

The Arab-Israeli Peace Process: The Law Reform Perspective

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A. The Critical Link Between Law Reform and Peace

The Oslo Agreements signed between Israel and the Palestinian Authority (PA) in 1993 were made with a view to enhance 'a just, lasting and comprehensive peace'. Yet, since their coming into effect the Middle East has witnessed no peace but violence of the worst kind in recent history. This article focuses on the rule of law, which must be observed within the legal regime of parties to peace agreements as a pre-condition to peaceful co-existence among them. In the absence of the necessary legal framework all efforts to achieve peace will, at best, buy a short-lived armistice, but be rendered futile in the medium- and long-run.

This article will first analyze the Arab-Israeli conflict from the international law perspective. It will be shown that public international law does not, and indeed cannot, offer a solution. This does not mean that there is no peaceful solution that both Israelis and Arabs would find desirable. But such a solution requires political will as well as a serious law reform, some main aspects of which are analyzed hereunder.

B. The International Law Perspective and the Peace-less Process

During the last, failed, Camp David Summit (in the Summer of 2000), Prime Minister (PM) Ehud Barak went further than any other Israeli leader in trying to bring the Arab-Israeli conflict to an end. He offered the Palestinians almost all of the West Bank and the Gaza Strip. In return for some 5 per cent of those territories, that Israel wished to retain, PM Barak was willing to cede territories inside pre-1967 Israel. He was willing to cede the Jordan Valley with all its thriving Jewish villages

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and thereby compromise Israel's ability to create a barrier, should security considerations so require, between Jordan and the new Palestinian State.

In addition, PM Barak offered to accept into tiny pre-1967 Israel some 150,000 refugees whose families had fled Israel in 1948. He was even willing to compromise Israel's sovereignty over large parts of the Old City of Jerusalem, a step that was harshly condemned even by great supporters of the peace process, such as the late Mrs Leah Rabin, the widow of the late, assassinated, Israeli Prime Minister. She said that Yizhak Rabin would never have made such a concession.

These most far-reaching proposals were rejected out of hand by Chairman Yasser Arafat. Instead, Chairman Arafat led and supported his people to active confrontations, the Al-Aqsa Intifadah. The motives for the rejection become clear when one reads the statements made by Israel's partners to the so-called 'peace process'. One wish is to regain full control over 100 per cent of the West Bank and the Gaza Strip. These territories should be made 'Judenrein' (clear of Jews), and all Jewish towns and villages must be dismantled. In addition, Israel must open up its borders to millions of Arabs who can trace their ancestry to Arabs who resided in the territory of pre-1967 Israel. According to data provided by the PA,¹ there are more than 5 million such persons. Their admission would mean that Israel, with its 6.4 million citizens (which include a substantial minority of almost 19 per cent of Israeli Arabs), would cease to be the State of the Jewish People.

Israel's Jewish population got the message: if all Arab demands are fulfilled two more Arab states will be created between the Jordan River and the Mediterranean Sea. One should remember that the Arabs control 99.9 per cent of the Middle East lands. Israel represents only one tenth of 1 per cent of the lands. The State of Israel was established first and foremost to be a homeland to the Jewish people. The right of the Jews to return to their ancient homeland, from which they had been driven out by force 2000 years ago, has been recognized by the international community. Israel provides a safe harbor for Jews world-wide, who wish to practice Judaism openly and undisturbed, living in a state that, *inter alia*, celebrates the Sabbath, rather than Friday or Sunday, as its day of rest, and where life is free of anti-semitic attacks on Jews.

C. The Merits of the Arab Demands

The claim that there is a legal right to a separate Arab state to be established in all of the West Bank and the Gaza Strip, and the further claim that all Arabs who trace their origins to pre-1967 Israel have a right to return to Israel, have no basis in international law.

¹ The data are taken from the website of the Palestinian National Authority <www.palestinehistory.com/reftoday.htm>.

I. The Territorial Claim

Contrary to current popular thought, there was no Arab 'Palestinian' state prior to the establishment of the State of Israel.² After the Jewish people had lost their sovereignty over the territory of Israel in 70 CE (Christian Era) the territory was governed by the Romans, Byzantines, Arab Moslems, Christian Crusades, Mamluks and Ottomans.

In 1920 the San Remo Conference formally conferred upon Britain a mandate, which included in its terms explicitly 'the establishment of the Jewish national home'. The Arab national movement, which has developed in Israel alongside the Jewish one, opposed any sharing of the country. The United Nations (UN) famous Partition Resolution of 29 November 1947 (General Assembly Resolution 181 (II)) was accepted by Israel's Jewish population but rejected by all Arab states. It was not a UN Resolution that established the State of Israel. Under public international law such resolutions are recommendations without binding effect. Had Israel not defeated all Arab armies that invaded the newly-born state, upon termination of the British mandate, Israel would not have come into being.

The 1949 Armistice Agreements signed between Israel and its neighbours made it clear that the Armistice Demarcation Lines should not be considered as final borders. The element of 'defined territory' as a condition for statehood has always been unclear in the case of Israel.³

In 1967 the UN removed its peace-keeping force at the behest of Egypt's President Gamal Abdel Nasser, precisely at the time at which it was supposed to prevent the escalation of hostilities into war. President Nasser then poured seven divisions of the Egyptian army into the Sinai Peninsula. Israel's diplomatic efforts to stop the aggression and remove the threat to its existence failed. After weeks of mobilization, which paralyzed the Israeli economy, Israel was finally forced to take a pre-emptive action against the Egyptian air force, destroying its aircraft on the ground. Syria and Jordan, totally unprovoked, joined Egypt and attacked Israel on 5 June 1967, opening fire all along the armistice line. The war ended with Israel's victory. The Sinai Peninsula, the Golan Heights, the Gaza Strip, Judea and Samaria, also known as the 'West Bank', and the Old City of Jerusalem came under Israeli control.

UN Security Council Resolution 242, passed in the wake of the Six Day War, was aimed at establishing the guidelines for a 'peaceful and accepted settlement' to be agreed by the parties. Accordingly, it affirmed that the fulfillment of Charter principles requires the establishment of a just and lasting peace in the Middle East

² On the historical development of the term 'Palestine' as synonymous to the Holy Land, or the Land of Israel (Eretz Israel), see Y. Porath and Y. Shavit (eds), *The History of Eretz Israel. Volume 9: The British Mandate and the Jewish National Home* (in Hebrew) pp. 263f.

³ P. Malanczuk, 'Israel: Status, Territory and Occupied Territories' in (1990) 12 *Encyclopedia of Public International Law* 149.

which should include the withdrawal of Israeli armed forces from territories (not necessarily all territories) occupied in 1967 as well as the:

termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every state in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force.

UN Security Council Resolution 338, which dates back to the 1973 *Yom Kippur* War waged by Egypt and Syria on Israel without any provocation, reiterates Resolution 242 of 1967 and declares that 'immediately and concurrently with the cease fire, negotiations start between the parties . . . aimed at establishing a just and durable peace in the Middle East'.

Under the Camp David Accords Egypt regained the Sinai Peninsula and an international border was fixed by consent between Israel and Egypt. The peace agreement with Jordan fixed the international border between them.

The Gaza Strip formed part of the British Mandate until 1948. It was then administered by Egypt from 1948 to 1967, and by Israel from 1967 until 1994, when Gaza became part of the Palestinian Autonomy. Egypt has never claimed title to the Gaza Strip.

Judea and Samaria (the West Bank) also formed part of the Palestine Mandate territory. Jordan occupied this territory in 1948 and attempted to annex it in 1950. The annexation was not recognized under public international law, the UK (with a reservation regarding East Jerusalem) and Pakistan being the only states to recognize the annexation, which was also vehemently opposed by the Arab states.⁴ In 1988 King Hussein declared that Jordan severed its legal and administrative ties with the West Bank. Israel has never formally incorporated Judea and Samaria, to the exclusion of East Jerusalem. The Israeli annexation of East Jerusalem has not been recognized under public international law.

The Golan Heights were Syrian territory until 1967, although here too there were no recognized borders with Israel. Their annexation by Israel has not been recognized under public international law.

It is therefore up to Israel and to those of its neighbors, which have not yet concluded peace agreements, to agree upon international borders between them. In 1993 the Palestinian Liberation Organization (PLO) signed the Declaration of Principles which states that Resolutions 242 and 338 should provide the basis for negotiations with Israel. These resolutions do not mandate the establishment of a separate Arab state in Judea, Samaria and the Gaza Strip. Neither have the interim agreements entered between Israel and the PLO determined the question of sovereignty over these territories.

⁴ Y.Z. Blum, 'The Missing Reversioner: Reflections on the Status of Judea and Samaria' in (1968) 3 *Israel Law Review* 279, at p. 288.

II. The Palestinian Claim to ‘Return’ to Pre-1967 Israel

As a result of the 1948 war Israel absorbed some 600,000 Jewish refugees from all over the Arab world, and about the same number of Arabs left Israel. Every war in history has yielded its share of refugees. The novel aspect of the Jewish-Arab conflict has been provided by the Arab countries’ deliberate refusal to absorb and integrate their refugees, despite their vast territories and their rich oil resources. Israel, on the other hand, absorbed the Jewish refugees without receiving any compensation for the property that they had left behind and without any help from international organizations. Had the Arab countries only used the property left behind by the Jews, who had fled to Israel, there would have been no difficulty whatsoever to absorb the people whom they openly declared to be their brothers. Indeed, there is no example in history to an everlasting refugees’ problem, since in the normal course of events every state absorbs the people who share the ethnic origin in common with its citizens.

UN Security Council Resolution 242 does not mention the Palestinians. This was no omission. The Resolution calls for ‘a just settlement of the refugee problem’ in acknowledgment that both sides had their share of refugees. Indeed, the fact that there were both Jewish and Arab refugees cannot be ignored when a final and just settlement is contemplated.

In recent years one often hears the claim that the Palestinians are a separate people and therefore no exchange of populations could have taken place. However, there is no ‘Palestinian’ language and no distinct ‘Palestinian’ culture. Palestinians are Arabs, indistinguishable from Jordanians, Syrians, Lebanese, Iraqis, etc. The statement made on 29 September 1947 by Mr Husseini, the Representative of the Arab Higher Committee, to the Ad Hoc Committee on the Palestinian Question makes this point clearly:

One other consideration of fundamental importance to the Arab world was that of racial homogeneity. The Arabs lived in a vast territory stretching from the Mediterranean to the Indian Ocean, spoke one language, had the same history, tradition and aspirations. Their unity was a solid foundation for peace in one of the most central and sensitive areas of the world. It was illogical, therefore, that the United Nations should associate itself with the introduction of an alien body into that established homogeneity, a course which could only produce new Balkans.⁵

Before 1967 Palestinians living in the West Bank did not demand a separate right of self-determination.

⁵ GA Ord Res, 2nd Session, 1947, Ad Hoc Committee on the Palestine Question, pp. 5–11, brought by Lapidoth and Hirsch (eds), *The Jerusalem Question and its Resolution: Selected Documents* (Dordrecht, 1994) at p. 13.

D. The Preconditions for Peace in the Middle East

Notwithstanding the above legal arguments, the Jewish population of Israel has at all times wished to make peace with their neighbours, and whatever merit the demands from Israel may have had, they were willing to compromise and share with their neighbours.

Since 1947, Israeli leaders have, one after another, agreed to accept any program that would bring peace in the Middle East. Israel has had an ever-growing peace camp. The late PM Menachem Begin ceded Egyptian territories captured during the Six Day War, the whole of the Sinai Peninsula, in return for a peace agreement, calling for 'No more bloodshed. No more tears'. Upon signing the Declaration of Principles with the PLO, PM Yizhak Rabin declared on the White House lawn: 'Enough of blood and tears. Enough.' Israeli children are brought up to understand the viewpoint of the Arabs, a task hardly ever taken up by nations in times of conflict. PM Barak attempted to go the extra mile towards a lasting peace by dividing Jerusalem and giving up the Temple Mount, the heart and the soul of the Jewish people.

But whereas in Israel people were rallying and demonstrating in their hundreds of thousands in support of the peace process, the Arab-Palestinian perception of the so-called 'peace process' turned out to be a very different one. Indeed, the very term 'peace process' is a contradiction in terms unless and until the following, elementary pre-conditions are met.

I. The Need for Mutual Respect in Law and in Deed

Immediately after the UN had adopted its plan of partition Mr Saul Malik, the Lebanese Delegate, declared 'If I forget thee O Jerusalem, let my right hand wither' to which Mr Abba Eban, the Israeli Delegate, responded 'if you keep saying this for two thousand years we shall start believing it'.⁶

No peace agreement can bring a lasting peace in the absence of respect for the essential needs of the other party. The status of Jerusalem is a case in point. Jews can trace their roots in Jerusalem back to the days of Abraham. Jerusalem has been in the hearts and minds of Jews throughout the history of the Jewish nation. Jews around the world turn to Jerusalem when they pray. 'If I forget thee Jerusalem shall my right hand wither. Let my tongue cleave to the roof of my mouth' (Psalms 137, 5).

In contrast, for Moslems the importance of Jerusalem is of a completely different kind. Whereas Mecca and Medina are mentioned many times in the Koran Jerusalem is not mentioned even once. Even when Moslems controlled the city they

⁶ The author of this article confirmed this story with Mr Abba Eban.

never turned it into their capital. When Jerusalem was under Jordanian control from 1948 to 1967 no foreign Arab leader came to pray in the Al-Aqsa Mosque on the Temple Mount. The Arab demand to have full control over Jerusalem and the Temple Mount can only be interpreted as a demand to humiliate the Zionist enemy rather than a confidence-building block of a lasting peace.

Holy places ceded by Israel to the PA, such as Joseph's Tomb and the ancient 'Shalom al Yisrael' Synagogue in Jericho, have been looted and torched. They are no longer accessible to Jews. Palestinian commanders openly stated that no Israeli would set foot in Joseph's Tomb. Indeed, a Jew who apparently wanted to visit the site was brutally murdered and a group of hikers (including women and children), 'suspected' of coming too near to the Tomb, were shot at and wounded and one was killed.⁷

II. The PA Must Renounce and Outlaw Violence

Chairman Arafat, who was even awarded the Nobel Peace Prize just for signing the Oslo Agreements, has not renounced violence for a single day.

Upon return from signing the agreements on the White House Lawn in Washington, Chairman Arafat was shown on television presiding over his people in Gaza, vowing with Kalachnikow rifles in their hands, 'with blood and fire we shall redeem you, Palestine'. From there he continued to Johannesburg where he delivered a speech in a mosque likening the agreement he had just signed to the Treaty of Al-Hudaybiyyah signed by the Prophet Mohammed and his Meccan enemies when they were stronger than him. As soon as Mohammed was strong enough he renounced that Treaty unilaterally, conquered the city and put to death many of his Meccan co-signatories. Chairman Arafat used the occasion to call upon a 'Jihad', a religious war.

Again this is not only rhetoric. The killing of innocent Israeli citizens through harsh and gruesome, well-planned attacks have been part and parcel of the 'peace process' since its inception. Television channels world-wide have transmitted time and again the pictures of Israeli buses exploding together with the innocent citizens. The Palestinian 'police' (in effect, Chairman Arafat's regular army) established under the Oslo agreements turned the guns provided by the Israeli government against the Israel Defence Forces (IDF). They killed, without hesitation, their Israeli comrades with whom they participated in joint patrols established under the interim agreement supposedly to protect the peace process against the enemies of the peace. The 'peace process' has been accompanied by Palestinians targeting ambulances and

⁷ Israeli Government 'white paper' on the PA/PLO non-compliance released on 21 November 2000, < www.imra.org.il/whitepaper1.htm > .

school buses, killing teachers and school children, planting deadly explosives in residential areas in the heart of Jerusalem and other Israeli cities, and lynching innocent people who have accidentally come their way. Israelis have been traumatized by the scope of the violence and by the depth of hatred displayed by their 'peace' partners.

On 12 October 2000, Palestinian police participated in the lynching of two Israeli reserve soldiers who, by accident, entered Ramallah, a city under full PA control. The lynching was filmed by an Italian journalist and broadcast world-wide, evoking shock and horror. In 2001 innocent Israeli civilians, mainly teenagers, were killed in cold blood after being tortured, stoned, stabbed, and mutilated beyond recognition. Numerous Israelis fell victim to Arab road ambushes and shooting attacks. Arab suicide bombers killed and maimed civilians, targeting them in shopping malls, bus stops, schools and school buses, restaurants, and a discotheque. Fortunately, many attacks have been successfully thwarted.

The suffering of Palestinians, especially the deaths of the children sent to the front line, caused anguish and soul-searching in Israel. From the Palestinian side, Chairman Arafat has hardly sounded a word in English against the attacks on the Israeli civil population. Even on those rare occasions all one could hear was 'I am totally against it' without mentioning what it was that he was against and without any expression of sorrow over the death of the innocent. In Arabic not a word of condemnation was heard. The official Italian Television Corporation representative in Israel and the PA areas, published an apology on the front page of the Palestinian newspaper *Al-Hayat Al-Jadidah*, in which he claimed that the lynching in Ramallah had in fact been filmed by a 'private rival Italian TV station and not by the official Italian TV corporation'. There is no way that the official Italian TV station was involved in any way in the filming of the attack, 'due to the fact that we abide by the correct media working procedures with the PA and we perform our work faithfully'.⁸

III. Education to Peace and Relinquishing Incitement

The noblest of words used in peace accords will achieve nothing if the public, especially the young generation, is not educated towards peace and respect of the partners to the dialogue. Indeed, in the Interim Agreement the parties committed themselves to foster mutual understanding, abstain from incitement and prevent incitement by any organizations, groups or individuals within their jurisdiction. The Peace Monitoring Center directed by Professor Itamar Marcus has studied these matters carefully over the past years and published a series of reports covering TV

⁸ See the report of the incident by Ariel Weiss in *Haaretz* daily newspaper, 19 October 2000.

broadcasts, schoolbooks and summer camps organized by the PA for the young ones. These studies should make all peace-supporters shudder.

To begin with, there is total denial of Israel's right to exist. Israel has not appeared on a single map in any schoolbook, old or new. Its place is marked as 'Palestine'. The PA's television and press have never ceased to broadcast and publish incitement of the most virulent kind.⁹ The books and programs present the whole Jewish people, past and present, as the source of evil. The classic anti-semitic libel blaming all Jews for the death of Jesus has been used to spread hatred. Children are made to explain in a distorted and defamatory way why Jews were persecuted in Europe and hated everywhere. Although it was an Australian non-Jew who set the Al-Aqsa mosque on fire in 1969 the PA teaches through its schoolbooks that Israeli senior officials and rabbis made the preparations for this crime and the naive Australian Rohan was just instigated to set fire without the slightest understanding what he was doing.

The PA organizes summer camps for children 12–16 years old. There they train to use weapons and are incited to clash with Israelis. The training includes even slashing throats of Israelis.¹⁰ The studies cite a member of the Palestinian Parliament, Jamilla Zidam, explaining:

[t]hese camps are a realization of our determination to mention the “tragedy” [Israel's creation] in light of our right to return [to the land in Israel] . . . these camps come to emphasize our determined position to continue in the paths of our fallen martyrs.¹¹

The worst of all is the cynical use made of children in active warfare. Rather than protect them as the Israelis do, Chairman Arafat and his people place them in the front line and encourage them to throw stones and rocks and create a live shield behind which adults fire with guns and rifles at Israeli positions. Daily television and newspapers praise the Jihad (holy war). Children are taught that to be a 'shahid' (martyr) who murders Jewish men, women and children indiscriminately is a virtue. The newspapers bring the stories of young martyrs who, according to the reports, responded to the call of Allah and achieved the martyrdom that they yearned for, so that it would clear the way for the liberation of Al-Aqsa and Palestine from the defilement of the occupation. Even second grade children are encouraged to take part in the riots and become martyrs. It should be recalled that the Protocols to the Geneva Convention of 1949 set the age below which children may not be recruited into the armed forces at 15 years. Article 38 of the UN Convention on the Rights of the Child

⁹ Compare the studies carried out by I. Marcus, Director of the Centre for Monitoring the Impact of Peace (PMC), Special Report #30 (11 September 2000). Some of the studies can be seen on < www.edume.org >.

¹⁰ A report on the summer camps prepared by Hillary Anderson has been broadcast on BBC World.

¹¹ Published in the daily newspaper Al-Hayat Al-Jadida and brought in the PMC Special Report #3.

provides that ‘State Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities’.

IV. The Need for Transparent and Accountable Governance in the PA

Chairman Arafat’s style of governance has been characterized by a lack of transparency and a lack of accountability. According to a report of the Budget Committee of the Palestinian Legislative Council in May 1997, funds from foreign donor states were channeled through personal accounts of Palestinian officials. Members of the Palestinian Legislative Council have reported waste and misuse of the budget for private purposes of ministers and officials.¹² At the same time, the standard of living of ordinary Palestinians has substantially deteriorated since Chairman’s Arafat coming into power, that despite USD2.5 billions poured by the donor states (mainly the EU, the US and Japan) into the PA by June 1998. PA corruption has squandered and mismanaged the funds.¹³

The ‘peace process’ was expected to yield peace dividends to the Arab population of the West Bank and Gaza. To help create prosperity the Oslo Agreements established a Customs Union with Israel.¹⁴ The objectives of the Customs Union have been frustrated at its inception. Rather than encourage a functioning market, the PA set up more than 100 exclusive importing agencies, or monopolies controlled by persons with close contacts to Chairman Arafat, some of them serving simultaneously as PA officials. Independent Palestinian entrepreneurs lost a substantial share of their Palestinian market. The PA-controlled monopolies thus served to transfer income from the poorer classes to a new economic class. According to an International Monetary Fund (IMF) Report of February 1997, the PA had undertaken to dismantle the import monopolies by the end of 1998, and to bring all revenues and expenditures (including revenues from PA commercial activities, particularly import monopolies) under the control of the Ministry of

¹² See also Edward W. Said, ‘Are There No Limits to Corruption?’ in *The End of the Peace Process: Oslo and After* (New York, 2000) 177ff.

¹³ Barry Rubin, Arab State Support to the Palestinian Authority: Unfulfilled Expectations, The Washington Institute for Near East Policy, Working Paper #181, < www.washingtoninstitute.org >; D. Shueftan, *Disengagement: Israel and the Palestinian Entity* (Tel-Aviv, 1999) (in Hebrew) 93ff.

¹⁴ T. Einhorn, ‘The Need for a Rule-Oriented Israeli-Palestinian Customs Union: The Role of International Trade Law and Domestic Law’ in (1997) 44 *Netherlands International Law Review* 315; see also the author’s testimony before the US Congress Joint Economic Committee, 21 October 1997 Hearing on the Economic Relations between Israel and the PA: < <http://www.house.gov/jec/hearings/israel/einhorn.htm> >

Finance by 1 March 1997. To date this has not happened. According to that report about one-fourth of domestic revenues were being diverted to accounts outside of the Ministry of Finance.

E. The Role of Basic Human Rights

As a precondition to accountability, the legal system must protect individual rights and subject its authorities to open criticism. In the Interim Agreement the parties pledged to 'exercise their powers and responsibilities ... with due regard to internationally-accepted norms and principles of human rights and the rule of law'. Human Rights Watch and Amnesty International have both been very critical of the PA's approach to human rights. Human rights activists and journalists were arrested for criticizing the PA. Dr. Iyad al-Sarraj, the Commissioner of Human Rights, and Bassem Eid, head of the Jerusalem-based Palestinian Human Rights Monitoring Group, have been arrested and threatened to cease their activities. Daoud Kuttab, a well-known Palestinian journalist and broadcaster, winner of the 1996 International Press Freedom Award of the Committee to Protect Journalists, was arrested for broadcasting sessions of the Palestinian Legislative Council. The Palestinian Human Rights Monitoring Group further charged that Chairman Arafat's security forces systematically tortured and mutilated detainees.¹⁵ It has also been alleged that the Chief of the Preventive Security Service has exercised censorship over the Al-Quds newspaper through almost daily contact with the managing editor, who seeks approval for all articles critical of the PA. The recent series of public executions of people said to co-operate with Israel (the peace partner, it will be remembered) have given the world a thorny reminder of the kind of justice administered by the PA. It was even sadder to watch Bassem Eid on TV arguing that all Palestinians support these executions.

To be sure, Israel has been condemned by the same international organizations for waging aggressive wars, for applying excessive force, for destroying the homes of innocent citizens, for imprisoning people without trial, for bombing civilian targets and for endless violations of international law. Yet, it has correctly been pointed out that:

[b]y treating Israel and its enemies comparably and 'even-handedly' the world fails to recognize the important distinction between a flawed democracy and imperfect dictatorships.¹⁶

¹⁵ Palestinian Human Rights Monitor (1997-) <www.phrmg.org>. See especially the 1997, 1998 and 1999 Annual Reports, 'Deaths in Detention' (Report #5 of 1997) and 'Torture: a State's Tyranny' (Report #6 of 1998).

¹⁶ A. Dershowitz, 'Israel: The Jew Among Nations', in *Israel Among the Nations: International and Comparative Perspectives on Israel's 50th Anniversary* (Kellermann, Siehr and Einhorn [eds]) (The Hague, 1998) 129, at p. 132.

The Israeli independent judicial system has applied Israeli law (including due process, rigid rules of evidence, appellate review of judgments, and sometimes even an additional hearing by an extended panel of the Supreme Court) to Palestinian terrorists in the same way that they apply Israeli law to Jews accused of committing serious crimes. In a landmark decision, the Israel Supreme Court outlawed the employment of physical pressure by the General Security Service (GSS) during the interrogation of suspected terrorists.¹⁷ Presented with the heavy toll of dead and wounded civilians caused by Arab terror, the Court acknowledged its awareness that this decision would hamper the ability to properly deal with terrorists and terrorism. Yet, the Justices considered that they must act according to their purest conscience when they decide the law. GSS investigators faced with criminal charges over interrogation methods may only avail themselves of the ‘necessity’ defense if there was clear, imminent danger and such measures were ‘necessary in an immediate manner’ for the preservation of human life. Although in practice every civilized society would probably torture captured terrorists to prevent a ‘ticking time bomb’ from exploding, Israel has placed very serious and effective restraints on the use of such powers.

Finally, Israel has free media with reporters who are free to cover any subject and in fact report on a daily basis every breach of human right that they observe. The journalists who engage in these activities are highly regarded for airing the problems they observe since sunshine is considered the best disinfectant.

It is difficult for any democracy to cope with terrorism and at the same time maintain a strict observation of the rule of law. It is submitted that Israel has compromised the rule of law to a lesser degree than other democracies facing lesser dangers. It is further submitted that, when and if the PA significantly raises its level of respect for human rights there will again be ground for hope for peace in the Middle East.

F. Conclusions

The ‘peace of the brave’ is an empty phrase. Its author, Nobel Peace Prize Laureate Chairman Arafat, killed the ‘peace process’. It did not die of ‘natural causes’. Its revival requires a change of heart of the Palestinian leadership as well as a serious reform of the domestic legal framework. Only when that leadership creates the legal framework within which full respect will be accorded to the needs and basic rights of its own people will peace prevail. Indeed, Immanuel Kant has drawn the connection between the reign of law within the state and a state of peace among states. Kant

¹⁷ ‘Judgment Concerning the Legality of the General Security Service’s Interrogatory Methods (HC 5100/94)’ in (1999) 38 ILM 1471.

foresaw eternal peace only when the people themselves, rather than their unelected leaders, are those to decide the issue of waging war:

[T]he republican constitution also provides for . . . perpetual peace, and the reason for this is as follows: If (as must inevitably be the case, given this form of constitution) the consent of the citizenry is required in order to determine whether or not there will be war, it is natural that they consider all its calamities before committing themselves to such a risky game. (Among these are doing the fighting themselves, paying the costs of war from their own resources, having to repair at great sacrifice the war's devastation, and, finally, the ultimate evil that would make peace itself better, never being able – because of new and constant wars – to expunge the burden of debt.) By contrast, under a non-republican constitution . . . the easiest thing in the world to do is to declare war. Here the ruler is not a fellow citizen, but the nation's owner, and war does not affect his table, his hunt, his places of pleasure, his court festivals, and so on. Thus, he can decide to go to war for the most meaningless of reasons, as if it were a kind of pleasure party, and he can blithely leave its justification (which decency requires) to his diplomatic corps, who are always prepared for such exercises.¹⁸

One must hope that the wish to have a thriving Jewish state living at peace with its surrounding Arab neighbors be fulfilled 'very soon in our days. Amen!'

¹⁸ Immanuel Kant, *To Perpetual Peace* (1795) in *Perpetual Peace and Other Essays* (trans. by Ted Humphrey) (Indianapolis, 1982) marginal number 351.