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REVIEW ESSAY

Peace and Its Discontents: Israeli and Palestinian Intellectuals Who Reject the Current Peace Process

Justus R. Weiner*

Peace and Its Discontents: Essays on Palestine in the Middle East Peace Process. By Edward W. Said. (Vintage Press, 1995); *Crisis In: Israel—A Peace Plan to Resist.* By Yechiel M. Leiter (SPI Books, 1994).¹

Introduction

The title of Edward Said's book, *Peace and Its Discontents*,² is, as he would readily acknowledge, in error. No "peace" currently exists between Israel and the Palestinians. The protracted process that began with secret meetings in Norway three years ago has thus far yielded five interim agreements,³ each of which advanced the process incrementally. The

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1. The Leiter book was written in December 1993, in the aftermath of the signing of the Declaration of Principles on Interim Self-Government Arrangements, Sept. 13, 1993, Isr.-PLO, 32 I.L.M. 1525 [hereinafter DOP], and the conclusion of Said's book is dated October 16, 1995. Given the rapid pace of developments in the peace process it was necessary to give Leiter and Said the opportunity to reevaluate and update their books. Leiter was interviewed on two occasions, particularly on the topics of the Rabin assassination, the signing of the Oslo II Agreement and whether a new government led by Netanyahu would reverse the peace policies of the previous Rabin-Peres government. In addition, the author spoke by telephone with Said's secretary at Columbia University and requested an interview for the purpose of updating this article. Said, however, did not return the call.

2. EDWARD SAID, *PEACE AND ITS DISCONTENTS: ESSAYS ON PALESTINE IN THE MIDDLE EAST PEACE PROCESS* (1995).

3. Five transitional agreements have been concluded between Israel and the PLO. The first was the DOP. It sets out the overall framework for negotiations to achieve further interim agreements and ultimately, a permanent status agreement. Second, the Israel-Palestine Liberation Organization Agreement on the Gaza Strip and Jericho Area, May 4, 1994, 33 I.L.M. 622 [hereinafter Cairo Agreement] provides for the partial withdrawal of Israeli administration and military forces in the Gaza Strip and Jericho area

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negotiations toward reaching a final status agreement officially commenced on May 5, 1996, as foreseen by the Declaration of Principles (DOP) on September 13, 1993.⁴

Howard Saunders, a veteran US diplomat and Middle East peace negotiator, has characterized peacemaking as an ongoing, step-by-step undertaking.⁵ This observation is particularly relevant to the Israeli-Palestinian peace talks. From the beginning of the Middle East Peace conference in Madrid on October 30, 1991, to the the initiation of secret backchannel talks by Norwegian academic Terje Larsen in April 1992, to the "historic handshake" of the late Israeli Prime Minister Yitzhak Rabin and Palestinian Liberation Organization (PLO) Chairman Yasir Arafat at the signing ceremony of the DOP, the process has intermittently gained and lost momentum.

The Israeli public's support for the peace process has fluctuated dramatically since the signing of the DOP.⁶ The most recent upswing followed the assassination of Yitzhak Rabin.⁷ This, however, was reversed in late February 1996, when a string of Hamas suicide bombings claimed scores of fatalities.⁸ The reversal was probably the reason that former Labor Party Prime Minister Peres and parties on the left lost the 1996 national elections to Likud leader Binyamin Netanyahu and the parties on

and allows the Palestinian Authority (PA) to assume most functions of local governance in those areas. The third agreement, the Agreement on Preparatory Transfer of Powers and Responsibilities Aug. 29, 1994, Isr.-PLO, reprinted in 24(2) J. Pal. St. 109 (1995) [hereinafter Erez Agreement], (signed at the Erez checkpoint between Israel and the Gaza Strip), allows for the transferral 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 the Jericho area. The fourth agreement, the Protocol on Further Transfer of Powers and Responsibilities, Aug. 27, 1995, Isr.-PLO (photocopy on file) [hereinafter Further Transfer Protocol], transfers powers in the West Bank to the PA in the following seven civil spheres: labor, industry and commerce, gas and petroleum, agriculture, local government, statistics, and postal services. Regarding the fifth and final interim agreement concluded between the parties, see *infra* note 21 and accompanying text.

4. See DOP, *supra* note 1, art. V.2; Cairo Agreement, *supra* note 3, art. XXIII.3. See also Guy Bechor, *At Permanent Status Talks Palestinians Demand State with Jerusalem as its Capital*, HA'ARETZ, May 6, 1996, at A1 (Hebrew original).

5. See Howard H. Saunders, *Reconstituting the Arab-Israeli Peace Process*, in THE MIDDLE EAST: TEN YEARS AFTER CAMP DAVID 413, 422-23 (William B. Quandt ed., 1988).

6. Initially the public reacted favorably to the mutual recognition of Israel and the PLO and to the signing of the DOP. In the aftermath of a series of terrorist attacks, however, one public opinion poll conducted in Israel at the beginning of 1995 revealed that 47% of Israelis believed that the Palestinians gained more than Israelis from the peace process. Dan Leon, *Israeli Public Opinion Polls*, PALESTINE-ISR. J. OF POL., ECON. & CULTURE, Winter 1995, at 56, 57. Support increased in the aftermath of the Rabin assassination and subsequently nosedived after the bloodiest mass suicide attacks in Israel's history during February and March 1996. See Yosef Goell, *Polls, Policy & The Public*, JERUSALEM POST, June 3, 1996, at 6.

7. See Steve Wulf, *Thou Shall Not Kill*, TIME, Nov. 13, 1995, at 20, 25; Judy Siegel & Evelyn Gordon, *Assassination Strengthens Peace Process*, JERUSALEM POST, Nov. 22, 1995, at 12.

8. See Andrea Levin, *Call It Hatred*, JERUSALEM POST, Mar. 22, 1996, at 11.

the right.⁹

On the other hand, Palestinian support for the peace process has also declined in recent months¹⁰ even though the support is more difficult to gauge, given the degree of control that the PA exercises over the media within the territories.¹¹ Moreover, certain uncomfortable facts and historical realities are not altered by the present oscillations of public sentiment toward the peace process.

Despite the drama, high-level negotiations, signing ceremonies, troop withdrawals, and elections, "peace" as it has begun to take shape remains an anathema to many. Even as we enter 1997, flush with the excitement of unprecedented breakthroughs, successful completion of the peace process is not the goal of many Palestinians and Israelis. Moreover, opposition to the diplomatic efforts toward reconciliation is not limited to those on the political or religious fringes. Many mainstream Israelis and Palestinians view the course chosen by their political leaders as fraught with danger. Two such individuals are Palestinian-American Professor Edward Said and Israeli Rabbi Yechiel Leiter. Both write impassioned dissents in an effort to avert what they perceive as disaster for their respective peoples. Both articulate a voice of political opposition to the course pursued by the leadership, and both feel that the peace process jeopardizes the core interests of their people. Edward Said decries the entire process as a "sell-out"¹² which has yet to result in peace and is unlikely to do so as presently constituted. Yechiel Leiter professes that the government of Israel has, by its agreements with the PLO, capitulated to terrorism, abandoned its God-given claim to the biblical Jewish heartland, and placed the future survival of the State in grave jeopardy. Both share the same ultimate goal—to reevaluate, and ultimately to radically restructure the current peace process.

9. Netanyahu won the vote for premiership against Peres by a very narrow margin of less than one percent. In the vote for the Knesset (Israeli parliament) the parties that were opposed to or had misgivings about the interim peace agreements won 68 seats as opposed to 52 for the parties supporting the agreements. Goell, *supra* note 6.

10. Many Palestinians initially perceived that Israel's aim in Oslo was to exploit "Palestinian weakness in order to solve the Palestinian problem and to pave the way for normalizing relations between Israel and other Arab countries . . ." Ali Jarbawi, *What Is the Alternative to Oslo*, PALESTINE-ISRAEL J. OF POL., ECON. & CULTURE, Winter 1995, at 33, 34. During 1994 and 1995, as additional cities in the West Bank came under PA administration and thousands of Palestinians were released from Israeli prisons, public support increased for Arafat's policies. See Jon Immanuel, *Support For Peace Process, Arafat At Record High*, JERUSALEM POST, Dec. 20, 1995, at 2; Danny Rubinstein, *The Palestinian Option*, HA'ARETZ, Feb. 2, 1996, at B1 (Hebrew original). More recently, however, under severe economic stress and following the election of the Netanyahu government, the Palestinians have become increasingly dissatisfied and impatient with the peace process. See e.g., Jon Immanuel et al., *Police Brace for Unrest on Temple Mount*, JERUSALEM POST, Aug. 30, 1996, at 1.

11. See, e.g., Sami Sockol, *The Palestinian Press Didn't Cover The Elections, Out of Fear of PA Police*, HA'ARETZ, Jan. 25, 1996, at A2 (Hebrew original); *Peace Watch Report Reveals Systematic Suppression of Press Freedoms Under the Palestinian Authority*, PEACE WATCH (Peace Watch, Jerusalem, Isr.) Jan. 16, 1996.

12. SAID, *supra* note 2, at 84.

An individual of multiple talents, Said is simultaneously a distinguished professor of English and Comparative Literature at Columbia University, a prolific and influential author, a noted music critic and pianist,¹³ and the most prominent American champion of Palestinian rights.¹⁴ According to one of his autobiographical articles, Said was born in Jerusalem in 1935. In the midst of the regional tension in 1947, he moved with his family to Cairo. Shortly thereafter, he left for America in 1951 to continue secondary school at Mount Hermon Academy, a prep school in Massachusetts. In 1964, Said received his doctorate in English literature from Harvard University, and in 1967, following the Six-Day War, began his intense involvement in the Palestinian cause.¹⁵ Said was a long-time confidant and supporter of Yasir Arafat, co-founded the strongly pro-Palestinian Association of Arab-American University Graduates in 1968, composed Arafat's 1974 address to the United Nations General Assembly, and helped to draft the 1988 resolution of the Palestinian National Council (the PLO's quasi-parliamentary body) proclaiming an independent state of Palestine.¹⁶

Leiter, a rabbi and veteran of the Israeli Defense Forces, was born and raised in Scranton, Pennsylvania. Leiter immigrated to Israel when he was 18 and a number of years later received his rabbinical ordination. Leiter subsequently served for three years as the mayor of the small Jewish community in the predominantly Palestinian West Bank city of Hebron. More recently, he moved to Eli, another Jewish settlement in the West Bank. He commutes to the offices of the Yesha Council¹⁷ in Jerusalem, where he directs the Yesha Council's Foreign Desk. Leiter frequently speaks and writes articles in defense of the Jewish right to live in the West Bank and Gaza Strip. In the context of a wave of indictments against opposition activists after the Rabin assassination, Leiter was indicted for leading a sit-in demonstration on December 2, 1993. The demonstration had been held to protest the peace process¹⁸ and the killing of two young Israelis the previous day by Hamas.¹⁹ The case is still pending.²⁰

13. Marianne McDonald, *Letters from Readers*, COMMENTARY, Dec. 1989, at 4.

14. See e.g., *Said, Edward W.*, 1989 CURRENT BIOGRAPHY YEARBOOK 493 (Charles Moritz ed., 1989) [hereinafter BIOGRAPHY YEARBOOK].

15. See *id.* at 493-94.

16. *Id.* at 484.

17. The Yesha Council is a non-profit organization that represents the Jewish settlers. Yesha is the acronym for the Hebrew words "Yehuda, Shomron v'Aza." It can be translated as "Judea, Samaria and Gaza," the biblical names for the territories of the West Bank and Gaza. "Yesha" is also the Hebrew word for "salvation." Approximately 145,000 Jewish settlers reside in the West Bank and Gaza Strip. David Makovsky, *PM Makes No Concessions to Clinton*, JERUSALEM POST, July 10, 1996, at 1 (quoting the Israel Central Bureau of Statistics figure). In the author's opinion, both Leiter and the Yesha Council represent a viewpoint that is considerably to the right of center on the Israeli political spectrum.

18. Interview with Yechiel Leiter, Director of the Foreign Desk of the Yesha Council, in Jerusalem, Isr. (Jan. 1, 1996) (copy on file) [hereinafter Leiter Interview 1]; Interview with Yechiel Leiter, Director of the Foreign Desk of the Yesha Council, in Jerusalem, Isr. (Oct. 23, 1996) [hereinafter Leiter Interview 2].

19. *Id.*

This essay will examine the arguments advanced by both Leiter and Said against the Israeli-Palestinian peace undertaking, and will analyze certain aspects of the September 28, 1995 Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip (Oslo II),²¹ the most recent and comprehensive of the five transitional agreements entered into by Israel and the PLO.²² In order to focus on several topics of crucial importance, this essay will limit its scope to the following topics: Edward Said's discontent; Leiter's critique and doubts; negotiating techniques and results; the Palestinian elections and the structure of the Palestinian Council; aspirations for Palestinian self-determination; the security/terrorism dilemma; and the prospects for ultimately reaching a full peace.

I. Edward Said's Discontent

A. Said's Accusations Against Arafat

Edward Said castigates Arafat for selling out the interests of the Palestinian people.²³ Those accustomed to the harsh critiques of Israel²⁴ and the United States²⁵ that permeate his earlier books may, depending on their

20. *Id.*

21. Late Prime Minister Yitzhak Rabin and current PA chief, Yasir Arafat signed the Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip, Sept. 28, 1995 (copy on file) [hereinafter Oslo II], in Washington, D.C. Oslo II was formulated as the final interim agreement between the Israelis and Palestinians. As a result, it supersedes all previous interim agreements concluded between the parties except for the DOP. See DOP, *supra* note 1. Oslo II set forth the framework for the elections of the Palestinian Interim Self-Government Authority (Council) and the *Ra'ees* of the Executive Authority (Chairman), which took place on January 20, 1996. Prior to the elections, Israeli armed forces withdrew from most Palestinian populated areas of the West Bank and further redeployments are scheduled by Oslo II.

Oslo II also outlines the size and structure, as well as the powers and responsibilities to be assumed by the Council, the Executive Authority, and its Chairman. The Agreement stipulates that the Council will adopt a Basic Law, i.e., a constitution, that will set forth the organization, structure and functioning of the Council, and establish a judicial system composed of independent courts and tribunals. The Agreement also outlines a mechanism for judicial review of acts or decisions taken by the Executive or its Chairman.

Pursuant to Oslo II, the Palestinian Council has begun to exercise jurisdiction over the West Bank and the Gaza Strip in all spheres except those delineated as part of the permanent status negotiations. Among the most important matters to be discussed in these negotiations are the status of Jerusalem, the future of the Jewish settlements, the presence of Israeli military installations in the Palestinian-controlled areas, the disposition of Palestinian refugees, borders and foreign relations. Moreover, the Council does not have jurisdiction over those matters for which it has not received specific authority under Oslo II, such as defense against external threats. Also, it has had to compete with Arafat and his inner circle of advisors and appointees for actual influence. See Serg Schmemmann, *Arafat's Heirs*, N.Y. TIMES MAG., Aug. 4, 1996, at 32.

22. See *supra* note 1 and accompanying text.

23. See Said, *supra* note 2, at 64-65, 177.

24. Said has been described as "an eloquent spokesman for the PLO and a relentless opponent of all things Israeli and Zionist." M.M., *The Many-Headed Edward Said (with a Cap for Each)*, CONTENTIONS, Feb. 1989, at 1.

25. See generally EDWARD W. SAID, THE POLITICS OF DISPOSSESSION 25 (1994) (US policy prevented Israeli-Palestinian agreement and facilitated violence); EDWARD W. SAID &

outlook, be startled or amused to see the same approach directed at the PA and Chairman Arafat. It is not that Said has become a Zionist or an admirer of American "imperialism," but rather that he considers Arafat's PLO to be co-opted by long-time enemies whose policies Said insists are detrimental to the Palestinian people. Said describes the present situation as "a massive abandonment of principles, the main currents of Palestinian history, and national goals."²⁶ Arafat, according to Said, became "the head of a Vichy government,"²⁷ and has, as a consequence, relegated the diaspora Palestinians to "permanent exile or refugee status."²⁸ According to Said, after Arafat accepted Israel's right to exist, renounced the use of terrorism, and promised to amend the Palestinian Covenant, the Palestinians "ha[d] very little left to give."²⁹ Said chastises Arafat for unilaterally ending the intifada, "which [Said considers to have] embodied not terrorism but the Palestinian *right to resist*."³⁰ In actuality, after its initial phase of mass demonstrations and riots, the intifada was harassed by various factions of the PLO and fundamentalist Islamic groups to carry out extensive terrorist activities utilizing firearms, hand grenades, and Molotov cocktails.³¹ Hundreds of Palestinians (primarily persons accused of being "collaborators" or morals offenders) and Israelis were killed and thousands injured.³²

Said further accuses Arafat of capitulating to Israel's security demands and claims that the PLO leadership has agreed to "become Israel's enforcer in Gaza."³³ Said also condemns both Israel and the US for deliberately allowing the PA to double the membership of its police force in violation of the Cairo Agreement so that "Arafat [could] become as much a petty dicta-

JEAN MOHR, *AFTER THE SKY* (1986); EDWARD W. SAID, *THE QUESTION OF PALESTINE* (1979); *BLAMING THE VICTIMS* (Edward W. Said & Christopher Hitchens eds., 1988).

26. SAID, *supra* note 2, at 74.

27. SAID, *supra* note 2, at 121.

28. *Id.* at 17. Said champions the plight of the Palestinian refugees and castigates Arafat for selling out their interests. *See id.* at xxix, 17-18.

An inconsistency in Said's book concerns the number of Palestinian refugees living in the diaspora, who at different points in his book are said to number "2.5 to 3 million," and elsewhere "almost four million." SAID, *supra* note 2, at 124, 131. While it is not possible to count the 1948 refugees precisely, informed estimates run in the range from 430,000 to 700,000. *See* TERENCE PRITTE & BERNARD DINEEN, *THE DOUBLE EXODUS 8-9* (1974); SHLOMO GAZIT, *THE PALESTINIAN REFUGEE PROBLEM 3* (1995). An additional approximately 300,000 Palestinians became refugees during the 1967 War, although some 120,000 of these had already been refugees from the 1948 War. TERENCE PRITTE, *ISRAEL: MIRACLE IN THE DESERT 118-22* (1967); WALTER PINNER, *HOW MANY ARAB REFUGEES?* (1959); DON PERETZ, *PALESTINIANS, REFUGEES, AND THE MIDDLE EAST PEACE PROCESS 12-13* (1993). By deducting from these sums persons readmitted by Israel under the family reunification policy and others that Israel granted residency status in the West Bank and Gaza since the 1967 War, as well significant numbers of persons who died during the intervening decades, it becomes clear that Said's claims are dubious. Said never explains the source of his figures.

29. SAID, *supra* note 2, at 20.

30. *Id.* at 9 (emphasis in original).

31. Daniel Reisner, *Legal Options in the War Against Terror*, JUSTICE, Mar. 1996, at 3.

32. *See* Justis R. Weiner, *Human Rights in the Israeli Administered Areas During the Intifada: 1987-1990*, 10 WIS. INT'L L.J. 185 (1992).

33. SAID, *supra* note 2, at 52-53.

tor as is consistent with their interests."³⁴ Said further asserts that Israel and the US stood behind Arafat's decision to establish a military justice system in the self-governing areas.³⁵ The trials held in these military courts, according to both Palestinian and international human rights organizations, violate the most basic rules of due process.³⁶ Other recent examples of human rights violations by the PA include the imprisonment and torture of the Director Commissioner General of the quasi-official Palestinian human rights organization for criticizing Arafat's administration,³⁷ the death of an eleven year old girl in an exchange of fire between Arafat's security guards and Palestinian policemen,³⁸ Arafat's firing of the President of the Palestinian Supreme Court who had made a controversial ruling,³⁹ and, ironically, the banning of Edward Said's books from libraries and bookshops. One of the banned books is an Arabic translation of Said's book reviewed herein.⁴⁰

Said is not alone in his opposition to the Israel-PLO peace undertaking. Other leading Palestinians who criticize, albeit less harshly than Said, the concessions made by the PLO include Hanan Ashrawi, the former spokesperson for the Palestinian negotiating team in the Washington talks and Abdel Haider al Shafi, who headed the Palestinian delegation in Washington. This sentiment is shared by many in the Palestinian electorate as was recently demonstrated by the widespread rioting and shooting directed at Israelis by Palestinian civilians and policemen, prompted by Israel's opening of an exit to an archaeological tunnel in Jerusalem's old city.⁴¹ This is evidenced by the fact that although Arafat and his hand-picked Fatah slate were overwhelmingly victorious in the Palestinian elec-

34. *Id.* at 157.

35. *Id.*

36. See Eric Silver, *Arafat's Despotic Rule Splits Palestinian Elite*, INDEPENDENT, Aug. 25, 1996, at 16; Anton La Guardia, *Gaza Sees Its Dreams Die Under Arafat's Rule*, DAILY TELEGRAPH, May 5, 1995, at 16. Fatah Azzam, then Al-Haq's Director General, publicly denounced the establishment of the State Security Courts. Myles Crawford, *Al-Haq and the New Authority*, JERUSALEM TIMES, Apr. 15, 1995, at 8. According to Azzam:

Defendants at recent trials were held incommunicado for up to a month, appointed counsel at the last hour, and tried in the middle of the night without notice to their families. There is no right of appeal, and the decisions of the court are subject only to ratification by the executive authority.

Id. See also Hilary Appelman, *Palestinians See "No Logic, No Law"*, JERUSALEM POST, May 17, 1995, at 5. See generally Justus R. Weiner, *An Analysis of the Oslo II Agreement in Light of the Expectations of Shimon Peres and Mahmud Abbas*, 17 MICH. J. INT'L L. 667, 670-78 (1996); Justus R. Weiner, *Human Rights in Limbo During the Interim Period of the Israel-Palestinian Peace Process: Review, Analysis and Implications*, N.Y.U. J. INT'L & POL. (forthcoming 1996).

37. *US Official Visits Jailed Palestinian Human Rights Activists*, JERUSALEM POST, June 16, 1996, at 2.

38. Jon Immanuel, *Girl Killed in PA Security Forces Crossfire*, JERUSALEM POST, Aug. 22, 1996, at 2.

39. *Palestine Supreme Court President Fired*, BELADI THE JERUSALEM TIMES, Sept. 5, 1996, at 2.

40. Wael Tabari, *Controversy Over Oslo Books*, BELADI THE JERUSALEM TIMES, Aug. 30, 1996, at 3; see BBC Short Wave Broadcasting, *Al-Sharq al-Aswat*, London, Aug. 21, 1996 (ME/2698 MED/7).

41. Charles Krauthammer, *A Desecration of the Truth*, TIME, Oct. 14, 1996, at 84.

tions, both Ashrawi and al-Shafi were elected to the Palestinian Legislative Council.⁴² Al-Shafi, in particular, received the highest percentage of votes of any of the 676 candidates⁴³ for the Council.⁴⁴

Most Palestinian foes to the peace process, however, are not secular intellectuals like Said, Ashrawi, and al Shafi, but the large Islamic opposition group Hamas and much smaller groups like Islamic Jihad. The most important of these groups, Hamas, derives its name from the acronym meaning "zeal" or "fervor" in Arabic.⁴⁵ The philosophy of Hamas combines both pan-Arab religious precepts and Palestinian nationalism.⁴⁶ Article 13 of the Hamas Charter, for example, denounces all peace initiatives stating, "[t]here is no solution to the Palestinian problem except by *jihad*."⁴⁷ Article 6 declares that all religiously faithful Palestinian Muslims are obliged "to raise the banner of Allah over every inch of Palestine."⁴⁸ As distinct from many other militant Islamic groups in the region, Hamas calls for a holy war resulting in the murder of Israelis. The most well-known tactic used by Hamas is the detonation of suicide bombs on or near crowded buses.⁴⁹

Although Said's and Hamas' ideologies and methods of expression differ dramatically (Said emphasizes his rejection of Hamas' bombings),⁵⁰ many of the arguments made by the religious opposition to the peace process mirror those of the secular opposition exemplified by Said. It would

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

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

44. See Jon Immanuel, *Fatah Wins 67 Seats on PA Council*, JERUSALEM POST, Jan. 23, 1996, at 1.

45. The movement's full Arabic name is *Harakat al-Muqawama al-Islamiyya*. *The Charter of Allah: The Platform of the Islamic Resistance Movement (Hamas)*, 2 ISR. AFF. 273 (Raphael Israeli trans., 1995) [hereinafter *Hamas*].

46. Boaz Ganor, *The Islamic Resistance Movement—Hamas*, MATARA, Nov. 20, 1991, at 3 (Hebrew original).

47. *Hamas*, *supra* note 45. *Jihad* is Arabic for "war against the unbeliever." DAVID PRYCE-JONES, *THE CLOSED CIRCLE* 322 (1989).

48. *Hamas*, *supra* note 45, at 275-76.

49. See Justus R. Weiner, *Israel's Expulsion of Islamic Militants to Southern Lebanon*, 26 COLUM. HUM. RTS. L. REV. 357, 380-85 (1995).

50. Said condemns the Hamas bombers and refuses to make a pact with them. SAID, *supra* note 2, at 111. He appreciatively acknowledges, however, that "the organization is one of the only ones expressing resistance." *Id.* Indeed, in an essay written in the aftermath of the signing of the DOP, Said defended Hamas and Islamic Jihad against their PLO critics in the following terms: "Like so many unpopular and undemocratic Arab governments, the PLO has already begun to appropriate authority for itself by calling its opponents terrorists and fundamentalists. This is demagoguery. Hamas and Islamic Jihad are opposed to the Oslo agreement, but they . . . will not use violence against other Palestinians." *Id.* at 19. Said rules out, by implication, the possibility that suicide attacks against Israeli civilians might justify labeling the Hamas or Islamic Jihad perpetrators as "terrorists." *Id.* Moreover, when asked in a revealing interview whether Hamas has a very different agenda from the PLO, Said replied, "That's not true, actually." Answering a follow up question as to whether Hamas represented a different philosophy, Said responded emphatically, "No. Absolutely not." *Id.* *Charlie Rose: Arafat and Middle East Peace* (WNET television broadcast, Aug. 8, 1994) (transcript #1177 available from Journal Graphics) [hereinafter *Charlie Rose*].

not be uncommon to read allegations made by the religious opposition that are virtually identical to those of Said when he claims that the DOP is an "instrument of Palestinian surrender"⁵¹ and that Arafat has "sold his people into enslavement."⁵²

B. Problems With Said's Historical Interpretation

Said's understanding of the facts and of his historical interpretation, however, are questionable at best. For example, regarding the killing of Muslim worshippers at the Tomb of the Patriarchs in Hebron, he states that:

[A]nyone who had any concrete knowledge of the situation in places like Hebron . . . would have made it a point at the very outset to press for some disengagement of settlers and Palestinian civilians in Hebron and elsewhere, where religious passions stimulated by the inherent monotheistic competition that is the curse of today's Middle East have been waiting to ignite.⁵³

Prior to this statement, he recalled that "[b]efore 1967, a small rabbinical school, located at the back of the mosque, had been *unused* for generations . . . where there are particularly ugly memories of inter-faith murders and riots."⁵⁴ He makes this description so bland as to avoid mention of who murdered whom. A brief synopsis of what Said omits of Hebron's history would note that the Jews established their oldest legal deed when their Patriarch Abraham purchased the cave at Machpela from a Hittite for 400 pieces of silver.⁵⁵ This cave was used as the burial site for Abraham, Isaac, and Jacob as well as their wives. Later, a church was built over the graves and some 650 years ago Muslims converted the entire compound into a mosque.⁵⁶ From then up until 1862 when the Prince of Wales was, as a celebrity, permitted entry to the complex to see the tombs, non-Moslems were denied entry beyond the seventh step outside the structure.⁵⁷ Despite the liberalizing influence of the British Mandate, in practice Jews were forbidden from crossing the green line of paint on the seventh step on pain of death.⁵⁸ Although Jews had lived, studied, and prayed in Hebron for more than three thousand years, the Muslims massacred them on more than one occasion. Most recently in 1929, a Muslim riot resulted in the murder of sixty Jews and the destruction of their synagogues and yeshivas. The horrible details of the mutilation of the thirty-eight victims who were killed in a Rabbi's house were recorded by an eyewitness who visited the scene shortly

51. Diana Jean Schemo, *America's Scholarly Palestinian Raises Volume Against Arafat*, N.Y. TIMES, Mar. 4, 1994, at A10.

52. *Id.* Interestingly, a similar assessment of the results of the early interim agreements has been made by some left-wing Israelis. Said quotes Meron Benvenisti's assessment of the Cairo Agreement: "[o]ne can clearly recognize that Israeli victory was absolute and Palestinian defeat abject." SAID, *supra* note 2, at 102.

53. SAID, *supra* note 2, at 60.

54. *Id.* at 55 (emphasis added).

55. *Genesis* xxiii (Torah).

56. KARL BAEDERER, *BAEDERER'S PALESTINE AND SYRIA HANDBOOK* 113-15 (1906).

57. SAUL S. FRIEDMAN, *LAND OF DUST* 135-37 (1982).

58. *Id.* at 136.

thereafter.⁵⁹ The entire surviving Jewish population, some 400 people, fled the town.⁶⁰ Jews returned to Jewish-owned properties in the center of Hebron in the aftermath of the 1967 war and reestablished one of the seminaries destroyed in 1929.⁶¹ As a result, it is not surprising that Said has been both attacked⁶² and praised frequently.⁶³

Another problematic area of Said's analysis is his constant castigation of Arafat and the PLO. For example, Said asserts that as a result of the peace process "the PLO had ended the intifada."⁶⁴ This is refuted by Mahmoud Abbas, a senior Arafat aide and member of the Palestinian negotiating team at Oslo, who clearly states that the PLO refused to issue a statement (at the accords) that would "stop the intifada" because it would "demand from our people that they discontinue their resistance while the occupation remained."⁶⁵ Instead, Arafat, in a letter to the Foreign Minister of Norway, pledged to exhort the Palestinians residing in the West Bank and Gaza Strip "to take part in the steps leading to the normalization of life."⁶⁶ Since the signing of the DOP, there has been a dramatic decline in violence and civil unrest in Gaza and the West Bank. It is particularly noteworthy that the overall incidence of clashes between Palestinians and Israeli soldiers has dramatically declined.⁶⁷

Also questionable is Said's claim that the PA acts as Israel's security force in the self-governing areas. This is true only to the extent that it has served Arafat's interests, and not as an end in itself. Thus, Arafat has vacillated between making efforts to fulfill his agreements to Israel and preserving his relations with the Palestinians opposed to the peace process.

Israel has repeatedly called upon Arafat to act more effectively against Islamic opposition groups that commit terrorist attacks against Israeli and Jewish targets.⁶⁸ Moreover, the initially tepid effort of the PA to confront terrorist organizations residing in its jurisdiction frustrated many Israeli

59. PIERRE VAN PASSEN, *A PILGRIM'S VOW* 122-25 (1956).

60. HELEN BENTWICH, *MANDATE MEMORIES 1918-1948*, at 129-48 (1961).

61. See FRIEDMAN, *supra* note 57, at 136-37.

62. Victor Brombert, *Orientalism and the Scandals of Scholarship*, *AMERICAN SCHOLAR*, Autumn 1979, at 532, 540; Hillel Halkin, *Whose Palestine? An Open Letter to Edward Said*, *COMMENTARY*, May 1980, at 21, 23; Walter Laqueur, *The Question of Palestine*, *NEW REPUBLIC*, Dec. 15, 1979, at 34 (review of Said's book); Bernard Lewis, *The Question of Orientalism*, *N.Y. REV. OF BOOKS*, June 24, 1982, at 49, 55; Leon Wieseltier, *Versions of Orientalism*, *NEW REPUBLIC*, Sept. 23, 1981, at 34, 36.

63. See e.g., Richard A. Falk, *Letters from Readers*, *COMMENTARY*, Dec. 1989, at 2; Yerach Gover et al., *Letters from Readers*, *COMMENTARY*, Dec. 1989, at 2-3.

64. SAID, *supra* note 2, at 9.

65. MAHMOUD ABBAS, *THROUGH SECRET CHANNELS* 208 (1995).

66. *Texts of Rabin, Arafat Letters*, *CHI. TRIB.*, Sept. 10, 1993, at 7 (letter from Yasir Arafat to Johan Jorgen Holst, Foreign Minister of Norway).

67. See *Sharp Drop In Number of Palestinians Killed by Security Forces In Year Since Signing of Gaza-Jericho Accords*, *PEACE WATCH* (Peace Watch, Jerusalem, Isr.), May 8, 1995.

68. See, e.g., Gideon Alon, *Peres: Fulfillment of List of Demands For Military Action Will Be "Supreme Test" For Palestinian Authority*, *HA'ARETZ*, Feb. 27, 1996, at A4 (Hebrew original).

leaders and continues to jeopardize the success of the peace process.⁶⁹ It was also a major factor in Prime Minister Peres' defeat in the recent Israeli national elections.⁷⁰

C. Problems With Said's Understanding of International Law

Another problematic area in *Peace and Its Discontents* is his apparent unfamiliarity with international law. For example, Said refers to East Jerusalem as "captured illegally by war."⁷¹ Contrary to Said's assertion, Israel's 1967 capture of the part of the city previously occupied by Jordan during the 1948 War was almost universally recognized as justified under the international law of self-defense.⁷² Neither the United Nations General Assembly nor the Security Council labeled Israel the aggressor or called upon Israel to return to the *status quo ante*, even though they were pressed to do so.⁷³ This reflects the general UN opinion toward allocation of responsibility for the 1967 Six Day War.⁷⁴

Given the imminent danger this war posed to Israel's survival, combined with the political circumstances surrounding the war, "[t]he most persuasive assessment," writes Professor Moore, is that the "Israeli actions in the [Six Day] War were lawful defense actions." Moreover, according to Moore, "Israeli seizure of the territories occupied in the Six Day War [which included the eastern part of Jerusalem] seems to have been reasonably necessary and proportional in relation to Israeli security needs." As a result, Israel's actions in this war were not, as many incorrectly assert, violations of international law, but were justified according to the laws of self-defense and by Israel's need to maintain the security of its citizens.⁷⁵

A second example of Said's peculiar understanding of international law is found in his defense of "collaborator" killings by PLO death squads. Said states that "the UN Charter and every other known document or protocol entitles a people under foreign occupation not only to resist but also by extension to *deal severely* with collaborators."⁷⁶ However, the United Nations Charter makes no mention whatsoever of allowing the murder of "collaborators" as a permitted means to resist foreign occupation. More-

69. See Ze'ev Schiff, *Israeli Public Security—First*, HA'ARETZ, Feb. 27, 1996, at B1 (Hebrew original).

70. Goell, *supra* note 6.

71. SAID, *supra* note 2, at xxv.

72. Barry Feinstein, *Self-Defence and Israel in International Law; A Reappraisal*, 11 ISR. L. REV. 516, 556 (1976). See Amos Shapira, *The Six-Day War and the Right of Self-Defence*, 6 ISR. L. REV. 65, 75-76 (1971).

73. Nathan Feinberg, *The Legality of the Use of Force to Recover Occupied Territory*, 15 ISR. L. REV. 160, 171 (1980).

74. *Id.*

75. John Norton Moore, *The Arab-Israeli Conflict and the Obligation to Pursue Peaceful Settlement of International Disputes*, in 2 THE ARAB-ISRAELI CONFLICT 739, 761 (John Norton Moore ed., 1974). See also YORAM DINSTEIN, *WAR, AGGRESSION & SELF-DEFENCE* 190-91 (2nd ed., 1994); Stephen M. Schwebel, *What Weight Conquest?*, 64 AM. J. INT'L L. 344, 346 (1970).

76. Edward Said, *An Exchange on Edward Said and Difference*, 15 CRITICAL INQUIRY 634, 641 (Spring 1989) (emphasis added).

over, Said does not elaborate which, if any, other documents he uses to justify this assertion. The author is unaware of any official documents or protocols entitling people under occupation to "deal severely" with their compatriots suspected of cooperating with the enemy.⁷⁷

One potential argument in support of Said's statement is that the General Assembly has repeatedly passed resolutions condemning Israel and that it has consistently supported the Palestinians.⁷⁸ The problem with this argument is that these resolutions neither amend the UN Charter nor create binding international law.⁷⁹ Moreover, these resolutions do not furnish a license for the wide-ranging campaign of murder and intimidation of Palestinians who are considered, often without any reason, to have collaborated with Israel or violated fundamentalist Islamic morality.⁸⁰

77. Cf. Edward Alexander, *Professor of Terror*, COMMENTARY, Aug. 1989, at 49.

78. See, e.g., G.A. Res. 2535, U.N. GAOR Spec. Pol. Comm., 24th Sess., Supp. No. 30, at 25, U.N. Doc. A/7630 (1969); G.A. Res. 2792(D), U.N. GAOR Spec. Pol. Comm., 26th Sess., Supp. No. 29, at 47, U.N. Doc. A/8429 (1971); G.A. Res. 2963, U.N. GAOR Spec. Pol. Comm., 27th Sess., Supp. No. 30, at 27, U.N. Doc. A/8730 (1972); G.A. Res. 3236, U.N. GAOR, 29th Sess., Supp. No. 31, at 4, U.N. Doc. A/9631 (1974).

79. As Professor Adam Roberts notes:

The United Nations, and in particular the General Assembly, is sometimes seen as having done little but pass resolutions indiscriminately condemnatory of all aspects of Israeli policy. Although this is more a criticism of the member states than of the Organization as such, the United Nations is vulnerable to the charge of rebuking Israel endlessly, while maintaining a diplomatic silence in respect of certain brutalities committed by other governments, including some Arab governments. The Special Committee to Investigate Israeli Practices has been widely criticized. The potential of UN resolutions has been undermined by political partiality and intellectual inconsistency. The General Assembly's espousal in 1975 of the resolution equating Zionism with racism was the most spectacular, but not the only, example of a denunciatory and self-defeating approach. Too often, UN member states have seemed content to cast votes on the subject and leave it at that; painstaking fact-finding, authoritative argument and diplomatic dialogue have sometimes been lacking. All this has conveyed the unfortunate impression that the law on occupations is a stick with which to beat occupants and a mechanism of political warfare, rather than a serious means of seeking to reconcile the conflicting interests of the parties.

Adam Roberts, *Prolonged Military Occupation: The Israeli-Occupied Territories Since 1967*, 84 AM. J. INT'L L. 44, 100 (1990). See also HARRIS O. SCHOENBERG, *A MANDATE FOR TERROR: THE UNITED NATIONS AND THE PLO 251-327* (1989); IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 699 (4th ed. 1990). Even today, six years after the UN's repeal of the resolution equating Zionism with racism, G.A. Res. 46/86, U.N. GAOR, 46th Sess., U.N. Doc. A/RES/46/86 (1991) (repealing General Assembly Resolution 3379, U.N. GAOR 3d Comm., 30th Sess., Supp. No. 34, at 83-84, U.N. Doc. A/10034 (1975), and determining "that Zionism is a form of racism and racial discrimination."), the organization has failed to mitigate its bias against Israel. See, e.g., Meir Rosenne, *Double Standard*, JERUSALEM POST, Jan. 11, 1993, at 6 (noting that the UN never condemns violence directed at Jews or Israelis); Marilyn Henry et al., *Israel, US Reject UN Kana Report*, JERUSALEM POST, May 9, 1996, at 1.

80. See B'TSELEM, *COLLABORATORS IN THE OCCUPIED TERRITORIES: HUMAN RIGHTS ABUSES AND VIOLATIONS* (1994); *The Gaza Strip and Jericho: Human Rights Under Palestinian Self-Rule*, HUMAN RIGHTS WATCH MIDDLE EAST, Feb. 1995, at 22-25; *Neither Law Nor Justice: Extra-judicial Punishment, Abduction, Unlawful Arrest, and Torture of Palestinian Residents of the West Bank by the Palestinian Preventive Security Service*, B'TSELEM (Isr. Info. Center for Hum. Rts. in the Occupied Terr., Jerusalem, Isr.), Aug. 1995. The continued harassment of "collaborators" by the Palestinian Authority constitutes a viola-

A third example of Said's questionable interpretation of international law is his allegation that the late Yitzhak Rabin was a "war criminal."⁸¹ Resting on Rabin's involvement in evacuating Arabs from two towns during the 1948 War, Said's observation ignores that the forced evacuation of Lydda and Ramle was strategically justified⁸² and not violative of international law.⁸³ Moreover, despite the recent dimming of his long-time esteem for Arafat,⁸⁴ Said makes no similar allegation against the person some regard as the father of modern political terrorism, whose PLO has in recent decades killed large numbers of civilians of various nationalities, some after having been held as hostages.⁸⁵ The PLO's terrorism prompted the US Congress to enact the unprecedented Anti-terrorism Act of 1987, which described the PLO as "a terrorist organization . . . and a threat . . . to international law" and forbade its operating in the United States.⁸⁶ Certainly the taking and harming of civilian hostages constitutes a violation of inter-

tion of the Cairo and Oslo II Agreements. See Cairo Agreement, *supra* note 3, art. XX.4; Oslo II Agreement, *supra* note 21, art. XVI.2.

81. David Barsamian, *Edward W. Said The Pen and the Sword: Culture and Imperialism*, Z MAG., July/Aug. 1993, at 62, 71 (interview with Edward Said).

82. First, Lydda and Ramle were located next to the Jerusalem-Tel Aviv highway and the armed Arab residents of these towns regularly interdicted Jewish traffic. Second, augmented by elements of the Jordanian Arab Legion, these towns constituted a springboard from which the Arabs intended to attack Tel Aviv. Third, the unit of the Israel Defense Forces that captured Lydda numbered only several hundred, yet was surrounded by tens of thousands of Arabs. Fourth, many of the homes in these towns were being used as sniping positions. BENNY MORRIS, *1948 AND AFTER 1-2* (1994). Furthermore, the evacuation occurred during the siege of Jerusalem in which the Jordanian Arab Legion had cut off the city's main water supply. Marie Syrkin, *The Palestinian Refugees: Resettlement, Repatriation, or Restoration*, in ISRAEL, THE ARABS AND THE MIDDLE EAST 164 (Irving Howe & Carl Gershman eds., 1972).

83. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Fourth Geneva Convention]. Article 49 of the Fourth Geneva Convention generally forbids the permanent evacuation of civilians living in areas occupied during international conflicts. Its relevance to these Palestinian refugees is doubtful for several reasons, *inter alia*, that the 1948 War was not yet an international conflict when the evacuations took place and the Fourth Geneva Convention came into force some two and a half years later and cannot be applied retroactively. DOCUMENTS ON THE LAWS OF WAR 272 (Adam Roberts & Richard Guelff eds., 1982). See Justus R. Weiner, *The Palestinian Refugees' "Right to Return" and the Peace Process*, B.C. INT'L & COMP. L. REV. (forthcoming). Even if the Fourth Geneva convention could be applied retroactively, justification for Rabin's conduct could be found under article 64 by reasoning that the evacuation of Ramle and Lydda was undertaken to ensure the security of Israeli forces. See Justus R. Weiner, *Israel's Expulsion of Islamic Militants to Southern Lebanon*, 26 COLUM.HUM. RTS. L. REV. 357, 377 (1995).

84. Although Said has frequently expressed his disapproval of terrorism, see e.g., Matthew Stevenson, *Edward Said: An Exile's Exile*, THE PROGRESSIVE, Feb. 1987, at 30, 32, until several years ago he "was an admirer of Arafat." Dinitia Smith, *Arafat's Man in New York: The Divided Life of Columbia Professor Edward Said*, NEW YORK, Jan. 25, 1989, at 40, 42.

In 1993, Said criticized Arafat as a "foolish man who misunderstands his own people." *Charlie Rose*, *supra* note 50.

85. NEIL C. LIVINGSTONE & DAVID HALEVY, *INSIDE THE PLO* 29, 142-43, 276-88 (1990). Among the victims was then US Ambassador to the Sudan, Cleo Noel, who was gunned down while in PLO custody pursuant to Arafat's order. *Id.* at 276-85.

86. Anti-terrorism Act of 1987, 22 U.S.C. §§ 5201-03 (1994).

national humanitarian law in war⁸⁷ and peacetime.⁸⁸

Said also complains that despite the peace process there remains "one law for Israeli settlers, another for Palestinians."⁸⁹ This statement is factually correct, however, a basic understanding of Israeli law furnishes the necessary rationale. The law applied to Palestinians differs from that applied to Israeli citizens residing in the West Bank and Gaza Strip. Settlers are subject to Israeli law in civil matters because the Israeli civil courts have jurisdiction over all cases in which at least one of the parties to the litigation is an Israeli citizen.⁹⁰ Israeli citizens residing in the West Bank and Gaza Strip are also subject to Israeli criminal, fiscal, and other public laws.⁹¹ This legal arrangement is based on the fact that these individuals carry their legal rights and obligations with them in an *in personam* manner.⁹²

The extension of Israeli legislation to settlers in the territories is understandable from a practical standpoint. It ensures that Israelis residing in the West Bank and Gaza Strip, many living only a few meters outside Israel's pre-1967 frontiers, have the same status as all other Israelis, and are not subject to different rights and liabilities merely because of their physical presence in the territories. Moreover, nothing in international law requires an occupier to apply its civilian legal system to the residents of the territory it captures. Such an extension of civil authority would arguably be illegal under international law and would most likely open Israel to widespread censure based on claims of illegitimate interference in the affairs of the indigenous population.⁹³ Moreover, it would certainly displease Said or other Palestinian nationalists who desire nothing less than full Palestinian authority over the territories.

II. Yechiel Leiter's Arguments for Resisting the Peace Process

A. Leiter's Views in Context: An Example of Israel's Right Wing

Since the breakthrough negotiations between Israel and the PLO were revealed to an astonished Israeli public in August 1993, Yechiel Leiter has

87. Fourth Geneva Convention, *supra* note 83, art. 34, 6 U.S.T., at 3365.

88. *International Convention Against the Taking of Hostages*, U.N. GAOR 6th Comm., 34th Sess., Agenda Item 113, U.N. Doc. A/C.6/34/L.23 (1979), reprinted in 18 I.L.M. 1456-63 (1979).

89. SAID, *supra* note 2, at 67. Said adds the claim "[t]hat a state of apartheid will go on is obvious." *Id.*

90. EYAL BENVENISTI, *LEGAL DUALISM: THE ABSORPTION OF THE OCCUPIED TERRITORIES INTO ISRAEL* 23-28 (1990).

91. *Id.* at 17-21.

92. According to the Israeli Rules of Civil Procedure, courts have jurisdiction over a party from the moment he is served with a summons notice. In order to ensure the legal equality of its citizens, however, Israeli law further allows for the service of summons upon defendants in the West Bank and Gaza Strip, areas not in Israel's general civil jurisdiction, as if they were part of Israel. Rules of Civil Procedure (Service of Documents in the Administered Territories), 5730-1969, Kovetz Takanot 2482 (Nov. 16, 1989). See also YOEL ZUSSMAN, *CIVIL PROCEDURE* 34-41 (Shlomo Levin, 7th ed. 1995) (Hebrew original).

93. See GERHARD VON GLAHN, *LAW AMONG NATIONS* 694-95 (5th ed. 1986).

been struggling to prevent the signing and implementation of the interim agreements. Leiter has waged his battle on two levels. On the practical political level, Leiter attempted to mobilize the forces necessary in order to impede the former Rabin-Peres Labor Party coalition government from advancing in the peace process. On the ideological level, Leiter strives to alert his countrymen to the danger these accords pose to the Zionist ideal.

Leiter recognizes that the return of the Israeli Defense Force (IDF) to various regions in the West Bank and Gaza Strip, from which it has withdrawn, is not practicable. While he has no objection to what he calls a "useful autonomy" for the Palestinians, Leiter is totally opposed to the creation of a Palestinian state alongside Israel,⁹⁴ and believes that the tide can be stemmed. Thus, he insists that although "Oslo II was implemented, [that] doesn't mean that we've lost the ideological battle."⁹⁵

Leiter's views are common among the religious right-wing in Israel, who, in the opinion of the author, represent roughly fifteen percent of the voters.⁹⁶ In addition, many of Leiter's strategic, tactical, and moral criticisms find favor with broad sectors of the secular right in Israel who do not share his theological beliefs. Similar views are held by many among the moderately observant Sephardic community in Israel, which also constitutes a large portion of the electorate. The power of the opposition to the Rabin-Peres peace process policies was evident in the results of the recent election. Furthermore, many of Leiter's views are shared by Christian fundamentalists,⁹⁷ who are a major voting block in the United States, and thus exert a strong pull on many American politicians.

B. Leiter's Reasons for Opposing the DOP

Leiter has many reasons for opposing the DOP. His overall rationale is based on policy and security considerations as well as national and religious identity. Leiter emphasizes that the Israeli government proceeded deceptively in negotiating the accord, and he feels that the peace undertaking should not have been initiated without a broad political mandate. He compares the process undertaken by the former Rabin-Peres government to the failure of then Prime Minister Menachem Begin's government to gain adequate public support for sending the IDF into Beirut during the 1982 War in Lebanon. As a result, Leiter claims that "if you can't wage a war with half the people, you can't wage a peace with half the people."⁹⁸

The duplicity of the Rabin-Peres government, Leiter feels, was evidenced by the clandestine nature of the talks in Oslo, which avoided media

94. Leiter Interview 1, *supra* note 18.

95. *Id.*

96. Leiter stated that "[T]he ideological lines are drawn having very little to do with the issue of the hills of Judea and Samaria for strategic depth which is normally the context in which this whole thing is argued. This is an ideological battle over the character of the country." *Id.*

97. One example of pro-Israeli sentiment within the Christian-fundamentalist media is a monthly newsletter based in Tulsa, Oklahoma, entitled *Bridges for Peace*. See *Bridges for Peace, Who Are We?*, DISPATCH FROM JERUSALEM, July/Aug. 1996, at 20.

98. Leiter Interview 1, *supra* note 18.

coverage or criticism by the opposition and resulted in a highly sensitive agreement representing a reversal of decades of governmental policy. Many of the commitments made by Israel in the DOP were contrary to the Labor Party's platform as well as certain campaign promises that had been made regarding relations with the Palestinians. In Leiter's view, the government's stratagem to stifle public debate concerning the accord severely tainted its democratic character, and therefore, tarnished the legitimacy of its agreement with the PLO.⁹⁹

Leiter criticizes the late Prime Minister Rabin and the then Foreign Minister Shimon Peres for breaking with the traditional Israeli policy that held that "the PLO is a terrorist organization and thus an illegitimate negotiating partner."¹⁰⁰ Leiter asserts that the PLO continues to pose a mortal threat to the existence of the State of Israel. In reaching this conclusion, he relies upon declarations made by Arafat on the day of the signing of the DOP which justify the accord as consistent with the PLO's Plan of Phases from 1974,¹⁰¹ Arafat's reluctance at the beginning of the process to openly condemn the perpetration of terrorist attacks against Israeli targets,¹⁰² and the failure of Arafat to fulfill the PLO's commitment to amend the Palestinian Covenant, which negates Israel's existence.¹⁰³

99. YECHIEL M. LEITER, *CRISIS IN: ISRAEL—A PEACE PLAN TO RESIST* 19-24 (1994).

100. *Id.* at 19.

101. *Id.* at 25. One author described the Plan of Phases as follows:

Under the "two-phase" plan the PLO would, first, establish a Palestinian state in any part of Palestine that it could obtain—phase one. Thereafter, this Palestinian state would serve as the base for a continued armed struggle, ultimately leading to the recovery of all of Palestine and the liquidation of Israel, as demanded by the [Palestinian National] [C]ovenant. While it is true that the Palestinians alone could not defeat Israel militarily, the fear has been that the West Bank and Gaza in the hands of Palestinians committed to continuation of the war of national liberation could be the launching pad for attacks by Arab states, such as Syria and Iraq, which would profit from the extreme vulnerability of Israel's pre-June 1967 borders. Israel would also be more vulnerable to terrorist incursions.

WILLIAM V. O'BRIEN, *LAW AND MORALITY IN ISRAEL'S WAR WITH THE PLO* 9 (1991) (footnote omitted).

102. LEITER, *supra* note 72, at 35-39, 93-95.

103. *Id.* at 37. As a result of Israeli and US pressure, the Palestinian National Council [hereinafter PNC] resolved on April 24, 1996, to amend the PLO Covenant as required by the Oslo II Agreement. Although the PNC vote did not actually change the Covenant, the Council allowed the PNC legal committee to prepare both a draft version of the amendments and an entirely new Covenant. Some have argued that the PNC resolution did not fulfill PLO Chairman Arafat's commitment to the late Israeli Prime Minister Yitzhak Rabin to amend articles in the Covenant inconsistent with the peace process because the actual amendment of the Palestinian Covenant has been postponed to a later date, while the old Covenant remains in force. Doubts about the validity of the PNC's decision to amend the Covenant arose after the PLO failed to immediately release an official version of the resolution's text, which was adopted in a closed session. Also, casting doubt on the decision's validity are the extensive delays in the publication of the new Covenant, and the present failure of the Council to disclose an internal Fatah document affirming that the covenant is frozen rather than annulled. *Internal Fatah Document: The Text of the Palestinian National Covenant Remains As It Was and No Changes Were Made to It*, PEACE WATCH (Peace Watch, Jerusalem, Isr.), May 21, 1996. See gener-

C. Leiter's Refusal to Recognize the PLO

Leiter also rejects the view that the PLO is a legitimate political body on moral grounds. He characterizes the PLO as the "grandmasters of international terrorism,"¹⁰⁴ who have been legitimized among the international community solely on the basis of their involvement in the peace process. According to Leiter, the Rabin-Peres government, by reaching an agreement with the PLO, was a major contributor to this development. Leiter states that:

Rabin's somewhat-reluctant handshake with Arafat has deteriorated into Foreign Minister Shimon Peres jubilantly holding hands on world television in a public ceremony with the mass murderer. This closeness, and the negotiations and recognition it represents, say in essence that terrorism pays off. Israel has sent the message that by killing enough civilians the PLO and others like it can successfully weaken Israeli resolve and make selected Israeli leaders want to surrender.¹⁰⁵

Leiter asserts that Arafat "should be tried for crimes against humanity."¹⁰⁶ Leiter's analogy between Arafat and Hitler,¹⁰⁷ however, is, as he admitted in an interview, "pedagogical" rather than literal.¹⁰⁸ Leiter decries the immorality of honoring Arafat who he believes should serve time in jail and then demonstrate that his fundamental views have changed prior to Israel dealing with him.¹⁰⁹ According to Leiter, Arafat is an unfit representative of the Palestinian residents of the West Bank and Gaza Strip.¹¹⁰ Prior to the signing of the DOP, Leiter notes that Arafat and his Fatah faction's popularity were at an all-time low. Furthermore, Arafat's backing of Saddam Hussein during the Gulf War rendered a great disservice to the Palestinian cause in the international arena. Finally, Arafat is renowned for his autocratic manner of administration and his willingness to employ violence and coercion in ruling over the Palestinians.¹¹¹

ally Amira Hess & Sami Soukol, *PNC Annals Articles in Palestinian Covenant Negating Israel's Right to Exist*, HA'ARETZ, Apr. 25, 1996, at A1 (Hebrew original).

104. LEITER, *supra* note 72, at 24.

105. *Id.* at 32.

106. *Id.* at 40.

107. Leiter reasons that:

Recognizing the PLO is not only politically foolish but even if Arafat's promises were trustworthy, a severe moral error. Imagine by way of analogy that in 1945 Hitler had repented, foresworn anti-Semitism and mass-murder and expressed the desire to live in peace and harmony with the Jews of Europe. Would he have been forgiven?

Id. at 39-40.

108. Leiter Interview 1, *supra* note 18.

109. In his first interview he stated, "[Arafat] has had nothing to answer for his crimes against humanity. It's immoral! Simply the whole thing is just immoral. And everything else is cut from that." *Id.*

110. LEITER, *supra* note 72, at 35.

111. See Lisa Beyer, *Can a Rebel Be a Ruler?*, TIME, July 31, 1995, at 16.

D. Problems with Leiter's Accusations

It is possible to take issue with a number of Leiter's accusations against the Israeli leadership's decision to negotiate with the PLO. First, Leiter's argument that Israel should not negotiate with the PLO because the PLO denies "[that] Israel has a right to exist"¹¹² finds absolutely no support in the agreements. On the contrary, all of the accords concluded thus far between the parties, as well as the letters exchanged between PLO Chairman Arafat and late Israeli Prime Minister Rabin prior to the signing of the DOP, unequivocally express the Palestinians' recognition of Israel's right to exist in peace and security.

Second, Leiter's claim that if Israel considers the PLO a suitable negotiating partner, the next logical step is for Israel to attempt peace with Palestinian terrorist organizations such as Hamas and the Islamic Jihad is unfounded.¹¹³ Leiter fails to consider that the PLO has been recognized as the sole representative of the Palestinian people by governments worldwide. Moreover, despite election irregularities,¹¹⁴ the results of the recent Council elections reinforce the perception that most Palestinians in the West Bank and Gaza Strip view the PLO as their representative.¹¹⁵ Furthermore, Israel has recognized this reality and has attempted to resolve the Israeli-Palestinian conflict with the PLO functioning as the representative of the Palestinian people. Thus, Israel's role in the peace process is not part of "a policy of capitulation, of surrender to violence,"¹¹⁶ as Leiter so vociferously maintains.

In the same vein, Leiter's protest that by agreeing to conduct talks with the PLO Israel has succumbed to the campaign of terror waged by the PLO against Israeli citizens over the past twenty-five years lacks merit. This claim is not supported either by the interim agreements or the conditions surrounding their negotiation. Moreover, contrary to Leiter's assertion, Israel insisted, as a prerequisite for reaching an agreement, that the PLO explicitly renounce terrorism and commit itself to amending all provisions in its National Covenant which sanction the use of terrorist actions against the Jewish state.¹¹⁷ The fact that Israel obtained these concessions at the

112. LEITER, *supra* note 72, at 30.

113. *Id.* at 30-31.

114. Justus R. Weiner, *An Analysis of the Oslo II Agreement in Light of the Expectations of Shimon Peres and Mahmoud Abbas*, 17 MICH. J. INT'L L. 667, 678-85 (1996).

115. See Jon Immanuel, *Fatah Wins 67 Seats on Council*, JERUSALEM POST, Jan. 23, 1996, at 1.

116. LEITER, *supra* note 75, at 32.

117. See the Exchange of Letters accompanying the in which 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 National Council." (Emphasis added). See also to the same effect the Exchange of Letters accompanying the Cairo Agreement. 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 Palestinian National Council will convene so as to amend the disputed provisions of the Covenant. See Oslo II, *supra* note 21, art. XXXI.9.

outset of the peace process renders untenable the charge that Israel has, as Leiter claims, "forgiven"¹¹⁸ Arafat for his organization's past murderous actions.

E. Leiter's Ideological Argument

Leiter also opposes the interim agreements on ideological grounds. In his view, much more is involved in the current peace process than the question of "land for peace." What is really at stake, according to Leiter, is the character of the Jewish state and the future of the Jewish people. He claims that behind the agitation and turmoil in Israeli society regarding the agreements, one can discern a more profound struggle between the secular and religious proponents of Zionism. Leiter views the present conflict as one between those who view the Jewish state as a means of transforming the Jewish people into "a nation like all other nations,"¹¹⁹ and those who believe that the return of the Jewish people to their homeland is a form of religious renewal or a return to traditional Judaism. Leiter characterizes the willingness among certain sectors of Israeli society to relinquish parts of Israel for the sake of "peace," as an expression of an overall desire to repress the uniqueness of the Jewish people in order to gain acceptance by the rest of the world. According to Leiter:

The issue is, rather, the character of the state: Is the Jewish state the fulfillment of Jewish history and destiny, which acknowledges and emphasizes the presence of a distinctive Jewish nation or is it merely a Hebrew-speaking carbon copy of Canada? . . . This was the phenomenon at work when Israelis were so exhilarated after the signing of the accord with the PLO that Mauritius and Zimbabwe granted Israel recognition, or that Michael Jackson and Madonna graced Israel with their presence. They were received with almost a religious fervor. "We're just like a normal country," was the message, "since even Madonna comes to perform." These Israelis wish to escape obligations and historic responsibilities by replacing Israel's Jewish identity with a general cosmopolitan world culture, and all too often the worst of that culture.¹²⁰

F. Problems With Leiter's Ideological Argument

Leiter's statements that Israelis who support the territorial concessions, which lay at the foundation of the current peace process, subscribe to the "pre-Zionis[t] assimilationist mentality"¹²¹ and manifest "disdain for Jewish tradition and those who respect it,"¹²² are overly simplistic and fail to reflect the vast array of beliefs present within the Israeli polity today. To equate the conflict that presently divides Israeli society regarding the peace undertaking with the public debate on "what it means to be Jewish"¹²³ is reductionist. It is predicated upon the false assumption that one's position

118. LEITER, *supra* note 72, at 33.

119. *Id.* at 102.

120. *Id.* at 110.

121. LEITER, *supra* note 72, at 109.

122. *Id.* at 113.

123. *Id.* at 97.

with respect to the peace process is an authentic reflection of the extent to which one adheres to Jewish tradition. Most of the Israeli public figures that opposed the concessions made by the former Rabin-Peres government did so on the basis of security considerations and do not subscribe to the tenets of religious Zionism. By the same token, a considerable segment of the Israeli population that lives an observant Jewish lifestyle accepts the principle of "land for peace" which underlies the peace process. They consider the occupation of another people as an anathema to Jewish values, and hence, view their acceptance of the peace process as an affirmation of those values. Moreover, there is a large segment of the non-Zionist, ultra-orthodox Israeli population that is not overly concerned about the peace process, and instead focuses their attention on other issues such as funding for religious institutions.¹²⁴

Despite the apparent durability of the peace process Leiter unrealistically believes it possible to "turn back the tide of capitulation."¹²⁵ Pursuant to this goal, Leiter has organized mass demonstrations and has launched a major educational campaign¹²⁶ in an effort to convince the public of the need to block the implementation of the Rabin-Peres agreements. It is important to note that however distraught Leiter was about the interim agreements, he never condoned the use of violence as a means to oppose the Israeli-Palestinian peace process. Moreover, Leiter's argument against the use of violence, formulated in the aftermath of the DOP, took on new meaning in light of the Rabin assassination:

Some will suggest violence, but this must also be ruled out. Violence is not only uncontrollable and of questionable moral value, but it would alienate large segments of the public who view it as inappropriate. Using violence would play into the hands of the left in their effort to portray us as radical extremists who are out of touch with Israeli society.¹²⁷

In an interview given after the Rabin assassination, Leiter blamed the Peres government for manipulating the public, and in particular for its use of the assassination as a platform to vilify those who expressed legitimate opposition to its "peace" policies. Leiter stated, "take for example the period of time following the assassination . . . the blood libel [accusations that the political opposition to Rabin created a climate which resulted in his assassination] that was unleashed against half the population and the entire opposition [is indicative of a distorted political dialogue]."¹²⁸ Specifically, Leiter considered the use of legal administrative measures against right-wing activists by then Prime Minister Peres' government, such as administrative detention, as symptomatic of a witch hunt.¹²⁹ He also viewed with alarm the issuance of indictments against approximately 135 Israelis opposed to the peace process during the two weeks after the Rabin

124. See, e.g., Netty C. Gross, *Rebel With a Cause*, JERUSALEM POST, Feb. 24, 1995, at 7.

125. LEITER, *supra* note 72, at 123.

126. *Id.* at 126-27.

127. *Id.* at 127-28.

128. Leiter Interview 1, *supra* note 18.

129. *Id.*

assassination.¹³⁰

G. Leiter's Solution for Successful Opposition to the Peace Process

Leiter advocates, as the only viable alternative to violence, nonviolent civil disobedience. Inspired by the teachings of Martin Luther King, Jr. and the Torah, he argues for the disruption of public order and the refusal to obey laws that reflect immoral governmental policies.¹³¹ Leiter embraces King's claim that "one who breaks an unjust law must do it *openly, lovingly*."¹³² because he is doing so as the member of a society that he wishes to change and improve. The main objective then is to confront the Israeli public with the consequences that the current peace process entails, particularly those involving risks to the national identity of the state of Israel. Leiter states that:

[T]he only appropriate and effective response to the government's illegitimate, immoral tactics is a campaign of massive non-violent civil disobedience. Such a campaign will dramatize before the court of Jewish opinion the contrast between the Jewish continuity projected by the Jews living in Yesha and the surrender of Jewish values and rights projected by Israel's Labor/*Meretz* [party coalition] government. It will force the public to realize that the issue is far from just the prosaic political matter of whether the agreement is a good one, rather what is at stake here is the nature of Israel's national identity.¹³³

Thus, Leiter opposes the peace process not only on political, moral, and security grounds, but also because of its potential to dilute the Jewish content of Israel's identity and culture.

III. Negotiating Techniques and Results (The Art of Peacemaking and the Israeli-Palestinian Peace Process)

A. Commonalities in Said's and Leiter's Rejection of the Negotiations

Leiter and Said criticize the negotiating approach of Israeli and Palestinian officials. Both oppose PLO Chairman Yasir Arafat's characterization of the peace process as the "peace of the brave."¹³⁴ Both feel that the process has deprived their respective sides of legitimate rights, and that their compatriots have negotiated from a standpoint of weakness. To a large extent, the views of Said and Leiter appear to be two sides of the same coin. On one side, Said bemoans the "truly astonishing proportions of the Palestinian capitulation,"¹³⁵ and refers to the DOP as "an instrument of Palestinian surrender, a Palestinian Versailles."¹³⁶ On the other side, Leiter sees the

130. *Id.* See generally Evelyn Gordon, *Ben-Yair: Crackdown on Inflammatory Speech Necessary*, JERUSALEM POST, Nov. 17, 1995, at 4; David Makovsky, *Cabinet Okays Crackdown on Extremists*, JERUSALEM POST, Nov. 20, 1995, at 1.

131. LEITER, *supra* note 72, at 128-46.

132. *Id.* at 130.

133. *Id.* at 135.

134. Kevin Fedarko, *The Peace of the Brave*, TIME, Oct. 9, 1995, at 57.

135. SAID, *supra* note 2, at 7.

136. *Id.*

accord as another episode in history where "Jewish leaders have willingly capitulated to those who would destroy them."¹³⁷ Perhaps a more apt description would be "the peace of the tired" as veteran politicians have attempted to gain a new lease on life after decades of deadlock.¹³⁸

Regardless of whether the Palestinian and Israeli leaders should be congratulated for bravery or criticized for dereliction of duty, it is clear that many Palestinians and Israelis who accept the necessity of reaching a peaceful conclusion to their long struggle accuse the participants in the current peace process of making unnecessary and/or dangerous concessions to the other side.¹³⁹ These reproaches have occasionally included accusations of treason by the extremist elements of both camps.¹⁴⁰

Said claims that the Palestinian people have been betrayed by Arafat or cheated by Israel in the peace process.¹⁴¹ He blames this outcome on "Arafat's autocracy and his staff's incompetence and corruption"¹⁴² and on "Israel's nefariousness, or US hypocrisy."¹⁴³ Said derides the Palestinian entity as "an Israeli protectorate" and a Middle Eastern version of a South African "Bantustan."¹⁴⁴ Similarly, Leiter believes that by signing the DOP, "Israel has in effect agreed that it will not hold on to the land of Judea and Samaria much longer."¹⁴⁵ He claims that Israel has, from the outset of the peace process, forsaken all security zones located in the West Bank, including the Jordan Valley, and conjectures apocalyptic visions of Katyusha rockets being launched from the Palestinian self-governing areas and hitting Israel's international airports.¹⁴⁶ In hastily jumping to conclusions regarding the final outcome of the peace process, both Said and Leiter fail to recognize the reasons behind the negotiating framework chosen by the parties in their peace undertaking.

137. LEITER, *supra* note 72, at 95.

138. During his abortive Presidential bid, Pennsylvania Senator Arlen Specter, reacting to the high toll of Israeli dead caused by Hamas and Islamic Jihad suicide bombers, called it the "peace of the dead." Hillel Kuttler, *Arlen Specter: PA Accord is "Peace of the Dead,"* JERUSALEM POST, Oct. 23, 1995, at 2.

139. According to one public opinion poll conducted in Israel at the beginning of 1995, 47% of Israelis believed that the Palestinians gained more than Israelis from the peace process. Dan Leon, *Israeli Public Opinion Polls on the Peace Process*, PALESTINE-ISR. J. OF POL., ECON. & CULTURE, Winter 1995, at 56, 57. Many Palestinians have come to the viewpoint that Israel's aim in Oslo "was to exploit Palestinian weakness in order to solve the Palestinian problem and to pave the way for normalizing relations between Israel and other Arab countries." Ali Jarbawi, *What Is the Alternative to Oslo?*, PALESTINE-ISR. J. OF POL., ECON. & CULTURE, Winter 1995, at 33, 34. See also David Makovsky, *Oslo: Here Comes the Hard Part*, JERUSALEM POST, Nov. 28, 1994, at 2.

140. See Geoffrey Kemp, *For Arafat, Hobson's Choice After Hamas Bus Bombing*, L.A. TIMES, Oct. 23, 1994, at M1; Jack Kelly, *Palestinians Lose Trust in Arafat*, USA TODAY, Nov. 1, 1994, at 8A; Barton Gellman, *Gaza Slaying: A Warning From Israel?*, WASH. POST, Nov. 15, 1994, at A12; Henry Siegman, *Palestinian Statehood—Now*, N.Y. TIMES, Jan. 26, 1995, at A21.

141. SAID, *supra* note 2, at 64-65.

142. *Id.* at 65.

143. *Id.*

144. *Id.* at 148.

145. LEITER, *supra* note 72, at 45.

146. *Id.* at 41-49, 52-53.

B. Principled Negotiation Versus Positional Bargaining

Rather than beginning the peace process with each side presenting a strong initial position and then progressively negotiating and making concessions until a final compromise is reached, the parties preferred to start their undertaking by emphasizing their common ground and then branching out so as to widen their settlement. This method of bargaining, called Principled Negotiation,¹⁴⁷ in contradistinction to the Positional Bargaining¹⁴⁸ method, is better suited for the resolution of a protracted conflict. The use of the latter has the negative effect of highlighting the parties' differences at the outset of the process, thereby creating an atmosphere of mutual hostility, and increasing the eventuality of an early collapse in the talks. The Principled Negotiation method, on the other hand, enables the parties involved in a protracted conflict to accentuate their overlapping interests, generate mutual trust, and foster creative ideas in order to settle disputes. Thus, the parties take part in building and maintaining a new relationship. This has the long term advantage of establishing precedents on which the parties may subsequently rely in achieving a settlement on the more contentious issues that have been left for the final negotiations.

The Oslo II Agreement, like the other four interim agreements that preceded it, postponed the most critical points of contention. These include the allocation of scarce fresh water sources, the custody of religious sites holy to two or more faiths,¹⁴⁹ the future of the Jewish settlements, the desire of many Palestinian refugees (from the 1948 War) and displaced persons (from the 1967 War) to return—either to the Palestinian entity or to Israel,¹⁵⁰ Palestinian aspirations to statehood, and the future sovereignty of Jerusalem.¹⁵¹ Given their highly contested nature,¹⁵² a conflict concerning any of these topics during the interim period could have

147. See generally ROGER FISHER & WILLIAM URY, *GETTING TO YES: NEGOTIATING AGREEMENTS WITHOUT GIVING IN* (1981). See also KAREN A. FESTE, *PLANS FOR PEACE: NEGOTIATION AND THE ARAB-ISRAELI CONFLICT* 64-67 (1991).

148. FESTE, *supra* note 147, at 64-67.

149. See, e.g., Danny Rubinstein, *Bethlehem Does Not Want To Be Berlin*, HA'ARETZ, Feb. 16, 1996, at B2 (Hebrew original).

150. Israeli resistance to the return of the Palestinian refugees from 1948 reflects the apprehension felt in Israel at the prospect of being inundated by a massive Palestinian repatriation.

151. In the third draft of the Basic Law that is to form the constitution of the Palestinian Council during the interim period, it is clearly stated that "Jerusalem shall be the capital of Palestine." See Draft Basic Law For The National Authority In The Transitional Period, Article 5 (February 1996).

152. The decision to leave the outstanding issues for the permanent status negotiations was an undoubtedly wise one for both sides from a domestic political perspective. Each of these issues is extremely sensitive for the Israeli and the Palestinian political constituencies. Not to have postponed the negotiations concerning these topics would have placed considerable pressures on the talks by domestic public opinion at a time when they could ill-afford them. Moreover, even the order in which issues are negotiated is often contested by parties attempting to reach a peace agreement due to concern that issues of great significance will remain unresolved if negotiations break down. See generally PAUL R. PILLAR, *NEGOTIATING PEACE: WAR TERMINATION AS A BARGAINING PROCESS* 223 (1983); Amos Perlmutter, *The Israel-PLO Accord Is Dead*, FOREIGN AFF., May/June 1995, at 59, 61-62.

readily undermined the good will that has been painstakingly developed since the peace process began. This could cause the collapse of the negotiations.

The strategy of letting the parties proceed in stages, concluding a number of interim agreements before proceeding to the final status talks, was initially adopted within the framework established by the Camp David Agreements. As Harold Saunders explains, such an approach was necessary given the Israeli and Palestinian domestic political realities:

Its starting point is the premise that ultimate questions cannot be resolved head-on but only through a series of negotiations that serve as building blocks. Each is designed to produce an agreement that will allow each party to test the other's ability and willingness to carry out the terms of the agreement as a basis for developing a peaceful relationship. The diplomacy of 1973-1975 through the Kissinger shuttles and, in a different way, the 1978 Camp David framework on a comprehensive peace were built on the judgment that neither side was ready to make the decisions required by an ultimate settlement but that partial or interim agreements could be reached that would accumulate and at some point make possible decisions on a final settlement. That is why the Camp David framework itself provided for negotiation in two stages.

The advantages of this approach are that it may be all the political traffic will bear in the participating countries at a given time and that it does provide constructive movement toward peace which may make broader decisions possible later.

The disadvantage is that there may come a time in a negotiating process when partial agreements are no longer possible without some understanding about the principles of a larger settlement.¹⁵³

Said believes that the Palestinian leadership has "simply given up on self-determination, Jerusalem and the refugees, allowing them to become part of an undetermined set of 'final status negotiations'."¹⁵⁴ His rebuke of Arafat appears substantially misguided. Rather than viewing peace as a zero-sum game in which all Palestinian demands need to be met at the outset of negotiations—a tactic used with disastrous results for decades¹⁵⁵—the PLO settled for a quasi-state while postponing many of the core issues of the conflict. In doing so, it managed to set in motion a dynamic process that achieved tremendous gains. Indeed, the peace process opened a multitude of new options for the Palestinians. Not only has Arafat achieved respectability in the United States,¹⁵⁶ but he has also won financial backing from numerous nations and international organizations. Furthermore, the PLO has emerged from the diplomatic isolation brought on by its support of Saddam Hussein and the disintegration of its primary patron during the cold war, the Soviet Union.

153. HAROLD H. SAUNDERS, *THE MIDDLE EAST PROBLEM IN THE 1980s* 42 (1981).

154. SAID, *supra* note 2, at xxix.

155. See FESTE, *supra* note 147.

156. Said remarks how by going along with the peace process the media instantly reconceived Arafat "as [a] darling apostle . . . of Western-style peace and rationality." SAID, *supra* note 2, at 107.

Although the initial dimensions of their state will certainly disappoint many ardent nationalists such as Said, the Palestinians are much closer to achieving statehood than ever before. If the current peace process ultimately deadlocks or collapses, Arafat will likely remain something similar to a "governor" of the Gaza Strip and the Palestinian populated areas of the West Bank. Barring a dramatic upsurge in terrorism or a new Middle Eastern war, it is unlikely that even the Netanyahu government would incur the casualties and expend the political capital to retake the areas from which the IDF has withdrawn. Nor would the Palestinian leadership voluntarily relinquish their foothold in what they call Palestine to return to exile abroad.

IV. Aspirations to Palestinian Self-Determination and the Elections

One of the main objectives of the Israeli-Palestinian peace undertaking is the realization of the Palestinian people's right to self-determination. While no direct mention of this right under international law is made in the agreements, it is understood that Israel's acceptance of the Palestinians' "legitimate political rights,"¹⁵⁷ includes the Palestinians' right to self-determination.¹⁵⁸ Moreover, the Council elections held in the West Bank and Gaza Strip constituted "a significant interim preparatory step toward the realization of the legitimate rights of the Palestinian people and their just requirements."¹⁵⁹

In Said's view, the prospects that Palestinian statehood will eventuate from the peace process are minimal:

Israel's recognition of the PLO, undoubtedly [constitutes] a significant step forward. Beyond that, by accepting that land and sovereignty are being postponed till "final status negotiations" the Palestinians in effect have discounted their unilateral and internationally acknowledged claim to the West Bank and Gaza: these have now at most become "disputed territories" Moreover, rather than becoming stronger during the interim period, the Palestinians will grow weaker and more under Israeli control, and thus less able to dispute the Israeli claim when the last set of negotiations begins. But there is an absence of any specified mechanism of how to get from an interim status to a later one. Does this mean ominously that the interim stage may be in effect the final one too?¹⁶⁰

Said decries the fact that during the interim period Israel has "through every one of its actions and statements . . . gone out of its way to make the likelihood of an independent Palestine more and more remote."¹⁶¹ Indeed, Israel has attempted to prejudice the outcome of the permanent status negotiations by favoring housing development for Jews in Jerusalem, and by attempting to expropriate land belonging to some of the city's Palestin-

157. DOP, *supra* note 1, pmb1.

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

159. DOP, *supra* note 1, art. III.3.

160. SAID, *supra* note 2, at 10-11.

161. *Id.* at 41.

ian residents. Also, the Netanyahu government is regarded by many Palestinians as having violated the spirit of the agreements¹⁶² by permitting expansion of some Jewish settlements in the West Bank. Moreover, the Netanyahu government has consistently and categorically opposed the creation of a Palestinian state.¹⁶³ Following the Israeli government's guidelines, which one PA minister characterized as a "declaration of war"¹⁶⁴ against the Palestinian people, the Netanyahu government rejected Palestinian claims to sovereignty over any part of the West Bank, Gaza Strip, or Jerusalem. The Israeli government further advocated a policy of increased Israeli settlement in these areas and conditioned the continuation of the peace process upon the fulfillment by the Palestinian side of its commitments under the agreements.¹⁶⁵ Arafat himself recently made a similar claim before a special session of the Palestinian Legislative Council when he asserted that the Netanyahu government had "declared war against the Palestinians."¹⁶⁶

Nonetheless, Said's misgivings regarding the course of action chosen by the PLO to realize its national and historical aspirations may prove to be unfounded. Although the initial purpose of the Palestinian peace negotiators at Oslo was to end the Israeli occupation, their paramount long-term goal remained recognition of their claims for statehood.¹⁶⁷ These objectives have been the focus of Palestinian nationalism for some thirty years. The PLO became a participant in international politics and diplomacy within months of its inception in 1964, initially by notifying the United Nations Secretary General of the organization's existence and of its claim to represent the Palestinian people.¹⁶⁸ Viewed as refugees, in the early years the Palestinians were not initially considered to have a right to self-

162. *Altercation Over Land*, JERUSALEM POST, Dec. 28, 1994, at 6.

163. Prior to the elections, Peres' Labor Party did, however, remove the clause in its political platform opposing the creation of a Palestinian state. Wael Tabari, *Labor Party Agrees to a Palestinian State*, JERUSALEM TIMES, May 3, 1996, at 3.

164. Jon Immanuel & Sarah Honig, *PA Ministers: Likud's New Guidelines "Declaration of War,"* JERUSALEM POST, June 9, 1996, at 1.

165. *The New Government's Guidelines*, JERUSALEM POST, June 18, 1996, at 3. The new Israeli government's insistence upon the PA's keeping to all its commitments is perceived as a pretext to stall the peace talks. Indeed, in spite of the public and private urging by the previous Labor government, the PA repeatedly violated the agreements it signed with Israel. See Justus R. Weiner, *Hard Facts Meet Soft Law—The Israel PLO Declaration of Principles and the Prospects of Peace: A Response to Katherine W. Meighan*, 35 VA. J. INT'L L. 931, 948-51 (1995); Evelyn Gordon, *Peace Watch: Arafat Never Banned Hamas, Islamic Jihad*, JERUSALEM POST, Aug. 6, 1996, at 2.

166. Jon Immanuel & Michal Yudelman, *Arafat: Israel has Declared War On Us*, JERUSALEM POST, Aug. 29, 1996, at 1.

167. See BROWNLIE, *supra* note 79, at 72-79. Among the qualifications for statehood which the PA lacks is the capacity to enter into relations with other States. See Oslo II, *supra* note 21, art. IX.5.a. Many observers, see, e.g., Cassese, *supra* note 158; Note, *The Israel-PLO Declaration of Principles: Prelude to a Peace?*, 34 VA. J. INT'L L. 435, 465-69 (1994), believe that a Palestinian state will eventually ensue from the peace process, among them Yossi Sarid, a Member of the Israeli Knesset and Cabinet. See *Palestinian Elections Will Result In State—Sarid*, JERUSALEM POST, Mar. 19, 1995, at 1.

168. Sanford Silverburg, *The Palestine Liberation Organization in the United Nations: Implications for International Law and Relations*, 12 ISR. L. REV. 365, 369 (1977).

determination.¹⁶⁹ Beginning in 1969 the UN General Assembly began to refer to the Palestinians as a discrete "people" and not merely as refugees.¹⁷⁰ The PLO's status at the UN was elevated when in 1974 it was invited to participate in the General Assembly deliberations on the question of Palestine, and subsequently in the sessions and work of the General Assembly as an observer.¹⁷¹

It must be emphasized that neither the PLO¹⁷² nor the Palestinian Council meet the prerequisites for independence under international law.¹⁷³ Although in 1988 the Palestine National Council proclaimed the creation of a Palestinian State in the West Bank and Gaza Strip, with East Jerusalem as its capital,¹⁷⁴ at this stage of the peace process, no sovereign Palestinian entity exists under prevailing standards of international law.¹⁷⁵ This is true despite Arafat's preference for the title "President of the State of Palestine" over "Chairman of the PLO and Palestinian Authority," his order that the West Bank and Gaza Strip be designated respectively as the "Northern and Southern Provinces of Palestine,"¹⁷⁶ the PA's issuance of stamps¹⁷⁷ and passports,¹⁷⁸ its intent to found a Palestinian currency,¹⁷⁹ as well as its intent to open an international airport¹⁸⁰ and establish a Palestinian airline.¹⁸¹

169. See, e.g., Samir N. Anabtawi, *The Palestinians as a Political Entity*, in 1 *THE ARAB-ISRAELI CONFLICT* 506 (John Norton Moore ed., 1974). The Second Conference of Non-aligned Countries endorsed Palestinian self-determination in October 1964. Silverburg, *supra* note 168, at 374.

170. G.A. Res. 2535B, U.N. GAOR, 24th Sess., Supp. No. 30, at 25, U.N. Doc. A/7630 (1970).

171. G.A. Res. 3210, U.N. GAOR, 29th Sess., Supp. No. 31, at 3, U.N. Doc. A/9631 (1974); G.A. Res. 3237, U.N. GAOR, 29th Sess., Supp. No. 31 at 4, U.N. Doc. A/9631 (1975).

172. See James Crawford, *The Creation of the State of Palestine: Too Much Too Soon?*, 1 *EUR. J. INT'L L.* 307 (1990). But see Francis A. Boyle, *The Creation of the State of Palestine*, 1 *EUR. J. INT'L L.* 301 (1990).

173. Even Arafat's senior deputy Mahmoud Abbas, 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." MAHMOUD ABBAS, *THROUGH SECRET CHANNELS* 218 (1995).

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

175. See 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 (1994).

176. See Amira Hess, *Following Arafat's Orders, West Bank to be Named "Northern Province of Palestine"*, HA'ARETZ, Mar. 18, 1996, at A2 (Hebrew original).

177. Jay Levinson, *The PA's Stamp Collection*, JERUSALEM POST, Apr. 29, 1996, at 7.

178. See *Palestinian Passport*, JERUSALEM TIMES, Dec. 15, 1995, at 2.

179. Jennifer Friedlin, *PA Plans To Unveil Its Own Currency Within Two Years*, JERUSALEM POST, Dec. 21, 1995, at 2.

180. See Eytan Rabin & Amira Hess, *Palestinians Intend To Inaugurate Airport At Dahania in May, "Despite Israel's Objections"*, HA'ARETZ, Feb. 18, 1996, at A4 (Hebrew original).

181. See Haim Shapiro, *IATA Head: Palestinian Airline Likely Soon*, JERUSALEM POST, Feb. 16, 1996, at 1.

The fact that there is only an autonomous Palestinian entity in parts of the West Bank and Gaza Strip, however, does not preclude the eventual creation of a Palestinian State in these areas. Indeed, many commentators have opined that the creation of a sovereign Palestinian entity will be inevitable as the process culminates.¹⁸² Leiter himself argued after the signing of the DOP that:

The preface to the pact [DOP] speaks of recognizing the "mutual legitimate and political rights" between "the State of Israel" and the "Palestinian people." Dovish Israeli Foreign Minister Shimon Peres similarly says Israel must recognize that there are two peoples with competing rights, fighting over the same land. In other words, he is creating an equivalence between Israel and the Palestinian Arabs, implying that both are legally entitled to the same political rights. Israel, of course is an independent state. The pact . . . admits by clear implication that the Palestinian Arabs deserve the same: an independent state of their own.¹⁸³

In contrast to Said, Leiter believes that the absence of any express provision in the interim agreements that explicitly prevents a Palestinian state from emerging at the end of the process indicates that the birth of such an entity is predestined.¹⁸⁴ He proposes that Arafat would not have adopted the unofficial contracts in Oslo if Peres had not promised him that the ultimate result would be a Palestinian state.¹⁸⁵ Leiter warns against a unilateral proclamation of statehood by the Council, which after it "takes over governing the areas . . . will in effect be a Palestinian Arab state in all but name."¹⁸⁶ Under these circumstances, Leiter claims that Israel will be impotent since "nothing would prevent Arafat from officially proclaiming statehood."¹⁸⁷ Israel could not launch a war against a people that it has admitted has the same legitimate rights as Israel. Leiter asserts that Israel would not attack just because the word "state" has replaced "self-government."¹⁸⁸

Recently Arafat nearly fulfilled the first half of Leiter's forecast when he proclaimed, "We are approaching [the time] to declare an independent Palestinian state and its capital in nobel Jerusalem. I mean it. I mean it."¹⁸⁹ Netanyahu responded, "never," and a statement distributed by his office reiterated his opposition to a Palestinian state and stressed that Jerusalem would never be divided.¹⁹⁰

182. See, e.g., Jerry Lewis, *Kissinger: Palestinian State "Inevitable,"* JEWISH CHRONICLE, Oct. 29, 1993, at 1.

183. LEITER, *supra* note 72, at 43.

184. Leiter Interview 1, *supra* note 18.

185. *Id.*

186. LEITER, *supra* note 72, at 44.

187. *Id.* at 45.

188. *Id.*

189. *Arafat: We Will Soon Declare State*, DISPATCH FROM JERUSALEM, July-Aug. 1995, at 8. See also Guy Bechor et al., *Arafat: We Will Soon Announce Establishment of Palestinian State, with Jerusalem as its Capital*, HA'ARETZ, June 6, 1996, at A1 (Hebrew original).

190. LEITER, *supra* note 99, at 45.

V. The Security/Terrorism Dilemma

In its preamble, the Oslo II Agreement reaffirms the parties' "mutual commitment to act . . . immediately, efficiently, and effectively against acts or threats of terrorism, violence or incitement, whether committed by Palestinians or Israelis."¹⁹¹ Indeed, the PA's capacity and resolve to take the necessary measures to prevent the perpetration by opponents of the Israeli-PLO dialogue, namely the Hamas and Islamic Jihad, of terrorist acts against Israeli targets, has from Israel's standpoint become critical in order to ensure the successful continuation of the peace process. Indeed, the PA's demonstrated lack of diligence in combatting terrorist elements operating within its own jurisdiction,¹⁹² was the primary cause for the extended delays¹⁹³ and near collapse¹⁹⁴ of the peace talks during the first two-and-a-half years after the signing of the DOP. During this period, Israel suffered a doubling of the number of victims killed as a result of terror incidents.¹⁹⁵ This undermined the domestic support in Israel for the peace process and its sponsors, and precipitated some members of Knesset (Israel's parliament) from the then incumbent Labor Party,¹⁹⁶ along with the President of the State,¹⁹⁷ to call for suspension of the negotiations and pressure on Arafat to crack down on the perpetrators of this wave of attacks and the organizations that recruit, train, and finance the terrorists.

In his book, Leiter warned against the crippling effect that the agreements would have on Israel's capacity to combat terrorism. He claimed that terrorists responsible for attacks perpetrated within Israel would escape punishment by fleeing to the self-governing areas. He predicted that Israel would be dependent upon Arafat and the PA's willingness to crack down on terrorist elements within the Islamic opposition, and he foresaw that after the military's withdrawal from the populated areas, Israel would be severely handicapped because of its reduced capacity to acquire

191. Oslo II, *supra* note 21, pmb1.

192. See Ze'ev Schiff, *That's Not How You Eliminate Terrorist Organizations*, HA'ARETZ, Mar. 4, 1996, at B1 (Hebrew original).

193. See, e.g., Jon Immanuel, *Israel Suspends Talks in Cairo*, JERUSALEM POST, Oct. 12, 1994, at 2.

194. See, e.g., Derek Brown, *Israeli Fears Put Pact With P.L.O. At Risk*, GUARDIAN, Dec. 7, 1994, at 14; Uzi Benzamin, *A Government Stuck in a Trap*, HA'ARETZ, Jan. 29, 1995, at B1 (translation).

195. See *Peace Watch Report: Number of Israelis Killed in Terror Attacks Has Doubled Since Oslo Accords*, PEACE WATCH (Peace Watch, Jerusalem, Isr.), Mar. 11, 1996.

196. See Liat Collins & David Rudge, *Labour MKs Call On Rabin to Send IDF Back into Gaza*, JERUSALEM POST, Apr. 12, 1995, at 2.

197. The President of Israel, Ezer Weizman, has on numerous occasions called for a suspension in the peace talks because of terrorist violence directed toward Israeli targets. His statements were notable as the Israeli President's role is largely ceremonial and Presidents generally do not make political statements. See Christopher Walker, *Weizman Speaks Out Against Talks With PLO*, THE TIMES, Jan. 24, 1995, at 12; *Weizman Returns and Declares That the Future of the Peace Process Must Be Reevaluated*, HA'ARETZ, Apr. 12, 1995, at A8 (Hebrew original); Yossi Hatoni, *At Eychilov Visit Weizmann Calls for Reevaluation of the Government's Policy*, HA'ARETZ, July 25, 1995, at A4 (Hebrew original).

intelligence information.¹⁹⁸

As a result of Israel's commitment to the peace process in general, and its military's withdrawal from the Gaza Strip and most Palestinian populated centers in the West Bank in particular, Israeli anti-terrorist policy has had to be substantially reevaluated.¹⁹⁹ The transfer of responsibility for combatting terrorism originating from the Palestinian self-governing areas to the PA has significantly hampered Israel's ability to ensure the security of its own citizens. Israel faces political obstacles to carrying out offensive operations against hostile elements in order to prevent and disrupt terrorist activity. The gathering of military intelligence, which always played a key role in Israel's ongoing war against terrorism, has become virtually impossible given that Israel is barred access to the self-governing areas. Moreover, Palestinians who provide information to Israel are branded as "collaborators" and treated severely by the PA's security apparatus.²⁰⁰ Thus, when Israel passes on information to PA officials concerning planned attacks, the Palestinian police may take action against the intelligence source rather than the terrorists.²⁰¹

Leiter's prediction that the PLO would not wage a full-fledged fight against terrorist groups comprising the Islamic opposition was borne out by subsequent events. Leiter wrote:

Some have suggested that the main function of the PLO police force will be to curtail terrorism by more fundamentalist elements such as *Hamas*. However, there is every reason to believe Arafat enjoys *Hamas* terrorism. It allows him to play a "good cop-bad cop" game. The worse *Hamas* looks, the more attractive Arafat is in comparison. Arafat can play the terror card and weaken Israeli resolve by backing *Hamas* in private, while reaping the benefits of Israeli concessions in the public negotiations. Arafat will be able to claim that he is doing his best to control terrorism—after all, even Israel could not block all attacks—and to do a better job he needs more forces, more equipment, and more authority.²⁰²

In the months immediately following the signing of the Oslo II Agreement, when Leiter was interviewed, Israel had not witnessed a single major terrorist attack. Leiter, however, remained unconvinced that Islamic terrorism had seen its last day. He stated that "[m]ost people believe that terrorism has been on the decline because the deal is working. Skeptics . . . believe that terrorism is on the decline right now because it serves Arafat. The

198. LEITER, *supra* note 72, at 59-61.

199. See Boaz Ganor, *Israeli Counterterrorism in the Shadow of Oslo*, POLICY VIEW (Shalem Ctr. Jerusalem, Isr.), Dec. 10, 1995.

200. LEITER, *supra* note 72, at 32, 34.

201. *Id.*

202. *Id.* at 57-58. In the interview, Leiter expressed the view that it is necessary for the Oslo II agreement to be amended or reinterpreted to give Israel greater freedom of action to prevent terrorist attacks that emanate from the areas under Palestinian local rule. He would like Israel to utilize "hot pursuit" to pursue and capture Palestinian terrorists who flee to self-rule areas. Leiter believes that "there is enough latitude, even within the agreements for Israel to act a lot more extensively security-wise than they're choosing to act at the present time." Leiter Interview 1, *supra* note 18.

moment it won't serve him, there will be an increase again."²⁰³ Indeed, both the Hamas and the Islamic Jihad categorically refused to suspend their terrorist activities.²⁰⁴ The common assessment was that the decision of these organizations to refrain from carrying out attacks against Israel was tactical in nature, so as not to be held responsible by the local population for obstructing the Israeli evacuation of Palestinian populated centers in the West Bank as well as the holding of the Council elections.²⁰⁵ Moreover, these groups have a clear interest in Israeli withdrawal because it allows them to carry out their attacks more freely.²⁰⁶ This was demonstrated only a few weeks after the Palestinian elections when a series of suicide bomber attacks were carried out against Israeli civilian targets, causing over fifty deaths and leaving hundreds injured.²⁰⁷

The PA, in violation of the Oslo II Agreement, has failed to make serious efforts to disarm these terrorist groups.²⁰⁸ Instead it has adopted a policy of appeasement and resignation. Admittedly, Arafat and the PA Police have carried out arrests and detentions,²⁰⁹ banned the organizations,²¹⁰ as well as sporadically punished those involved in the perpetration of terrorist attacks.²¹¹ However, the PA refuses to strike at the infrastructure which forms the lifeline of the Islamic terrorist organizations,²¹² and fails to apprehend those members in charge of the groups' military operations.²¹³ In addition, those prosecuted and convicted in the PA State Security Court are often released prior to the expiration of their prison sentences.²¹⁴ Many believe that Arafat's reluctance to directly confront the Islamic opposition stems from fear of igniting a Palestinian civil

203. Leiter Interview 1, *supra* note 18.

204. Uri Nir, *Hamas Refuses to Dismantle Its Military Branch: "Agreement With PA Not Near,"* HA'ARETZ, Dec. 8, 1995, at A1 (Hebrew original).

205. See Danny Rubinstein, *Hamas' "Restraint,"* HA'ARETZ, June 6, 1995, at B1 (Hebrew original).

206. See Ehud Ya'ari, *Remorseless Peace,* JERUSALEM REPORT, Sept. 21, 1995, at 24.

207. See Bill Hutman & Raine Marcus, *25 Killed In Jerusalem, Ashkelon,* JERUSALEM POST, Feb. 26, 1996, at 1; Bill Hutman & Herb Keinon, *Hamas Suicide Bomber Kills 18 in Jerusalem,* JERUSALEM POST, Mar. 4, 1996, at 1; Raine Marcus & Steve Rodman, *12 Die in TA as Hamas Terror Strikes Again,* JERUSALEM POST, Mar. 5, 1996, at 1.

208. See *Weapons Control and the Palestinian Authority,* PEACE WATCH REPORT (Peace Watch, Jerusalem, Isr.), June 1995.

209. See, e.g., Jon Immanuel, *Arafat Pledges To Fight Terror With Israel,* JERUSALEM POST, Mar. 5, 1996, at 2. In March and April 1996, the Palestinian police arrested approximately nine hundred Islamic militants in the aftermath of a series of suicide bombings in Israel. Jon Immanuel, *PA Releases Three Hamas Prisoners,* JERUSALEM POST, Apr. 28, 1996, at 1.

210. See Jon Immanuel, *Arafat Bans Armed Groups, Promises "Serious Steps,"* JERUSALEM POST, Mar. 4, 1996, at 2.

211. See, e.g., Amira Hess, *Head of Hamas Ring in Ramallah Sentenced to Life Imprisonment in Palestinian Court,* HA'ARETZ, Mar. 7, 1996, at A6 (Hebrew original).

212. Gideon Alon & Tsvi Zarchia, *Intelligence Chief To Security Committee: "Arafat Didn't Touch Terrorist Infrastructure of Hamas; It Is Developing,"* HA'ARETZ, Jan. 17, 1996, at A4 (Hebrew original); Uri Nir, *Arafat Will Not Take Action Against Hamas Leaders, Will Only Act Against Its Military Branch,* HA'ARETZ, Feb. 27, 1996, at A1 (Hebrew original).

213. Cf. *Palestinian Authority Arrested Number 2 on Israeli Wanted List, Muhammed Dief's Subordinate,* HA'ARETZ, Apr. 26, 1996, at A6 (Hebrew original).

214. An investigation conducted by Peace Watch revealed that:

war.²¹⁵ Thus, the PA has from the outset of the process consistently declined to implement those provisions calling for the transfer of persons suspected of terrorism against Israel.²¹⁶ This refusal, although in direct violation of the agreements, is understandable given Arafat's domestic situation. As several members of the cabinet in the former Rabin-Peres government have admitted,²¹⁷ an affirmative PA response to Israeli requests for the transfer of suspected Palestinian terrorists would be seen by most Palestinians as an act of betrayal and collaboration with the enemy, with potentially catastrophic political consequences for PLO Chairman Arafat.²¹⁸

The former Rabin-Peres government chose not to link the continuation of the talks with Arafat's willingness to take adequate measures against the terrorist organizations. The late Israeli Prime Minister often declared that his government would continue the negotiations as if there was no terror, and fight terror as if there were no negotiations. Thus, Israel refused to suspend the peace talks for extended periods of time to exert pressure on Arafat. The rationale was that such action would play into the hands of the terrorists, allowing the Hamas and Islamic Jihad to realize their goal, i.e., to stop the peace process.

The new Netanyahu government was elected on the slogan "peace with security."²¹⁹ Following his election, Netanyahu initially refrained from meeting with Arafat²²⁰ and then met with him on two occasions, but only following intense pressure from the United States.²²¹ He clearly believes that his government's mandate is markedly more hawkish than that of his

Out of 26 cases in which the individuals sentenced by the PA court should still have been in jail at the time of the investigation, *Peace Watch* found that 11 of the 26 were either out of jail at the time, were formally in jail but actually held positions in the Palestinian security forces, or had previously been released from jail, and were rearrested only under Israeli pressure.

Peace Watch Report Reveals Major Flaws in PA Policy on Punishing Terrorists, PEACE WATCH (Peace Watch, Jerusalem, Isr.), May 15, 1996.

215. See Guy Bechor, *Between Peace at Home and Peace with Israel*, HA'ARETZ, Mar. 4, 1996, at B3 (Hebrew original).

216. See *Peace Watch Report: Disturbing Pattern of PA Non-Compliance Concerning the Transfer of Terror Suspects to Israel; None of the 16 Terror Suspects Requested by Israel Have Been Turned Over*, PEACE WATCH (Peace Watch, Jerusalem, Isr.), Sept. 19, 1995. See also Uri Nir & Eytan Rabin, *Palestinian Authority Sentenced to 7 and 12 Years of Imprisonment 2 Members of Hamas Apparently Involved in Jerusalem Bombing*, HA'ARETZ, Aug. 27, 1995, at A3 (Hebrew original); Alouf Ben et al., *Rabin Rejects Ministers' Criticism: Non-Transfer of Terrorists Does Not Violate Agreement; Terrorists Suspected of Murder in Wadi Kelt Sentenced to Prison in Jericho, Will Not be Transferred to Israel*, HA'ARETZ, Sept. 9, 1995, at A1 (Hebrew original); Dan Margalit, *Maliciousness and Hastiness*, HA'ARETZ, Sept. 14, 1995, at B1 (Hebrew original).

217. Gideon Alon, *Liba'i & Beilin: Claim that PA Should Transfer Suspects—Not Realistic*, HA'ARETZ, Oct. 6, 1995, at A2 (Hebrew original).

218. *Id.*

219. Evelyn Gordon, *Thousands Attend Likud Campaign Kickoff*, JERUSALEM POST, Apr. 30, 1996, at 1; David Makovsky, *Netanyahu: The Choice is Peace or Terror*, JERUSALEM POST, June 26, 1996, at 1.

220. David Makovsky, *PM—Arafat Meeting Soon, Official Says*, JERUSALEM POST, Aug. 30, 1996, at 1.

221. See Patrick Cockburn, *Netanyahu Not Ready to Bow to Pressure*, THE INDEPENDENT, June 26, 1996, at 10.

predecessor Shimon Peres, who was willing to overlook many Palestinian violations of the interim agreements. Doubtless, this new approach will, at least in the short run, place additional pressure on the negotiations.

Conclusion and Outlook

Article 2(3) of the United Nations Charter stipulates that "[a]ll members shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered."²²² Moreover, the 1970 Declaration on Principles of International Law develops this principle and notes that: "[S]tates shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice."²²³ Of course the PLO is not, at present, a state and enjoys only observer status in the United National General Assembly.²²⁴ Even if one ignores the PLO's non-sovereign nature, however, it is significant that nothing in international law obligates states to resolve their differences.²²⁵ Simply put, international law offers a variety of dispute resolution mechanisms but none are compulsory. Although contemporary world leaders generally find it embarrassing not to pay at least lip service to the pursuit of peace, the authenticity of their commitment and their willingness to compromise and to take risks remains in the realm of politics, not law. Moreover, it is difficult to resolve international disputes with agreements, even lengthy agreements with long annexes. Such agreements, at best, can provide a framework in which the government officials, businesses, intellectuals, and ordinary people build the network of interrelationships that give peace its substance and lasting quality.

It is impossible to predict the future course of Palestinian politics, in particular the longevity of the PLO's commitment to peace with Israel. Now that Arafat is faced with an elected opposition in the Council, he is no longer free to make concessions to Israel. This is particularly true as regards such sensitive subjects as those to be discussed during the permanent status talks. Indeed, the Edward Saids and Yechiel Leiters will abound within the Palestinian and Israeli constituencies at the first sign of concessions regarding matters of existential gravity, such as possession of Jerusalem, the Jewish settlements, and the Palestinian refugee and displaced persons issues. At some point, Arafat may be tempted to simply

222. U.N. CHARTER art. 2, ¶ 3.

223. *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 18, at 121, U.N. Doc. A/8082 (1970); *Manila Declaration on the Peaceful Settlement of International Disputes*, U.N. GAOR 6th Comm., 37th Sess., Supp. No. 33, Annex, Agenda Item 122, at 4, U.N. Doc. A/37/590 (1982).

224. *Invitation to the Palestine Liberation Organization*, G.A. Res. 3210, U.N. GAOR, 29th Sess., Supp. No. 31, at 3, U.N. Doc. A/L.736 and Add. 1 and 2 (1974).

225. See MALCOLM N. SHAW, *INTERNATIONAL LAW* 631 (3d ed. 1991); BROWNIE, *supra* note 79, at 708.

withdraw from the negotiations, leaving the entire process in ruins.²²⁶

Frequently Arafat has referred to the peace process as a stage in the step-by-step liberation of all of Palestine. During his television broadcast from Washington to the Palestinian people on the day he signed the DOP, he failed to mention his repudiation of terrorism or his new policy of pursuing peace with Israel. Instead Arafat described the then new agreement as the "first step 'in the 1974 plan'—known by all Arabs as the 'plan of phases' for the destruction of Israel."²²⁷ Thereafter he justified the DOP as "the best possible agreement in the worst possible circumstances."²²⁸

The only way to predict the durability of Arafat's commitment to the current peace process is to look at his previous conduct. Little from his or the PLO's past would identify fidelity to promises or principle as a distinguishing trait, even in connection with their dealings with Arab states and leaders. It would not be out of character if the five agreements concluded with Israel are, at some point, scrapped.²²⁹

With the election of a new government, Israel's commitment to the peace process will be reevaluated. Shimon Peres' hopes of inaugurating a "New Middle East"²³⁰ have been supplanted by a more cautious pledge to insist on reciprocity and secure a peace that will last generations.²³¹ Therefore, a protracted stalemate or a total breakdown of the peace process is not difficult to envision.

Said's fear that "the interim stage may be in effect the final one"²³² could very well be borne out by future events. Indeed, if the current peace process is propelled only by the sense on both sides that there is no viable alternative, it is difficult to envisage how the parties will succeed in achieving a final settlement. Thus, it is not impossible that in the end those who, like Said and Leiter, stand in opposition to the current peace process, will have the last laugh. Indeed, the adversity faced by the two sides since the inception of their peace undertaking may eventually prove to be insurmountable. While they succeeded in overcoming their differences in negotiating the interim agreements by devising partial arrangements, this

226. In the aftermath of Netanyahu's election victory, the fact that Arafat threatened unilaterally to declare a Palestinian State in the West Bank and Gaza Strip should the peace process not advance supports this conclusion. See *supra* note 189.

227. Uri Avnery, *Is Oslo Dead?*, PALESTINE-ISR. J. OF POL., ECON. & CULTURE, Winter 1995, at 26. See BBC Short Wave Broadcastings, Jordanian TV, Amman, Sept. 13, 1993 (ME/1794, MED/8).

228. Avnery, *supra* note 227, at 29.

229. States or other entities signing international agreements are assumed to be acting in good faith. The epigram *pacta sunt servanda*, that "pacts are to be observed," is in conflict with another legal axiom: *rebus sic stantibus*. This latter principle means "if things remain the same." Not infrequently an international agreement will be declared obsolete and hence non-binding when it can be argued that the conditions under which the agreement was ratified are no longer in effect, e.g., as a result of change in the balance of power between Israel and the Palestinian entity, economic difficulties, the threat of war, etc.

230. SHIMON PERES, *THE NEW MIDDLE EAST* (1993).

231. David Makovsky, *The Candidate Now Becomes the Leader*, JERUSALEM POST, June 7, 1996, at 1.

232. SAID, *supra* note 2, at 11.

stratagem will no longer be effective in the permanent status talks. At this point, the parties will no longer be able to avoid or postpone the political, historical, doctrinal, and military implications of their common venture. Dramatic and painful concessions will have to be made for the process to continue on track.²³³ Perhaps then they will realize that the time has come "when partial agreements are no longer possible without some understanding about the principles of a larger settlement."²³⁴

233. Since the DOP, Arafat has frequently claimed that the Palestinians will not settle for a final peace agreement unless it includes Jerusalem, or at least part of Jerusalem, as the capital of the sovereign state of Palestine. See Hagai, *The Words*, DAVAR, Sept. 10, 1995, at 9, translated in SELECTIONS FROM THE HEBREW PRESS, GOVERNMENT PRESS OFFICE, STATE OF ISRAEL, Sept. 11, 1995; Eytan Rabin, *Arafat Toned Down Declarations on Jerusalem After Message from Senior Ranks in Israel*, HA'ARETZ, Jan. 2, 1996, at A1 (Hebrew original). Israeli leaders including Prime Minister Netanyahu reject this concession and have announced their refusal to cede any part of Israel's capital to the Palestinians. See BENJAMIN NETANYAHU, *A PLACE AMONG THE NATIONS* 346-48 (1993); Helen Kaye & Bill Hutman, *Undivided Jerusalem Is Ours—Rabin*, JERUSALEM POST, Sept. 5, 1995, at 1; Peres: "Jerusalem Not Up for Negotiations," JERUSALEM POST, Jan. 28, 1996, at 1.

234. SAUNDERS, *supra* note 153, at 42.

