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AN ANALYSIS OF THE OSLO II AGREEMENT IN LIGHT OF THE EXPECTATIONS OF SHIMON PERES AND MAHMOUD ABBAS

SHIMON PERES, *BATTLING FOR PEACE: A MEMOIR*. New York: Random House, 1995. 350 pp.

MAHMOUD ABBAS, *THROUGH SECRET CHANNELS*. Reading: Garnet Publishing, Ltd., 1995. 252 pp.

*Reviewed by Justus R. Weiner**

INTRODUCTION

It must be acknowledged that in the brief interval since the signing of the Declaration of Principles (DOP) on September 13, 1993, and with the added impetus of the Rabin assassination on November 4, 1995, the prevailing understanding of the decades-long Israeli-Palestinian conflict has been substantially modified. The unenviable task of reconciling Israeli and Palestinian nationalism, understood as virtually futile, has proceeded further than even the most optimistic peace campaigner could have foreseen. As Rabin observed in his speech on the White House lawn at the September 28, 1995 signing ceremony of the Oslo II interim agreement:

Now, after a long series of formal, festive statements, take a look at this stage: the king of Jordan, the president of Egypt, Chairman Arafat, and us, the prime minister and foreign minister of Israel, on one platform

Please take a good, hard look. The sight you see before you at this moment was impossible, was unthinkable, just two years ago. Only poets dreamed of it; and, to our great pain, soldiers and civilians went to their deaths to make this moment possible. . . .

Yes, I know: our speeches are already repeating themselves. Perhaps this picture has already become routine.¹

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1. Prime Minister Yitzhak Rabin, Address on the Occasion of the Signing Ceremony of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip 1 (Sept. 28, 1995) (transcript on file with *Michigan Journal of International Law*).

Five weeks later, the profundity of the political revolution that Rabin alluded to was, sadly, reinforced by the presence of eighty-six heads of state and government who gathered in Jerusalem to honor him at his funeral.² These dignitaries included Egypt's President Hosnei Mubarak, who had never visited Jerusalem despite having received many official invitations during the more than fifteen years Egypt and Israel have been at peace. Clearly, the Middle East is a vastly different place than it was prior to the diplomatic breakthrough that generated the Declaration of Principles and four subsequent agreements between Israel and the Palestine Liberation Organization (PLO).

The Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip (hereinafter Oslo II) is the most recent and the final interim agreement. It supersedes all interim agreements previously signed between the parties. Oslo II established the overall framework for the elections, held on January 20, 1996, of the Palestinian Interim Self-Government Authority (hereinafter Council) and the *Ra'ees* (hereinafter Chairman) of the Executive Authority. The elections were preceded by the withdrawal of Israeli armed forces from most Palestinian populated cities and towns in the West Bank. Pursuant to the Agreement, Israeli armed forces in the West Bank will deploy further after the inauguration of the Council. The Agreement states that the Council will supersede the Palestinian Authority (PA) after its inauguration and provide local governance for the Palestinian residents of the West Bank and Gaza Strip during the rest of the interim period. The Council is to have a strong police force that will assume responsibility for public order and internal security in those areas under its jurisdiction in the West Bank and Gaza Strip.

The jurisdiction of the Council covers the West Bank and the Gaza Strip but does not include matters that are subject to the permanent status negotiations, namely, the status of Jerusalem, the future of the Jewish settlements, specified Israeli military installations, the disposition of Palestinian refugees, borders, and foreign relations. In addition, the Council's jurisdiction does not encompass functions for which it has not been granted authority under the Oslo II Agreement, such as defense against external threats.

Also worthy of mention are the four interim agreements concluded between Israel and the PLO prior to the Oslo II Agreement. The first

2. United States Ambassador to Israel, Martin Indyk, Address at Haifa University 1 (Nov. 16, 1995) (transcript on file with *Michigan Journal of International Law*).

was the Declaration of Principles.³ It established the overall framework for negotiations in view of reaching an additional interim and, ultimately, a permanent status agreement. Second, the Israel-Palestine Liberation Organization Agreement on the Gaza Strip and the Jericho Area⁴ provided for the partial withdrawal of Israeli administration and military forces in the Gaza Strip and Jericho area and the assumption of most local control by the PA. Thereafter, the Agreement on Preparatory Powers and Responsibilities⁵ allowed 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. The fourth agreement, the Protocol on Further Transfer of Powers and Responsibilities,⁶ provided for the transfer of 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.

Shimon Peres and Mahmoud Abbas are two of the most important figures in the Israeli-Palestinian peace process and are the subjects of this review. Both were intimately involved in the secret Oslo negotiations which precipitated the new relationship between Israel and the PLO. Shimon Peres served as the Israeli Foreign Minister during most of the peace process. In the aftermath of Itzhak Rabin's assassination, he assumed the office of prime minister. A man of vision, Peres has been involved in Israeli politics for over thirty years and has served in previous governments as prime minister, foreign minister, and minister of defense. Since the opening of the secret channel at Oslo, Peres has been the leading advocate of the peace undertaking in the Israeli cabinet. He was the chief architect of the five interim agreements and, serving now as prime minister, he continues to play a key role as Israel prepares for the permanent status negotiations. Peres' book, *Battling for Peace: A Memoir*,⁷ traverses the statesman's seventy-one years and chronicles his involvement in the key moments of the history of the state of Israel, with particular attention being drawn to the current peace undertaking.

3. Declaration of Principles on Interim Self-Government Arrangements, Sept. 13, 1993, Isr.-Palestine Liberation Organization, 32 I.L.M. 1525 [hereinafter DOP].

4. Agreement on the Gaza Strip and the Jericho Area, May 4, 1995, Isr.-Palestine Liberation Organization, 33 I.L.M. 622 [hereinafter Cairo Agreement].

5. Agreement on Preparatory Powers and Responsibilities, Aug. 29, 1994, Isr.-Palestine Liberation Organization, 34 I.L.M. 455.

6. Protocol on Transfer of Powers, Aug. 27, 1995, Isr.-Palestine Liberation Organization (on file with *Michigan Journal of International Law*).

7. SHIMON PERES, *BATTLING FOR PEACE: A MEMOIR* (1995).

Mahmoud Abbas (hereinafter Abu Mazen⁸), one of the founding members of the Fatah movement,⁹ is a figure of senior stature in the PLO, second only to its Chairman, Yasser Arafat. He is a member of both the quasi-parliamentary Palestine National Council (PNC) and the Executive Committee of the PLO. Considered a moderate and a pragmatist, Abu Mazen was among the representatives of the PLO at the Oslo negotiations. Following an approximately two year hiatus from the peace talks, he settled in the West Bank town of Ramallah and was subsequently appointed by Arafat to chair the Central Elections Commission for the recent Council elections.¹⁰ He has reportedly been nominated by Arafat to act as a representative of the Palestinians at the permanent status negotiations, which, pursuant to the DOP, will commence in May 1996.¹¹ Abu Mazen's book *Through Secret Channels*¹² reconstructs numerous meetings that were held between Israeli and PLO officials over the years in an effort to initiate a dialogue and negotiate a solution to the Israeli-Palestinian conflict. He provides a vivid and detailed account of the clandestine talks that were conducted in Oslo and which eventually led to the signing of the DOP on the White House lawn.

While numerous aspects of the Oslo II Agreement and the Israeli-Palestinian peace process as a whole merit examination, this review will focus mainly on those issues that appear prominently as concerns of either of the two authors: human rights, the Palestinian elections, Palestinian claims to sovereignty, the amendment of the PLO Covenant, and the new era and new relationship created between the parties.

I. HUMAN RIGHTS AND THE PEACE PROCESS

The late Prime Minister Rabin startled many observers when he stated at the outset of the process that the PLO would be able to enforce security because it had no need to be concerned about criticism from human rights organizations.¹³ Nor, Rabin continued, would PLO practic-

8. Most of the PLO leadership assumed a *nom de guerre*, frequently the name of the eldest son according to the Arab custom.

9. Fatah is the largest faction of the PLO. Headed by Yasser Arafat, Fatah, which literally translates to mean "victory" or "conquest," is the only major faction within the PLO which supports the current peace process. See NEIL C. LIVINGSTONE & DAVID HALEVY, *INSIDE THE PLO 72* (1990); DAVID MAKOVSKY, *MAKING PEACE WITH THE PLO: THE RABIN GOVERNMENT'S ROAD TO THE OSLO ACCORD 2* (1996).

10. See *Abu Mazen Heads Election Commission*, JERUSALEM POST, Dec. 24, 1995, at 2 [hereinafter *Mazen Heads Commission*].

11. See Hillel Cohen, *Number 2 Talks*, KOL HA'IR (Isr.), Jan. 12, 1996, at 52.

12. MAHMOUD ABBAS, *THROUGH SECRET CHANNELS* (1995).

13. See B'tselem, *Neither Law Nor Justice: Extra-Judicial Punishment, Abduction, Unlawful Arrest, and Torture of Palestinian Residents of the West Bank by the Palestinian*

es be subject to judicial review by the Israeli Supreme Court.¹⁴ He said, "If the Palestinians become a partner to the agreement, they will manage their internal affairs without a High Court of Justice [and] without B'tselem [an Israeli human rights organization] . . ."¹⁵ Unfortunately, after nearly eighteen months of arbitrary and undemocratic PA rule in the Palestinian self-governed areas, it appears as if the assassinated head of state's forecast has proved to be accurate.

One of the significant questions that has arisen as a result of the parties' decision to opt for an incremental, rather than a comprehensive, approach in the resolution of their conflict concerns accountability for human rights violations that occur during the interim period in those areas where the PA exercises local governmental authority.¹⁶ The issue has proved to be crucial, particularly in light of the lack of consideration for human rights manifested by the PA in the regions of Palestinian autonomy.

The Oslo II Agreement,¹⁷ like its predecessor, the Cairo Agreement,¹⁸ does contain a number of provisions that broadly provide for the protection of human rights. Thus, Article XIX of the Agreement reads "Israel and the Council shall exercise their powers and responsibilities pursuant to this Agreement with due-regard to internationally-accepted norms and principles of human rights and the rule of law."¹⁹ Similar language concerns the parties' conduct in relation to matters of security:

[T]he 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.²⁰

Preventive Security Service 3 (Aug. 1995) (on file with *Michigan Journal of International Law*).

14. *Id.* at 1-2.

15. *Id.*

16. See generally Eyal Benvenisti, *Responsibility for the Protection of Human Rights Under the Interim Israeli-Palestinian Agreements*, 28 *ISR. L. REV.* 297 (1994); Justus R. Weiner, *Human Rights in Limbo During the Interim Period of the Israel-Palestinian Peace Process: Review, Analysis and Implications*, 27 *N.Y.U. J. INT'L L. & POL.* (forthcoming Spring 1996) [hereinafter *Human Rights in Limbo*]. The PA has 10 separate security forces and they are enormous relative to the number of residents of the regions under its local rule. Lisa Beyer, *Can a Rebel Be a Ruler?*, *TIME*, July 31, 1995, at 44, 46.

17. Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Sept. 28, 1995, Isr.-Palestine Liberation Organization, available online at URL <<http://www.israel-mfa.gov.il/peace/interim.html>> [hereinafter Oslo II Agreement].

18. Cairo Agreement, *supra* note 4, art. XIV.

19. Oslo II Agreement, *supra* note 17, art. XIX.

20. *Id.* Annex I, art. XI, para. 1.

Beyond these general stipulations, however, the subject of human rights has received scant treatment in Oslo II. Apparently, safeguarding the Palestinian inhabitants' human rights throughout the interim period did not figure among the main priorities of the parties to the protracted negotiations. Israeli security considerations and matters pertaining to Palestinian pride and economic viability were the linchpins of the negotiations. Israel negotiated most energetically to institute alternative arrangements to contain terrorism, understanding that its intelligence gathering efforts and freedom to preempt attacks or arrest perpetrators would be severely handicapped as a result of its withdrawal. The PLO's primary effort was directed at obtaining tangible gains in order to sustain local Palestinian support for the peace process and its Fatah sponsors.²¹

Numerous human rights violations perpetrated by PA officials in the areas for which it obtained authority under the Agreements have been protested by both local (Palestinian and Israeli²²) and international human rights organizations.²³ Unlawful arrests, by the Palestinian police, of those opposing Arafat²⁴ and the PA's manner of governing, have become widespread since the advent of Palestinian autonomy.²⁵ Brutal

21. See Doug Struck, *Deadline Stirring Action on Middle East Peace*, BALTIMORE SUN, May 31, 1995, at 1; see also Beyer, *supra* note 16, at 44-46.

22. The PA's police and security forces have even arrested Palestinian human rights activists who have criticized Arafat or his administration. See, e.g., Karsten Prager, *Hopeless in Gaza*, TIME, Oct. 9, 1995, at 58. Hanan Ashrawi, while the head of the official Palestinian Independent Commission for Citizens' Rights, complained, "[t]here is a severe containment of freedom of expression and freedom of the press." *The Fate of Jerusalem — and Peace*, CHRISTIAN SCI. MONITOR, May 24, 1995, at 18 (interview with Hanan Ashrawi) [hereinafter Ashrawi Interview].

23. A study conducted by the U.S.-based Human Rights Watch concluded that human rights under the PA's local rule were in a "perilous state." Beyer, *supra* note 16, at 46.

24. During the first 18 months of the PA's control over Gaza and Jericho some 1,500 people, primarily Arafat opponents, were detained, frequently without any formal charges being brought against them. Prager, *supra* note 22, at 58.

25. See AMNESTY INTERNATIONAL, HUMAN RIGHTS: A YEAR OF SHATTERED HOPES 23-25 (1995) [hereinafter SHATTERED HOPES]; HUMAN RIGHTS WATCH / MIDDLE EAST, THE GAZA STRIP AND JERICHO: HUMAN RIGHTS UNDER PALESTINIAN PARTIAL SELF-RULE 16-18 (1995); Jon Immanuel, *Outcry Over Abduction of B'tselem Worker by PA Police*, JERUSALEM POST, Jan. 4, 1996, at 1 [hereinafter Immanuel, *Outcry*]; Jon Immanuel, *PA Arrests Noted Civil Rights Activist*, JERUSALEM POST, Dec. 10, 1995, at 2 [hereinafter Immanuel, *Activist Arrest*]; Danny Rubinstein, *The Palestinian Bag Hurts More*, HA'ARETZ (Isr.), May 20, 1995; Jon Immanuel, *Gaza Police Chief Cancels Human Rights Seminar*, JERUSALEM POST, Mar. 23, 1995, at 2 [hereinafter Immanuel, *Gaza Police*].

The December 7, 1995 arrest of Dr. Iyad Sarraj, Commissioner General of the Palestinian Independent Commission for Citizen's Rights (PICCR), by agents of the Palestinian Police Criminal Investigation Department in reaction to certain statements he made about human rights conditions in the Gaza Strip elicited widespread protest from within the Palestinian human rights community. Apparently Dr. Sarraj, Hanan Ashrawi's successor as the head of

torture, sometimes ending in death,²⁶ and prolonged imprisonment without trial of Palestinians suspected of having "collaborated" with Israel are direct violations of the Cairo and Oslo II Agreements.²⁷ Despite this prohibition, illegal detention and torture are routine as the PA gradually assumes control of Palestinian populated centers.²⁸

The State Security Courts established by Arafat in February 1995 in Gaza and Jericho utterly fail to meet international standards for a fair trial.²⁹ The judges and prosecutors are all military officers of the PLO³⁰ directly appointed by Arafat. They base their decisions on the military legal code that the PLO adopted in Lebanon in 1979.³¹ Moreover, Amnesty International asserted that "in the first cases held by the court, pre-trial and trial procedures fell far short of international standards for a fair trial."³² Prior to trial the defendant is held incommunicado for

Arafat's "official" yet "independent" Commission, described the human rights situation under PA rule as "deteriorating" and asserted that he had not received any responses to the 400 complaints and interventions, sent to the office of the PA's Attorney General, Khaled Al-Qidreh. The failure of the Attorney General even to respond to the PA's own human rights body bodes poorly for its responsiveness to outside organizations and individuals. Furthermore, it is difficult to imagine what reasoning could have been behind the decision to arrest the commissioner general of a human rights organization, especially one with such intimate ties to the PA authorities. See The Palestinian Independent Commission for Citizens' Rights, Press Statement: Palestinian Security Forces Detain PICCR Commissioner General Dr. Iyad Sarraj for Interrogation (Dec. 8, 1995) (on file with *Michigan Journal of International Law*); *Activist Arrest*, *supra*, at 2.

26. See Palestinian Centre for Human Rights & Robert F. Kennedy Memorial Centre for Human Rights, Joint Statement Regarding Human Rights and Palestinian Elections 3 (Jan. 19, 1996) [hereinafter Palestinian/Kennedy Centres Joint Statement] (on file with *Michigan Journal of International Law*).

27. The Oslo II Agreement clearly forbids harming the so-called collaborators:

Palestinians who have maintained contact with the Israeli authorities will not be subjected to acts of harassment, violence, retribution or prosecution. Appropriate ongoing measures will be taken, in coordination with Israel, in order to ensure their protection.

Oslo II Agreement, *supra* note 17, art. XVI, para. 2; see also Cairo Agreement, *supra* note 4, art. XX, para. 4.

28. See B'tselem, Press Release: Tortured to Death at Ketziot 1-2 (Dec. 28, 1995) (on file with *Michigan Journal of International Law*); B'tselem, *supra* note 13, at 1-3; SHATTERED HOPES, *supra* note 25, at 26-28; HUMAN RIGHTS WATCH / MIDDLE EAST, *supra* note 25, at 22-25. Thirty-one Palestinians suspected of having "collaborated" with Israel have been killed since the PA assumed authority in Gaza and Jericho. Hundreds more fear for their security as the Israeli military withdraws from parts of the West Bank. See Eytan Rabin, *Hundreds of Collaborators and Civil Administration Workers Seek Refuge in Israel in Fear of Their Fate After Withdrawal*, HA'ARETZ (Isr.), July 17, 1995, at A3.

29. SHATTERED HOPES, *supra* note 25, at 22-23; see also Hilary Appleman, *Palestinians See "No Logic, No Law"*, JERUSALEM POST, May 17, 1995, at 5; Palestinian/Kennedy Centres Joint Statement, *supra* note 26, at 5.

30. SHATTERED HOPES, *supra* note 25, at 22.

31. Prager, *supra* note 22, at 58.

32. *Id.* at 58.

extended periods of time. The trials are usually convened in secret at midnight. If defense counsel is appointed, and some claim that the defendant must appear *pro se*,³³ the lawyer is assigned to the case only immediately before the hearing. Trials are conducted so quickly as to preclude reasonable procedural guarantees for the defendants.³⁴ Furthermore, no right of appeal is available to the defendant, except to the PA or Arafat.

Other important threats to human rights may emerge in the near future. For example, although there is question whether they have been enforced, in September 1995 the chief of the Palestinian police issued two orders: one bans unauthorized political assemblies and the other forbids bus companies from transporting any political groups or faction members, regardless of the purpose of their journey, without prior authorization.³⁵ These orders, which were apparently aimed at Arafat's Islamic opposition, may have had a chilling effect on freedom of expression, especially during the election period.³⁶

Also, although it has not been officially invoked, the PA's Press and Publications Law would place far-reaching restrictions on what can be published or reported without authorization from the PA's Ministry of the Media.³⁷ The law appears to regulate virtually every aspect of what can and cannot be published³⁸ as well as who can own a periodical, who may work as editor-in-chief, and even who can direct a research center which publishes information.³⁹ The law also prohibits and controls relations with foreign bodies and countries and even details how certain items should be inserted into a publication. Its control mechanism is the issuance of licenses by the Minister of Information. The methods of

33. Palestinian Centre for Human Rights, Election Update No. 2, at 9 (Jan. 12, 1996) [hereinafter PCHR Election Update] (on file with *Michigan Journal of International Law*).

34. *Id.*

35. *Id.* at 8.

36. See Palestinian/Kennedy Centres Joint Statement, *supra* note 26, at 4-5. In March 1995, the PA invoked a decree, on political assemblies issued in September 1994, in order to cancel a human rights seminar on the Security Courts. *Id.* at 5; see also *Gaza Police*, *supra* note 25, at 2.

37. Palestinian/Kennedy Centres Joint Statement, *supra* note 26, at 4. Arafat signed this law on June 25, 1995, as Chairman of the PLO and President of the PA. Palestinian Centre for Human Rights, Critique of the Press Law 1995 Issued by the Palestinian Authority 4 (1995) [hereinafter PCHR Press Law Critique] (on file with *Michigan Journal of International Law*). It has provoked intense criticism from human rights organizations, political parties, and intellectuals. *Id.* at 2.

38. Articles 7 and 37 of the law include vaguely-worded prohibitions on the publication of materials which are "inconsistent with morals" or which "hamper morals, values and Palestinian traditions" of children and teenagers. *Id.* at 13, 17. Also unclear is the Article 8 requirement to report in an objective, balanced, and accurate manner. *Id.* at 14.

39. *Id.* at 4-5.

enforcement range from withdrawal of the license to civil or criminal proceedings brought against any or all of the following persons: (a) the owner of the publication, (b) its editor-in-chief, (c) the author, (d) owners of the print and distribution house, and (e) libraries that carry the offending publication.⁴⁰ The penalties under the law include publishing an apology, closure of the publication for three months, a substantial fine, and even imprisonment for up to six months.⁴¹ A Palestinian human rights organization expressed its disillusionment with the law as follows:

The Press Law is an extremely sorry indictment of the period under Palestinian rule. Its 51 articles seek to control the media, fundamentally undermining the freedom of expression. At the same time, it gives the executive sweeping powers and remains silent on the issues of judicial scrutiny and recourse to the courts when rights have been infringed. In Gaza, there was great hope that the onset of autonomy, even in the fragmented and distorted form envisaged in the Cairo Agreements [sic], would offer a reversal of the history of occupation and oppression. Unfortunately the Press Law indicates that the Palestinian Authority has little intention to respect human rights or to establish the framework for democratic civil society.⁴²

40. *Id.* at 5.

41. *Id.* By comparison, the much criticized Israeli limitations on freedom of the press, even during the peak of the intifada, were benign. Thus, although the international law of belligerent occupation gives Israel broad authority to impose censorship, prevent circulation, and regulate or prohibit entirely all means of communication in the West Bank and Gaza Strip to prevent incitement, disorder, and hostile activity, in actual practice very little effort has been made to control the mostly antagonistic Arabic language press. In general, Israel only censors passages which offer information of military value to enemy states or incite hatred and disorder, thereby presenting a threat to public order and safety. Violators are very rarely prosecuted or sanctioned by the removal of their press accreditation. For example, during the first three years of the intifada, no member of the press had his press credentials revoked, and only a few brief suspensions were imposed. See Justus R. Weiner, *Human Rights in the Israeli Administered Areas during the Intifada: 1987-1990*, 10 WIS. INT'L L.J. 185, 246-51 (1992).

The PA could argue, however, that its Press Law is consistent with the Cairo Agreement, which provides:

Israel and the Palestinian Authority 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 any such incitement by any organizations, groups or individuals within their jurisdiction.

Cairo Agreement, *supra* note 4, art. XII, para. 1. In the author's opinion, however, this understanding fails to adequately weigh the proviso "without derogating from the freedom of expression." Nevertheless, the PA should seek to balance this critical human right with the real danger of incitement against the peace process.

42. PCHR Press Law Critique, *supra* note 37, at 28.

Other press restrictions that *have* already been used include the intermittent closure of newspaper offices,⁴³ preventing the distribution of a newspaper,⁴⁴ the detention of journalists critical of or insensitive to PA policy,⁴⁵ and the imposition of substantial limits on the allowed content of published material.⁴⁶ These tactics have obstructed the formation of an open political culture in Palestinian society and fostered an atmosphere of fear among journalists.⁴⁷

The PA, as a non-sovereign entity, does not have the capacity to sign or ratify international human rights conventions such as the International Covenant on Civil and Political Rights.⁴⁸ Israel ratified the treaty, although with a notable reservation.⁴⁹ However, Arafat gave an undertaking on September 30, 1993 that the PA accepted human rights stan-

43. Jon Immanuel, *Journalists Blast PA's Restrictions on Press Freedom*, JERUSALEM POST, Sept. 29, 1995, at 2. At least ten newspaper premises have been shut down by the PA since it assumed authority in Gaza and Jericho. See Sami Soukol, *The Palestinian Press Didn't Cover the Elections Out of Fear of PA Police*, HA'ARETZ (Isr.), Jan. 25, 1996, at A2.

44. *Peace Watch: PA is Suppressing Freedom of Press*, JERUSALEM POST, Jan. 17, 1996, at 2.

45. Arafat has intimidated the press by arresting the editor of *Al Quds*, the leading Arabic language newspaper which is published in Jerusalem and distributed throughout the West Bank and Gaza, apparently because the editor relegated a story on Arafat to the inside pages. See Bill Hutman, *Al Quds' Editor Remains in Jericho Jail*, JERUSALEM POST, Dec. 28, 1995, at 12. On another occasion Arafat ordered a well-known writer arrested. See SHATTERED HOPES, *supra* note 25, at 24-25; Jon Immanuel, *Arafat Frees Jindal Editor for Id al-Fitr*, JERUSALEM POST, Feb. 21, 1996, at 2.

46. HUMAN RIGHTS WATCH / MIDDLE EAST, *supra* note 25, at 25-27.

47. Palestinian/Kennedy Centres Joint Statement, *supra* note 26, at 2, 4.

48. International Covenant on Civil and Political Rights, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16 at 52, U.N. Doc. A/RES/6546 (1966) (entered into force Mar. 23, 1976).

49. Israel ratified the covenant during the summer of 1991. See Becky Cohen, *The Practice of Israel in Matters Related to International Law*, 26 ISR. L. REV. 559, 572-73 (1992). The reservation reads as follows:

Since its establishment, the State of Israel has been the victim of continuous threats and attacks on its very existence as well as on the life and property of its citizens. These have taken the form of threats of war, of actual armed attacks, and campaigns of terrorism resulting in the murder of and injury to human beings. In view of the above, the State of Emergency which was proclaimed in May 1948 has remained in force ever since. This situation constitutes a public emergency within the meaning of Article 4(1) of the Covenant. The Government of Israel has therefore found it necessary, in accordance with the said Article 4, to take measures to the extent strictly required by the exigencies of the situation, for the defence of the State and for the protection of life and property, including the exercise of powers of arrest and detention. In so far as any of these measures are inconsistent with Article 9 of the Covenant, Israel thereby derogates from its obligation under that provision.

dards and would ensure their respect in the self-ruled areas.⁵⁰ While his statement has no value as precedent, the Palestinian courts may use it in interpreting legislation.⁵¹ Moreover, it is possible that the Israeli Supreme Court sitting as the High Court of Justice will serve as a forum for human rights complaints arising from the Palestinian self-governed areas during the interim period.⁵² Despite the political fallout that would likely result from such a move, this new jurisdiction could come about if the Court were challenged to apply its liberal formulation of the standing and justiciability doctrine to the conduct of PA officials who have allegedly violated human rights in fulfilling functions delegated to the PA by Israel. Such an interpretation is possible because Israel remains the state that empowers the PA during the interim period.⁵³

The numerous human rights violations perpetrated by Arafat and the PA might have been averted had the Agreements been more thoughtfully drafted,⁵⁴ with greater attention given to the subject of human rights. It is fairly clear, however, in light of the broader political context, that neither of the parties has much interest in protecting the human rights of the Palestinians residing in the self-governed regions. Israel, despite the language of the Agreements, has yet to voice any public objections regarding human rights abuses in the areas under PA authority.⁵⁵ This silence is perhaps understandable given that Arafat's remaining in power is considered essential for the continuation of the peace process and for the victory of the Labor-led government of Israel in the upcoming national elections.⁵⁶ It is a sad irony, however, that concern for human

50. PCHR Press Law Critique, *supra* note 37, at 30. Abu Mazen wrote forcefully in his book that the Palestinian entity "must, before all else, respect human rights . . . and [be] establish[ed] . . . on the bases of modern democratic principles, total freedom[] . . ." ABBAS, *supra* note 12, at 223.

51. PCHR Press Law Critique, *supra* note 37, at 30.

52. See *Human Rights In Limbo*, *supra* note 16.

53. See *infra* notes 131-34 and accompanying text.

54. Hanan Ashrawi, spokesperson of the Palestinian delegation to the Washington peace talks, was upset when she was shown the DOP. She complained to Arafat, "[h]ow could you ignore human rights?" Ashrawi Interview, *supra* note 22, at 18.

55. It could be argued that such protests, would, if made, only aggravate Israeli-PA relations without achieving anything tangible. Nonetheless, Israel has intervened with practical steps in order to protect the so-called Palestinian collaborators. Thousands of these individuals and their families are currently being absorbed into Israeli territory. See Rabin, *supra* note 28, at A1; Eytan Rabin, *Security Branches Examine Possibility of Assisting Collaborators to Purchase Homes in Israel*, HA'ARETZ (Isr.), July 17, 1995, at A3.

56. Professor Edward Said, a Palestinian-American Christian who was formerly a member of the PNC, made the following perspicacious comment:

There is a cynical Israeli policy of letting Arafat become as much a petty dictator as is consistent with their interests. . . . [Arafat] governs unilaterally, in the absence of real laws or constitution. At the urging of Israel and the United States, he has

rights, which constituted a significant factor prior to the Israeli-Palestinian peace undertaking, is now considered immaterial as the peace process finally reaches fruition.⁵⁷

II. THE PALESTINIAN COUNCIL ELECTIONS

In the same vein, the elections for the Palestinian Council, the convening of which formed one of the primary purposes of the peace process,⁵⁸ failed to meet commonly accepted standards for free and democratic elections. The DOP declared one of the principal aims of the interim negotiations to be the establishment of a "Palestinian Interim Self-Government Authority, the elected Council . . . for the Palestinian people in the West Bank and Gaza Strip."⁵⁹ Article III of the accord specified that:

[i]n order that the Palestinian people in the West Bank and Gaza Strip may govern themselves according to democratic principles, direct, free and general political elections will be held for the Council under agreed supervision and international observation, while the Palestinian police will ensure public order.⁶⁰

The Oslo II Agreement, which sets out the agreed framework for carrying out the elections, restates the view expressed in the DOP. It states that

[t]hese elections will constitute a significant interim preparatory step towards the realization of the legitimate rights of the Palestinian people and their just requirements and will provide a democratic basis for the establishment of Palestinian institutions.⁶¹

instituted military courts which can arrest, detain, and sentence people without due process.

EDWARD SAID, *PEACE AND ITS DISCONTENTS* 157 (1995).

57. See, e.g., *Amnesty: Human Rights Can't Be Second To Peace*, JERUSALEM POST, Feb. 8, 1996, at 2. Hanan Ashrawi proclaimed: "No one cares about Palestinian human rights, provided they get what they want from the [peace] process." Ashrawi Interview, *supra* note 22, at 18.

58. Interestingly, during the Oslo negotiations, then-Israeli Foreign Minister Shimon Peres did not perceive the elections "as necessarily a condition" for the success of the peace undertaking. He explained himself as follows: "I do not believe democracy can be imposed artificially on another society, though I do believe the Palestinians could potentially become the first truly democratic Arab society and that nothing would be a greater boon to Arab life than true democracy." PERES, *supra* note 7, at 292-93.

59. DOP, *supra* note 3, art. I.

60. *Id.* art. III, para. 1.

61. Oslo II Agreement, *supra* note 17, art. II, para. 2; see also DOP, *supra* note 3, art. III, para. 3.

Indeed, the Oslo II Agreement provides for most of the details concerning the setting of the elections as well as the structure of the Palestinian Council and its Chairman that would emerge therefrom. It is interesting to note that, although the DOP did not contain any stipulations on the subject, the Oslo II Agreement specifically provided for the direct election of the *Ra'ees*⁶² of the Council. Moreover, following the Agreement, the elected Council was to be composed of eighty-three representatives, including the Chairman. Pursuant to Arafat's request, however, Israel consented to the addition of a number of seats so that presently the Council comprises eighty-nine members, one fewer than what it believed was the smallest parliament in the world.⁶³

In accordance with the Oslo II Agreement,⁶⁴ the PA drafted an Elections Law and put it into effect on December 2, 1995.⁶⁵ Members of both the PLO and the major opposition parties were given a chance to voice their opinion regarding the law prior to its adoption.⁶⁶ In addition

62. The use of the Arabic title "Ra'ees" in the Oslo II Agreement in order to designate the head of the Executive Authority of the Council is the result of a compromise between Israel and the PLO. Israel rejected the use of the title "President" so as to preclude any Palestinian claims to the effect that the new entity constituted a state, rather than an exercise in local self-governance. The PLO, on the other hand, resisted Israeli demands that the term "Chairman" be used, and insisted that the head of the Executive Authority bear the title of "President." In the end, the term "Ra'ees" was agreed upon as a suitable compromise since it may be translated in English as either "Chairman" or "President." See Peace Watch, *An Update on Palestinian Elections: Where Matters Stand on the Eve of the Campaign 8 n.2* (Dec. 27, 1995) [hereinafter *Elections Update*] (on file with *Michigan Journal of International Law*).

63. See Eytan Rabin, *Peres Responds Positively to Arafat's Request for Increase in Number of Council Members*, HA'ARETZ (Isr.), Dec. 26, 1995, at A1. At first, Palestinian negotiators demanded that the Council contain 130 members. Israel rejected this claim outright, proposing instead that the Council be limited in size, with no more than 40 seats. Israel's main concern in this regard was Palestinian claims to sovereignty. The operation of a representative body composed of a large number of members in the West Bank and Gaza Strip could subsequently be equated by the Palestinians to a standard "Parliament," one of the main attributes of a sovereign entity. Thus, Israel finally accepted that the Council comprise of 84 seats, including the Ra'ees, based on the conviction that the smallest national parliament in the world has only 90 seats. *Id.* This belief was erroneous as a number of mostly small countries have smaller legislatures, including Andorra, Anguilla, Antigua and Barbuda, the Bahamas, Belize, Bermuda, Botswana, the United Arab Emirates, Vanuatu, and Western Samoa. THE STATESMAN'S YEAR-BOOK 1995-1996, at 76, 83, 85, 162, 188, 196, 211, 1300, 1576, 1598 (Brian Hunter ed., 132d ed. 1995).

64. Oslo II Agreement, *supra* note 17, Annex II, art. I, para. 2.

65. The Palestinian Election Law (Dec. 7, 1995), *reprinted and translated in* JERUSALEM TIMES, Dec. 15, 1995, at 7 [hereinafter *Elections Law*].

66. See *Elections Update*, *supra* note 62, at 10. A draft Palestinian Political Party Law was also prepared by the PA's Justice Ministry in view of the elections. The draft law, which was the subject of intense criticism, was not approved by the PA, and thus was not in force during the elections. According to one human rights organization, the draft law sought to regulate every aspect of organized political expression, including the formation and activities of all political parties. It would have denied registration to parties that oppose the current

to providing for various significant issues related to the elections, the Law established a Central Elections Commission that was charged with overseeing all aspects of the elections.⁶⁷ In addition, the law instituted an Elections Appeals Court⁶⁸ which served as the final arbiter on matters pertaining to the elections. The establishment of both of these institutions was mandated by the Oslo II Agreement.⁶⁹

The Elections Law divided the West Bank, Gaza Strip, and Jerusalem into sixteen electoral districts based on the "natural and historical boundaries" of the region.⁷⁰ The law specifically reserved a number of seats in the Council for Christians and Samaritans residing in the self-governed areas.⁷¹ The number of seats allocated per district was established by Yasser Arafat in a decree.⁷² Although the Elections Law specified that "the number of seats in each [should be] proportional to the population therein,"⁷³ many protested that in fact the apportionment of seats did not reflect the distribution of population between the various districts,⁷⁴ and that the population statistics on which it was based were never made public.⁷⁵ This objection gave rise to charges that the allocation of seats was manipulated for political purposes because Arafat and his faction's base is stronger in some districts than in others.⁷⁶

Nearly seven hundred candidates took part in the Council elections.⁷⁷ While a majority of the candidates ran as independents, the preponderance of them identified with Arafat and his Fatah faction.⁷⁸ Apart from a few fringe movements with individual candidates dispersed

peace process or have radical or revolutionary policies and thereby might have encouraged a one-party system. *See generally* PCHR Press Law Critique, *supra* note 37.

67. *See* Elections Law, *supra* note 65, arts. 21–26.

68. *See id.* arts. 31–37.

69. Oslo II Agreement, *supra* note 17, Annex II, art. I, para. 3.

70. Elections Law, *supra* note 65, art. 5; *see also* Elections Update, *supra* note 62, at 14–15.

71. Elections Law, *supra* note 65, art. 5, para. 2.

72. *See* Elections Update, *supra* note 62, at 14.

73. Elections Law, *supra* note 65, art. 5.

74. *See* Peace Watch, Statement # 1 of the Peace Watch Elections Observer Team (Jan. 4, 1996) [hereinafter Peace Watch Statement # 1] (copy on file with *Michigan Journal of International Law*); Palestinian/Kennedy Centres Joint Statement, *supra* note 26, at 6.

75. *See* Peace Watch, Summary of the Peace Watch Observer Team's Concluding Statement on the Palestinian Elections Campaign (Jan. 18, 1996) (on file with *Michigan Journal of International Law*).

76. *See* PCHR Election Update, *supra* note 33, at 4–7.

77. *See* Uri Nir, *Palestinians Fear Provocation by Jewish Extremists at Council Elections in Jerusalem*, HA'ARETZ (Isr.), Jan. 7, 1996, at A8.

78. *See* Uri Nir, *Discord in Fatah Following Prohibition to Run as Independents*, HA'ARETZ (Isr.), Dec. 29, 1995, at A5.

in a limited number of districts, the People's Party, formerly known as the Communist Party, was the sole opposition party to conduct an organized campaign throughout all of the West Bank, Gaza Strip, and East Jerusalem.⁷⁹ Consequently, it was not surprising that of the eighty-eight contested seats,⁸⁰ sixty-seven of the successful candidates were affiliated with Arafat.⁸¹

The number of candidates opposed to the peace process was negligible, mainly because the Islamic opposition declined a PA request that it take part in the elections and shortly thereafter *Hamas* and *Islamic Jihad* declared a boycott of the democratic exercise.⁸² Three former members of *Hamas* that had registered their candidacy for the election withdrew after receiving threats on their lives from *Hamas* elements in Jordan.⁸³ In the final analysis, however, the Islamic opposition's call not to take part in the elections was emphatically rejected by the local population, including Palestinians affiliated with the opposition,⁸⁴ which manifested tremendous enthusiasm in participating in the first Palestinian elections in history. In total, over eighty-five percent of the registered voters in Gaza and close to seventy percent in the West Bank exercised their right to vote at the elections.⁸⁵

The direct elections for the office of the *Ra'ees* were virtually uncontested. No credible alternative to PLO Chairman Arafat was presented to the local populace. Arafat's sole challenger, Samiha Khalil, the seventy-two year-old head of a charitable institution, did not pose any threat to Arafat's landslide triumph in the balloting. Khalil won less

79. Danny Rubinstein, *The Stamp of Palestinian Legitimacy*, HA'ARETZ (Isr.), Jan. 5, 1996, at B3.

80. There were 52 seats in the West Bank and 36 in the Gaza Strip. *Id.*

81. See Jon Immanuel, *Fatah Wins 67 Seats on Council*, JERUSALEM POST, Jan. 23, 1996, at 1 [hereinafter *Fatah Wins*].

82. See Yossi Torpstein, *Palestinian Opposition to Boycott Elections*, DAVAR RISHON, Jan. 16, 1996, at 3; Jon Immanuel, *PA Elections in a Nutshell*, JERUSALEM POST, Jan. 19, 1996, at 2.

83. Peace Watch, Statement # 3 of the Peace Watch Elections Observer Team 2 (Jan. 11, 1996) [hereinafter Peace Watch Statement # 3] (on file with *Michigan Journal of International Law*).

84. See Amira Has, *Significant Part of Opposition Members — Hamas and the National and Democratic Fronts — Voted*, HA'ARETZ (Isr.), Jan. 21, 1996, at A5; Uri Nir, *60% of Hamas Supporters and Almost All Popular Front Supporters Took Part in Elections*, HA'ARETZ (Isr.), Jan. 24, 1996, at A4.

85. See Alouf Ben, *Peres To Meet Tomorrow With Arafat; Will Demand Liquidation of Hamas' Base in Territories*, HA'ARETZ (Isr.), Jan. 23, 1996, at A1; Uri Nir, *Sweeping Victory for Arafat: Controls More Than 60% of the Seats in Council*, HA'ARETZ (Isr.), Jan. 22, 1996, at A1.

than ten percent of the total vote.⁸⁶ Prior to the elections it was suggested that Dr. Haidar Abd Al-Shafi, a member of the Palestinian delegation at the Madrid Peace Conference and vocal opponent of Arafat's peace diplomacy, might offer his candidacy for the chairmanship of the Council. Al-Shafi chose instead to run for a seat on the Council. He turned out to be a tremendous success at the ballot box, garnering more votes than any other Council candidate in the elections.⁸⁷ This achievement is quite remarkable given that, with the notable exception of human rights activist Hanan Ashrawi and a few other significant opposition figures, few candidates in disagreement with Arafat won a seat on the Council.⁸⁸

During the negotiations at Oslo, the subject of Jerusalem was a contentious issue. As Peres wrote, "[t]hroughout the Oslo process, we were determined not to make any political concessions on Jerusalem."⁸⁹ Abu Mazen, adopting a similar tone, recollected: "Our delegation . . . said that it could not sign any agreement that did not include . . . Jerusalem."⁹⁰ Consequently, the parties' positions substantially differed on the extent that Palestinian residents of Jerusalem would be allowed to participate in the elections. Israel ultimately accepted that Jerusalem Palestinians could take part in the elections but postponed determining the extent of their participation in both candidacy and voting for negotiation at a later stage.⁹¹ Hence, the following general stipulation appeared in Annex I of the DOP: "Palestinians of Jerusalem who live there will have the right to participate in the election process, according to an agreement between the two sides."⁹²

The issue eventually resurfaced as one of the most contentious matters during the negotiations of the Oslo II Agreement, placing a heavy burden on the parties in their peace undertaking.⁹³ After months of deadlock, the parties finally reached a compromise.⁹⁴ The agreement allowed Palestinian residents of Jerusalem to both vote and present their

86. Amira Has & Uri Nir, *Arafat to Be Sworn In Today as President of Council*, HA'ARETZ (Isr.), Feb. 12, 1996, at A1.

87. See *Fatah Wins*, *supra* note 81, at 1.

88. See Danny Rubinstein, *Abd Al-Shafi and Ashrawi — Among Figures Elected Despite Quarrel With Arafat*, HA'ARETZ (Isr.), Jan. 22, 1996, at A3.

89. PERES, *supra* note 7, at 287.

90. ABBAS, *supra* note 12, at 134.

91. PERES, *supra* note 7, at 287.

92. DOP, *supra* note 3, Annex I, art. 1.

93. See John Battersby, *A Compromise Propels the Mideast Peace Process*, CHRISTIAN SCI. MONITOR, Aug. 15, 1995, at 8.

94. See Joel Singer, *The West Bank and Gaza Strip: Phase Two*, 7 JUSTICE 1, 5-7 (1995).

candidacy for a seat on the Council on the condition that they possess a valid address in the self-governed areas.⁹⁵ In practice, this limitation could be sidestepped by simply signing a rental contract in any city located in an area under PA jurisdiction.⁹⁶ Moreover, Israel agreed to authorize the candidates to conduct campaign activities in Jerusalem.⁹⁷

This arrangement represented an acceptable compromise. Palestinian residents of Jerusalem were not deprived of the right to participate in the Council elections, and Israel's claimed sovereignty over Jerusalem was not formally violated since it could claim that those who ran for election did so as absentees based on their residence outside Jerusalem. As the manager of one of the five Israeli post offices where Palestinians cast their ballots declared, "[a]s far as we're concerned the [Palestinian] voters are just sending mail."⁹⁸

Nonetheless, various hindrances impeded the elections in Jerusalem. At the outset, voter registration was exceptionally low due to unfounded fears that certain Israeli governmental benefits would be denied to those who cast ballots.⁹⁹ On the day of the elections, substantial numbers of Palestinians were deterred from appearing at the polling stations because of the heavy presence of Israeli police.¹⁰⁰ Israel had taken stiff security measures in order to prevent Israelis opposed to the peace process or the Palestinian Islamic opposition from obstructing the balloting. As a result, many eligible voters in Jerusalem were reportedly intimidated and did not vote.¹⁰¹

Other factors also seriously undermined the democratic nature of the Palestinian elections. Indeed, it is questionable whether there were "direct, free and general political elections"¹⁰² as the DOP called for at the outset of the process. It is therefore debatable whether they were a "major breakthrough" or a "major step forward" as forecast by Robert

95. The elections arrangements for Jerusalem were set forth in Article VI of Annex II of the Oslo II Agreement. See Oslo II Agreement, *supra* note 17, Annex II, art. VI.

96. See Elections Update, *supra* note 62, at 29.

97. Oslo II Agreement, *supra* note 17, Annex II, art. VI, para. 1.

98. See Sami Soukol, *Under Tight Security 30% of Registered Voters in Jerusalem Voted*, HA'ARETZ (Isr.), Jan. 21, 1996, at A2.

99. See B'tselem, *Palestinian Council Elections' Observer: Israel Prevents Free and Democratic Elections in East Jerusalem* (Jan. 18, 1996) (on file with *Michigan Journal of International Law*).

100. See Soukol, *supra* note 98, at A2.

101. See Derek Brown, *Arafat Triumphs but the Voters Signal a Warning*, GUARDIAN (London), Jan. 22, 1996, at 1; Dalia Shahoni, *Carter Satisfied With Elections "Apart From East Jerusalem"*, HA'ARETZ (Isr.), Jan. 22, 1996, at A4.

102. DOP, *supra* note 3, art. III, para. 1.

Pelletreau, the United States Assistant Secretary of State for Near East Affairs.¹⁰³

The Palestinian Central Election Commission's membership was dominated by officials with close ties to Arafat's Fatah faction, including notably its President, Abu Mazen.¹⁰⁴ No doubt a panel composed of impartial individuals would have been preferable. Indeed, Abu Mazen admitted in an interview prior to the elections that "in principle . . . it was a mistake. The president of the Commission should have been someone neutral, with no ties to any of the political parties."¹⁰⁵

In addition, Chairman Arafat arbitrarily reordered the list of Fatah candidates for the elections.¹⁰⁶ This list had been composed on the basis of the results of Fatah primaries conducted in certain districts. Arafat, however, interfered in the democratic process by modifying the lists, substituting loyalists of his own for candidates not to his liking. Many of the ousted PLO Fatah candidates subsequently ran as independents,¹⁰⁷ but the considerable pressure exerted by Fatah members caused others to withdraw entirely from the elections.¹⁰⁸ Other candidates withdrew from the elections in exchange for jobs in PA ministries.¹⁰⁹

These problems were compounded by a considerably shortened election campaign period of approximately two weeks¹¹⁰ due to the tight schedule to which the Palestinians were confined.¹¹¹ It also undermined the democratic character of the elections since many candidates were not given enough time to prepare adequately for the campaign and make their positions known to the voters.¹¹²

In addition, many international election observers detected a strong bias in the local press in favor of Arafat and candidates affiliated with

103. Beyer, *supra* note 16, at 46.

104. See Mazen Heads Commission, *supra* note 10, at 2.

105. Cohen, *supra* note 11, at 52, 53 (author's translation); see also Jon Immanuel, *Irregularities Are Damaging PA Election Credibility — Chief Observer*, JERUSALEM POST, Jan. 2, 1996, at 2 [hereinafter Immanuel, *Irregularities*].

106. See Evelyn Gordon, *Peace Watch Finds Reason to Doubt Democracy of PA Poll*, JERUSALEM POST, Jan. 19, 1996, at 3.

107. See Amira Has, *Fatah Prohibits Its Members to Run as Independents*, HA'ARETZ (Isr.), Dec. 28, 1995, at A3.

108. See Peace Watch Statement # 1, *supra* note 74, at 1.

109. See Peace Watch Statement # 3, *supra* note 83, at 2.

110. See Peace Watch Statement # 1, *supra* note 74, at 3-4.

111. The timetable for the Palestinian elections was very limited because, on the one hand, Israeli redeployment from Palestinian populated centers could not be completed before late December 1995, and on the other hand, the Muslim holy month of Ramadan commenced in late January. See Elections Update, *supra* note 62, at 17.

112. See Immanuel, *Irregularities*, *supra* note 105, at 1; Palestinian/Kennedy Centres Joint Statement, *supra* note 26, at 6.

his Fatah Party.¹¹³ The election campaign was also marred by the arrest, detention, and harassment of journalists¹¹⁴ as well as political and human rights activists¹¹⁵ who expressed opposition to Arafat's policies and methods of governing. This intimidation was carried out by the Palestinian Preventive Security Service, one of the PA's security agencies.

Moreover, several irregularities on the day of the elections further tainted the entire exercise. Significant numbers of ballot boxes reportedly disappeared for lengthy periods of time in at least two districts.¹¹⁶ In certain districts, votes were tabulated without any official supervision,¹¹⁷ and major errors were discovered in the protocols at some polling stations.¹¹⁸ Two polling stations in Gaza had to conduct new balloting due to serious allegations of tampering with the ballot boxes.¹¹⁹ Appeals subsequently brought before the Palestinian Election Appeals Court were all dismissed on the pretext that as a matter of principle claims could not be filed against the Central Elections Commission.¹²⁰ This decision by the Appeals Court, aside from being inconsistent with democratic principles, was also in violation of the Elections Law.¹²¹

III. PALESTINIAN CLAIMS TO SOVEREIGNTY

It is clear that one of the main objectives of the elections was to serve as a "significant interim preparatory step toward the realization of the legitimate rights of the Palestinian people,"¹²² which are taken to

113. See Immanuel, *Irregularities*, *supra* note 105, at 1; Peace Watch, *Peace Watch Report Reveals Systematic Suppression of Press Freedoms Under the Palestinian Authority* (Jan. 16, 1996) (on file with *Michigan Journal of International Law*); Soukol, *supra* note 43, at A2.

114. Hillel Kutler, 'We Want Honest Elections,' JERUSALEM POST, Jan. 19, 1996, at 8.

115. See Peace Watch Statement # 3, *supra* note 83, at 1 (discussing detention of People's Party campaign manager and other persons who have spoken out against the PA and the Fatah movement); Immanuel, *Outcry*, *supra* note 25, at 1.

116. See Uri Nir, *Tens of Ballot Boxes Abandoned Without Supervision in Ramallah and Hebron*, HA'ARETZ (Isr.), Jan. 24, 1996, at A4.

117. This violates Article 77 of the Elections Law, which provides that "[v]ote counting is conducted in the presence of all members of the Polling Station Commission and those members of the Electoral Management, representatives of candidates, local and international observers and journalists who wish to attend the vote count." Elections Law, *supra* note 65, art. 77.

118. *Id.*; Peace Watch, *Allegations of Fraud Persist in Gaza, Hebron and Ramallah* (Feb. 6, 1996) (on file with *Michigan Journal of International Law*).

119. See Susan Sappir, *Palestinian Poll Seen as Vote for Democracy, Peace*, Reuters World Service, Jan. 23, 1996, available in LEXIS, News Library, Reuwlid File.

120. See Peace Watch, *Peace Watch: Appeals Process Inconsistent with Democratic Principles* (Feb. 29, 1996).

121. *Id.*

122. DOP, *supra* note 3, art. III, para. 3.

include the right to self-determination. Although the Agreement does not contain any specific references to this right under international law, it is widely accepted that the parties' recognition, initially expressed in the preamble of the DOP, of "their mutual and legitimate political rights," includes the Palestinians' right to self-determination.¹²³ What is not clear, however, is whether such a recognition entails Israeli acquiescence to Palestinian statehood as the inevitable outcome of the peace undertaking.

It should be stressed at the outset that neither the PLO¹²⁴ nor the Palestinian Council meet the prerequisites for independence under international law. Although the PLO was granted permanent observer status at the United Nations in 1974¹²⁵ and the PNC proclaimed creation of a Palestinian State in the West Bank and Gaza Strip in 1988,¹²⁶ at this stage of the process no sovereign Palestinian entity exists pursuant to prevailing standards of international law.¹²⁷

Even under the Oslo II Agreement, which considerably broadens the scope of powers transferred to the Palestinian entity, the Palestinian Council clearly lacks the capacity to conduct foreign relations,¹²⁸ an essential prerequisite of sovereignty under international law.¹²⁹ As Joel Singer, Legal Advisor of the Israeli Ministry of Foreign Affairs and senior official to the negotiations with the Palestinians, clarified:

In each one of the three main agreements which Israel has concluded to date with the PLO as part of the current peace process,

123. See generally Antonio Cassese, *The Israel-PLO Agreement and Self-Determination*, 4 EUR. J. INT'L L. 564 (1993).

124. See James Crawford, *The Creation of the State of Palestine: Too Much Too Soon?*, 1 EUR. J. INT'L L. 307 (1990); Ruth Lapidoth & N.K. Calvo-Goller, *Les Elements Constitutifs de L'Etat et la Declaration du Conseil National Palestinien du 15 Novembre 1988*, 96 REVUE GÉNÉRALE DE DROIT INTERNATIONAL PUBLIC [R.G.D.I.P.] 777 (1992). But see Francis A. Boyle, *The Creation of the State of Palestine*, 1 EUR. J. INT'L L. 301 (1990); Maurice Flory, *Naissance d'un Etat Palestinien*, 93 R.G.D.I.P. 385 (1989).

125. *Observer Status for the Palestinian Liberation Organization*, G.A. Res. 3237, U.N. GAOR, 29th Sess., Supp. No. 31 at 4, U.N. Doc. A/9631 (1974).

126. *Political Communique and Declaration of Independence by Palestinian National Council*, in THE ARAB-ISRAEL CONFLICT AND ITS RESOLUTION: SELECTED DOCUMENTS 344, 348 (Ruth Lapidoth & Moshe Hirsch eds. 1992).

127. See 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*, 36 VA. J. INT'L L. (forthcoming 1996).

128. Oslo II Agreement, *supra* note 17, art. IX, para. 5.

129. According to Ian Brownlie, the ability to enter into relations with other states is indicative of independence from foreign rule: "the concept of independence is represented by the requirement of capacity to enter into relations with other states. Independence has been stressed by many jurists as the *decisive* criterion of statehood." IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 73-74 (4th ed. 1990) (emphasis added).

the issue of foreign relations has received special treatment. This reflects the fact that . . . the treatment of the sphere of foreign relations has an added effect *on the very nature of the autonomous entity itself*, because *full capacity to conduct foreign relations is one of the accepted indicia of sovereignty and statehood*.¹³⁰

Furthermore, the Oslo II Agreement stipulates that Israel continues to retain exclusive responsibility for the external security of the West Bank and Gaza Strip.¹³¹

Moreover, pursuant to the text of the Oslo II Agreement, the Israeli military government will continue to operate in the West Bank and Gaza Strip throughout the interim period. In addition, the Agreement contains several stipulations that the legal status of Gaza, Jericho, and other areas of the West Bank under the local jurisdiction of the Council remains unchanged.¹³² It would therefore follow that these regions continue to be under the occupation of the Israeli military, with the Council acting as nothing more than an agent of the Israeli occupation administration.¹³³

Thus, a viable argument exists that the sole source of the Council's authority and legitimacy is the accords it concluded with Israel. The first paragraph of Article I of the Oslo II Agreement makes clear that Israel is the source of the Palestinian Council's administrative power and that Israel maintains residual control over functions not expressly transferred to the Council:

Israel shall transfer powers and responsibilities as specified in this Agreement from the Israeli military government and its Civil Administration to the Council in accordance with this Agreement. Israel shall continue to exercise powers and responsibilities not so transferred.¹³⁴

In addition, numerous provisions found in the Agreement stress that the status of the self-governed areas has not been altered. For instance, Article XI of the Oslo II Agreement states, "[t]he two sides view the

130. Joel Singer, *Aspects of Foreign Relations Under the Israeli-Palestinian Agreements on Interim Self-Government Arrangements for the West Bank and Gaza*, 28 ISR. L. REV. 268, 268-69 (1994) (emphasis added; footnote omitted). Even Arafat's senior deputy Abu Mazen, who was intimately involved in negotiating the DOP, has written, "[w]e do not claim that we signed an agreement that created an independent Palestinian State; none of the provisions in the Declaration of Principles make such a claim." ABBAS, *supra* note 12, at 218.

131. Oslo II Agreement, *supra* note 17, art. X, para. 4.

132. *Id.* arts. XI, para. 1; art. XXXI, para. 8.

133. See Joel Singer, *The Declaration of Principles on Interim Self-Government Arrangements*, 1 JUSTICE 4, 6 (1994). But see Benvenisti, *supra* note 16, at 297.

134. Oslo II Agreement, *supra* note 17, art. I, para. 1.

West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which will be preserved during the interim period.”¹³⁵ The Agreement also provides that

After the inauguration of the Council, the [Israeli] Civil Administration in the West Bank will be dissolved, and the Israeli military government shall be withdrawn. The withdrawal of the military government shall not prevent it from exercising the powers and responsibilities not transferred to the Council.¹³⁶

Thus, the military government continues to exercise certain prerogatives in those areas for which authority has been transferred to the Council. The importance of this fact was emphasized by Joel Singer:

In this context, the fact that the military government in the West Bank and Gaza Strip will continue to exist is very significant. It emphasizes that, notwithstanding the transfer of a large portion of the powers and responsibilities currently exercised by Israel to Palestinian hands, *the status of the West Bank and Gaza Strip will not be changed during the interim period*. These areas will continue to be subject to military government. Similarly, this fact suggests that the Palestinian Council will not be independent or sovereign in nature, but rather will be legally subordinate to the authority of the military government. In other words, operating within Israel, the military government will continue to be the source of authority for the Palestinian Council and the powers and responsibilities exercised by it in the West Bank and Gaza Strip.¹³⁷

Interestingly, according to Shimon Peres, the Palestinians agreed at Oslo that the military government would constitute the source of authority of the Council:

[T]he Palestinians demanded that the Declaration of Principles provide (Article VII) that “after the inauguration of the Council, the Israeli Civil Administration and military government will be dissolved.” We countered that while the civil administration would be “dissolved” once the autonomy was in place, . . . the military government would remain the source of authority in the territories. The Palestinians agreed, in the end, to that distinction.¹³⁸

135. *Id.* art. XI, para. 1.

136. *Id.* art. I, para. 5; *see also id.* art. XVII, para. 4; art. XXXI, para. 7; art. XXXI, para. 8. The DOP also provided that the status of the West Bank and Gaza Strip would not be altered during the interim period. *See DOP, supra* note 3, art. IV; Annex II, art. 6.

137. Singer, *supra* note 133, at 6 (emphasis added).

138. PERES, *supra* note 7, at 290.

In contrast, Abu Mazen emphatically rejects the claim that the Palestinian Council constitutes nothing more than an agent of the Israeli military government in specified areas of the West Bank and Gaza Strip. The following assessment appears in the final chapter of his book, entitled "Thoughts for the Future":

The allegation that the Palestinian Council will be established merely to undertake the duties on behalf of Israel is plainly refuted by many of the articles of the accord [the DOP]. Moreover, the fact that the priorities of the Interim Authority differ from those of the Israeli Civil Administration shows conclusively that the Palestinian Council will not merely do Israel's work. Thus the basic needs of the people will be catered for as a matter of priority

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The fact that at the current stage of the interim process there is only a self-governed Palestinian entity in parts of the West Bank and Gaza Strip does not preclude the eventual creation of a Palestinian state in these areas. Indeed, many commentators have averred that the creation of a sovereign Palestinian entity will be inevitable as the process culminates.¹⁴⁰ However, both the United States and the current Israeli leadership have consistently opposed the creation of a Palestinian state,¹⁴¹ favoring other models of government for the Palestinian population in the West Bank and Gaza Strip, such as a confederation with Jordan.¹⁴² Indeed, Israel's position on this issue was unequivocal throughout the

139. ABBAS, *supra* note 12, at 219.

140. See Jerry Lewis, *Kissinger: Palestinian State "Inevitable,"* JEWISH CHRON., Oct. 29, 1993; *Palestinian Elections Will Result In State — Sarid,* JERUSALEM POST, Mar. 19, 1995, at 1.

141. Harold Saunders wrote:

The formal U.S. position on Palestinian rights has been not to use the word "self-determination" because that word has been widely misdefined in the Middle East as meaning "an independent Palestinian state." In early 1985, the Hussein-Arafat agreement spoke of self-determination in the context of a Jordanian-Palestinian confederation. The commonly stated U.S. position has been a pragmatic one — that an act of self-determination can take place in a number of ways and may have a number of outcomes, not necessarily an independent state.

HAROLD H. SAUNDERS, *THE OTHER WALLS* 140 (rev. ed. 1991). Israel's opposition is primarily based on security considerations, i.e., that a Palestinian entity would serve as a base for terrorism and possibly armed aggression, see CONOR C. O'BRIEN, *THE SIEGE: THE SAGA OF ISRAEL AND ZIONISM* 547-48 (1986). This aggression could occur against both Israel and Jordan. MAKOVSKY, *supra* note 9, at 124.

142. In view of the upcoming elections, however, certain elements in the Labor Party have called for the amendment of those articles in the party's platform rejecting Palestinian statehood. See Yarayach Tal, *Labor Officials: Peres To Support Establishment of Palestinian State, If Hussein Shows No Opposition,* HA'ARETZ (Isr.), Feb. 15, 1996, at A1.

secret negotiations at Oslo, as the following excerpt from Peres' account of the talks makes clear:

This dispute [concerning the powers and structure of the Council] was linked to several others also stemming from the Palestinians' desire to extend the ambit of self-government so that it would inexorably lead to full sovereignty, and the Israelis' concern to limit it so that the permanent status of the territories would not be prejudiced by the terms of the interim agreement. Thus the Palestinian negotiators pressed repeatedly for the wording "mutual legitimate, national, and political rights" in the preamble to the Declaration of Principles. We eventually agreed, reluctantly, to "political" but refused to accept "national." It was omitted.¹⁴³

Abu Mazen, however, offers a different interpretation of the DOP and the peace process as a whole, by which he endorses the Palestinians' claim to sovereignty:

Sovereignty for the Palestinians should not be seen as a textbook principle of national rights but more as a reflection of a national existence that was not originally recognized. . . . [T]he mechanism by which the terms of the accord will be implemented will eventually give rise to the emergence and crystallization of many features of sovereignty, and this process will go on until complete sovereignty is realized. In this connection, it is well to remember the preamble of the Declaration which calls for mutual recognition of the two parties' "legitimate and political rights" and also Article III, paragraph 3, which stipulates that the elections of the Palestinian Council "will constitute a significant interim preparatory step towards the realization of the legitimate rights of the Palestinian people and their just requirements."¹⁴⁴

In the author's opinion the Palestinians are now closer than ever to achieving their aspiration of statehood. This constitutes an integral part of the new reality that has been created in the region as a consequence of the Israeli-Palestinian interim peace efforts.

IV. AMENDING THE PALESTINIAN NATIONAL COVENANT

The dramatic shift in the geopolitical landscape produced by the peace process would not have been possible had the Israeli and Palestinian sides not consented at the outset to certain minimal, but indis-

143. PERES, *supra* note 7, at 289-90.

144. ABBAS, *supra* note 12, at 219.

pensable, concessions. Israel insisted that from the beginning of the process the PLO meet their most basic demands: recognition of Israel's right to exist in peace and security, acceptance of United Nations Resolutions 242 and 338,¹⁴⁵ abrogation of the articles of the Palestinian Covenant calling for the destruction of the state of Israel and cessation of all acts of violence and terrorism.¹⁴⁶ The Palestinians insisted upon a formal recognition by Israel of the existence of the Palestinian people and the PLO as its representative. In the end, after more than ten days of negotiations, the reciprocal demands were agreed to. Following this agreement, Israel and the PLO's acquiescence to "mutual recognition" was communicated by means of Letters of Mutual Recognition exchanged between the late Israeli Prime Minister Rabin and PLO Chairman Arafat prior to the signing of the DOP.¹⁴⁷

There can be no doubt that the commitments expressed in the Letters of Mutual Recognition represent major concessions. Until the signing of the DOP, Israel was averse to recognizing the Palestinians as a group possessing a separate national identity, referring to them solely as Arab residents of the West Bank and Gaza Strip.¹⁴⁸ As for the PLO, Chairman Arafat, in an effort to enter into a diplomatic dialogue with the United States, had specifically declared on December 14, 1988 his organization's acceptance of United Nations Resolutions 242 and 338 as a basis for negotiation with Israel together with the PLO's renunciation of all forms of terrorism. Although the former commitment regarding Resolutions 242 and 338 was adopted by the PNC in Algiers, as part of the purported Declaration of Independence and the proclamation of a state of Palestine in the West Bank and Gaza Strip, this quasi-parliamentary body never renounced terrorism.¹⁴⁹ Moreover, during the following eight months, the seriousness of Arafat's commitments was placed in doubt by numerous attacks carried out across Israel's borders by PLO elements, particularly those based in Lebanon. The most signifi-

145. S.C. Res. 242, U.N. SCOR, 22d Sess., 1382d mtg., U.N. Doc. S/RES/242 (1967); S.C. Res. 338, U.N. SCOR, 28th Sess., 1747th mtg., U.N. Doc. S/RES/338 (1973). The Resolutions were adopted by the Security Council in the aftermath of the 1967 and 1973 wars. They call for Israeli withdrawal from "territories occupied in the recent conflict" and the recognition of Israel's right to exist in peace and security by its Arab neighbors. In addition, the Resolutions call for a negotiated settlement of the Arab-Israeli conflict.

146. ABBAS, *supra* note 12, at 207-08.

147. See *Three Letters That Sealed the Diplomatic Bargain*, N.Y. TIMES, Sept. 10, 1993, at A12 [hereinafter *Three Letters*].

148. See Eyal Benvenisti, *The Israeli-Palestinian Declaration of Principles: A Framework for Future Settlement*, 4 EUR. J. INT'L L. 542, 543 (1993); ABBAS, *supra* note 12, at 207.

149. See ABBAS, *supra* note 12, at 19-35.

cant of these incursions was a sea-borne raid on the coast near Tel Aviv which resulted in the United States government suspending the dialogue it had undertaken with the PLO.¹⁵⁰ In addition, the PLO's alliance with Iraq during the Gulf War provided a further illustration of the organization's reluctance to forsake its original opposition to the very existence of the state of Israel.¹⁵¹

While the preamble of the Oslo II Agreement reaffirms the parties' "adherence to the mutual recognition and commitments expressed in the letters . . . exchanged between the Prime Minister of Israel and the Chairman of the PLO,"¹⁵² this statement cannot be taken at face value given the PLO's failure to honor one of its fundamental promises¹⁵³ as set forth in the aforementioned Letters of Mutual Recognition which had been exchanged some two years previously.

Significantly, the PLO has yet to carry out its commitment¹⁵⁴ to abrogate the provisions contained in its National Covenant¹⁵⁵ declaring the establishment of the state of Israel illegal¹⁵⁶ and calling for its destruction.¹⁵⁷ Articles of the Covenant repudiating the Zionist movement¹⁵⁸ and justifying armed struggle to liberate Palestine also

150. See Weiner, *supra* note 41, at 195-96; see also WILLIAM V. O'BRIEN, *LAW AND MORALITY IN ISRAEL'S WAR WITH THE PLO* 61-64 (1991).

151. See Weiner, *supra* note 41, at 197.

152. Oslo II Agreement, *supra* note 17, pmb., para. 7.

153. Withholding recognition was, for both Israelis and Palestinians, a very potent weapon because it strikes at the other side's most basic human need: assuring its own identity. SAUNDERS, *supra* note 141, at 129.

154. See *Three Letters*, *supra* note 147, at A12. In his letter, PLO Chairman Arafat affirms that "those articles of the Palestinian Covenant which deny Israel's right to exist . . . are now inoperative and no longer valid . . . [and that] the PLO undertakes to submit to the Palestinian National Council for formal approval the necessary changes in regard to the Palestinian Covenant." *Id.* (emphasis added); see also Exchange of Letters accompanying the Cairo Agreement, in 33 I.L.M. 638 (1994). The Oslo II Agreement states that within two months of the date of the inauguration of the Council, following the Palestinian elections in the West Bank, Gaza Strip, and East Jerusalem, the PNC will convene so as to amend the disputed provisions of the Covenant. Oslo II Agreement, *supra* note 17, art. XXXI, para. 9.

155. See Palestinian Charter of 1964 and Palestinian Charter of 1968, *reprinted in* 3 *THE ARAB-ISRAELI CONFLICT* 699, 706 (John N. Moore ed., 1974).

156. Palestinian Charter of 1964, *supra* note 155, arts. 17, 18; Palestinian Charter of 1968, *supra* note 155, arts. 19, 20.

157. Article 15 of the Covenant (1968) states that it "aims at the elimination of Zionism in Palestine." Palestinian Charter of 1968, *supra* note 155, art. 15. Article 21 of this document states, "[t]he Arab Palestinian people, expressing themselves by the armed Palestinian revolution, reject all solutions which are substitutes for the total liberation of Palestine." *Id.*, art. 21.

158. Palestinian Charter of 1964, *supra* note 155, art. 19; Palestinian Charter of 1968, *supra* note 155, art. 22. The latter provision states, *inter alia*:

Zionism is a political movement organically associated with international imperialism and antagonistic to all action for liberation and to progressive movements in

remain in force.¹⁵⁹

The persistence of these provisions more than two years into the process may be attributed in part to the limited support Arafat's peace venture has received from major segments of the membership of the PNC. Given that the abrogation of the aforementioned provisions necessitates approval by a two-thirds majority,¹⁶⁰ it is not surprising that Arafat has thus far refrained from convening that forum for a vote on the amendment. Indeed, many members of the Palestinian leadership adopt the view that no concessions should be made to Israel with regard to the Covenant before vital Palestinian interests are secured.¹⁶¹ Mainstream Palestinian representatives have insisted that Israel fulfill its obligations under the Oslo II Agreement, such as the creation of a safe passage between the West Bank and Gaza Strip and the release of additional prisoners.¹⁶² Opposition figures, on the other hand, have declared that the Covenant should not be altered before Israel accepts the creation of an independent Palestinian state in the West Bank and

the world. It is racist and fanatic in its nature, aggressive, expansionist and colonial in its aims, and fascist in its methods [T]he liberation of Palestine will destroy the Zionist and imperialist presence and will contribute to the establishment of peace in the Middle East. . . .

Id. art. 22.

159. Palestinian Charter of 1968, *supra* note 155, arts. 9, 10, 21. A further contravention of the terms of the DOP occurred when PLO Chairman Yassir Arafat, in addressing a Johannesburg mosque, called to "begin the jihad to liberate Jerusalem." See P.L.O. Chairman Yassir Arafat, Speech on Jerusalem to South African Muslims, in Johannesburg, South Africa (May 10, 1994), in 24 J. PALESTINIAN STUD. 131, 132 (1994); David Makovsky, *Rabin: Arafat's Call for "Jihad" Puts Peace Process in Question*, JERUSALEM POST, May 18, 1994, at 1; Peace Watch, Chairman Arafat's Recent Call for Jihad Constitutes a Violation of the Cairo Agreement 1-2 (Aug. 10, 1995) (on file with *Michigan Journal of International Law*). This declaration echoed Arafat's statement on Jordanian television the day the DOP was signed that referred not to peace and coexistence, but rather to the "plan of phases," a euphemism for the step-by-step destruction of Israel. Yigal Carmon, *The Story Behind the Handshake*, COMMENTARY, Mar. 1994, at 25, 29; see also Abraham Tal, *What Does the "Ra'ees" Mean?*, HA'ARETZ (Isr.), Aug. 14, 1995, at B1. But see Walid Awad, *Jihad of Peaceful Struggle*, JERUSALEM POST, Oct. 6, 1995, at 7.

160. Palestinian Charter of 1964, *supra* note 155, art. 29; Palestinian Charter of 1968, *supra* note 155, art. 33.

161. Professor Said, a vocal opponent of the peace process, denounced Arafat's promise to amend the Covenant because it did not demand that Israel reciprocally commit to change its Law of Return, that grants every Jew automatic Israeli citizenship and which he depicts as "an extraordinary inequity, intolerable to all Palestinians for almost half a century." SAID, *supra* note 56.

162. See Amira Has, *Elected Council Member: Covenant — Anachronistic; Must Be Reciprocity in Fulfilling Agreements*, HA'ARETZ (Isr.), Jan. 29, 1996, at A5; Danny Rubinstein, *Who Cares About the Covenant?*, HA'ARETZ (Isr.), Jan. 29, 1996, at B1; Danny Rubinstein, *Recognition In Return for Recognition*, HA'ARETZ (Isr.), Feb. 5, 1996, at B1.

Gaza Strip.¹⁶³ Most likely, the PLO negotiating team at Oslo also held a similar view, and thereby preferred to bequeath the responsibility for amending the Covenant to the PNC. As Abu Mazen stated in his book: "[W]e were careful not to offer the Israelis the kind of recognition that would entail a firm commitment on our part to cancel the relevant articles in the Covenant because the authority to make such a commitment rested with the PNC."¹⁶⁴

However, now that the elected Palestinian Council will be presently inaugurated¹⁶⁵ and the Israel Defense Forces (IDF) withdrawal from Palestinian-populated centers is on the verge of completion,¹⁶⁶ perhaps Chairman Arafat will have more success in gathering support to fulfill this threshold promise. In order to avoid confrontation with those opposed to the peace undertaking, it is expected that a newly drafted Covenant will be submitted at the next PNC assembly.¹⁶⁷ The PNC is expected to consider approving the promised changes to the Covenant, as mandated by the Oslo II Agreement.¹⁶⁸ Indeed, since the elections, Arafat has taken various measures in order to increase the likelihood of obtaining the required two-thirds majority at the next PNC session. He amended the Elections Law so that all newly elected members of the Council, the vast majority of whom support the peace process, will be added as members of the PNC.¹⁶⁹ Arafat also secured Israel's consent

163. Amira Has, *Abd-Al-Shafti: Recognition of Our National Rights is a Prerequisite for Amending Covenant*, HA'ARETZ (Isr.), Jan. 19, 1996, at A3; Sami Soukol, *Ashrawi: Israeli Pressure to Amend Covenant May Have Reverse Effect*, HA'ARETZ (Isr.), Jan. 23, 1996, at A4. Following one public opinion poll, close to fifty percent of the Palestinians refused to amend the Covenant before a Palestinian State is established in the West Bank and Gaza Strip. Only six percent of those surveyed accepted to cancel provisions inconsistent with the peace process without the promise of Palestinian statehood. See *Amend Covenant Only in Exchange for State: Poll*, PALESTINE REP., Feb. 16, 1996, at 13.

164. ABBAS, *supra* note 12, at 208.

165. Amira Has, *Palestinian Council Has First Meeting in Gaza*, HA'ARETZ (Isr.), Mar. 8, 1996, at A1.

166. Israeli Prime Minister Peres has conditioned the Israeli military's withdrawal from Hebron upon the PNC amending the Covenant. Arie O'Sullivan, *IDF Clamps Curfew on 465 Villages*, JERUSALEM POST, Mar. 6, 1996, at 1. According to the impartial Peace Watch organization, Israel's linking its withdrawal from Hebron to the amendment of the Palestinian Covenant has no foundation in the Oslo II Agreement. Peace Watch, *Legal Opinion: Oslo Does Not Establish a Link Between Israeli Pullout from Hebron and Amending of Palestinian Covenant* (Mar. 28, 1996).

167. Guy Bechor, *Consensus Emerging Within PLO to Draft New Palestinian Covenant and Not to Amend the Present One*, HA'ARETZ (Isr.), Feb. 7, 1996, at A1.

168. Oslo II Agreement, *supra* note 17, art. XXXI, para. 9. Pursuant to the Oslo II Agreement, the changes to the Palestinian Covenant must be approved by May 7, 1996, that is, within two months of the inauguration of the Council. *Id.*

169. See Uri Nir, *Elected Members of Council to Join PNC*, HA'ARETZ (Isr.), Jan. 18, 1996, at A4.

for the admission to the self-governed areas of PNC members residing abroad, so that they may "see for themselves" the benefits emerging from the peace process.¹⁷⁰ Moreover, the Executive Committee of the PLO has already met in order to discuss the proposed amendment and schedule the upcoming PNC assembly.¹⁷¹

The Covenant amendment is particularly significant since it will serve to demonstrate that, as Israel and the PLO explicitly affirmed in the preamble of the Oslo II Agreement, "the peace process and the new era that it has created, as well as the new relationship established between the two Parties . . . are irreversible, and the determination of the two Parties [is] to maintain, sustain and continue the peace process."¹⁷²

V. THE NEW ERA AND RELATIONSHIP BETWEEN ISRAEL AND THE PALESTINIANS

The signing of the DOP, and the political breakthrough that it embodied, gave way to momentous changes in the geopolitical landscape of the Middle East. It will be recalled that this mutation in the Arab-Israeli conflict was precipitated by the Gulf War, orchestrated by the United States to oust the Iraqi occupiers of Kuwait. This campaign was conducted under the auspices of the United Nations with the support and assistance of a worldwide coalition. In an effort to undermine the coalition, Saddam Hussein attempted to insinuate a linkage between the Iraqi occupation of Kuwait and the Palestinian problem,¹⁷³ which prompted certain governments to call for an international peace conference on the Middle East once the war ended.¹⁷⁴ Although the linkage established between the Israeli-Palestinian dispute and the Iraqi invasion

170. See Alouf Ben et al., *Israel Will Allow PNC Members to Enter Territories for Vote on Amending Covenant*, HA'ARETZ (Isr.), Jan. 21, 1996, at A1. According to Palestinian sources, virtually all PNC members residing outside the autonomous areas have officially filed requests to attend the upcoming PNC assembly. See Uri Nir, *167 PNC Members Living Abroad Officially Request to Come to Autonomous Territories*, HA'ARETZ (Isr.), Jan. 26, 1996, at A3.

171. See Guy Bechor & Gideon Alon, *PLO Executive Committee Discusses Covenant Amendments in Al-Arish*, HA'ARETZ (Isr.), Feb. 6, 1996, at A1; Alouf Ben & Uri Nir, *Arafat to Convene PNC in Gaza on April 12 to Discuss Amending Covenant*, HA'ARETZ (Isr.), Feb. 1, 1996, at A1.

172. Oslo II Agreement, *supra* note 17, pmbi., para. 4.

173. See KAREN A. FESTE, PLANS FOR PEACE: NEGOTIATION AND THE ARAB-ISRAELI CONFLICT 100 (1991); Thomas Friedman, *Underneath the Theatrics, First Hint of Concession*, N.Y. TIMES, Feb. 17, 1991, at E1.

174. See FESTE, *supra* note 173, at xvi. France, in the midst of the allied offensive in the Gulf, insisted that an international peace conference on the Middle East be held once the fighting ceased. The European Community subsequently gave its endorsement to the claim. *Id.*

of Kuwait was categorically rejected by both the United States and Israel,¹⁷⁵ Israel ultimately did agree to take part in the postwar peace talks initiated in Madrid under the auspices of the United States and the Soviet Union.¹⁷⁶ This forum was a product of United States efforts to capitalize upon the momentum of the allied victory in the Gulf War in the hope of brokering peace agreements between Israel, the Palestinians, and other Arab States.

The Madrid conference stalemated and was largely superseded by the secret negotiations in Oslo.¹⁷⁷ Far away from the attention of the media and domestic political pressures, the parties succeeded in devising a framework for a future settlement of their long-standing dispute. Engaged in direct negotiations for the first time in the history of their conflict,¹⁷⁸ various immediate Israeli and PLO interests were served by concluding the DOP. The then-recently elected Israeli Prime Minister Yitzhak Rabin had promised the voters that within nine months of taking office an agreement with the Palestinians would be reached.¹⁷⁹ Peres, his foreign minister at the time, sensed that the collapse of the Soviet Union, a long-time diplomatic patron and supplier of arms to the Palestinians and other Arab States, had removed a key obstacle to reconciliation, giving Israel the upper hand.¹⁸⁰ In the aftermath of the Gulf War, Arafat was rebuffed in the West and largely isolated in the Middle East for supporting Saddam Hussein. Moreover, after five years of intifada, the Chairman of the PLO had nothing tangible to show for

175. *Id.* at 165; 1 U.S. DEP'T ST. DISPATCH, Dec. 24, 1990, at 1.

176. Doug Struck, *A Bleak Day for the Architect of "Greater Israel,"* BALTIMORE SUN, Sept. 29, 1995, at 4.

177. See MAKOVSKY, *supra* note 9, at 38-43.

178. Israel had always refused to recognize the PLO as the representative of the Palestinians for the purpose of negotiations. Even at the Madrid peace conference, Israel insisted that no official representatives of the PLO be involved in the multilateral talks. Nonetheless, the Palestinian delegation maintained close contact and was effectively subordinated to the PLO throughout the whole process. See PERES, *supra* note 7, at 274.

179. ROBERT SLATER, RABIN OF ISRAEL 398 (1993).

180. As the then-Foreign Minister recollected:

I believed the world was in the throes of a cataclysmic change. For most of our century, we had been living according to rules that had evolved from global confrontations that were now rapidly evaporating. First among these was the confrontation between East and West The East, in effect, had aligned itself with the Arab cause. Moscow and its allies had provided a steady and reliable source of military hardware, offering both the military and the political backing that had enabled the Arabs to make war on Israel. . . .

The collapse of the USSR thus signaled far-reaching changes for our region. The Arabs no longer had a source of arms, generous both with supplies and about prices and payments, whose support had been grounded in politics and ideology.

PERES, *supra* note 7, at 275.

the sacrifices he had urged upon his people. Intrafada (Palestinian on Palestinian) killings were surging and local support for *Hamas* and other Islamic organizations was on the rise, particularly among the Palestinian youth.

More than two years after the initial breakthrough realized at Oslo, the dividends Israel and the PLO have enjoyed on the international plane as a result of their commitment to the peace process are numerous. Israel and Jordan have negotiated a full and rather warm peace, bringing tourism, open borders, and the beginnings of economic interdependence.¹⁸¹ Israel has much improved diplomatic and trade relations with numerous European, Islamic, Third World, and even Arab States.¹⁸² The PLO has established relations with the United States and gained financial aid for its efforts to finance its local governmental and economic development functions.¹⁸³ The PLO has also emerged from the diplomatic seclusion brought on by its backing of Saddam Hussein during the Gulf War. In addition, the Palestinians, particularly after the Council elections, have dramatically increased their prospects of achieving statehood, although numerous vexing issues pertaining to the timing, size, and territorial contiguity of the emerging Palestinian state remain unresolved as the parties proceed to the final status talks.

Whether the process is indeed irreversible, as the preamble to the Oslo II Agreement confidently asserts, remains questionable. Upcoming Israeli elections¹⁸⁴ constitute the next obstacle. The incumbent Labor Party and its leader Shimon Peres are currently slightly ahead in the polls,¹⁸⁵ but its increase in popularity is generally attributable to the

181. See Treaty of Peace, Oct. 26, 1994, Isr.-Jordan, 34 I.L.M. 46.

182. See, e.g., Ian Black, *Boycott's Stranglehold Loosens*, GUARDIAN (London), Oct. 26, 1995, at 24; Israel, Oman Sign Pact to Exchange Trade Reps, JERUSALEM POST, Jan. 28, 1996, at 1; Hillel Kutler & Batsheva Tsur, *Israel, Tunisia to Announce Formal Ties*, JERUSALEM POST, Jan. 21, 1996, at 1.

183. Donor countries recently agreed to transfer close to 1.5 billion dollars to the Palestinians for the upcoming year. See Raghd Maraya, *Donor Countries Grant PNA \$1.365b*, JERUSALEM TIMES, Jan. 12, 1996, at 1.

184. The upcoming elections will witness the first direct balloting for Prime Minister in Israel's history. Susan H. Rolef, *Direct Elections Won't End Horse-Trading*, JERUSALEM POST, Feb. 23, 1996, at 8. Polls taken before the assassination of Yitzhak Rabin indicated that Likud leader M.K. Binyamin Netanyahu would likely prevail over Rabin. See Uzi Benyamin, *Netanyahu's Links*, HA'ARETZ (Isr.), May 21, 1995, at B1; Lisa Beyer, *Sick to Death of Peace; A Majority of Israelis and Palestinians Now Regret Making Their Historic Accord*, TIME, June 5, 1995, at 44, 45; Sarah Honig, *Netanyahu Ahead in Latest Poll*, JERUSALEM POST, Apr. 28, 1995, at 3; David Horowitz, *The Men Who Would Be King*, JERUSALEM REP., Mar. 9, 1995, at 12, 13.

185. *Poll Shows Peres Losing Ground*, JERUSALEM POST, Feb. 27, 1996, at 3.

voters' sympathy and outrage resulting from the Rabin assassination.¹⁸⁶ The assassin, a twenty-five year-old law student, stated that he shot the Prime Minister for giving away Jewish land to the enemies of Israel.¹⁸⁷ Apparently in relation to this unprecedented murder, an additional segment of the public lent its support to the implementation of their late Prime Minister's peace policy. Yitzhak Rabin and his policies have, following his death, taken on elevated prestige and momentum. Moreover, the right wing opposition was practically paralyzed by accusations that its criticisms of Prime Minister Rabin had created the climate in which the assassin committed his crime.¹⁸⁸

Whether this constellation of factors will persist until the national elections, which are scheduled for May 1996,¹⁸⁹ is doubtful. Israeli support for the peace process, as well as its sponsors, has dimmed¹⁹⁰ as a result of a string of recent deadly *Hamas* suicide bombings.¹⁹¹ In four previous national election campaigns the Labor Party led by Shimon Peres has failed to win an outright victory.¹⁹² His lack of electoral appeal is augmented by the intense dissatisfaction discerned among large segments of the polity with both the peace process and its sponsors.¹⁹³ Moreover, the popularity of the current government will also be affected

186. Since the assassination in Israel there has been a considerable move away from the political fringes, especially the right fringe, toward the center. Denunciations of the murder and of the tiny extremist camp from which the lone assassin, Yigal Amir, emerged have come from every political party and religious and political leader. Estimates of the number of persons who came to the Knesset (Israel's parliament) to pay homage to their slain leader ran between 800,000 and one million, approaching twenty percent of the total population. Even leaders in the Jewish settlers movement honored the memory of the man who had been their political nemesis and set in motion diplomatic trends that threaten to undermine their communities and messianic hopes for the return of Jews to their Biblical heartland. They even remained quiet in the face of a number of terrorist attacks during the weeks after the assassination. See, e.g., *All Quiet On Israel's Front*, JEWISH TELEGRAPH, Dec. 15, 1995, at 1.

187. Derek Brown, *Secret Service Feels Rabin Fall-Out*, GUARDIAN (London), Dec. 19, 1995, at 3.

188. The right, which had been ascendant, suspended its frequent demonstrations and campaign of civil disobedience during the month of mourning, this despite the withdrawal of the IDF from such West Bank cities as Jenin and Nablus on or before the dates scheduled in the Oslo II Agreement. The assassin's crime actually did more to undermine the prospects of the right, even the moderate Likud opposition party, than any other conceivable act or event.

189. See Evelyn Gordon, *Elections Finally Set for May 29*, JERUSALEM POST, Feb. 21, 1996, at 1.

190. See Sarah Honig, *Polls Give Netanyahu Slight Lead*, JERUSALEM POST, Mar. 8, 1996, at 1.

191. See Bill Hutman & Herb Keinon, *Hamas Suicide Bomber Kills 18 in Jerusalem*, JERUSALEM POST, Mar. 4, 1996, at 1; Raine Marcus, *12 Die in TA as Hamas Terror Strikes Again*, JERUSALEM POST, Mar. 5, 1996, at 1.

192. MAKOVSKY, *supra* note 9, at 83.

193. Lisa Beyer, *Can Peace Survive?*, TIME, Feb. 6, 1995, at 32; Kevin Fedarko, *The Peace of the Brave*, TIME, Oct. 9, 1995, at 28.

by any understanding it reaches in the peace negotiations with Syria. Surely, any agreement concluded before the elections including significant territorial concessions on the Golan Heights would be greeted with widespread opposition among the Israeli public,¹⁹⁴ further limiting the government's leeway in negotiating with the Palestinians.

A victory by the opposition Likud party would definitely have a negative impact on the peace process. Although most of its members do not advocate returning to either Gaza or the Palestinian populated centers recently evacuated in the West Bank,¹⁹⁵ the Likud's leader, Binyamin Netanyahu, has declared that when his party comes to power he will not meet with Yasser Arafat.¹⁹⁶ Former Likud Prime Minister Yitzhak Shamir stated that when his party returns to power it will stop the agreements set in motion by his successor, Yitzhak Rabin. Shamir explained:

Nothing is irreversible. Maybe it's difficult to change something. But I don't know any government existing in the world arena that conducts a policy that is against its (people's) conscience and views. . . . Maybe it will take time [but the changes made by Rabin are] not a fact that has to stay for 100 years.¹⁹⁷

Thus, further territorial concessions to the Palestinians would likely be resisted¹⁹⁸ and the final status negotiations would probably become deadlocked or simply fall apart. Hence, Palestinian fears that the Oslo II Agreement will *de facto* represent the permanent status agreement may eventually crystallize.¹⁹⁹

Even in the event of a Labor-Peres victory at the polls, the successful conclusion of the peace process is far from assured. The permanent status negotiations, set to begin on May 4, 1996 according to the

194. See Jack Katzenell, *Rabin Able to Beat Bill on the Golan*, WASHINGTON TIMES, July 27, 1995, at A17; Mark Matthews, *Israel-Syria Peace Talks Advance*, BALTIMORE SUN, June 30, 1995, at 3.

195. See Jenni Frazer, *Likud Will Accept Self-Rule But Will Act Against Terror*, JEWISH CHRON., Jun. 6, 1995, at 3; Shahar Eilan, *Sharon: "Not Reasonable to Withdraw From Oslo 2. I Wouldn't Demand the Return of Places Already Given Back"*, HA'ARETZ (Isr.), Dec. 12, 1995, at A4; Yarayach Tal, *Netanyahu Meets With Gore and Explains: Oslo Accords Are Bad, But We Will Honor Them*, HA'ARETZ (Isr.), Jan. 17, 1996, at A4; Sarah Honig, *Netanyahu Aims to Adapt Party Line to Oslo Reality*, JERUSALEM POST, Jan. 26, 1996, at A17.

196. See Sarah Honig, *Netanyahu: I Won't Meet With Arafat*, JERUSALEM POST, Feb. 6, 1996, at 1.

197. Struck, *supra* note 176, at 4.

198. See Honig, *supra* note 190, at 2.

199. See Yarayach Tal, *Israeli Source: Palestinians Fear That Likud Government Will Change Interim Agreement into Permanent Status Deal*, HA'ARETZ (Isr.), Aug. 7, 1995, at A5.

timetable established in the DOP,²⁰⁰ concern a number of key issues where profound differences divide the parties. These essential yet intractable issues include the sovereignty of Jerusalem, the future of Jewish settlements, control of subterranean water resources, the issue of Palestinian statehood, and the repatriation or resettlement of Palestinian refugees from the 1967 and 1948 wars. Given the differences between the two sides, it is not implausible that once the negotiations commence they will become deadlocked, risking implosion of the entire process.

CONCLUSION AND OUTLOOK

Shimon Peres opens the epilogue of his book with the following credo: "I was born an optimist and have remained one throughout my life. Pessimism has always seemed to me a useless frame of mind."²⁰¹ He then conveys his outlook regarding the future of the Middle East:

We are ending a decades-long history dominated by war and embarking on an era in which the guns will stay silent while dreams flourish. I feel I have earned the right to dream. So much that I dreamed in the past was dismissed as fantasy but has now become thriving reality. Peace in our region is no longer part of a dreamworld; it has built a permanent place for itself in the realm of reality.²⁰²

Abu Mazen begins the final chapter of his book with reference to the Palestinians' decades-long struggle for recognition:

The long struggle of the Palestinian people was aimed at regaining their dignity, their rights and their place among the peoples of the world in an independent state. This struggle was a genuine expression of their refusal to submit to the "reality" which had been imposed upon them. It was not vengeance but an expression of their collective will that drove them on. Though many were dispersed, they kept up the struggle under the leadership of the PLO. The intifada in the occupied territories was a natural extension of this struggle, and showed that the Palestinian people were a match for the Israelis who contested their existence and strove to crush them. But they were persuaded otherwise when the decisive hour came.²⁰³

200. See DOP, *supra* note 3, art. V; Cairo Agreement, *supra* note 4, art. XXIII, para. 3; Oslo II Agreement, *supra* note 17, pmb., para. 6; art. XXXI, para. 9.

201. PERES, *supra* note 7, at 307.

202. *Id.*

203. ABBAS, *supra* note 12, at 217.

The Oslo II Agreement reflects a milestone in the new relationship that has begun to take form between Israel and the Palestinians. Its implementation, which is far from being completed, is of great significance for the Palestinians as they advance toward expanded self-government. The recent election and inauguration of the Council, together with the withdrawal of Israeli troops from nearly all Palestinian populated centers in the West Bank and Gaza Strip, have enhanced the morale of the Palestinians and given them a strong sense of achievement. Unlike its main predecessor, the Cairo Agreement, which was depicted as "reduc[ing] the National Authority [PA] to the status of a municipality in virtual receivership,"²⁰⁴ the Oslo II Agreement provides, to a large extent, for the creation of autonomous Palestinian democratic institutions.

Pursuant to the Agreement, the Council is to be composed of a legislative and an executive branch. After its inauguration, it will adopt a "Basic Law for the Palestinian Interim Self-Government Authority,"²⁰⁵ a quasi-constitution, which shall provide in detail for the organization, structure, and functioning of the Council during the interim period.

The provisions found in the Oslo II Agreement concerning the formation of the Council reflect the parties' unequivocal commitment to the establishment of a democratic system of government in the autonomous areas. The organization of the Council takes into consideration separation of powers concerns. The allocation of authority between the executive and the legislature seeks to embody a mechanism of checks and balances. Moreover, the Agreement calls for the establishment of "an independent judicial system composed of independent Palestinian courts and tribunals"²⁰⁶ which shall include a Palestinian Court of Justice entrusted with powers of judicial review.²⁰⁷

Thus, Abu Mazen's wish that the new Palestinian entity be based on "modern democratic principles"²⁰⁸ appears to have been realized. But as has been noted with alarm in this review, the reality on the ground has not lived up to the precepts set forth in the Agreements. Whether the

204. Naseer H. Aruri & John J. Carroll, *A New Palestinian Charter*, 23 J. PALESTINE STUD. 5, 17 (1994).

205. Oslo II Agreement, *supra* note 17, art. III, para. 7. The Basic Law is currently in its fourth draft form and is scheduled to be adopted shortly by the Palestinian Council after its inauguration. See Ragheb Maraya, *PNA Gets a Constitution*, JERUSALEM TIMES, Feb. 9, 1996, at 1; see also Draft Basic Law for the National Authority in the Transitional Period, Dec. 11, 1995 (on file with *Michigan Journal of International Law*).

206. Oslo II Agreement, *supra* note 17, art. IX, para. 6.

207. *Id.* art. VIII.

208. ABBAS, *supra* note 12, at 223.

emerging Palestinian entity will be truly democratic in essence will depend on a number of factors. Most importantly, as Abu Mazen himself observed, the Palestinians will have to "move from the mentality of revolution"²⁰⁹ and cease sacrificing basic tenets of democratic life for what their leaders define as the "national good." Indeed, Palestinians have always focused on collective conceptions of human rights that are closely interrelated with the principle of self-determination and independence from Israeli occupation. But now that the Council has substantially replaced Israel as the immediate level of governing authority, a new emphasis will have to be placed on individual rights, in derogation of the policies of Yasser Arafat and his administration, *within* the Palestinian polity.²¹⁰

Moreover, recent developments have strengthened the prospect that a Palestinian state will emerge out of the current peace undertaking. Opposition to Palestinian statehood is slowly fading within the ranks of Israel's Labor Party.²¹¹ A recently disclosed document, negotiated between Abu Mazen and Israeli cabinet member Yossi Beilin, outlines the main points of a tentative permanent status agreement and provides for the creation of a Palestinian state.²¹² Although the tentative agreement was allegedly rejected by then-Foreign Minister Peres, it indubitably reflects a significant shift among Israel's political leadership regarding the eventuality of Palestinian sovereignty over the bulk of the West Bank and Gaza Strip.²¹³

The prospects for the realization of Shimon Peres' vision of peace and prosperity in the Middle East, although dramatically improved in the aftermath of the Rabin assassination, appear less assured in light of more recent events. The resumption of suicide bombings by *Hamas* against Israeli civilian targets²¹⁴ has dramatically undermined Israeli trust

209. *Id.*

210. See Baas De Gaay Fortman, *The Human Rights Project in the New Palestine*, Paper Delivered at First International Conference on Human Rights in Jerusalem 71, 78 (Dec. 9-11, 1993) (on file with *Michigan Journal of International Law*).

211. See Tal, *supra* note 195, at A4.

212. See Amos Harel, *The Public No Longer Gets Excited*, HA'ARETZ (Isr.), Feb. 25, 1996, at B2.

213. See Gideon Levy, *There Is Something to Talk About*, HA'ARETZ (Isr.), Feb. 25, 1996, at B1.

214. On February 25, 1996, two suicide bombing attacks were carried out against Israeli targets. One of the attacks was particularly deadly, with an initial toll of 24 dead and more than 50 injured. Bill Hutman & Raine Marcus, *25 Killed in Jerusalem, Ashkelon*, JERUSALEM POST, Feb. 26, 1996, at 1. In one of his last interviews then-Prime Minister Rabin observed, "There is no deterrent to a person who goes with high explosives in his car or in his bag and explodes himself. . . . Is the peace process reversible? It might be. But only if terror will succeed." "A Majority of One," TIME, Nov. 13, 1995, at 64. Additional attacks, including

in Arafat's capacity and willingness to combat terrorist elements under the PA's jurisdiction.²¹⁵ The perpetration of these fatal attacks during the run-up to the Israeli national elections will certainly weaken the Labor Party and Prime Minister Peres' prospects for re-election²¹⁶ and thus endanger the continuance of the peace process. Sensitive to the electoral realities, the day after two such attacks Peres rededicated Israel to both fighting terror and pursuing peace.²¹⁷ He accused *Hamas* of undermining the Palestinians' desire for peace and prosperity²¹⁸ and challenged the PA to confiscate the weapons of *Hamas* and other paramilitary organizations as is required by the interim agreements.²¹⁹

After Peres' speech to the Knesset plenum a member of the Likud opposition party heckled the Prime Minister. The sarcastic taunt was, "[t]his is the new Middle East[?]"²²⁰ At the same Knesset session the leader of the parliamentary opposition stated:

Shimon, fight them with all your strength and all your might and we'll support you. We are united. There is no peace and no calm. Israel should strive for peace while recognizing this reality. It cannot count on the Palestinian Army, only on the IDF. The security forces should have freedom of action. Peace can only be achieved when there is security.²²¹

Within thirty-six hours of the bombings the Palestinian police had arrested nearly 100 *Hamas* activists, and the Gaza police commander

another suicide bombing on a Jerusalem bus, claimed more than 30 lives during the following week. Hutman & Keinon, *supra* note 191, at 1; Marcus, *supra* note 191, at 1.

215. See Uri Nir, *Arafat Will Not Take Action Against Hamas Leadership But Will Take Action Against Organization's Military Branch*, HA'ARETZ (Isr.), Feb. 27, 1996, at A1.

216. An opinion poll after the bombings showed that Netanyahu was slightly ahead of Peres. See Honig, *supra* note 190, at 1. Significantly, according to one public opinion poll taken in August 1994, 70% of the Israeli public believed that the success of the peace process depended on the degree to which the PLO repressed terrorist activity. After the Beit Lid bombing in January 1995, public support for the peace process dropped to 35%. See *Israeli Support for Peace Process Diverse*, UPI, Mar. 7, 1995, available in LEXIS, News Library, Upi File.

217. Liat Collins, *PM: No Limits on Fight Against Terror*, JERUSALEM POST, Feb. 27, 1996, at 1. Appearing before the Knesset plenum, Peres stated, "[w]e will not halt the peace process, we will continue with it. . . ." He continued, "[a]t the same time, we will take all appropriate means in order to strike at terrorists everywhere, both before and after they commit their criminal actions." *Id.*

218. *Id.*

219. *Id.* at 1-2. Palestinian security officials were given a list of operational security demands by Peres who stated, "[f]or us, compliance with these demands will be a supreme test of their ability to uphold their commitment." David Makovsky, *Arafat: Israeli Fanatics Provided Bombs in Attacks*, JERUSALEM POST, Feb. 27, 1996, at 1.

220. Collins, *supra* note 217, at 2.

221. *Id.*

said that his forces would implement, "intensive new steps" against the planners of violence.²²² The effectiveness of these arrests and the planned steps remains questionable in light of the dedication of *Hamas*. Persons picked up in previous waves of arrests have generally been released after the political storm has passed.²²³ Palestine Radio condemned the bombings but the Palestinian Authority Information Ministry stated that, "the Israeli side carries responsibility for creating an atmosphere conducive to acts like these."²²⁴ Arafat insisted, however, that a shadowy organization of ex-IDF personnel determined to sabotage the peace process had furnished the explosives used in the attacks.²²⁵ When asked about Arafat's claim the Israeli Foreign Minister Ehud Barak responded that it was "nonsense."²²⁶

The Israeli-Palestinian peace process has thus far shown remarkable stamina. Yet it remains fragile and must, as recent events have forcefully underscored, function in the shadow of the political vicissitudes of the Middle East.²²⁷ Whether the vision of Peres, the moderation of Abu Mazen, or the democratic structures of the painstakingly negotiated²²⁸ Oslo II Agreement will prevail in this environment remains too enigmatic to predict.

222. Jon Immanuel, *Palestinian Police Arrests 100 Hamas Men*, JERUSALEM POST, Jan. 27, 1996, at 2 [hereinafter Immanuel, *Hamas Arrests*].

223. See, e.g., Jon Immanuel, *PA Frees Hamas Activists*, JERUSALEM POST, Jan. 29, 1996, at 2; see also Beyer, *supra* note 193, at 33.

224. Immanuel, *Hamas Arrests*, *supra* note 222, at 2.

225. *Id.*

226. *Id.*

227. According to Harold Saunders, "[t]he peace process . . . [is] a series of negotiations embedded in a larger political process that lowered obstacles to agreement and made negotiation possible." Harold H. Saunders, *Reconstituting the Arab-Israeli Peace Process*, in *THE MIDDLE EAST: TEN YEARS AFTER CAMP DAVID* (William B. Quandt ed., 1988). "The challenge is to generate a political process that can crystallize, impel and sustain a commitment to negotiate a settlement." *Id.* at 440.

228. U.S. Special Middle East Coordinator Dennis Ross was modest when he stated, "[t]his [Oslo II] was an immensely difficult negotiation[.]" Fedarko, *supra* note 193, at 28.