

4. The Palestinian Moderates

DR. EYAD SARAJ gets more attention from the western press than his political influence would warrant. A chain-smoking Gaza psychiatrist with a humanist outlook on domestic and international matters, he talks of entering the political arena as a “third force” between the corruption of Fatah and the Islamic extremism of Hamas. He offers little, however, to inspire any confidence that he has found many potential constituents in this deeply bifurcated society, let alone developed an organization capable of getting them to the polls. His powerlessness is underlined by reports that he has been arrested and tortured on three occasions. Yet his mind is so sharp, his eye so keen, his moral courage so daunting, and his voice so clear that reporters find him too attractive to ignore.

On a Saturday morning in late July, he held forth on a dock beside the Mediterranean as he prepared to launch his twenty-nine-foot inboard. “So this was a very good opportunity for us and unfortunately it was completely destroyed,” he said, referring to the decade of rule by the Fatah-dominated PA beginning with Arafat’s 1994 return. “Because suddenly the elite of the PLO and Fatah took over, which proved over the years to be absolutely distant from the rule of law, from democracy, and they proved also to be not very good managers, even at the low level.”¹

The imminent Israeli pullout from Gaza had given rise to

1. Eyad Saraj, transcript of interview with author, Gaza, July 30, 2005.

some public talk of a victory vindicating all the bloodshed. Saraj would have none of it. As he emphasized:

No, I think they lost miserably. I think Palestinians proved to be the worst of their enemies. Who gained is Hamas. Hamas gained. But the rest of the society, the Palestinians in general, the Palestinian cause, the just cause was damaged. The peace process was damaged, the peace camp in Israel was destroyed, the Palestinian Authority was weakened, the whole focus in the world became fighting terror and we Palestinians became somehow part of this terrorist structure so that just cause, which should have been the higher moral cause was dimmed to a question between security and terror.²

Saraj was substantially right on both counts. A senior western diplomat estimated that had the Second Intifada been scored like a sporting match on a ten-point system, the Israelis might have gotten an eight on the military side and a five on the politics, with the Palestinians scoring four on the military side and zero on politics.³ “Sharon had the advantage as long as this was a fight in the alley,” the diplomat said. “At the negotiating table, with international support, the PA had the advantage. Arafat either didn’t know this, or didn’t care. He was the road block.”⁴

On the day the Second Intifada erupted and continuing for several months thereafter, the Palestinians had within their grasp a state with a capital in East Jerusalem together with 97 percent of the West Bank and all of the Gaza Strip. Already they presided over areas in which more than 90 percent of the Palestinian population resided. Every day tens of thousands crossed the borders for work in Israel. Travel between Gaza and the West Bank was possible, as was overseas travel. With the establishment of dip-

2. Ibid.

3. Interview with senior western diplomat, July 22, 2005.

4. Ibid.

lomatic relations, Jordan too had become readily accessible and a purchaser of Palestinian goods.

Now the Palestinians were paying a surtax for their terrorism in the form of a pervasive military presence, checkpoints, curfews, severe travel restrictions, and the construction of a “security fence” that was swallowing up 8.6 percent of the West Bank with thousands of West Bank residents caught in the “seam” or “security zone” between the 1967 borders and the fence. Thousands of others were blocked from previously accessible land.

A good way to tell which side prevailed in the military contest is to note which side occupies whose territory and which is issuing the orders that must be obeyed. In their essay in the French paper *Le Monde*, Robert Malley, a former Middle East specialist on Bill Clinton’s NSC, and Hussein Agha of Saint Anthony’s College, Oxford—neither of them sympathetic to Israel—make the telling point that Sharon won the current round of the Israeli-Palestinian conflict by imposing such difficult conditions that he succeeded in “diverting the Palestinian’s concentration from political issues to mundane matters of more immediate, quotidian concern. He appears to have achieved this ambition, an outcome Abu Mazen long predicted, which is why at the very outset of the armed Intifada in 2000 he called for it to end.”⁵ In this new situation, Israel holds all of the cards.

Saraj was also right with respect to the Palestinian domestic circumstances. Arafat returned from his lengthy exile bringing the authoritarian habits that had served him well running his organization from foreign bases first located in Jordan, then Lebanon, and, finally, Tunisia. He controlled the purse strings of the movement, divided responsibility for security among at least thirteen

5. Hussein Agha and Robert Malley, “Abu Mazen: Palestine’s Last Best Hope,” *Le Monde Diplomatique*, February 2005. Agha and Malley make a similar argument in the *New York Review of Books*: see Agha and Malley, “The Lost Palestinians,” *New York Review of Books* 52, no. 10 (June 2005).

factions, permitted no legislative oversight, established no independent judiciary, and permitted even so able a top lieutenant as Muhammad Dahlan to funnel millions from his control over concrete and oil monopolies into his own pockets. He eliminated anything resembling academic freedom at such proud universities as Birzeit and an-Najah and provided health, welfare, and municipal services at levels so lacking as to invite Hamas and other nonstate organizations with political agendas of their own to gain a foothold.

Yet Arafat the “Old Man” personified the Palestinian cause to the extent that so long as he lived he was impervious to challenge. When he died, the sins of the father were visited upon his political progeny. Qais Abdul-Karim, the head of the Democratic Front for the Liberation of Palestine and member of the PLO Central Council explained:

People have had enough of a Palestinian Authority that is monopolized by Fatah. People have had enough of corruption in the Palestinian authority, which devours a major portion of the resources that this PNA could master [. . .] Instead of going in the direction of alleviating the hardships and the suffering of the people, they go to the elite and all their privileges and corruption.⁶

Arafat's death in November 2004 provided a window for reform, thereby leading to Abu Mazen's election. His goal was to restore the credibility of the Palestinian march toward nationhood, making the world and particularly the United States view the Palestinian cause with renewed sympathy. To achieve this outcome, as Malley and Agha offer, “Palestinians must stabilize the situation, restore law and order, rein in all armed militias, build transpar-

6. Qais Abdul-Karim, transcript of interview with author, Ramallah, July 29 2005.

ent, legitimate centralized institutions, and above all, cease armed attacks against Israel.”⁷

Palestinian elites viewed Israel’s decision to withdraw from Gaza with mixed emotions. Revealed in stages throughout 2003 and 2004, the withdrawal could be viewed as a product of the Intifada, perhaps its most visible achievement. On the other hand, the elites appreciated that many other factors contributed to the decision, including Sharon’s desire to stifle pressure from the United States and Europe to return to the negotiating table and the possibility that he would use the period of grace following the pullout to literally cement Israel’s hold on the West Bank and East Jerusalem. In terms of their own interests, Palestinian leaders needed cooperation from the Israelis vis-à-vis facilitating both human and commercial traffic from the territory, supervision of the Philadelphia corridor running along Gaza’s border with Egypt, resuming flights from Gaza’s airport, lifting a six-mile Israeli-imposed restriction on sea traffic from Gaza, commencing work on a commercial port, and myriad other practical issues. Regarding the oft-remarked “day after” the Israeli pullout, mainstream Palestinian leaders hoped Gaza’s residents would find themselves in something other than a “prison” holding 1.3 million inmates.

Yet another consideration was the Palestinian hope that Israel would see assistance to Abu Mazen and other moderates as in its own enlightened self-interest. Lacking any core constituency of his own, Abu Mazen’s one hope of retaining influence while subduing Hamas and other radical factions was to cultivate an impression among Palestinians that he could deliver a bilateral relationship with Israel making their lives more bearable—economically and otherwise. This meant not only cooperation on the above list of Gaza-related issues, but such others as prisoner release, eased travel and related restrictions on the West Bank,

7. See Agha and Malley, “Last Best Hope.”

construction of the wall in ways that minimized its impact on daily Palestinian life, and the demonstration of some inclination toward participating in an accelerated peace process. Abu Mazen had already secured a *tahdiya*, a period of calm or cease-fire, from Hamas, but lacked the muscle—or thought he did—to either disarm Hamas and other radical organizations or compel them to integrate their own militias into a single security force controlled by the Palestinian Authority. Instead, his instincts were to keep Hamas quiet through negotiation and wait until the legislative council elections of January 25, 2006, when the political strength of the various factions would be sorted out. Then, perhaps, the ideal of “one authority, one gun, one law” might be achievable. Like most observers of the unfolding political story, Abu Mazen assumed Hamas would win enough seats to have its maturity tested but not enough to wield real political power. That proved to be a misjudgment of cosmic proportions. Had Abu Mazen fully appreciated the extent of the Hamas political threat, he could have insisted that as the price for full participation in the political process Hamas renounce terrorism, disband its militia and agree to abide by such past government-to-government agreements as Oslo. There would have been broad international support for such a requirement, but Abu Mazen in effect placed consensus ahead of order and wound up with neither.

All things considered, the Palestinian leadership resolved to treat the Israeli withdrawal to the 1967 borders as a positive thing, to commit itself—a commitment shared by Hamas—to avoid taking any action, such as violence against departing settlers or evacuating troops, that would embarrass the Israelis or invite reprisal, and to convey a sense of moderation in commenting on Sharon and his motives. Most of all, Abu Mazen treated the event as a test of his ability to bring the Palestinians back to the point where they proved themselves worthy of statehood and a negotiated peace process. Ahmad Abd Alrahman, a

close friend of Arafat and senior Fatah figure, described Abu Ma-zen's plans weeks before the pullout:

Our President Abbas will stay all the time in Gaza until the withdrawal. It means we are serious to do our assignment in Gaza Strip. The assignment is law and order and security, and no violation of the agreement. I mean, no rockets, no any kind of violence against the Israelis in the Green Line. It is part of Israel, it is part of the state of Israel, we recognize Israel as a state.⁸

Yet as it became clear that Sharon had no intention of extending political help to the PA leadership, Palestinian sentiments turned bitter. For example, Mohammed Dahlan, the young Fatah power in Gaza who may one day inherit Arafat's khafia, said in an interview with *Haaretz Magazine*:

The only thing he can do is to give the Palestinians hope. Sharon is not giving any hope, he is continuing to build the fence, he is expanding the settlements and telling the Palestinians that they have two options: either to die from this life, or to die from the tanks. There is no hope for the students, there is no hope for the future generation.⁹

On the topic of whether Sharon deserves any credit for the pullback, Dahlan was clear:

Of course not. That's Sharon's strategy. He declared that he wants to leave Gaza in order to continue the occupation in the West Bank and to strengthen the settlements, he promised the settlers in the West Bank that they have nothing to worry about. That's no secret. We believe every word Sharon says. Every word of his is the truth; there is no Palestinian state, there is no peace process, there are no negotiations.¹⁰

8. Ahmad Abd Alrahman, transcript of interview with author, Ramallah, July 29, 2005.

9. Gideon Levy, "Get Out of Our Lives," *Haaretz Magazine*, July 22, 2005.

10. Ibid.

Some Palestinian voices were less resentful, more pleading in tone. Smoking heavy-smelling cigarettes and sipping Arab coffee in his Ramallah office, his hair dyed jet-black, Ahmad Abd Alrahman lamented Sharon's tendency to build roadblocks rather than bridges to Abu Mazen: "Sharon said over time while Arafat was alive that we do not have a partner. Now I am saying that we have no partner from the Israeli side. The Palestinian side is ready—I mean Abu Mazen, who has the decision in his hand. He is ready, and he is not playing games, but where are the Israelis?"¹¹

The ride from Jerusalem to Jericho is perilous. Steep sandy mountains give way to deep wadis and valleys hundreds of feet below. The paved roads are barely wide enough for two vehicles. The hairpin turns provide an instant cure for heat-induced ennui. There is no guardrail. Here and there the Israeli traffic administrators have deployed warning signs consisting of a black exclamation point on an orange background. The city is the lowest on earth and, with a history exceeding six thousand years, the longest continuously habited. On the town's main street, in a pleasant villa that serves as both office and home, lives Saeb Erakat. Dapper, very smart, well practiced in the science of diplomacy, Erakat can often be found fine-tuning Palestinian negotiating positions while issuing directions to subordinates. They, in turn, are busy refining arguments supporting the position taken, marshalling information about the latest confrontation or dispute with the Israelis, keeping tabs on anything that might make the Palestinians look reasonable and the Israelis, hard-line and close-minded.

Palestinian public relations have become infinitely more professional since Camp David where Barak and his colleagues—aided by President Clinton and his devoted Middle East aide Dennis Ross—successfully portrayed themselves as daring adven-

11. Interview with Alrahman.

turers for peace and Arafat as negative, unprepared, and uncompromising. Now the Palestinians translate their ideas into formal positions described in literature designed to catch the western eye. Backing them is a Negotiation Support Unit comprised largely of young American lawyers, economists, and public relations specialists who are the sons and daughters of Palestinian émigrés.

Their work product is not perfect, as one handout entitled “The Six Month Report of Israeli Violations” clearly demonstrates. Yet for an understanding of where the Palestinians currently stand on the right of return, Jerusalem, or border issues, for an accounting of their difficulties with the wall, or their complaints regarding checkpoints, the de facto grabbing of West Bank property, Israel’s failure to deal promptly with illegal outposts, or an inadequate loosening of the grip on Gaza, the Negotiation Support Unit makes an enormous contribution.

Like most of the Palestinian elite, Erakat had little good to say about Israeli unilateralism. “The question is one of demography for them, not geography,” he claimed. “They want to solve their problems—get rid of 1.3 million Palestinians so that you can maintain whatever you want in the settlements in the West Bank.”¹² Erakat dismissed the claims of unilateral disengagement supporters who say the country was forced into the approach by the absence of a Palestinian partner. Rather, he argued, the purpose is to move in a way that lowers Palestinian expectations. “They can snatch a piece of land in the north of the West Bank, Jerusalem, Ma’aleh Adumim, Gush Etzion, and then the Palestinians just have to accept. What this will do is kill Abu Mazen, kill Saeb Erakat, kill the Palestinian moderate camp, and end up supporting the extremists, which will translate to victories for other extremists in this region.”¹³

12. Saeb Erakat, transcript of interview with author, Jericho, August 6, 2005.

13. Ibid.

Erakat was twenty-three years old in 1967 when Israel first occupied Jericho. Now he has four children, including twenty-three-year-old twin girls, and spoke darkly of having grandchildren also born under occupation, blocked by a wall from traveling their land freely. He claimed Israel is empowered by U.S. backing while Americans look at this part of the world and wonder why they are hated. "We don't hate you," he said. "We come to you for help. We want democracy, we want freedom, we want liberty, we want the rule of law, we want transparency. That's what Palestinians are all about."¹⁴

Erakat's assistants assembled a collection of Palestinian positions on final status issues and a separate illustrated soft-covered booklet on the wall. The handout on refugees consists of six single-spaced pages, including one directing readers to other resources on the issue.¹⁵ The first five pages follow a question-and-answer format, detailing fifteen questions addressing such matters as the origin of the problem, the current number (6.5 million) and distribution of refugees, their legal status, and the partial text of UN Resolution 194, passed in December 1948 and calling for the right of return home for those "refugees wishing to return to their homes and live at peace with their neighbors."¹⁶

It is the Palestinian position, consistently advanced at Camp David, Taba, and even today, that Resolution 194 has lost none of its bite and that, with some allowance for human logistics, all those refugees wishing to return to Israel have the right to do so, although the handout seeks to finesse through evasion and dis-

14. Ibid.

15. PLO Negotiations Support Unit, "Palestinian Refugees," PLO Negotiations Affairs Department. Available online at www.nad-plo.org.

16. United Nations General Assembly Resolution 194, A/RES/194, December 11 1948. Available online at <http://domino.un.org/unispal.nsf/0/c758572b78d1cd0085256bcf0077e51a?OpenDocument>.

traction the problem of two Arab majorities in two states folding in an historical instant into one.¹⁷

Furthermore, the Palestinian position runs roughshod over the Israeli concern that acknowledging a right of return threatens the Jewish nature of Israel. Significantly, the Negotiating Unit contends that the “end of religious/ethnic discrimination with respect to the right of return threatens nothing other than discrimination itself.” Preserved would be “the Jewish historical attachment to Israel,” and “the rights of Jews to immigrate to Israel.” The right of return “seeks only to address historic injustices.” Of course, the Israel that defines this “attachment” and that has attracted these immigrants is a Jewish Israel. The Palestinian formula is thus the complete negation of the two-state solution. It is a formula for the extinction of Israel as a Jewish state, as perfect in its extremism as is the advocacy of Greater Israel enthusiasts for the creation of a Jewish state from the Mediterranean to the Jordan with the presence of four to five million Palestinians as little more than a logistical inconvenience. In both cases, the existing populations—with roots, economic livelihoods, and political structures—are treated as so much old furniture in a “makeover” room.¹⁸

WHEN I SAT DOWN WITH HER, Hanan Ashwari’s first question had to do with the failing health of ABC News anchor Peter Jennings. They had been friends since the 1970s, Peter one of many western journalists who developed early respect and affection for the brilliant and talented lady from Ramallah who could write a novel or deliver a raging polemic with equal facility and conviction. Ashwari hated the Israeli occupation but endorsed a two-state solution at a time when doing so took some courage. She was

17. PLO Negotiations Support Unit, “Palestinian Refugees.”

18. *Ibid.*

close friends with Arafat and yet resented his authoritarian ways. She was an integral part of the First Intifada, often giving voice to her people's discontents from her roving pulpit of network television cameras, but opposed its violent successor "because I believe that things went drastically wrong and I believe that extremists on both sides took over and the people paid the price." As with other Palestinian moderates, she expressed bitterness over the reluctance of the Sharon government to do more for Abu Mazen. "I mean, okay, Abu Mazen has an agenda for peace, of nonviolence, of reform, of moderation. How did they respond to this in Israel? Did they stop their policies? Did they stop their settlement activities? Did they stop the wall? Did they stop assassinations? No, they didn't."¹⁹

The wall seems to have struck a deeper note of resentment in Ms. Ashwari than in others. Perhaps it offends her poetic soul. Or maybe as a woman—albeit a Christian—in a culture jealous of male prerogatives she has faced walls all her life, climbing one only to confront a new, more foreboding structure. The symbolism was strong. As she eloquently put it:

To me this is the most viable expression of oppression and of provocation. You are stealing people's land. You are building a wall between their homes and their land. You are building a wall to take away their water. You are building walls surrounding whole communities and villages. You're imprisoning people. You're stealing their horizon. You're turning the West Bank into a prison. It's horrible. It's ugly. I mean to me it is the ultimate expression of not just ugliness, but viciousness. I can't stand this.²⁰

Israelis see it differently. When they speak of the wall, they think of it as a system of sensors, a "smart fence"—95 percent of it is fence—packed with the most sophisticated electronic equip-

19. Hanan Ashwari, transcript of interview with author, Jerusalem, July 29, 2005.

20. *Ibid.*

ment to detect trespassers. A cleared, flat area on the Palestinian side permits Israeli monitors to identify and stop most would-be infiltrators. A similar piece of flattened terrain on the Israeli side is designed to facilitate hot pursuit. Statistics regarding the reduced number of successful infiltrators plus accounts from captured terrorists regarding the wall's influence on their planning combine—even before completion of construction—to persuade even many early skeptics that the wall works.

Palestinian complaints with the wall, expressed in both public relations literature and court arguments, are less emotional than Ms. Ashwari's. Their concerns focus, in the short run, on the great harm inflicted on Palestinian communities and, in the long run, on the wall's effects upon borders and demography. Israeli security could have been achieved, they argue, by dismantling settlements and building the wall inside Israel's 1967 border. Instead, Mr. Sharon cleverly distracted the world's attention by unilaterally taking eight thousand settlers out of Gaza while moving to functionally annex important parts of the West Bank and East Jerusalem, carving up Palestinian areas into dysfunctional cantons in the process. Extending some 763 kilometers—over twice the length of the 1967 border—it will embrace more than 9 percent of the West Bank, an area where, according to Palestinian estimates, two hundred and forty-nine thousand Palestinians—including residents of East Jerusalem—now live.²¹ Israelis involved in planning the fence claim the Palestinian figures are wild exaggerations and depend on the creative use of Arab residents of Jerusalem who should not be counted for this purpose. The wall will embrace only 8.6 percent of the West Bank, while the real number of Palestinians caught in its seam—thereby inside the area Israel would now claim—is only about thirty thousand. Still, Palestinians fear that what will be cut off are not Pal-

21. Israel High Court Ruling, Docket H.C.J. 7957/04, International Legality of the Security Fence and Sections near Alfei Menashe, September 15, 2005, p. 6.

estinians from Israel, but Palestinians from their agricultural lands, their hospitals, their children's schools, their places of business, other Palestinians, and ultimately from their putative capital and economic heart, East Jerusalem.²² They will be cut off from a viable state.

THE ISRAELI THREAT to Jerusalem derives from the wall itself combined with the construction of homes for Jews in East Jerusalem and the on-again, off-again Israeli plans for destruction of what Palestinians fear will be hundreds of their homes. No less ominous is the so-called E-1 (East-1) project, designed to link the Ma'aleh Adumim settlement to Jerusalem "through the construction of three-and-a-half thousand housing units, an industrial park, offices, entertainment and sports centers, ten hotels and a cemetery."²³ Palestinians claim the project will effectively sever East Jerusalem's north-south link to the remainder of the West Bank and increase the population of the already illegal settlement from thirty thousand four hundred Israelis to seventy thousand.²⁴ The project's planning was begun under Yitzhak Rabin. The Israeli's say yielding the area of planned construction to the Palestinians would block Israel's east-west contiguity from Jerusalem. Even before the Palestinians elected to be run by a Hamas government an Israeli cave-in on E-1 was unlikely. Now funds needed to get the project going will probably be allocated.

In a July 2004 advisory opinion, the International Court of Justice (ICJ) branded the wall contrary to international law and a violation of the human rights of Palestinians. Despite Israel's

22. Palestine Liberation Organization, "Israel's Wall," Negotiations Affairs Department, October 2004.

23. Palestine Liberation Organization, "Israel's Wall (Special Edition: First Anniversary of the International Court of Justice's Ruling on Israel's Wall)," Negotiations Affairs Department, July 9, 2005.

24. *Ibid.*

claim that the wall is temporary, the ICJ found “that the construction of the wall and its associated regime create a ‘fait accompli’ on the ground that could well become permanent in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation.”²⁵

Yet what of Israel’s claim that the wall was necessary for self-defense? In an astonishing bit of reasoning that perhaps reflected more on themselves than the Israelis, the ICJ judges held that as there was no “State of Palestine” occupied by the Palestinians, Israel lacked a legitimate self-defense motive in the wall’s construction. This is something of an oxymoron considering that under Article 2 of the Fourth Geneva Convention—the governing document in the case—ICJ jurisdiction would not attach unless an armed conflict existed between two contracting parties. Only once such a condition is met does the Convention apply in territory occupied by one of the parties. As the Israeli Supreme Court would later note wryly of the ICJ, “[t]o achieve its finding, the court held at the same time that there exists an armed conflict, and that territories are occupied territories of another state, but also and at the same time asserted that Israel has no right to defend itself in that conflict, because there is no other state involved.”²⁶ Israel had not participated directly in the case, challenging the court’s jurisdiction, and clearly did not consider itself bound by the result.

Palestinian litigants were active in the Israeli courts as well, producing two major Supreme Court decisions that clarified and delineated the strict defensive use of the wall in terms of both practice and legality. The first one was the *Beit Sourik* case, involving clusters of villages running from the Bethlehem area to

25. Advisory Opinion, “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,” International Court of Justice, Press Release 2004/28, 9 July 2004.

26. Israel High Court Ruling Docket H.C.J. 7959/04, p. 1, *supra*.

Samaria; the second involved Palestinian residents of several villages in the vicinity of Alfei Menashe, an Israeli settlement of just over five thousand in the northern West Bank.²⁷

In *Alfei Menashe*, the court first noted that the project was initially undertaken to defend Israel from the “strategic threat” of suicide bombings. Its purpose was security. But security does not stop at the 1967 Green Line. Rather, it extends to areas under Israel’s “belligerent occupation,” territories where the military commander is “the long arm of the state.” It is both the right and the duty of that commander to offer protection to residents of and visitors to that territory, even those who are there illegally. Can the military commander order that the fence follow a particular route? “In the *Beit Sourik Case* our answer was that the military commander is not authorized to order the construction of a separation fence, if the reason behind the fence is a political goal of ‘annexing’ territories of the area to the State of Israel.” Moreover, “construction of the fence does not involve transfer of the ownership on which it is built,” implying that if and when the fence is removed all rights to the land revert to its owner.²⁸ This interpretation of the law was entirely consistent with earlier holdings of the court denying the right of military commanders to construct roads for the purpose of serving the convenience of Israeli commuters or reflecting a political desire for Israelis to occupy all of the area of biblical Israel.

The inquiry did not end with a finding by the court that the military commander was motivated by appropriate security concerns in selecting the route of the fence and thus demarking the security zone or “seam” behind it. As the court stated in *Beit Sourik*:

27. Israeli Supreme Court Judgment Regarding the Security Fence, June 24, 2004, *Beit Sourik*. Available online via the Jewish Virtual Library at: www.jewishvirtuallibrary.org/jsourc/peace/fencect.html.

28. Israel High Court Ruling Docket H.C.J. 7957/04, *supra.*, p. 10.

The law of war usually creates a delicate balance between two poles: military necessity on one hand and humanitarian considerations on the other [. . .] The obligations and rights of a military administration are defined, on the one hand, by its own military needs and, on the other, by the need to ensure, to the extent possible, the normal daily life of the population.²⁹

In *Beit Sourik*, the court moved to establish a test of what it termed “proportionality,” required of the military in each act affecting local populations. And this in turn requires the military commander to satisfy three subtests. First, “the objective must be related to the means.” If you are situating a fence in such a way that access to agricultural land, schools, medical facilities, or roads is impeded, there must be a rational connection between that action and the desired enhancement in security. Second, in “the spectrum of means that can be used to achieve the objective, the least injurious means must be used.”³⁰ Finally, the third test represents a narrow application of proportionality in that it requires that the specific damage caused to the resident population “must be of proper proportion to the gain brought about by that means.”³¹ Great inconvenience cannot be justified if the security enhancement is modest, even if the nexus between the inconvenience and security improvement is real and the steps taken to further security are the least injurious available.

Cumulatively, the court invoked the third test (local proportionality) and struck down the military commander’s action with respect to every village, ordering revisions to the wall’s planned route. It calculated that doing nothing would cut off more than thirteen thousand farmers from their lands and from tens of thousands of their trees. Gates leading to the agricultural lands would be open only at designated times, permitting entrance only

29. *Beit Sourik*, supra. p. 29.

30. *Beit Sourik*, supra. p. 20.

31. *Ibid.*

to those with special licenses. The result would be long lines and a substantial economic inconvenience, far out of proportion to any enhancement in security. The court ruled that the action violated both the Hague regulations and the Fourth Geneva Convention. It ordered substantial changes in the route of the security fence. By the Palestinians' own calculations, Beit Sourik went from 76 percent of its land designated for the security area inside the fence to 15 percent, Biddu from 45 percent to 27 percent, Beit Liqya from 27 percent to 5 percent, and so on.³² Particularly noteworthy was the intervention of groups representing Israeli peace activists, including residents of Mevasseret Tzion—one of those the original plan was designed to protect—who said the military order would detract from their security by enraging Palestinians with whom they now got along well but who would be severely hurt by the fence.

One year later, on September 15, 2005, the court granted similar relief to Palestinians affected by the proposed security fence route in the area of Alfei Menashe. Once again the decision was based on proportionality as the degree of injury to Palestinian residents was far greater than the marginal improvement in security for the resident population.

To the reporter traveling the West Bank, the perceptions of Hanan Ashwari seem more grounded in daily human experience than are the Israeli Supreme Court's notions of proportionality, though it is certainly the case that the checkpoints, rather than the security barrier, are the major impediments to mobility. The ten-minute drive from Ramallah to Jerusalem can take two hours or more when things get clogged at the Qalandiya checkpoint. The landscape is dotted by Palestinians traveling on foot over rural hills from village to town and back again. A separate "temporary" fence snakes out from Ariel like fingers trying to catch

32. PLO, "Israel's Wall," July 9, 2005, *supra.*, p. 24.

one Jewish settlement or another, making it tough if not impossible for neighboring Palestinian villagers to use the land efficiently. Decorating the wall with graffiti comparing the Israelis to Hitler, listing grievances on it, or painting escapist landscapes or billowy clouds has become the fashion. All the while, complain the Palestinians, Israelis say they need a wall to provide security, simultaneously closing their eyes to provocative settlements and outposts dotting every hilltop, way beyond the reach of any security rationale, providing the potential for a dramatic change in the delicate situation

Israel does plan to ease congestion at Qalandiya and other jammed gateways by converting the facilities into civilian-manned checkpoints accessible through computerized identity cards.³³ At the end of the day, however, their collective motto seems to be, “Life over the quality of life.”

In a larger sense, one retains hope for a society that observes a rule of law, where a few men and women in robes can change the configuration of a wall because it was insufficiently respectful of the rights of people who just months ago were cheering and supporting the “martyrs” trying to bring Israel to its knees with waves of terrorist attacks. Now the moderate Palestinians say they want peace. They accept two states. Some want material support in the security area so they can fight some tough opponents of peace. Others argue political support is even more important. Lift the restrictions on mobility, they were pleading only a few months ago. Let our people out of jail. Let us talk about the ultimate issues. We can deliver the settlement we both must seek only if we are credible in our own community. And for that, you hold the key.

Then the Palestinian masses elected a Hamas government and

33. Steven Erlanger, “Israel Is Easing Barrier Burden, but Palestinians Still See a Border,” *New York Times*, December 22, 2005.

the finger-pointing started all over again. One first wonders about the veracity of the claims made by the Palestinian moderates regarding the desire for peace among the Palestinians. A still bigger question is what is to be the fate of the Palestinian moderates now that they have been voted out of office. That is, if Hamas—a radical organization—has been voted into power and the moderates voted out, will the moderates change their political views in order to retain influence? Or will the “moderates” take up arms, this time against a Hamas-led government.

Many Israelis would like to have helped Abu Mazen and his “moderate Palestinians” if and when either he or they could have identified them. But they say they learned some things from the Second Intifada that they will not soon forget. First, do not strengthen your foe until you are sure he is your foe no longer. As a corollary, actions still speak louder than words. Stating you are a partner does not make you one; specific actions are called for, not declarations alone. Finally, where the trade-off is between security and benevolence, err on the side of security.

Now with a Hamas government, the issue of bilateral talks is moot and the question of unilateral disengagement is more central than ever before. Those continuing to embrace the doctrine have the opportunity to do so in its purest form—when there truly is no negotiating partner. No longer does the elected Palestinian majority offer peace at the end of a negotiating process. The Hamas charter calls only for war.