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Ian S. Lustick

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# Ending Protracted Conflicts: The Oslo Peace Process Between Political Partnership and Legality

Ian S. Lustick\*

## Introduction

If the Oslo peace process is considered within the category of other extended processes of negotiation and attempted reconciliation, such as those underway in Northern Ireland, those preceding the French withdrawal from Algeria, those leading to the American departure from Vietnam, or those resulting in the end of apartheid in South Africa, an interesting and important pattern emerges. If each of these is considered, in some sense, as a "peace process," then we can see that success entails transforming a partisan political deal struck between moderate segments of the political systems into a binding settlement of outstanding issues expressed, within each polity, as a depoliticized array of legal conditions.

Accordingly, the success of a peace process can eventually be charted by the extent to which the language of the agreement is treated not as a political/diplomatic document whose ambiguities represent resources for those in each polity committed to the *principles* underlying the agreement, but as a set of rules whose contravention is really treated, within each polity, as criminal. In the short term, however, moving too quickly to treat what is still an evolving political partnership as a legal framework for maximizing advantage, involving due sanctions, and exploiting loopholes, can be a particularly effective method for destroying the peace process itself.

Appreciation of this dynamic and its permutations is necessary to understand the fate of the Israel-Palestinian Oslo peace process. Almost since its inception, opponents of the process itself and the principles of compromise upon which it is based, sought to interrupt, stall, complicate, and even thwart it by treating (prematurely, from the point of view of its supporters) the agreement as a legal codex rather than a political framework. Following the Likud victory of 1996 and the ascension of Benjamin Netanyahu to his office as Prime Minister, this fundamentally disingenuous policy—acceptance of Oslo as a legal process in order to end Oslo as a

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\* Professor of Political Science and Chair of the Political Science Department, University of Pennsylvania. Ph.D., University of California, Berkeley, 1976; B.A., Brandeis University, 1971. The Author's most recent book is *Unsettled States, Disputed Lands: Britain and Ireland, France and Algeria, Israel and the West Bank—Gaza* (1993). The Author thanks his students Ari Silverman and Brett Phillips for their important contributions to the preparation of this Article.

political process—has been adopted and implemented by the Israeli government itself.

To be sure, many opponents of Oslo, both among Palestinians as well as Israelis, have preferred to reject Oslo by rejecting the very idea of political compromise. Thus, Jewish settlers and others on Israel's annexationist right have decried the inevitable sacrifice of Jewish control and sovereignty over precious parts of the "Land of Israel." Palestinian opponents usually emphasize the abandonment of the right of return, the humiliating weakness and dependence of the Palestinian entity likely to emerge, the Judaization of el-Quds<sup>1</sup> seemingly enabled by the agreement, and the continued presence and expansion of Jewish settlements in lands occupied in 1967 that they expect will be associated with any final negotiated agreement emerging from the Oslo process.

In the Palestinian context, where civil society is weak and where few expect elections to be regular, fair, or capable of changing governments, terrorist attacks and explicit, ideologically-based rejection of the whole process may make more sense as opposition tactics. But despite the opening the Rabin assassination gave to the Likud in the 1996 election, such methods are not, in general, and specifically in the Israeli case, the most effective ways to block the road to political compromise.

In politics with regular elections and strong civil societies, shifts in public opinion have real and unavoidable political consequences. In such political systems, the ability of a compromise-oriented government to move the whole polity toward an overall agreement can create the mystique of peace and the utopian image of a promised reconciliation. These influences can blur the edges of dissatisfaction with the actual terms of the agreement, thereby helping sustain the process during a period when the costs of compromise seem obviously high, while the benefits seem distant and uncertain. Therefore, the most sophisticated opposition strategy is to attack the process based on a disingenuous acceptance of it—an acceptance expressed via insistence that "the other side" honor the "terms of the agreement." In essence, the tactic employed is to treat the process, not as a politically strategic, inevitably adapting, and intrinsically ambiguous framework for incubating trust and reconciliation, but as an array of legalistic and definitive limits for the opposing sides or as an array of loop-holes and opportunities for the aggressive, adversarial exploitation of opportunities for one's own side. Instead of operating according to standards of a political partnership, where the signatories of the agreement recognize between themselves that they have substantially more in common with one another than they do with extreme elements in their own polities and see their primary task as broadening the bases of support for compromise while protecting the "domestic" political position of their partners, sophisticated opponents of the process invoke the rules and standards of an adversarial legal environment. In this context, with each "side" portrayed

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1. Arabic for "The Holy"—the Muslim name of the city Jews call "Yerushalayim" and Christians call "Jerusalem."

in a bargaining relationship and figured as “united” against its national enemy, every “legal” opportunity within the agreement to constrain, fault, or punish the other side, or to advance one’s own side’s claims against those of the adversary, is vigorously pursued.

### I. The Politics of Oscillation in Israel

Consideration of patterns in Israeli politics prior to the Oslo Agreement shows the polarized and bitterly antagonistic struggle that developed within the country. This struggle was waged between “annexationists”—those committed for ideological reasons to maintain Israeli rule over all of the West Bank and Gaza Strip (Judea, Samaria, and the Gaza District)—and those for whom these territories, although acknowledged as portions of the “Land of Israel,” were perceived as burdens and as bargaining chips in peace negotiations with the Palestinian Arabs. Long before Prime Minister Yitzhak Rabin was assassinated by a Jewish fundamentalist infuriated by the Labor Party government’s willingness to relinquish these “holy” areas, the division on this issue had given rise to a *kulturkampf*, including political polarization, a vituperative public discourse, and many instances of violence and intimidation.<sup>2</sup>

The 1982 Lebanon War revealed that there was more emotional and political distance between these groups of Israeli Jews than between the dovish side of the Israeli spectrum and the mainstream of the Palestinian movement. With annexationists and ultranationalists in command of the government and the military, a self-described “war of choice” was launched to destroy the Palestine Liberation Organization, with the hope of sealing the future of the West Bank and Gaza as permanently incorporated within Israel. The war, marked by massacres of Palestinians and heavy Israeli casualties, sparked a mutiny of high-ranking officers against Defense Minister Ariel Sharon, resistance to the use of Israeli reservists, and unprecedented, mass demonstrations against the government following the Sabra and Shatilla massacres of Palestinian refugees. The anti-war movement was fueled mainly by a sense that the government was using the army to implement a controversial political program that contradicted chances for peace entertained by half the population. The controversy over the Lebanon War, including a fatal grenade attack on a dovish rally by right-wing extremists, laid the groundwork for the debate inside Israel over whether to treat the Palestinian uprising (Intifada) of 1987-93 as a war in which victory over the enemy was to be achieved at any cost or as a signal that political negotiations with the PLO were the only route to a satisfactory future.

This distinctive set of circumstances—an electorate deeply and stably, yet very evenly, divided—produced a pattern of extremely close elections between 1984 and 1996. For example, fewer than 30,000 votes out of nearly three million made the hawkish Benjamin Netanyahu Prime Minister instead of the dovish Shimon Peres. The same kind of virtually “acci-

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2. IAN S. LUSTICK, *UNSETTLED STATES, DISPUTED LANDS: BRITAIN AND IRELAND, FRANCE AND ALGERIA, ISRAEL AND THE WEST BANK/GAZA* 361-438 (1993).

dental" margin, i.e., within the range of random perturbation, that decided the outcome of the 1984 election, when only 180 votes separated the annexationist from the anti-annexationist parties, also determined the outcome of the 1988 election when a terrorist attack just before the polls opened shifted just enough support to the right to prevent a victory for the Labor Party. This same pattern was reflected in the formation of the 1990 ultranationalist government, instead of a militantly dovish Peres government, because of the last minute decision of a nonagenarian Rabbi.<sup>3</sup> Overall, Israeli politics has witnessed a kind of oscillation between governments. Some have been vigorously committed to ruling out peace negotiations by creating settlements and other facts on the ground before their opponents could return to office. These include the hawkish Begin and Shamir governments from 1977 to 1984, the hawkish governments led by Shamir between 1986 and 1992, and the Netanyahu government of 1996. Other governments have been vigorously committed to launching a substantive negotiating process to rule out the annexationist ambitions of the other side. These include the Peres government of 1985-86, the Peres shadow government in the tumultuous caretaker period of early 1990, and the Rabin and Peres government that took power after the 1992 elections with a one vote margin in the Parliament. Indeed, it is this pattern of oscillation, coupled with beliefs by each political camp that it would endure, that accounts for the increasing vigor, and even desperation, with which succeeding governments sought to implement their (conflicting) visions of the future.

## II. Who Are the Real Partners

The intense political competition between the Likud and its annexationist allies and the Labor party and its anti-annexationist allies, each perceived by the other as capable of ruining the other's dreams and bringing the other's nightmares to life, is the context for understanding what Prime Minister Rabin and Foreign Minister Peres meant by their repeated evocation of Arafat, the PLO, and the Palestinians as "partners." Some quotations by leaders of the Labor government between 1993 and 1996 are typical of the formulas used to characterize and promote the peace process. Rabin has stated that, "Just as we made peace with *our* greatest enemy in war, with Egypt, so will we make peace with others who were *our* enemies and who will be *our partners* in building peace in the Middle East."<sup>4</sup> Peres made a similar statement:

You know, basically what I've learned in my experience is when you talk about peace, many people think in order to have peace, you have to have the proper plan. I'm not so sure, because a plan without a *partner* is just theory. What you need first is a *partner*. And if you find a *partner*, you can develop

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3. Regarding the Netanyahu victory as an "accident," see Ian S. Lustick, *Reflections on the Peace Process and a Durable Settlement*, J. PALESTINE STUD., Autumn 1996, at 9-12.

4. Prime Minister Rabin referring to the Palestinians in his speech opening the Summer Knesset Session, May 15, 1995 (emphasis added).

a plan.<sup>5</sup>

On another occasion, Peres characterized the process as follows:

For many years, the custom was to negotiate with oneself. After all, it is easier than to negotiate with another party. The change occurred when *both sides* recognized that there are *two parties* to a conflict—that to negotiate, there is a need for a *partner*. We learned that a peace plan without a *partner* is a dead end, while a *partner*, even without a peace plan, may be a real beginning. The difficult decision at the time, was to accept Yasser Arafat as a partner.<sup>6</sup>

Savir, Israel's chief negotiator, also invoked the idea of "partnership" when he stated: "*Our Palestinian partners in peace, we feel we can work together with you.*"<sup>7</sup>

In these public pronouncements, the presumptive referent of the first person pronoun "we" or "our" is to the Israeli government, representing the State of Israel and the people of Israel. The "both sides" is likewise understood to be a reference to the Israelis, taken as a whole, and the Palestinians, taken as a whole. These certainly were the meanings that the speakers of these words wanted their audiences, especially in Israel, persuaded to accept as true. However, the speakers of these words were well aware that the secrecy with which the Oslo agreement was negotiated and the furious opposition it triggered, among both "rejectionist" Israelis and Palestinians, were *prima facie* evidence that the real partnership was not between "Israel" and "the Palestinians." Indeed, it was not even between "the State of Israel" and "the PLO." The real partnership was between a group of moderate and dovish political parties in Israel controlling the government and diplomatic apparatus of the state in 1993 and the Arafatist wing of the PLO in combination with a large percentage of the Palestinian population in the West Bank and Gaza, though not within the Palestinian diaspora. This was a political partnership with an axis crossing the boundary between "Israelis" and "Palestinians" by linking one group of Israelis and one group of Palestinians, tying their political fortunes to one another.

The core of this partnership was the Labor Party-Arafat axis, including especially the relationship between the two security services tied formally to the Israeli State and PLO institutions but more personally to Prime Minister Rabin and Chairman Arafat. The partnership also had a number of other important participants. The dovish/liberal Meretz party, Israeli Arabs (Palestinians with Israeli citizenship), the Clinton administration, several moderate Arab states, and much of the world community provided the political resources the partnership needed to operate. Opposition crystallized, not as an alliance between opponents of the Oslo process involving public endorsement of one another and explicit and secret forms of coordi-

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5. Prime Minister Peres, in answer to a question at the Washington Institute for Near East Policy, April 29, 1996 (emphasis added).

6. Speech by Prime Minister Peres to the Annual Conference of the American-Israel Public Affairs Committee, April 28, 1996 (emphasis added).

7. Uri Savir, Israel's chief negotiator, addressing his interlocutors at the formal inauguration of permanent status talks, May 5, 1996 (emphasis added).

nation, but as what Marxists used to call an "objective alliance"—an array of forces and political actors whose interests in a particular outcome, the destruction and failure of the Oslo process, led them to actions which, without explicit coordination, multiplied their effectiveness in reciprocal relation with one another. The core of this alliance was often described by Prime Minister Rabin as between the Likud and Hamas, between those Israelis devoted to maintaining the territorial unity of the "whole Land of Israel" and those Palestinians who rejected the principle of dividing Palestine between an Arab and a Jewish state.<sup>8</sup> Serving as a political resource base for this objective alliance opposing Oslo were the Jewish settlers in the West Bank and Gaza, some small ultranationalist and fundamentalist Israeli parties, powerful and vociferous right-wing elements within the American Jewish community, a number of U.S. Senators and Congressmen anxious to please the most active elements within the Israel lobby, Palestinian refugees angry at being largely ignored by the Oslo agreements, rejectionist rivals to Fatah, such as the PFLP, within the PLO, leaders within Fatah, such as Farouk Kaddoumi, unwilling to follow Arafat's lead, extremist states like Iran, Libya, Iraq, and Islamist movements throughout the Muslim world.<sup>9</sup>

What was clear only to careful observers at the time is, in retrospect, clear to most. The Labor Party leadership and its Israeli allies understood very well that their fortunes were directly linked to the performance and fortunes of Arafat and his dominant coalition within the Palestinian polity. Despite many angry responses to charges from the Israeli right that dovish politicians, including now-President Ezer Weizmann, were secretly conniving with PLO leaders and American diplomats to isolate, weaken, and pressure annexationist-controlled Israeli governments, these charges were

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8. In July 1994, Rabin sharply attacked his opponents on the annexationist right for their fierce protests against Arafat by linking it in what I describe here as an "objective alliance" to Hamas. "There is an evil circle of cooperation between—not to compare the two—the Hamas murderers and the radical right." JERUSALEM REP., July 28, 1994, at 8. In April 1995, on Israel Television, Rabin was even more direct in his characterization of the relationship between the Likud and Hamas: "The terrorist organizations are succeeding because the Likud has become the collaborator of Hamas and Islamic Jihad." JERUSALEM REP., Apr. 20, 1995, at 19.

9. This, of course, was only one in a history of many political struggles involving Israel and the Palestinians that have produced partnerships and alliance patterns crossing the border between those two polities rather than aligning themselves with it. Prior to the 1992 election, for example, there was an effective alliance—mostly objective but partially coordinated—between the Bush/Baker administration, the PLO, and the Labor Party, against the Government of Israel, led by Prime Minister Shamir and comprised of or supported by all the right of center, ultranationalist, and fundamentalist groups in Israel, and most of the Israel lobby in the United States. The two most dramatic manifestations of the Bush/Labor Party alliance were President Bush's 1989 remarks about East Jerusalem as Israeli-occupied territory, which produced a coalition crisis and an opportunity for the Labor Party to take power, and the withholding of American loan guarantees in retaliation for settlement activity in the West Bank which induced significant numbers of new immigrants in Israel to vote for Labor in the 1992 elections. LUSICK, *supra* note 2, at 381-82, 423.

fundamentally correct.<sup>10</sup> This is the context for understanding that in the Peres, Savir, and Rabin speeches quoted earlier, the primary referents for the words “our,” “we,” “partner,” and “partnership,” were the Labor Party and its Israeli allies on one side and the Arafatist wing of the PLO and its Arab and international allies on the other, *not* “Israel” and “the Palestinians” or “Israel” and “the Arabs.”

Occasionally, and usually only implicitly, the reality of this actual, cross-polity partnership surfaced in the public remarks of Oslo’s Israeli architects. Not long after the Oslo process became public knowledge, Peres was asked why the negotiations were conducted in secret. “It is extremely difficult to ever think openly,” he responded, “for a simple reason; because most people think that when you negotiate, the main task is to convince the other party, where in fact what you have to do is to convince your own people.”<sup>11</sup> In his very last speech, moments before his assassination by one of the “enemies of peace” to which he referred, Rabin, addressing the peace rally in Tel-Aviv, identified his partners and his adversaries.

There are enemies of peace who are trying to hurt us, in order to torpedo the peace process. I want to say bluntly, that we have found a partner for peace among the Palestinians as well: the PLO, which was an enemy and has ceased to engage in terrorism. Without partners for peace there can be no peace.<sup>12</sup>

That the Oslo process and the agreements which followed it were the product of a cross-polity partnership between, to put it simply, Arafat and the Rabin-Peres team, rather than a polity-to-polity partnership between “the Israelis” and “the Palestinians,” was most tellingly revealed by the consequences of Netanyahu’s razor thin victory over Peres in May 1996. Had that victory been the result of a wholesale change in the attitude of the Israeli public toward the principle of compromise with the Palestinians and negotiations with the PLO, the Likud’s return to power could not be interpreted in this way. But in fact, the Netanyahu victory was “accidental.” It occurred as a result of fluctuations within the Israeli electorate that were so small as to be within the range of random variation on a week to week basis. In a polity as deeply and as evenly divided as Israel since the early 1980s, the only predictions about election outcomes safely made are that elections will be very close and that the victor in one will be the vanquished in another. In the *volte-face* of the new Israeli government toward the peace process, and specifically toward negotiations with the Palestinian Authority, one sees, not a change of mind of the Israeli public about “its” partnership with the Palestinians, but the consequences of the destruction of the

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10. Concerning the important role of deception in the thinking of political strategists close to the Labor Party leadership see LUSTICK, *supra* note 2, at 425; Yoel Marcus, *And What About the Home Turf?*, HAARETZ, Nov. 16, 1993, translated by the FBIS, *Daily Report: Near East and South Asia*, Nov. 16, 1993, at 49-50. For an example of assessments, by Netanyahu and others, of Peres’s strategic use of secrecy in coordination with his Palestinian partners, see MAARIV, Feb. 25, 1996 (editorial).

11. Interview with Shimon Peres, Cable News Network, Sept. 1, 1993.

12. Remarks by Late PM Rabin at Tel Aviv Peace Rally, Nov. 4, 1995, <<http://www.israel-mfa.gov.il/mfa/speeches>>.



actual partnership between the Labor Party and Arafat resulting from the death of Rabin and Peres's narrow electoral defeat.

### III. The Romance of Peace

Despite the horrific terror attacks in Jerusalem and Tel-Aviv just months before, polls taken after Netanyahu's election showed a majority of Israelis in favor of continuing the peace process.<sup>13</sup> To this extent, at least, the efforts by advocates of the process to depict Oslo as the only path, however difficult, to Middle East peace and a sustainable future for Israel, met with success. Indeed, much emphasis was placed by the Labor government on embellishing these efforts with visions of a prosperous and neighborly Middle East. Along with the direct political negotiations with Jordan and the Palestinians, a wide-ranging and heavily publicized array of multilateral conferences and negotiations pertaining to regional development and infrastructural issues were undertaken. In 1994, prior to the much-heralded Casablanca conference for political and business leaders in support of the peace process, a book entitled *Plans for Regional Development and Partnership* was put together under the direction of Shimon Peres. The development projects envisioned in that volume required \$25 billion in private and public investment, half of which was to be devoted to solving the region's water problems.<sup>14</sup> In his address to the conference, Peres referred to a Middle East of three hundred million people. "The choice before them is to remain poor and bitter, wearing the cloak of protest and the mantle of fundamentalism, or to become 300 million producers and consumers investing in posterity, to enter the 21st century as equals with the most developed nations," he said.<sup>15</sup> A more romantic, yet typical, evocation of the "New Middle East" to which the Oslo road was said to be leading was offered by Peres in his speech as Prime Minister to a joint session of the United States Congress.

I believe we face an historic opportunity, perhaps of a galloping nature. If we shall find the language of peace between us, we can bring peace to all of us. Surely, nothing would capture the imagination of young people everywhere more than a gathering of all of us standing together—when I say all of us, I mean all the leaders of the Middle East, all twenty of them, not one by one, but together—and declaring the end of the war, the end of the conflict, carrying the message to our forefathers and to our grandchildren that we are again, all of us, the sons and daughters of Abraham, living in a tent of peace. We shall tell them that together, as partners, we are going to build a new Middle East, a prosperous economy; that we are going to raise the standard of living, not the standard of violence; that we are going to introduce light

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13. *The Peace Index*, HAARETZ, July 3, 1997.

14. See Sever Plutzger, *The Vision of Casablanca*, YEDIOT ACHARONOT, Sept. 9, 1994, translated in JPRS-NEA-94-053, Oct. 12, 1994, at 14-15. See also SHIMON PERES, *THE NEW MIDDLE EAST* 123-32 (1993).

15. Rabat RTM Television, Oct. 30, 1994, transcribed by FBIS, *Daily Report: Near East and South Asia*, Nov. 1, 1994, FBIS-NES-94-211-S, p. 9.

and hope to our peoples, to their destinies.<sup>16</sup>

The handshake at the White House, the promises of massive economic aid, the new Middle East of enormous commercial opportunity, Nobel Peace Prizes for Arafat, Peres, and Rabin, and the lavish and laudatory attention by the international media and the leaders of the world's most powerful nations were all part of a romance of peace designed to rally support, in both the Israeli and Palestinian/Arab communities, behind a deal whose coldly calculable, eventual outcome was beyond what majorities on each side were willing to accept. The necessary support for the substance of the compromises that the partners knew would eventually need to obtain was to be produced as a by-product of the process and the new images of one another that this inspiring, romantic vision, with a powerful sense of the historic about it, could trigger among Israelis and Palestinians whose allegiances were not primarily to ideological visions but to practical aspirations regarding their future, their physical and economic security, their nation's long-term viability, and their children.

Many commentators ridiculed Shimon Peres's wondrous depictions of the "New Middle East" of peace, prosperity, and freedom. Indeed, this rhetoric was certainly not sufficient to produce a Labor Party victory in 1996. But the new welcoming attitude displayed toward the Jewish state by so many previously hostile countries, the end of the Arab boycott, and an economy booming at the prospect of an explosion in the access of Israeli businessmen to worldwide markets, had an effect. No longer could the right-wing advance its dream of consolidating Jewish sovereignty over "the whole Land of Israel" as a vision of the future to attract and inspire the Israeli public and justify costly policies. However much Netanyahu and his allies may have continued to cherish that ambition, it was necessary to characterize policies toward the territories and the Palestinians as designed for enhancing security or advancing peace with due caution, rather than as designed for pursuing the destiny of the Jewish people to rule the entire promised land.

#### IV. Law over Politics: Netanyahu's Strategy to Defeat Oslo

After his electoral victory, Netanyahu retreated from earlier warnings that he would not honor the Oslo Agreements. Though not swept away in the kind of euphoria that briefly accompanied Sadat's trip to Israel in 1977, a great many Israelis were still inspired and gladdened by the prospect that dreams of peace, anchored in a liveable arrangement with the Palestinians, might actually come true. If the Oslo process was to be effectively opposed in Israel (and in the United States), it could not be opposed in principle, but rather sabotaged in implementation. Thus, even before Netanyahu's victory, most of Oslo's Israeli opponents chose to pay lip service to the agreement while shifting discourse about it in a way that, if accepted,

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16. 141 CONG. REC. H14256 (daily ed. Dec. 12, 1995) (statement of Prime Minister Shimon Peres in address to joint session of Congress).

would ensure its demise. In this way, they could reduce their risks of alienating hundreds of thousands of Israelis inspired by the image and the promise of the "handshake," Israelis whose conceptions of what might be possible to achieve and forgive were beginning to change. Right-wing opponents of Oslo in Israel and in the American Jewish community have implemented this strategy doggedly, with enormous sophistication, and with substantial success.

The approach has been especially obvious in the activities of the Zionist Organization of America (ZOA), whose leader, Morton Klein, before Oslo, took that organization (traditionally an extension of Herut and the Likud in America) to new extremes of antipathy toward Palestinians, territorial compromise, and Jewish critics of Israeli policies. In the pre-Oslo period, the ZOA posited that the PLO was purely a terrorist organization with whom it would not be possible to negotiate under any circumstances. After Oslo, the ZOA claimed that it did not reject the Oslo process itself, but sought simply to ensure that the Oslo agreement was honored. Since that time, it has waged a ceaseless campaign in Congress and in the media to define the issue as whether or not Arafat has abided by the "legal" requirements of the agreement, thereby seeking to transform the political partnership between the Rabin government and the Arafatist wing of the PLO into an ever more detailed list of opportunities to test and find wanting the good faith and trustworthiness of the Palestinian side. This accounting included actions which the Palestinians have not done, but which they, by this interpretation, were bound to do, such as extradition of terrorists and change in the Palestinian "Covenant," or actions which they were not, under the agreement, supposed to do, such as increase the number of arms and armed personnel under the Authority's command or maintain activity within el-Quds, but which they have done. Accordingly, the modal ZOA press release, as well as the modal op-ed piece by Klein, feature some variation on an accusation against the Palestinian Authority of "another blatant violation of the Oslo Accords."<sup>17</sup> Under this banner, it has not been difficult for the ZOA to enlist substantial numbers of Senators

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17. See, e.g., *State Department Report Again Whitewashes PLO Violations*, ZOA PRESS RELEASE (Mar. 8, 1996) <<http://www.zoa.org/archives/pr-960308-1.html>>; *ZOA Praises AIPAC for Acknowledging that PLO is Not in Compliance with Oslo Accords*, ZOA PRESS RELEASE (Apr. 3, 1996) <<http://www.zoa.org/archives/pr-960403-1.html>>; Morton Klein, *PLo Violations: A Crucial Topic for Clinton-Netanyahu Discussions*, (July 8, 1996) <<http://www.zoa.org/archives/oped13.html>>; *Zionist Wants U.S. to Cut Aid to Make PLO Peace-Abiding*, THE MORNING CALL, July 21, 1996; *PLo's Official Call for Arab Boycott of Israel is Flagrant Violation of Oslo*, ZOA PRESS RELEASE (June 24, 1997) <<http://www.zoa.org/archives/pr-970624-2.html>>; *ZOA: PLo's Hiring of 150 Terrorists as Policemen is Blatant Violation of Oslo*, ZOA PRESS RELEASE (July 1, 1997) <<http://www.zoa.org/archives/pr-970701-1.html>>; *ZOA: Hanan Ashrawi's Vow that PLO will Never Extradite Terrorists Violates Oslo*, ZOA PRESS RELEASE (Aug. 18, 1997) <<http://www.zoa.org/archives/pr-970818-1.html>>; Morton A. Klein, *The Four Legs of the 'Oslo Table' Have Collapsed*, Aug. 18, 1997, <<http://www.zoa.org/archives/oped30.html>>. See also ZOA IN THE NEWS (1994) (a collection of letters to the editor, columns, and press releases distributed as a packet by ZOA); Morton Klein, *Three Years of PLO Violations: An Assessment of PLO Compliance Since the Signing of the Israel-PLO Accords*, Sept. 13, 1993 - Sept. 13, 1996, <<http://www.emet.com/zoa.htm>>.

and Representatives. These politicians, led by Benjamin Gilman, Chair of the House Foreign Affairs Committee, have accepted the definition of the problem as measuring Palestinian, rather than Israeli, compliance with the "terms of Oslo" and have embraced the tactic of using "non-compliance" as a means of reducing, delaying, or eliminating American financial, diplomatic, and political support for the Palestinian Authority and for the peace process more generally.<sup>18</sup>

Just as energetically, but often less obviously and more consequentially, the same tactic has been used in Israel by ostensibly "independent" and "non-partisan" groups such as Peace Watch, Independent Media Review and Analysis (IMRA), and the Institute for Peace Education. These organizations advertise themselves as dedicated to genuine peace and as advancing the cause by providing technical, objective, and unbiased evaluations on the extent of compliance with the terms of the agreement. In its reports, Peace Watch describes itself as "an independent non-partisan organization monitoring the implementation of the peace agreements signed by Israel and the PLO."<sup>19</sup> David Bedein adamantly denies charges that his reporting is colored by his right-wing views, insists that his Institute for Peace Education is "evenhanded," and gives prominence on his website to the claim that his Israel Resource News Agency is based *both* in the Israeli International Press Center in Jerusalem and in "the Gaza Media Center under the jurisdiction of the Palestine Authority."<sup>20</sup> Joseph and Aaron Lerner, who run IMRA, stress that their work, including interviews with Palestinian and Israeli politicians about their reactions to reported violations of the Oslo Accords, opinion surveys to accent Israeli distrust of the

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18. Regarding ZOA's role in lobbying Congress to adopt its legalistic, Palestinian "violations" oriented stance toward the Oslo peace process, and in particular regarding ZOA's role in the creation and implementation of legislation to link aid cut-offs to the Palestinian Authority to these "violations," see *ZOA Helps Create Congressional Groups to Monitor PLO Violations*, ZOA REP., May-June 1994. See also *U.S. Aid Must Be Used as Leverage*, ZOA PRESS RELEASE, Mar. 11, 1996, <<http://www.zoa.org/archives/pr-960311-1.html>>; J.J. Goldberg, *To Aid, or Not to Aid, the PLO*, JEWISH EXPONENT (Philadelphia), Sept. 25, 1997, at 20; Helen Freedman, *Rabbis Protest Half Billion \$\$\$ to PLO*, JEWISH POST NEWS, June 1995, <<http://www.jewishpost.com/jewishpost/jpm0102.html>>. It is noteworthy that Irving Moskowitz, who has financed aggressive and controversial land takeovers by Jewish fundamentalist groups in Arab neighborhoods of East Jerusalem, was identified in the May-June 1994 *ZOA Report* as having "sponsored" that issue of the publication. See ZOA REP., *supra*.

19. See Natan Sharansky, *Compliance is the Crux*, THE JERUSALEM REP., Mar. 24, 1994. For an endorsement of Peace Watch as "an impartial and non-partisan body, comprised of Israelis from across the full spectrum of the political arena" and of its monitoring of violations as accomplishing something that both opponents and supporters of Oslo desire, see also three "Peace Watch Reports" [hereinafter Three Peace Watch Reports] issued in Jerusalem. *Institutions of the Palestinian Authority in Jerusalem*, Mar. 14, 1995; *Freedom of the Press Under the Palestinian Authority*, Jan. 16, 1996; and *PLO and PA Compliance with Their Obligations to Prevent Terror Attacks During the Palestinian Authority's First Two Years*, Aug. 5, 1996.

20. Larry Derfner, *Both Sides Now*, JERUSALEM POST, Nov. 3, 1995, at 11; Leslie Susser, *The Peace Police*, JERUSALEM REP., Oct. 19, 1995, at 16; and David S. Bedein, *Analysis After Bibi Freed Sheikh Yassin: What Does It Mean to Have Yassir and Yassin Stand in Hand* (Oct. 20, 1997) <<http://www.israelvisit.co.il/BehindTheNews>>.

Palestinians and disagreement with aspects of the peace process, and distribution to the foreign press of evidence of Palestinian violations, "is careful and accurate."<sup>21</sup> Their mission has been described as "saving Israel from itself, comparing the situation to that 'before the Yom Kippur War,' with overconfident Israelis convinced they can give up major security assets and still defeat the Arabs."<sup>22</sup>

The effect of these activists and the lists of "violations" they distribute has been to undermine the peace process by demystifying its grand claims, by defining public debate over the process as mainly a question of the trustworthiness of the Palestinian side in the implementation of details of the agreement, and by pushing Israeli officials toward punishing Palestinian behavior. The approach tends to weaken the Palestinian partner within the Palestinian community while forcing those Israelis who support the agreement as a political framework to confront a Hobson's choice between exposing themselves to accusations of acting as weaker bargainers than those more fully committed to "Israeli" interests and abandonment of the rhetoric of historic reconciliation including the images of peace, prosperity, and acceptance evoked by Shimon Peres's conception of a "new Middle East."

Peace Watch is the best known of these groups and makes the most apparently convincing claim to non-partisanship. It was formed by two right-wing activists in October 1993, just after the Washington meeting between Rabin and Arafat. Its official purpose and declared intention is to foster the prospects for a genuine Israel-Palestinian peace by keeping each side focused on adhering to its commitments under the Oslo Accords.<sup>23</sup> To enhance its credibility, at least within different segments of the Israeli population, Peace Watch organizers enlisted figures with moderate reputations from both the left and right of center—kibbutzniks such as Muki Tsur and Elisha Shapira and rabbis living in West Bank settlements such as Yoel Ben-Nun and Shlomo Riskin as well as Natan Sharansky.<sup>24</sup> It also, very occasionally, mentions some Israeli violations of the Accords.<sup>25</sup> Although the centrists on the Peace Watch board of directors have accepted the logic that "the best hope for peace is to look reality in the face, and not try to sweep unpalatable facts under the carpet,"<sup>26</sup> the activists who created and run Peace Watch, Dan Polisar and Bob Lang, are committed annexationists and opponents of any substantial political compromise between Israel and the Palestinians. Lang, for example, was formerly spokesman for the Gush Emunim founded Council of Jewish Settlements in Judea, Samaria, and Gaza.<sup>27</sup> Similarly, Joseph and Aaron Lerner, who operate IMRA, and David Bedein, who directs the Center for Peace Education, are personally

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21. Susser, *supra* note 20, at 18.

22. *Id.*

23. Sharansky, *supra* note 19.

24. Three Peace Watch Reports, *supra* note 19.

25. Sharansky, *supra* note 19.

26. Susser, *supra* note 20.

27. *Double Trouble*, JERUSALEM REP., Mar. 7, 1991.

and fervently committed to the demise of the Oslo peace process and to thwarting any substantial political/territorial compromise between Israel and the Palestinians.<sup>28</sup>

The main activity of these groups, while stressing their "Joe Friday" interest in "just the facts," is discovering and publicizing technical information regarding violations of the peace agreements for use by Jewish and Israeli right-wing opponents of Oslo and by the press to create and strengthen perceptions that the Palestinians are not living up to their commitments under Oslo or that the Israeli government is forsaking its own rights under the agreement. The actual material made available to the public, through Israeli and international wire services, widely distributed op-ed pieces, and on the internet, includes taped interviews and speeches of Palestinian leaders portrayed as revealing but not-widely-circulated evidence of their nefarious intentions, detailed lists of security violations by the Palestinian Authority (including constantly updated data on the number of police and weapons held by the PA in excess of the levels stipulated in the Accords), lists of "terrorists" whom the Palestinian Authority refuses to extradite to Israel, lists of Palestinian actions in el-Quds and elsewhere which can be interpreted as violations of the Accords, analyses of Palestinian failure to "annul" the Covenant, and interviews with Israeli officials in which their reluctance to punish the Palestinian Authority for infractions are exposed and ridiculed. The material also includes detailed analyses of how the exact terms of the interim Accords can be aggressively interpreted to depict Israeli settlement and land expropriation activity, armed intrusions by Israeli forces into Palestinian areas, and territorially minuscule "withdrawals" as permissible, while interpreted to require such burdensome and constricted behavior by Palestinians as to make Palestinian agreement to further progress toward the implementation of the Accords impossible.

A particularly striking example of this latter tactic is provided in *Oslo Issues in Hebron*, by Aaron Lerner, issued by the IMRA.<sup>29</sup> The publication poses the question "what is the maximum which Oslo allows Netanyahu to demand?" Composed in November 1996, in the midst of intense negotiations prior to the partial Israeli withdrawal from Hebron, Lerner shows how a "strict reading" of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip signed in Washington on September 28, 1995 (popularly known as "Oslo II"), allows the Israel Defense Forces (IDF) to remain, where necessary, within Arab Hebron. The argument faults the Netanyahu government for not "aggressively" utilizing these "strict" interpretations of clauses in Oslo in the course of the negotiations. This and other such memoranda issued by IMRA are particularly instruc-

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28. See, e.g., Aaron Lerner, *How About a Joint Goal?*, JERUSALEM POST, Apr. 1, 1997, at 6; Susser, *supra* note 20.

29. Aaron Lerner, *Oslo Issues in Hebron*, IMRA-L Digest 89, Nov. 18, 1996, <<http://mofetsrv.mofet.macam98.ac.il/~izak/israel/a/0043.html>>. See also Aaron Lerner, *So Now We're Talking Oslo*, IMRA-L Digest 93, Nov. 27, 1996, <[http://virtual.co.il/city\\_services/lists/archives/imra/nov96/msg00016.html](http://virtual.co.il/city_services/lists/archives/imra/nov96/msg00016.html)>.

tive when compared to Lerner's immediate reaction to Oslo II where he attacked that agreement as a serious Israeli retreat from the original Oslo Accords.<sup>30</sup> In the intervening year, he used Oslo as a legal document in an aggressive, adversarial mode against the Palestinian side instead of directly criticizing the peace process. He made this approach explicit in July 1996, when he wrote to condemn those who referred to the spirit of Oslo. The agreements, said Lerner, "are legal documents, and as legal documents what counts is what is written—not some amorphous 'spirit.'"<sup>31</sup>

Not surprisingly, Benjamin Netanyahu used material produced by Peace Watch and these other organizations extensively in his election campaign. Various settler groups and other right-wing opponents of the peace process, both in Israel and in the United States, including especially the ZOA, regularly draw on the materials distributed by Peace Watch, IMRA, and David Bedein.<sup>32</sup> Their press releases and analyses are also commonly cited in the mainstream media as authoritative.

When criticized for being partisan in their efforts, these groups respond by stressing the facticity of their reporting, their commitment to separating their personal views from their analyses, and their bottom-line commitment to "simply" measuring "compliance."<sup>33</sup> What they have figured out, however, and learned to apply in practice, is what I am seeking to outline in theory. The same ambiguities in the agreement—whether it is a legal or political document and whether it is between Israel and the Palestinians or between the peace camps of Israeli and Palestinian moderates—that can serve the interests of the moderates, can also serve the interests of the opponents of the peace process. The crucial issue is the effectiveness with which public discourse can be shaped and oriented.

In this context, the success of these activists is striking. Since the summer of 1996, a tripartite division within the Netanyahu government, and possibly within Prime Minister Netanyahu himself, has existed. The division has existed between those such as David Levy (currently not in the government), inclined to resume the Oslo process as a partnership with the PLO but without the myth and romance of Peres's "New Middle East;" those, such as Yitzhak Shamir and Knesset member Beni Begin, for whom nothing has changed, "the sea is still the sea and the Arabs are still the Arabs," and for whom Oslo or any agreement is, in principle, anathema; and those who have favored offering lip-service to the peace process in

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30. Aaron Lerner, *IMRA Reviews Oslo 2 Agreement*, Oct. 1, 1995, <<http://mofetsrv.mofet.macam98.ac.il/~izak/israel/a/0043.html>>.

31. Aaron Lerner, *Settlements: Catalyst for Peace*, July 27, 1996, <[http://freeman.io.com/m\\_online/aug96/lerner.htm](http://freeman.io.com/m_online/aug96/lerner.htm)>.

32. Among the annexationist and Jewish fundamentalist groups who publicize and distribute the findings of Peace Watch, IMRA, and the Institute for Peace Education, are the Zionist Organization of America, the Freeman Center for Strategic Studies, *The Jewish Post*, the Likud Party, Arutz 7 (a settler/Jewish fundamentalist radio station based on a ship sailing off the Israeli coast), The Jewish Community of Hebron, Virtual Jerusalem (website), Information Regarding Israel's Security (website and subscription service), and the Israeli and Global News Service (website and subscription service).

33. Susser, *supra* note 20.

deference to the opinions of the majority of Israelis, while in fact using a “work-to-rule” approach to the Oslo Accords—treating them not as a basis for an evolving partnership, but as an array of legalist and public relations weapons that can free Israel of its commitments, prevent further transfers of territory to Palestinian control, and delegitimize Arafat and the idea of a Palestinian state in the mind of Israeli public opinion.

It is this third option that the Netanyahu government has clearly chosen. One indication is that, by the spring of 1997, the official Israeli Government Press Office and the Information Division of the Foreign Ministry began to feature prominently in their distributed materials just the kind of lists of Palestinian “violations” of the Oslo agreements that Peace Watch, David Bedein, and IMRA were compiling.<sup>34</sup> A somewhat more dramatic indication was the radicalization of Israeli government policy in an expanded East Jerusalem.<sup>35</sup>

The Oslo Accords pointed toward the future of East Jerusalem by making its Arab population eligible for participation, as candidates and as voters, in the Palestinian Authority’s legislative council elections. In addition, Israel quietly permitted Palestinian security services to operate in East Jerusalem and committed itself to permit the continued operation of existing Palestinian institutions in the city, even as establishment of offices by the Palestinian Authority itself within the Israeli demarcated boundaries of the city was prohibited. But the Rabin-Arafat partnership was based in part on silences about the future of the city, deferring negotiations about it until the “final status talks.” Still, shortly before Rabin’s assassination, increasingly detailed reports were appearing, later confirmed, of an agreement between two high ranking Israeli and Palestinian politicians—Yossi Beili and Mahmoud Abbas (Abu-Mazen)—to share the city politically with the Palestinians by creating a Palestinian capital in Abu Dis and the contig-

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34. See, e.g., Information Div., Israel Foreign Ministry, *Primary Palestinian Violations of the Israeli-Palestinian Agreements*, Jerusalem, Mar. 1997, <[http://www.freeman.org/m\\_online/apr97/violate.htm](http://www.freeman.org/m_online/apr97/violate.htm)>; *Palestinian Security Forces Violate Oslo in Jerusalem*, Israeli Government Press Office, Jerusalem, May 25, 1997; Avi Segal and Khalid Abu-Ta'mah, *Justice for Show: This is How the Judicial System Works in the Territories: 100 Years of Hard Labor (Its OK, You'll Be Out Tomorrow)*, in YERUSHALAYIM SUPPLEMENT, Israeli Government Press Office, Jerusalem, August 29, 1997. On May 13, 1997, the Israeli Government Press Office distributed an analysis of IMRA's Aaron Lerner discussing in great detail the failure of the Palestinian Authority to comply with official Israeli requests for extradition of wanted terrorists to Israel. See *Israel Government Details PA Refusal to Comply with Transfer Requests*, <[http://www.freeman.org/m\\_online/apr97/violate.htm](http://www.freeman.org/m_online/apr97/violate.htm)>.

35. In June 1967, the Israeli government promulgated a series of complex legal and administrative measures which had the effect, not of annexing Arab East Jerusalem (el-Quds) to Israel, but of increasing the size of the municipality of Israeli “Yerushalayim” by more than seventy square kilometers. The Old City comprises only one square kilometer of this swath of the West Bank which, stretching from Bethlehem in the south to el-Bireh in the north, includes a dozen or so Arab villages and lands from more than a dozen more. The Jordanian municipality of Jerusalem, between 1948 and 1967, included only one ninth of the area designated by the Israeli Interior Minister in 1967. See Ian S. Lustick, *Has Israel Annexed East Jerusalem?*, MIDDLE EAST POL'Y, Jan. 1997, at 34-45.



uous Arab inhabited portions of what was historically the Arab city of el-Quds.

Netanyahu's policies toward Jerusalem, however, based in part on his calculation that he could expand his political base by emphasizing Jerusalem as a purely Jewish city, was to escalate Israeli activities in expanded Jerusalem, thereby forcing Palestinian opposition to measures which were not explicitly prohibited by the Oslo Accords and for which there could be, at least initially, widespread Jewish support. First, he opened the tunnel near the Temple Mount/Haram el-Sharif, sparking widespread violence and heavy Arab and Jewish casualties in October 1996. Then, needing to mend fences with diehard opponents of Oslo after the Hebron withdrawal and desiring to postpone an already scheduled further Israeli redeployment from portions of the West Bank, Netanyahu initiated site preparation activity for a large new Jewish settlement, Har Homa, on Jabal Abu-Ghneim in the southern extremity of expanded East Jerusalem. That act triggered a complete halt to negotiations, indefinite postponement of the Israeli army redeployment, and a wave of terrorist attacks inside Jewish Jerusalem and in Tel-Aviv. Most recently, Jewish fundamentalists have been allowed to take possession of a site in Ras el-Amud in the center of the portion of el-Quds designated by the Beilin-Abu-Mazen plan as the future Palestine capital. What is most salient about these measures is not that they are disruptive of the peace process, but that they have been defended by Israeli government spokesmen as "legal" under the terms of the Oslo agreement.<sup>36</sup> Indeed, this defense is correct, and it is an excellent example of how Oslo can be used as a legal agreement, via the aggressive exploitation of its exact language, to thwart Oslo as a political partnership.

## Conclusion

This analysis of the Oslo process has been based on a distinction between an agreement as a legal arrangement binding two polities and an agreement as a basis for a political partnership between segments of each of the polities. The result of the analysis suggests that this distinction has strategic importance for understanding the fate of the Oslo Accords, the character of the rhetoric associated with advocacy of and opposition to Oslo inside Israel, and the impact on the peace process of Netanyahu's election victory in May 1996. However, in a democratizing world, where increasing numbers of protracted conflicts are being and will be addressed via negotiations, it is worth considering how this kind of analysis might be advanced by testing general propositions in a comparative context.

One hypothesis, well illustrated by the last year and a half of the Oslo process, pertains to the consequences of too rapidly moving from political partnership toward legal codex. Whether calculated or inadvertent, moving too quickly in this way is likely to destroy the process without exploit-

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36. See, e.g., Statements by Prime Minister Benjamin Netanyahu defending the legality of Israeli construction projects for Jewish settlements under the Oslo Accords, Press Conference, Wash. D.C., Sept. 7, 1997, <<http://www.Israel-mfa.gov.il>>.

ing its full potential as a vehicle for orchestrating a compromise anchored in the maximum that mainstream opinion in each polity can be persuaded to concede. A second hypothesis, illustrated by the Oslo process prior to Rabin's assassination, is that too slow movement from political partnership to legal codex, i.e. inordinate delay in the implementation of the agreement and its transformation from a semi-secret deal between incumbents within each polity to a legally binding settlement between the polities themselves, has the effect of keeping the question of how much is being conceded on the agendas of each of the polities for too long a period of time. Such a delay can increase to dangerous levels the number of accidents—election outcomes, terrorist incidents, uncontrolled provocations, international crises, and deaths of key players—capable of disrupting the partnership and hence derailing the peace process.

Ultimately, it may be hypothesized that the optimal pace in this transformation from political to legal modalities is determined by: 1) the generosity of the compromise compared to what short-term coercive capabilities make possible; and 2) the boldness of leadership displayed within each polity in its readiness to confront internal, diehard opposition to any compromise.

To the degree the political partnership is based on concessions made by the side capable, in the short run, of enforcing its will via coercion, the longer the side receiving the concessions can afford to wait for their actual implementation and until the size of the bloc supporting peace on the coercively stronger side increases. However, to the degree that these concessions are not generous, relative to the demands of the mainstream on the other side and relative to what could be enforced coercively in their absence, the pace of implementation will need to be more rapid and combined with a readiness on the part of both leaderships to confront and neutralize diehard opponents to peace and its underlying partnership within their own polities.

It was precisely the ungenerous aspects of the Oslo Accords, and their ambiguity on key points with respect to what Palestinians would ultimately be able to achieve, that required the Israeli government to confront extremist Jewish opponents more rapidly, ultimately more forthrightly, and probably violently, than the Rabin or Peres governments were willing to orchestrate or endure. The Labor government, in other words, could have been bolder against its internal adversaries or it could have been more generous toward the Palestinians, but it could not be neither and still succeed in making peace.

But these are hypotheses only. One case can establish their plausibility, not their validity. Yet for those committed to preserving opportunities for the success of Oslo, and for designing similar processes in other conflict situations across the globe, they may provide a valuable opportunity to explore, analyze, and explain the fertile but fragile relationship between legal and political aspects of peace agreements designed to end protracted conflicts.

