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The Israeli Disengagement Plan: Unilateralism in the Face of Multilateral Agreements

by *Brandon Hollinder*

INTRODUCTION

OVER THE PAST DECADE U.S. Presidents Bill Clinton and George W. Bush have spearheaded efforts, mediated by key international players, to resolve the Israeli-Palestinian conflict. Two initiatives to emerge from these dialogues, the 1993 Israel and PLO: Declaration of Principles on Interim Self-Government Arrangements, or Oslo Agreement (Oslo), and the 2003 Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict (Roadmap) have garnered approval from Israel and the Palestinians and remain significant instruments of peace in the Israeli-Palestinian conflict.

Although both accords call for an eventual Israeli withdrawal from Gaza, it was envisioned as part of a multilateral, negotiated solution. Israel's unilateral Disengagement Plan stands in marked contrast to this backdrop of cooperation, replacing it with non-negotiable terms and, in effect, an imposed peace. The unilateral decision to withdraw arguably fails to move the peace process forward, instead threatening the fragile agreements currently in place.

Although Israel claims that abandoning a negotiated settlement does not violate or prejudice any of its agreements with the Palestinian Authority (PA),¹ this article argues that the unilateral Disengagement Plan violates both Oslo and the Roadmap and that these violations will have significant negative impacts on the peace process. This article is not an exhaustive study of all documents and agreements that are relevant to this conflict, but rather is offered as a legal and textual basis for judging the Disengagement Plan through the use of two documents that have served as the bases and starting points for negotiations and further agreements.

THE ISRAELI DISENGAGEMENT PLAN IS EXPLICITLY UNILATERAL

ISRAEL HAS OCCUPIED THE GAZA STRIP and West Bank territories since the Six-Day War of 1967.² Gaza lies between the southern edge of Israel, the Mediterranean Sea, and Egypt. Approximately 1,377,000 Palestinians reside in Gaza, and until the withdrawal, completed in September 2005, roughly 5,000 Israeli settlers lived in the territory, with extensive protection from the Israeli Defense Force (IDF).³ The Gaza Strip and West Bank together form the essential core territory of any future state of Palestine.

In April 2004 Ariel Sharon introduced a plan for withdrawing Israeli forces and settlers from the Gaza Strip (the Disengagement Plan).⁴ Despite heavy opposition from his Likud party, including a non-binding party referendum rejecting the Disengagement Plan⁵ and the resignation of former prime minister and then-finance minister Benjamin Netanyahu,⁶ Sharon pressed forward, winning eventual support from his cabinet⁷ and the Knesset (the Israeli parliament).⁸ Another victory was achieved on June 9, 2005, when the Israeli Supreme Court ruled ten-to-one that any Israeli laws that might block the plan were inapplicable because the land was seized during war and is therefore not official-

ly a part of Israel.⁹ This decision also recognized the role of international principles and treaties in relation to the Gaza Strip.

Sharon conceived his Disengagement Plan as an independent Israeli endeavor and although he attempted to garner more support by altering his rhetoric to make it less abrasive, the initiative remained unilateral, with Israel determined to "initiate moves not dependent on Palestinian cooperation." The new terminology was loose, but the overall structure and detail of the plan remained largely unchanged, and Sharon continued to maintain that there was no "Palestinian partner with which [Israel] can make progress in a two-sided peace progress."¹⁰ Due to this conviction, the PA was not included in decision making or planning.

Upon implementation of the unilateral Disengagement Plan, Mohammed Dahlan, Civil Affairs Minister of the PA and chairman of a committee preparing for the end of the Israeli occupation, noted that there had been a general atmosphere of non-cooperation surrounding plans for the withdrawal. He stated, "As far as I can see there has been no cooperation. . . . [W]hen we declared our willingness to [cooperate], Israel backtracked dozens of steps."¹¹

Despite the unilateral nature of the disengagement, many Palestinians, including President Mahmoud Abbas, initially welcomed the withdrawal. At a February 2005 press briefing Abbas said, "We are standing on a crossing road in our prolonged march for independence and ending the occupation, as the withdrawal from Gaza Strip constitutes a chance for rehabilitating our institutions and realizing our sovereignty."¹²

Many in the PA lost faith in the Disengagement Plan once it was carried out. In October 2005, two months after the withdrawal, Abbas again commented on the relationship between the withdrawal and a solution to the conflict:

Palestinians cannot pursue the Road Map alone. Implicit in the idea of the Road Map is that Israel and the Palestinians are partners in the journey to peace . . . [D]uring Israel's Gaza disengagement, my government was asked to ensure that Israel's evacuation took place peacefully and without disruption. I am proud to say that we succeeded: not a single Israeli settler or soldier was attacked or fired on. We were told that our behavior would be a "test," and that if we did our part, Israel would reciprocate by allowing Gazans to breathe the air of freedom and begin rebuilding their shattered lives.

Yet, this has not happened: Gaza's airport and crossing point to Egypt remain closed; its waters are off-limits to our fishermen; its borders are completely sealed and movement into or out of Gaza is virtually impossible; and no safe passage between Gaza and the West Bank exists. Because investors rightly fear that without access to the outside world, Gazans will not be able to rebuild a functioning economy, they have been slow at investing.¹³

What remains to be seen is how this withdrawal can now be incorporated into the existing, and still legally relevant, peace agreements.

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THE ISRAELI DISENGAGEMENT PLAN VIOLATES OSLO AND THE ROADMAP

OSLO AND THE ROADMAP ARE SIGNIFICANT PEACE DOCUMENTS

Drafted in 1993 and 2003, respectively, Oslo and the Roadmap represent relevant peace frameworks agreed to and signed by both Israel and the PA with the explicit aim of ending the conflict.¹⁴ Although both Israel and the PA have ignored certain provisions in these agreements, neither has formally rejected the agreements or their principles, indicating that both parties should be held accountable to their terms.

The Oslo Accords were finalized in Oslo, Norway, and signed on September 13, 1993, in a public ceremony in Washington, D.C. Mahmoud Abbas signed for the Palestinian Liberation Organization, and Simon Peres signed for Israel.

Oslo laid out a plan for the phased withdrawal of Israeli troops from Palestinian areas and the creation of the Palestinian Authority, which would rule for a five-year interim period, during which permanent status would be negotiated. Interim self-government would be granted in stages and the West Bank and Gaza

Quartet,” a group of multilateral negotiators and mediators consisting of the United States, United Nations, European Union, and Russia, and presented to the PA on April 30, 2003. The Roadmap is a performance-based, goal-driven plan with clear phases, timelines, benchmarks, and reciprocal obligations to achieve a final and comprehensive settlement of the Israeli-Palestinian conflict. The Roadmap, which envisioned a comprehensive solution by the end of 2005, does not, however, have clear criteria for success nor mechanisms for assessing or enforcing compliance.¹⁶

Although both the Israelis and the PA accepted the Roadmap, they did so with hesitation. Israel made 14 reservations and neither side has implemented it. The PA has not combated terror effectively, as it was obligated to do, and Israel has failed to comply with key provisions, such as a freeze on settlement activity. Even so, Israel has argued that it specifically aims to implement the reforms enumerated by the Roadmap, reasserting the relevance of the Roadmap and the role it may continue to play in fostering peace.

THE DISENGAGEMENT PLAN VIOLATES OSLO

The language of Oslo favors the development of a peace settlement through a process of mutual agreement and negotiation.

“The implementation of Israel’s Disengagement Plan proceeded with widespread international attention and minimal violence, but unfortunately this does not indicate its ultimate success ...”

would be divided into zones under either full Palestinian or Israeli control or joint Palestinian-Israeli control. Permanent issues, such as the status of Jerusalem, refugees, Israeli settlements, security, and final borders were excluded from the Accords and were meant to be negotiated at the end of the withdrawal.

Following the Oslo Accords, the two parties also signed Letters of Mutual Recognition. For the first time Israel conferred legitimacy on the PLO as the representative of the Palestinian people, and the PLO acknowledged Israel’s right to exist.¹⁵ International scholars deem the Oslo agreement to be valid and binding. In his recent article, “Agora: ICJ Advisory Opinion on Construction of a Wall in the Occupied Palestinian Territory: The ‘Wall’ Decisions in Legal and Political Context,” Columbus School of Law Professor Geoffrey Watson argues that Oslo was a legal agreement, formed by two valid and sovereign entities, and intended to be binding. Even though Palestine is not a state, it does enjoy observer status at the United Nations, follows in part the Geneva Conventions, maintains embassies worldwide, and is formally recognized by many nations. Watson continues to explain that even if Oslo is politically dead, which is contrary to the language of the Disengagement Plan, it is not legally dead. Although a party may claim material breach as a justification for avoiding obligations, breach alone does not automatically void an international agreement. According to Professor Watson, neither Israel nor the PA has taken the necessary steps to void the agreement; therefore, it remains valid and applicable.

Ten years after Oslo the Roadmap was developed by “the

Its preamble declares that “[t]he Government of the State of Israel and the P.L.O [will] . . . strive to achieve [a] . . . peace settlement and historic reconciliation through the agreed political process.” Nevertheless, Israel’s Disengagement Plan violates these key tenets, rejecting a negotiated settlement in favor of a predetermined Israeli resolution.

Article V of Oslo specifically invokes negotiation as the method for resolving what the Disengagement Plan attempts to solve unilaterally. Article V covers permanent status, stating, “*Negotiations* shall cover . . . settlements, security arrangements, borders . . . and other issues of common interest” (emphasis added). Although a tentative agreement was reached concerning the status of Jewish settlements following withdrawal, the withdrawal itself was not negotiated. As the IDF was withdrawn, and with the Palestinian security forces still largely in disarray, security in the region has been jeopardized.¹⁷ The withdrawal has similarly impacted border security because Israel unilaterally determined what land would be given up and when.

Article XIV of Oslo calls on Israel to withdraw from Gaza, as laid out in Annex II of the agreement. The Disengagement Plan violates this provision, however, because Israel failed to negotiate an agreement with the Palestinians for the Gaza Strip military withdrawal. Oslo also proposes the “[e]stablishment of a joint Palestinian-Israeli Coordination and Cooperation Committee for mutual security purposes.” Because no agreement for such a committee was reached prior to August 2005, Israel dictated the exclusive terms of the withdrawal. Not only did Israel’s actions contra-

vene Oslo's terms, but they also neglected the spirit of cooperation and negotiation that permeates the document, which is crucial to relations between the two parties. Although the Oslo Accords allow for some level of unilateral action, the document also envisions cooperation and negotiation. Further, this unilateral action is restricted primarily to coordination with international partners. As such, Israel's unilateral Disengagement Plan does not abide by Oslo's stipulation for unilateral action, and certainly ignores and breaches the majority of the conditions set forth for the Gaza withdrawal.

Under Oslo any disputes over the agreement or its interpretation should be resolved by a joint Israeli-Palestinian "Liaison Committee,"¹⁸ composed of members of the two parties, which will "reach decisions by agreement."¹⁹ In fact, the Palestinians expected that "all outstanding issues relating to permanent status [would] be resolved through negotiations."²⁰ Thus, even if Israel could classify the Disengagement Plan as an interpretation of Oslo, there would still be disagreement as to its validity because the Plan was not assessed by the Liaison Committee prior to implementation. By moving ahead without consultation with the Palestinians or the designated mediator, Israel violated the conditions established in Oslo.

THE DISENGAGEMENT PLAN VIOLATES THE ROADMAP

In concordance with Oslo, the Roadmap expressly calls for cooperation between Israel and the PA and urges each party to take steps to end the violent conflict in Gaza. The Disengagement Plan, however, ignores the various external resolutions, plans, and recommendations sponsored by the Roadmap. Similar to Oslo, the Roadmap's preamble states the need for a negotiated settlement between Israel and the PA. Although it does not stipulate whether the entire process should be negotiated, the withdrawal from Gaza represents an important step in the peace process, and one that is crucial to any ultimate solution. Therefore, it should be inferred that the Roadmap intended that the withdrawal be "negotiated between the parties."²¹

Phase I of the Roadmap calls on Israel to "end incitement against Palestinians" and to refrain from "actions undermining the trust [of the Palestinians]." The Disengagement Plan has created widespread criticism in the Arab world and is perceived by many as a ploy to avoid the Roadmap. There are fears that Israel will use this as an excuse to permanently keep settlements in the West Bank.

Israeli officials have further aggravated circumstances. Ariel Sharon's top aide, Dov Weisglass, has been quoted in the international press as saying that "[t]he significance of the Disengagement Plan is the freezing of the peace process, and when you freeze that process, you prevent the establishment of a Palestinian state."²² The unilateral actions of Israel in conjunction with such incendiary statements continue to undermine the Palestinians' trust in Israel.

The Roadmap's Phase II calls for an international conference among Israel, the PA, the United States, the European Union, the United Nations (UN), and Russia. Under the Roadmap, this conference should include multilateral engagement on several issues, such as arms control and the status of refugees in relation to Gaza. By operating unilaterally through the Disengagement Plan, Israel ignores its obligations under the Roadmap not only to the Palestinians, but also to the international community.

Additionally, Phase II calls for continuing the "security cooperation" outlined in Phase I. The term "cooperation" again indi-

cates that the Roadmap envisions a process of negotiation, not unilateralism. Further, if Israel does not perform the cooperation required under Phase I, it makes successful performance of Phase II impossible. By this reasoning, the Disengagement Plan may have threatened the Roadmap by calling into question the implementation of its subsequent phases.

Lastly, Phase III of the Roadmap calls for "[a] final and comprehensive permanent status agreement . . . [reached] through a settlement negotiated between the parties." Without a negotiated settlement, the Disengagement Plan unilaterally creates a new status for Gaza by changing it from a territory occupied and administered by Israel to one that is administered by the PA and closed off by Israel. Although Phases II and III of the Roadmap have yet to begin, their success will rely upon a spirit of cooperation and reasoned negotiation. The unilateralism of the Disengagement Plan violates the core of these ideals embodied by the Roadmap.

THE DISENGAGEMENT PLAN VIOLATES EXTRINSIC SOURCES

In addition to violating the direct language of the Roadmap, the Disengagement Plan also violates several sources incorporated into the Roadmap, including United Nation Security Council Resolution (UNSCR) 338, UNSCR 1397, and the *Mitchell Report*.²³ In disregarding these important instruments, Israel violates the spirit of cooperation that permeates Oslo and the Roadmap.

UNSCR 338 calls for "negotiations [to] start between the parties concerned . . . aimed at establishing a just and durable peace." The resolution suggests that the UN prefers negotiations regarding decisions such as the withdrawal from the Gaza Strip. Although not speaking specifically about the Disengagement Plan, Terje Roed-Larsen, Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General, supported this view, stating, "initiatives cannot substitute for the officials of the parties negotiating."²⁴ Speaking at the same event, Kieran Prendergast, Under-Secretary-General for Political Affairs, favored a similar position, declaring, "unilateral acts by the Government of Israel are not only inconsistent with its obligations under the Roadmap, but also in complete contravention of the spirit of that document."²⁵ Similarly, UNSCR 1397 calls for "resuming negotiations on a political settlement." Although the UN does not specify the content of these negotiations, the concept of negotiation is nevertheless recognized as a crucial tool for solving the conflict.

The April 2001 *Mitchell Report* specified that the recommendations it made, which are replete with calls for negotiations and cooperation, should be implemented by both parties to the agreement.²⁶ Primarily, the report called on the parties to rebuild confidence by "work[ing] together . . . implement[ing] additional confidence building measures" and resuming negotiations.²⁷ Four years later, the Disengagement Plan clearly contravenes these earlier calls for negotiations.

THE UNILATERAL QUALITIES OF THE DISENGAGEMENT PLAN WILL ADVERSELY IMPACT THE OVERALL PEACE PROCESS

THE IMPLEMENTATION OF ISRAEL'S DISENGAGEMENT Plan proceeded with widespread international attention and minimal violence, but unfortunately this does not indicate its ultimate success, nor does it bode well for a long-term positive impact on the peace

process. The effects of the Disengagement Plan on long-term peace objectives must not be understated. Israel's unilateral action could potentially destroy the viability of brokered peace accords, discredit the anticipated reforms of Palestinian President Abbas, and disrupt any remaining trust between the two parties. As the drafters of the *Mitchell Report* suggest, none of the steps in the peace process "will long be sustained absent a return to serious negotiations." They continue, "[I]n order to provide an effective political context for practical cooperation between the parties, negotiations must not be unreasonably deferred and they must, in our view, manifest a spirit of compromise, reconciliation and partnership." This sentiment reinforces the crucial role that cooperation must play in establishing peace between these two parties. The Disengagement Plan stands in sharp contrast to this internationally recognized objective.

CONCLUSION

RECOGNIZING THE NEED FOR A NEGOTIATED SOLUTION, both Oslo and the Roadmap contain provisions for a negotiated withdrawal from Gaza. Given the long history of conflict followed by attempted multilateral solutions, neither Israel nor the PA should deviate from

the efforts of mutual agreement, cooperation, and negotiation. Israel's substitution of a unilateral plan for disengagement brings to the fore a number of issues that still require negotiation, including final borders, control of ports, economic development, return of refugees, and the environment. The timeframe for the Roadmap, originally due to be fully in force by the end of 2005, must also be revisited. Now that the unilateral withdrawal is complete, the parties must work to salvage past agreements and incorporate the withdrawal into the principles embodied in Oslo and the Roadmap.

Despite recent reforms in Palestinian politics, and promises and attempts to reign in the official security forces and independent militias, Israel did not abandon the unilateral nature of its Disengagement Plan to engage in further discussion and negotiation. This unilateral action sets a dangerous precedent because it suggests that both parties may now look first to unilateral actions, rather than cooperation, to resolve pending disputes. Although disengagement and withdrawal may move the peace process forward, they are only effective if undertaken through cooperation and negotiation. A unilateral action by one party does not satisfy notions of fair compromise and just agreement, and does not ultimately pave the way for a smooth transition to peace. **HRB**

ENDNOTES: Hollinder

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