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August 16, 2005

**DOMESTIC IMPLICATIONS OF DISENGAGEMENT:
ISRAELI DEMOCRATIC LEGITIMACY AND PALESTINIAN CONSTITUTIONAL ORDER**

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For most of the world, the Israeli disengagement from Gaza and the northern West Bank that began on Monday is an event whose outcome will directly affect the future of the Israeli-Palestinian conflict. When analysts and policymakers ask about "the day after," they are generally thinking about how Israel and the Palestinians will interact with each other in the future. In fact, since the disengagement was not formulated as part of a broader strategic plan; its ultimate impact on the conflict is highly uncertain and will be a function of many unpredictable variables. But it may well have a much more direct impact on domestic governance, that is, on how Israelis and Palestinians will interact among themselves.

In the case of Israel, opposition to disengagement has involved efforts by the settlers and their supporters to prevent the implementation of a policy adopted by a properly-constituted government, endorsed by a freely-elected parliament, and ratified by a duly-appointed judiciary. After having exhausted all political and legal remedies for their grievances, the opponents of disengagement should have had no option but to wait until the next elections and then vote against political leaders they felt had betrayed their trust – which is precisely what

most have done. But many others instead turned to defiance of the law (albeit largely non-violent), justified by a world-view that rejects the legitimacy of a government responsible for what they believe is an intrinsically illegitimate decision. While some ground their rejection of the law in historical-national rights or security imperatives, the mostly religious majority among that group (though not necessarily the majority of the religious in the country) see disengagement as intrinsically illegitimate because it contradicts divine will and commandment as understood by them or, more often, interpreted for them by rabbis, teachers, or yeshiva (religious seminary) heads. For both populations, but especially among the latter, the critical point has been obedience to a voice whose moral authority transcends and outweighs that of the constitutional order.

This struggle therefore touches directly on the legitimacy of Israeli democracy itself, and the preference of those who have acted to subvert the implementation of disengagement is grounded in the subordination of democratic legitimacy to some higher truth. Such mysticism has never been a dominant trend in Israeli politics, even in the religious camp. But it has been strong enough to produce some truly momentous

Published by TEL AVIV UNIVERSITY

The Jaffee Center for Strategic Studies & The Moshe Dayan Center for Middle Eastern and African Studies
through the generosity of Sari and Israel Roizman, Philadelphia

www.tau.ac.il/jcss/

www.dayan.org/

outcomes, especially the assassination of Prime Minister Yitzhak Rabin in 1995. And it has managed, through tactical alliances with other political forces, to overcome legal constraints and public opinion and to drive Israeli policy for many years, especially on issues connected with "redemption of the land."

But the struggle over disengagement has left the messianists, perhaps for the first time since 1977, without allies powerful enough to help them dictate the national agenda, and that sense of isolation and impotence has driven many of their leaders to denounce the validity of the entire democratic system. Nevertheless, it is clear, now that the disengagement has begun, that those who would defy democratic legitimacy will not prevail, and on "the day after," the first priority for many may well be to confront their own crisis of faith. Whatever it implies for the future of the conflict with the Palestinians, the most significant consequence of the disengagement could therefore be to strengthen the foundations of Israel's constitutional order.

For Palestinians, by contrast, disengagement could help create the notion of constitutional legitimacy that has hardly existed since the establishment of the Palestinian Authority in 1994. But that will depend on how they meet the challenge to them that disengagement will really begin to pose only after it is over. Unilateral Israeli withdrawal from any territories claimed by Palestinians should logically be a source of unqualified celebration by the Palestinians. In fact, disengagement is the source of considerable anxiety, primarily because of the fear that the Palestinians' post-disengagement performance will be seen by many (including many Palestinians) as a test of their ability to manage the state they so insistently demand.

That fear was clearly behind the televised address last week of Mahmoud Abbas (Abu Mazen), Chairman of the PA. Speaking from Gaza at a special session of the Palestinian Legislative Council (the parliament), Abu Mazen – with Hamas and other opposition elements

clearly in mind -- urged his people to behave in a calm and "civilized" manner during and after the disengagement. His rationale was that Palestinian cooperation in ensuring an orderly Israeli withdrawal would "confirm to the world that we deserve a state and that this step is just the beginning and not the end."

The Palestinian political system may be far from mature democracy, but there is a basic law that enshrines a division of powers, and Abu Mazen was elected in a relatively free and fair national election. Nevertheless, he has reason to fear that the cooperation he urges will not be forthcoming because of longstanding defiance of his policy of "one authority, one law, one gun" by groups or individuals fully convinced of the overriding legitimacy of their own agendas. Although some of them are driven by personal ambition, most, including Hamas and Islamic Jihad, ground their behavior in "revealed" religious and/or national-historical imperatives.

Until now, Abu Mazen has been unwilling or unable to confront them directly. But precisely because post-disengagement developments are likely to be seen as a critical test with such high stakes, Abu Mazen may have no choice but to try to institute the constitutional order that thus far has existed largely on paper. That may very well entail even more physical force than Ariel Sharon needed to overcome Israeli opponents of constitutional government. But given the degree of international interest in Abu Mazen's success, the resources being made available to him, and widespread public support for an end to lawlessness and anarchy, there is a reasonable prospect that he, too, would ultimately prevail in any contest with the proponents of "higher truth." For the Palestinians, perhaps even more than for Israelis, disengagement may therefore precipitate a profound change in the way they live their political lives.

KEYWORDS: Israel; Palestinians