (Israel has a VAT of 17 percent).

d) The Palestinian Authority is free to export both agricultural and industrial produce to external markets. It also has full authority to impose direct and indirect taxes, but, as mentioned, VAT has to be at a rate of 15-16 percent, and the purchase tax has to be similar to the one imposed by Israel.

e) Israel will transfer to the Palestinian Authority 75 percent of the revenues from income taxes collected from Palestinians employed in Israel.

f) While in principle attempting to "maintain the normality of movement of labor between them," each side may "determine from time to time the extent and conditions of the labor movement into its area."

g) The Palestinian Authority is to establish a Monetary Authority, whose main function will be to regulate and supervise the banks operating in the self-governing areas. The Israeli currency (shekel) will be one of the circulating currencies in the areas.

In all the various spheres — security, civil affairs, legal matters, and economics — elaborate mechanisms for liaison, cooperation, consultation, and coordination have been foreseen.

The parties committed themselves to exercise their respective powers in conformity with "internationally-accepted norms and principles of human rights,"¹⁵ and to abstain from "incitement, including hostile propaganda, against each other...."

Hardly had the ink dried on the Agreement on Gaza and Jericho, when the parties started to negotiate on the early transfer of certain powers in the rest of the West Bank.

The 29 August 1994 Agreement on Preparatory Transfer of Powers and Responsibilities in the West Bank¹⁶

As foreseen by the Declaration of Principles, Israel and the PLO agreed on the transfer of powers in the spheres of education and culture, health, social welfare, tourism, direct taxation, and Value Added Tax. In fact, VAT was not originally included in the list of powers to be transferred at this stage, but Israel agreed to transfer these powers in order to endow the Palestinians with the resources needed to live up to the responsibilities in the various other spheres mentioned above.

The Declaration of Principles had foreseen the transfer of these powers to "the authorized Palestinians," and in the August 1994 Agreement the parties agreed that the Palestinian Authority established under

the Gaza-Jericho agreement would constitute this body.

The relevant powers were transferred gradually, in view of the funds made available to the Palestinians by Israel and by donor countries. As we go to press, the parties have agreed to negotiate on the transfer of powers in additional spheres, namely, trade and industry, postal service, energy, labor, and insurance.

"The Palestinian Authority may promulgate secondary legislation regarding the powers and responsibilities transferred to it. Such legislation includes amendments and changes to the existing laws, regulations and military orders specified in [lists appended to the text of the Agreement]...." Legislation promulgated by the Palestinian Authority has to be consistent with the provisions of the August 1994 Agreement. It is interesting that consistency with the Declaration of Principles has not been formally required. The legislative power of the Authority is subject to Israeli control intended mainly to prevent an excess of powers. This control is more extensive than the limited supervision foreseen in the Gaza-Jericho agreement for legislation applicable only to those areas.

The Palestinian Authority may not employ policemen for the enforcement of its decisions in the West Bank, but only civilian inspectors who may not wear uniforms nor carry arms.

The agreement also contains a six-month budget for the transferred powers.

In most spheres, a mechanism for coordination and cooperation has been established. In addition, Israel has promised to fulfill *her* functions (mainly in matters of security) with minimum interference in the activities of the Palestinian Authority. Special, detailed, provisions have been included in order to prevent both overlapping and loopholes in the sphere of taxation.

As noted above, the parties are currently negotiating on the third stage, namely, the establishment of a regime of self-government in the West Bank.

The Israel-Jordan Track

Since 1988, when King Hussein announced the disengagement of the West Bank from Jordan in matters of law and administration, the points of friction between Israel and Jordan have diminished considerably. Therefore, once the ice was broken between Israel and the Palestinians, the negotiations between Israel and Jordan soon led to a "Common Agenda" (Washington, 14 September 1993), the establishment of a trilateral U.S.-Jordan-Israel economic committee (Washington, 1 October 1993), followed by a joint declaration¹⁷ (Washington, 25 July 1994), and finally a Peace Treaty

(Arava/Araba Crossing Point, 26 October 1994).¹⁸

Although its provisions are typical of a peace treaty, this document and the declaration that preceded it are much more than the mere establishment of peace, since they involve the acceptance of the very existence of the State of Israel in the Middle East.

After the first articles which deal with the establishment of peace, mutual recognition and good neighborly relations, the text settles questions of delimitation and demarcation of the boundary. The Treaty has established the boundary "with reference to the boundary definition under the Mandate." It foresees an exchange of territories (of about 30 square kms.) as well as a special arrangement for some areas that are under Jordanian sovereignty but with Israeli private land ownership (the Naharayim/Baqura area) or Israeli private land use rights (the Zofar/Al Ghamr area). In these areas the Israeli owners or users are to have free access and be subject to Israeli law applying to the extra-territorial activities of Israelis, while the peace and security of Jordan are to be preserved. Jordan will permit, with the minimum of formality, the entry of Israeli police officers into these areas to deal with incidents and crimes involving only the landowners or land users respectively, their invitees, and employees. Subject to these special arrangements, Jordanian law will apply to those areas. The above arrangement will remain in force for 25 years at least.

Another thorny problem was the allocation of water resources. Jordan committed itself to supply to Israel water from wells that had been drilled and used by Israel before the relevant land was returned to Jordan. Very detailed provisions have been agreed upon concerning rights to water from the Jordan and Yarmouk Rivers. The Treaty increased considerably the amount allocated to Jordan. Thus, Jordan is to receive about 50 MCM/year of water to be pumped from the Yarmouk, the Kinneret, and from the desalination of some saline springs. Jordan will gain an additional 50 MCM approximately upon the construction of two dams on the Yarmouk and Jordan Rivers near Bet She'an. Another 50 MCM/year of water of drinkable standards will be accorded to Jordan in the framework of joint development plans. The parties also committed themselves to protect the quality of the water, and to cooperate in searching for additional sources.

The Peace Treaty also includes security commitments, with special reference to the possibility to establish a Conference on Security and Co-operation in the Middle East; an agreement to establish full diplomatic relations; and provisions on economic

relations, which include a commitment to terminate economic boycotts. The problem of refugees and displaced persons has been dealt with in a manner more or less similar to that followed in the agreements with the Palestinians, namely, the question of the displaced persons (of 1967) is to be resolved in a quadripartite committee together with Egypt and the Palestinians, while the case of the refugees (mainly those of 1948) is to be dealt with in the framework of the Multilateral Working Group on Refugees and in negotiations to be held in conjunction with the permanent status negotiations between Israel and the Palestinians.

With regard to the Holy Places, the Treaty includes a promise by Israel "to respect the present special role of... Jordan in Muslim Holy Shrines in Jerusalem," and, "when negotiations on the permanent status will take place, Israel will give high priority to the Jordanian historic role in these shrines."¹⁹

In addition, the parties committed themselves to cultural and scientific exchanges; abstention from hostile propaganda; co-operation in combatting crime and drugs; promoting improved transportation and roads, postal and telecommunications, aviation links, and tourism; protection of the environment; development of energy, health, agriculture, and the Jordan Rift Valley; and joint development of Aqaba and Eilat. The parties reaffirmed the regime of freedom of navigation and overflight in the Straits of Tiran and in the Gulf of Aqaba in terms similar to those included in the 1979 Treaty of Peace between Egypt and Israel. They further agreed to establish a claims commission for the settlement of financial claims.

Not only did the parties commit themselves to implement the Peace Treaty, but they even undertook to give the obligations included in it precedence over any other international obligation, except for those established by the Charter of the United Nations. They also promised to make the necessary changes in their respective legislation, and agreed on a procedure for the settlement of disputes.

On many subjects the parties agreed to hold additional negotiations in order to reach more detailed arrangements, e.g., in the sphere of cultural and scientific exchanges, combatting crime and drugs, civil aviation, etc. They also agreed to establish certain joint bodies, e.g., a joint boundary commission and a joint water committee, as well as a "joint committee headed by senior officials, to monitor the implementation of this Treaty and the conclusion of relevant agreements, in accordance with the Treaty provisions."

In the wake of the improved relations with the Palestinians and with Jordan, several other countries have established or re-established diplomatic relations with Israel. Of particular interest in this regard is the normalization of relations between Israel and the Holy See, foreseen by a Fundamental Agreement of 30 December 1993.²⁰

Important Steps Toward the Future

In the past, the Arab-Israel conflict was characterized by two problems: the non-acceptance of Israel by the Arab world, and the conflicting claims to self-determination of the Israelis and the Palestinian Arabs. The peace process has led to two basic changes in the attitude of the parties: on the one hand, the PLO and Jordan have agreed to Israel's existence, and on the other hand, Israel has agreed to a territorial compromise.

The negotiations are accompanied on the part of the Israeli population by both hope and fear. Hope — because of the progress achieved, and fear — because the peace process has not brought with it a cessation or reduction of acts of violence by extremist groups.

We are still far away from a comprehensive settlement. As this article goes to press, progress in the negotiations between Israel and Syria or Lebanon has been minimal. Moreover, even if the most optimistic forecasts come true, it will take at least another four years until a permanent settlement between Israel and the Palestinians can be reached. However, the most important steps have already been taken.

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Notes

1. United Nations Treaty Series (UNTS), Vol. 1138, Nos. 17853 and 17854, pp. 39-56.
2. UNTS, Vol. 1138, Nos. 17855-17859, pp. 72-173.
3. For the text of the invitation, see R. Lapidoth and M. Hirsch, eds., *The Arab-Israel Conflict and Its Resolution: Selected Documents* (Dordrecht: Nijhoff, 1992), pp. 384-386.
4. Published by the Ministry of Foreign Affairs of Israel, September 1993.
5. Lapidoth and Hirsch, *supra* note 3, at pp. 136-141.
6. *32 International Legal Materials* (1993), pp. 1525-1544; U.N. Doc. A/48/486-S/26560 (Annex), of 11 October 1993. On this Declaration, see J. Singer, "The Declaration of Principles on Interim Self-Government Arrangements," *Justice* 1 (1994):4-21; E. Benvenisti, "The Israel-Palestinian Declaration of Principles: A Framework for Future Settle-

ment," *European Journal of International Law* 4 (1993):542-554; A. Cassese, "The Israel-PLO Agreement and Self-Determination," *ibid.*:564-571; R. Shihadeh, "Can the Declaration of Principles Bring About a 'Just and Lasting Peace'?", *ibid.*:555-563.

7. Security Council, Official Records (SCOR), 22nd year, Resolutions and Decisions, pp. 8-9.

8. SCOR, 28th year, Resolutions and Decisions, p. 10.

9. K. Calvo-Goller, "Legal Analysis of the Security Arrangements between Israel and the PLO," *Israel Law Review* 28 (1994):236-267.

10. 33 *International Legal Materials* (1994), pp. 622-720; U.N. Doc. A/49/180-S/1994/727 (Annex), of 20 June 1994.

11. M. Hirsch, "Environmental Aspects of the Cairo Agreement on the Gaza Strip and the Jericho Area," *Israel Law Review* 28 (1994):374-401.

12. J. Singer, "Aspects of Foreign Relations under the Israeli-Palestinian Agreements on Interim Self-Government Arrangements for the West Bank and Gaza," *Israel Law Review* 28 (1994):268-296.

13. C. Wasserstein-Fassberg, "Israel and the Palestinian Authority: Jurisdiction and Legal Assistance," *Israel Law Review* 28 (1994):318-346.

14. E. Kleiman, "The Economic Provisions of the Agreement between Israel and the PLO," *Israel Law Review* 28 (1994):347-373.

15. E. Benvenisti, "Responsibility for the Protection of Human Rights under the Interim Israeli-Palestinian Agreements," *Israel Law Review* 28 (1994):297-317.

16. Published by the Ministry of Foreign Affairs of Israel, Information Division, 1994.

17. Published by the Ministry of Foreign Affairs of Israel, 1994.

18. 34 *International Legal Materials* (1995), p. 43.

19. R. Lapidot, "Jerusalem and the Peace Process," *Israel Law Review* 28 (1994):402-434, at 430-432.

20. 33 *International Legal Materials* (1994), p. 153.

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Israel at the Polls, 1992

Edited by Daniel J. Elazar and Shmuel Sandler

Israel at the Polls, 1992 is the fifth book in the "Israel at the Polls" series begun in 1977 with the "upset" in the Israeli elections that brought down the Labor government which had ruled in Israel since the founding of the state. In the 1992 elections Labor returned as the ruling party and this book looks at the question of whether those elections mark the beginning of a new era in Israeli politics. Thirteen essays evaluate the downfall of Likud and the "national" camp, the major and minor parties, and the Israeli Arab and ex-Soviet Jewish vote, as well as the impact of the elections on foreign policy, the Israeli army, the economy, the style of the media campaign, and the role of interest groups. Special chapters focus on Prime Minister Yitzhak Rabin's personality and style of leadership and review the first year and a half of the Rabin government.

Lanham, MD: Rowman & Littlefield and JCPA, 1995, 359 pp.

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**Covenant and Polity in Biblical Israel:
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Daniel J. Elazar

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New Brunswick, NJ: Transaction Press, 1994, 536pp.; \$49.95

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Longman Current Affairs (UK), 1994, 380 pages.