Can Disengagement Secure Legitimacy? The European Angle

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Introduction: Unilateralism Back in Fashion?

After a period of being out of fashion, the idea of disengaging unilaterally from parts of the West Bank is regaining currency in some Israeli circles, and is advocated by some respected think tanks, intellectuals, and former officials. At the INSS annual conference in April 2013, Gilead Sher presented the findings of an INSS working group on the peace process, in which this approach featured prominently.

The central finding of the group was that, "The long term national interest of the State of Israel – ensuring its future as the secure democratic nation state of the Jewish people – depends on the territorial division of the area between the Jordan River and the Mediterranean Sea into two states." The preferred route is through a negotiated agreement with the Palestinian Authority. However, the group proposed that Israel pursue a complementary but independent track that would, "in coordination with the international community shape the borders of the country," while making preparations within Israeli society and the national infrastructure for a gradual disengagement from the Palestinians.¹

In advocating this Israeli Plan B, the INSS group is in the company of a small but growing set of high profile groups and individuals. Former Prime Minister and Defense Minister Ehud Barak perhaps did most to put this option on the public agenda by advocating a similar approach in an interview with *Israel Hayom* in September 2012.² Underlying this interest in unilateral disengagement is the fact that a negotiated agreement looks a long way off, and that the status quo poses a growing threat to Israel's

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international legitimacy. There is increased concern regarding what Asher Susser has called the "South Africanization" of the international discourse around the Israeli-Palestinian conflict.³

While unilateral withdrawal from parts of the West Bank is gaining some respected supporters, it must be stated clearly that at present it remains an entirely hypothetical possibility. The key decision maker, Prime Minister Benjamin Netanyahu, has yet to show any interest in it, and was himself a leading critic of the unilateral disengagement from the Gaza Strip in 2005. Furthermore, while most Israelis support peace talks, the INSS National Security and Public Opinion Project survey for 2012 showed that public support for unilateral withdrawals declined markedly after the rise to power of Hamas in Gaza in 2006, and has not recovered.

However, Netanyahu, while seemingly far removed from such a decision, has in the last 12-18 months begun speaking about the emergence of a "bi-national state" as a threat to the Jewish state. This premise is the starting point for those advocating an independent Israeli or unilateral option, if negotiations prove fruitless. Similarly, surveys indicate consistent majority support for a two-state solution among the Israeli public, including territorial concessions, and a priority given by a majority of Israeli Jews to maintaining a Jewish majority in Israel, rather than maintaining the Greater Land of Israel. It is also worth recalling that there was little sign that Ariel Sharon was about to announce the Gaza disengagement plan before he did so in late 2003.

A unilateral disengagement from parts of the West Bank is one of Israel's options to change the game in its dispute with the Palestinians. It therefore warrants evaluation and planning as to how it could most effectively be implemented, were a future Israeli government to pursue it. This planning should include consideration of how such a policy ought to be communicated internationally, so as to ensure the best possible diplomatic reception.

The Diplomatic Rationale for Disengagement

Those advocating some form of unilateral disengagement from parts of the West Bank make the persuasive case that that if non-agreement and the status quo threaten Israel's legitimacy as a Jewish and a democratic state, then Israel must have a Plan B as an alternative to a negotiated agreement. As well as putting Israel back in control of its own destiny and ending its reliance on a Palestinian partner to bring about a two-state reality, having an alternative to a negotiated agreement creates leverage vis-à-vis the Palestinians in negotiations.

Currently the Palestinians have a diplomatic alternative to a negotiated agreement, which is an international diplomatic campaign to secure recognition of a Palestinian state in all parts of the Gaza Strip and West Bank. The upgrade of Palestine in November 2012 to a non-member state at the UN has paved the way for a host of potential initiatives to secure international recognition for the State of Palestine, including in the International Criminal Court. This campaign would serve to isolate Israel diplomatically, while gaining recognition for Palestinian statehood on Palestinian terms, without any renunciation of claims from Israel, including the right of return, which would be required in a negotiated solution.

Beyond this pressing threat lies the even greater concern of international opinion despairing of the two-state solution altogether, a situation that would open the door for Palestinians and their international supporters to advance the case for a single Arab-majority state between the river and the sea. The growth of settlements reinforces the international perception—right or wrong—that "the window is closing on the two-state solution."

Palestinian negotiators clearly recognize the threat of a bi-national

state to Jewish national aspirations and have at times sounded this threat with their Israeli counterparts. "We will leave it for our future generations to demand our rights," said Ahmed Qurei to Tzipi Livni, when he did not like her border proposal during talks in April 2008; "the solution is a bi-national state from the sea to the river."

This strategy was spelled out explicitly in August 2008 in an unofficial document by the Palestine Strategy Group, a group of leading Palestinian intellectuals and advisors.⁸ They proposed that the threat of demanding equal rights

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for West Bank Palestinians in the State of Israel, backed by international support, was an existential threat to which Israel had no response – a trump card that would force Israel to end the occupation on Palestinian terms.

The proposal for an Israeli unilateral option to delineate borders and create a separation between Israel and a Palestinian state answers this threat. Israeli steps to withdraw independently from most of the West Bank would reverse the current trend that makes a separation increasingly hard to implement. It would focus international energy and attention on the bottom-up effort to build a separate Palestinian state, and reduce international motivation to support Palestinian efforts to isolate Israel. Having a viable alternative to a negotiated agreement that addresses Israel's core concerns regarding international legitimacy and security thereby strengthens Israel's hand at the negotiating table. The strong aversion of Palestinian President Mahmoud Abbas to an interim arrangement reflects Palestinian concerns that a temporary solution would alleviate pressure on Israel without satisfying Palestinian core demands.

It might be objected that if the Palestinians have the prospect of getting "something for nothing" there will be no motivation for them to make any further concessions. However, the diplomatic logic of the Plan B approach frames the current conflict as first and foremost a battle for Israel's international legitimacy as a Jewish and democratic state. Seen in that light, the possibility that Israel might initiate a unilateral separation process that largely removes international concerns about its legitimacy will effectively disarm the Palestinians of what is – in the long run – their most dangerous weapon against Israel, namely their capacity to undermine Israel's legitimacy.

Who Cares what Europe Thinks?

However, if a key motivation for any future Israeli unilateral disengagement is to head off international isolation of Israel, then its effectiveness depends on the extent to which it improves and stabilizes Israel's diplomatic position.

In any Israeli move on the Palestinian front, the diplomatic support of the United States is of primary significance. At the same time, the position of major EU states ought to be given considerable weight. European states matter not only due to their strategic and economic relationships with Israel, the Palestinians, and other states in the region, but also because of their weight in international public opinion and their influence in international organizations, not least, the UN.

If the United States can typically be expected to support Israel, and much of the Arab and wider developing world to support the Palestinians, European states can be seen as the "swing states" of international opinion. This was demonstrated in the diplomatic struggle over the Palestinian demand to be recognized as a state at the UN General Assembly. In the run up to the November 2012 vote, both Israel and the Palestinians focused on winning the support of European states. Israel hoped that even if they lost the vote, the support of liberal and democratic European states would reduce its isolation – and that of the US – thereby reducing the impact of a Palestinian victory and conveying diplomatic legitimacy for Israel's position.

While preferring to reach a common position, the major EU states ultimately decide their policy independently, and indeed, were divided over the Palestinian bids at the UN. However, EU states have shown themselves willing in recent years to unite against the US on this issue. Britain, France, and Germany rallied behind a UN Security Council resolution in February 2011 that condemned settlements as illegal. This forced the US into an isolated and uncomfortable veto in Israel's defense. Keen to avert a threatened Palestinian unilateral declaration of independence, the European powers then pressured the US to declare that the 1967 borders should be the basis for a territorial agreement, which President Obama did in May 2011, to the dismay of Prime Minister Netanyahu.⁹

Precisely because the EU and many of its members are seen as

diplomatic friends of the Palestinians, their reaction to a future Israeli unilateral move bears weight. If they create a bloc of support alongside the United States in favor of an Israel separation initiative, this inhibits the ability of the Palestinians to rally international opposition. Conversely, if major EU states back the Palestinians, the diplomatic case for unilateralism is weaker, and the post-implementation diplomatic situation uncertain.

While it might seem self-evident that world powers will support Israel in unconditionally evacuating any part of the West Bank, the Gaza experience shows this is not necessarily so.

Not only is European support critical for creating a Western diplomatic bloc in favor of an Israeli move, but Israel's bilateral relations with the EU as a whole stand to improve if Israeli unilateral measures are seen by the EU as promoting the two-state solution. EU-Israel bilateral relations took a considerable step forward ahead of the disengagement from the Gaza Strip in 2005. Further steps to enhance the relationship were negotiated against the backdrop of the Annapolis process in 2008. However, implementation has been held back since Operation Cast Lead and the election of Prime Minister Netanyahu in 2009.¹⁰

In fact, Israel faces increasing costs in Europe for its continued presence in the West Bank, and in particular continued settlement construction without any negotiated border between Israel and a future Palestinian state. This issue very nearly cost Israel its participation in the EU's €70 billion "Horizon 2020" research program, almost denying Israeli researchers access to a huge source of funding and collaboration. A further diplomatic scuffle is in the offing, with the EU expected at some point to issue guidance for members to label imported goods produced in Israeli settlements.

In the realm of civil society, some European capitals are key engines of the movement to promote boycotts, divestment, and sanctions of Israel. Those promoting these initiatives are few, but their ability to advance their narrative in the political mainstream is growing due to inertia in the peace process and a perception of Israeli bad faith fueled by settlement construction. An Israeli move to unilaterally end the occupation of the West Bank, at least for the most part, would draw much of the sting of this movement.

Aside from the benefits to Israel's international standing of having European support for any independent initiative, having broad based international support will in turn help make the case with the Israeli public for advancing the initiative.

Lessons from the Gaza Experience

If European support is important to the diplomatic success of any future disengagement, what conditions are most likely to garner such support, and how can Israel build such conditions? One available tool in planning a diplomatic and communications strategy is to review the experience of the unilateral withdrawal from the Gaza Strip and four small settlements in the northern West Bank in 2005.

It is important to recognize the limits of the analogy, due both to the differences between the 2005 disengagement and what is advocated with regard to a current withdrawal from the West Bank, and due to the

transformed regional and international political context. Nonetheless, the international debate around any such Israeli move is likely to bear similarities.

The EU struggled to overcome internal differences with regard to Ariel Sharon's disengagement plan. Nonetheless, in looking broadly at the European response, three broad stages can be identified: initial skepticism; positive response and constructive engagement with implementation; and disillusionment and frustration with the aftermath.

Initial Skepticism

Sharon launched the disengagement plan in his address at the Herzliya Conference in December 2003, and outlined further details in the following few months. By its very design the disengagement was not coordinated with the Palestinians, who campaigned against it and argued that it was a ploy to freeze the Roadmap and strengthen Israel's hold on the West Bank.

Given that Israel was in effect proposing to unconditionally end the occupation of the Gaza Strip, one might have thought this would be an easy sell internationally, but this was not the case. In his memoirs, then-British Prime Minister Tony Blair recalled of Sharon that "he made it as hard as possible to support his disengagement policy in Gaza. He did it in as alienating a way as could be imagined for international opinion." In March 2004, the EU Council issued a tepid position statement, declaring: "Such a withdrawal could represent a significant step towards the implementation of the Roadmap, provided that ... it took place in the context of the Roadmap; it was a step towards a two-State solution; it did not involve a transfer of settlement activity to the West Bank; there was an organized and negotiated handover of responsibility to the Palestinian Authority; and Israel facilitated the rehabilitation and reconstruction of Gaza." Is

Facing intense opposition to the plan within the Likud, Sharon sought a concrete diplomatic dividend to help justify his policy. Following discussions with the US, Sharon included four small West Bank settlements in the plan. In return, President Bush issued his letter of April 14, 2004, endorsing Israeli positions on refugees (i.e., that they should be settled in a Palestinian state) and on borders (i.e., that Israel would retain major settlement blocs). ¹⁴

This arrangement, carefully coordinated with the US, earned a very negative reaction in the Arab world and in Europe. In the days following the Bush letter, French President Jacques Chirac said, "I have reservations about the unilateral, bilateral questioning of international law," adding that such moves would set an "unfortunate and dangerous precedent." German Chancellor Gerhard Schroeder said, "Palestinians have a right to expect that decisions are not made over their heads." Brian Cowen, Foreign Minister of Ireland, which at the time held the rotating EU presidency, said at the opening of an EU summit immediately after the announcement, "Everyone knows that any attempt to solve the conflict unilaterally will not bring lasting peace. Any viable, long-term settlement needs to be both agreed and inclusive." ¹⁶

The clearest exception was British Prime Minister Tony Blair, who endorsed the plan publicly at the time of the Bush letter. His basic view was that ending part of the occupation was better than nothing, would create the potential for Palestinian development, and therefore should be supported. This approach also fit with his geopolitical agenda of reducing gaps and tensions between the US and Europe. His position, however, met with vocal opposition from a broad swathe of opinion among retired diplomats in the UK, 52 of whom signed an open letter describing the Sharon plan as "one-sided and illegal."

European skepticism was reinforced by the negative view of Sharon personally, ¹⁸ who was seen in the light of his political record, including his past championing of the settlement project, the First Lebanon War, his purported role in sparking the second intifada, and his forceful response to it as Prime Minister. The endorsement of Bush, also unpopular in Europe, did not help.

The situation was likewise aggravated by the extremely ambiguous way in which Sharon and his aides justified the disengagement. Particularly damaging was Dov Weissglas's much quoted remark that the plan "supplies the amount of formaldehyde that is necessary so there will not be a political process with the Palestinians." Though Weissglas claimed subsequently that he was misconstrued, this remark fueled the worst fears of international skeptics, and was a gift for those who wanted to paint the Israeli move as intended to kill the peace process, rather than break the deadlock.

Diplomatic Dividends of Implementation

In the period immediately prior to and following implementation, European doubts gave way to praise for Sharon's personal courage, and the implementation of the disengagement reaped a diplomatic and public relations dividend. The epic political struggles Sharon underwent to pass the disengagement legislation through the cabinet and Knesset likely increased international appreciation for his efforts. It was against this backdrop that the EU-Israel Action Plan was signed in April 2005, setting out the basis for a considerable upgrade in cooperation on security, economic, political, and cultural fields.²⁰ With Britain holding the rotating presidency of the G8, Blair rallied the leading world powers in July 2005 to commit funds to support the Palestinian Authority in taking on the governance of the Gaza Strip. The EU as a whole and its member states increased their donor aid.²¹

The scenes of August 2005, which received extensive media coverage, also had a public relations impact. The sight of Israel evacuating settlements overturned the image of Israel as a relentless colonial occupier. Footage of unarmed soldiers confronting passive resistance, balancing the need to carry out the mission with their compassion for the settlers, cut across the perception – augmented during the second intifada – of the IDF as aggressive and trigger happy.

However, the touted benefits to the Palestinians, i.e., being able to control their own territory without Israeli interference, did not materialize immediately. The unilateral character of the move meant there was no significant coordination on border regimes for people or goods. It took the signing of the Agreement on Movement and Access (AMA) between Israel and the PA in November 2005 to resolve this, including through the direct involvement of the EU as a third party observer at the Gaza-Egypt border crossing at Rafah. The European assistance made it possible for the Palestinians to control their own border with no Israeli presence for the first time, and gave the EU an active role in the security domain.

Disillusion with Disengagement

The moment of optimism surrounding the AMA did not last. The election of Hamas and the subsequent coup against Palestinian Authority President Mahmoud Abbas changed the complexion of the disengagement in Israel, appearing to fulfill the darkest prophecies of the plans opponents.

Israel's reaction to Hamas's rise to power wiped out the diplomatic dividends reaped from disengagement. Two aspects of Israeli policy proved particularly problematic internationally: restrictions on movement and access, and Israel's use of force against armed groups inside the Gaza Strip. The formation of a Hamas government in 2006 turned the AMA into a dead letter. Israel's response to the Hamas coup in 2007 was to declare the Gaza Strip an enemy entity, adopting a policy intended to make it as hard as possible for Hamas to run the Gaza Strip. It determined what could enter and leave Gaza from Israel based on its calculations of humanitarian needs.

While there may have been logic to treating the Gaza Strip like an enemy state, the policy failed to weaken Hamas, and created a major diplomatic and public relations liability. Israeli authorities were put in the invidious position of creating lists of goods that were permitted, and making assessments of how many truckloads of food and other goods were required. This access policy ultimately proved indefensible internationally, and Israel relaxed it under international pressure following the *Mavi Marmara* incident.

International concerns about the situation in Gaza were perhaps kept in check during 2008, with the EU effectively lining up behind the Israeli and US policy of bolstering Mahmoud Abbas and isolating Hamas, and supportive of Olmert's attempts to negotiate a final status agreement. Indeed, an agreement on a further upgrade in EU-Israel relations was reached in 2008.²²

This changed in 2009 following Operation Cast Lead, the election of a right wing government under Benjamin Netanyahu, and the ensuing evaporation of peace negotiations. Operation Cast Lead in particular had a very damaging effect on Israel's public image. The high level of Palestinian casualties and the subsequent UN Goldstone Report, which accused Israel of deliberately targeting civilians (a charge later withdrawn by Goldstone), put the IDF under heavy scrutiny. In this case as well Israel was forced to announce revisions to its policies due to international pressure, for example over the use of white phosphorous.

Just a few years since the implementation of the disengagement plan, Gaza was far from the model for Palestinian self-government. The heavy restrictions on the movement of people and goods applied by both Israel and Egypt led to the territory being likened to a prison camp, an analogy used most famously by British Prime Minister David Cameron during a 2010 visit to Turkey.

Conclusions and Policy Implications

If current negotiations end without agreement, the diplomatic focus of the conflict will return to international forums and world opinion, with Israelis and Palestinians negotiating their position not with each other, but with the rest of the world. An Israeli option for unilateral disengagement gives Israel the ability to put itself back in the driver's seat, head off the threat of the bi-national state, and improve its international standing. The very fact of having a viable Plan B as an alternative to an agreement potentially strengthens Israel in the negotiations.

Managing domestic political opposition, security concerns, and social policy challenges will be priorities for any Israeli leaders considering such a move. But they should also give ample consideration to management of the diplomatic front, not only with the United States but with Europe. The diplomatic benefits of disengagement are bound up with the international reaction to any independent Israeli initiative.

While it might seem self-evident that world powers will support Israel in unconditionally evacuating any part of the West Bank, the Gaza experience shows this is not necessarily so. Even in the case of Gaza, where Israel withdrew to an internationally recognized boundary, there was considerable international wariness at first. This was encouraged by a campaign by Palestinians and their supporters to discredit the Israeli move. This may well be augmented in the case of the West Bank, where Israel will not withdraw to a recognized boundary.

In the face of opposition from Palestinians and their supporters, Israel will first of all have to make a convincing case that it has tried in good faith to reach a negotiated agreement and offered fair concessions, and remains open to negotiations on final status issues, even while committed to advance the two-state reality through independent action. In addition, it will have to communicate persistently, and demonstrate through implementation, that Israeli independent moves are consistent with advancing a viable Palestinian state, and heighten rather than narrow prospects for a future agreement.

Chances of a positive international reception will likely be further enhanced by Israel offering to cooperate with the Palestinian Authority as much as possible on implementation. Israel might, for example, propose joint teams to coordinate handing over control of territory and future arrangements for movement and access during the planning stage, rather than as an afterthought. If Israel feels unable to immediately relinquish control of West Bank-Jordan border crossings, it should make clear its intent to do so when practicable, and define clear and realistic conditions for this to occur. While the Palestinians may refuse to cooperate in any way with a unilateral move they do not accept, Israel's position will be enhanced by making clear its preference for coordination and its intention to promote Palestinian independence and sovereignty to the greatest possible extent.

Israel should also make clear that it is prepared to recognize the sovereignty (with some limitations) of the Palestinian Authority in the evacuated territory, and to offer assistance in the development of the Palestinian state in the West Bank, and the absorption and naturalization of stateless Palestinians within a future State of Palestine. This could involve supporting the large scale development of infrastructure, housing, industry, and transportation, including links between the West Bank and Gaza Strip to be activated when Palestinian political circumstances allow.

Unlike in the case of Gaza, Israel will not withdraw to the pre-1967 lines, and will retain major settlement blocs. This will create considerable added difficulty in making the case for the move internationally, and Israel will face the argument that it is relinquishing small settlements only to strengthen its hold on larger settlements and East Jerusalem. Israel must be able to make a case that the self-declared border is a reasonable basis for a future agreed border including territorial swaps. New planning and construction in the most sensitive and disputed areas, such as E1, should remain on hold. Similarly, while Israel would likely seek to maintain a security presence on the Jordanian border and other strategic locations, it should attempt to make any residual security presence as unobtrusive as possible, and avoid deployments that will inhibit Palestinian development.

At the same time, maintaining security, in particular preventing the rise of Hamas, is itself critical for diplomatic success. Had Hamas not taken power in the Gaza Strip, Israel would not have imposed the same restrictions on movement and access, and the situation would look very different today. That said, should it be necessary to take military action to establish deterrence, actions should be as localized as possible, drawing

the appropriate conclusions from the contrasting international reactions to Operation Cast Lead and Operation Pillar of Defense.

In sum, an independent initiative to disengage from parts of the West Bank does offer the potential to head off the threatened "South Africanization" of international discourse around the conflict, the international despair over the two-state solution, and the emergence of a bi-national state. However, in order to secure these diplomatic benefits, Israel would have to be able to demonstrate that for the most part the occupation of the West Bank is over. This would mean making clear that what Israel leaves behind after any future West Bank disengagement would be a functioning Palestinian entity, with control over most of the territory, and eventually, control over border crossings for goods and people.

Notes

- See "The Palestinian Issue: Towards a Reality of Two State," paper prepared by Gilead Sher, Benedetta Berti, Gideon Biger, Shlomo Brom, Udi Dekel, Shlomo Gazit, Anat Kurz, Yael Lahav-Kurzion, and Yoram Schweitzer, presented at Institute for National Security Studies conference "Security Challenges of the 21st Century," April 23, 2013.
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- 4 Yehuda Ben Meir and Olena Bagno-Moldavsky, *The Voice of the People: Israeli Public Opinion on National Security* 2012 (Tel Aviv: Institute for National Security Studies, 2013), p. 82.
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- 6 Ben Meir and Bagno-Moldavsky, The Voice of the People, p. 23.
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- 9 Toby Greene, "Shifting World, Shifting Priorities: Half-Term Report on the UK Coalition's Relations with Israel," *Fathom* 1 (winter 2012): 40–49.
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- 11 "Building a Political Firewall against the Assault on Israel's Legitimacy: London as a Case Study, Version A," Reut Institute, November 2010.
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- 13 EU Presidency, "Presidency Conclusions of the Brussels European Council (25 and 26 March 2004)," Council of the European Union, May 19, 2004.
- 14 Elliott Abrams, *Tested by Zion* (Cambridge: Cambridge University Press, 2013), p. 102.
- 15 "Chronological Review of Events Relating to the Question of Palestine -Monthly Media Monitoring Review," UN Division for Palestinian Rights, April 2004.
- 16 "Irish EU Presidency Says Unilateral Attempt will not Bring Last Peace in Middle East," *Xinhuanet*, April 16, 2004.
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- 18 Suzanne Gershowitz and Emanuele Ottolenghi, "Europe's Problem with Ariel Sharon," *Middle East Quarterly* (fall 2005): 13-23.
- 19 Ari Shavit, "Top PM Aide: Gaza Plan Aims to Freeze the Peace Process," *Haaretz*, October 6, 2004.
- 20 Pardo and Peters, Uneasy Neighbors, p. 61.
- 21 Rory Miller, Inglorious Disarray (London: Hurst, 2003), p. 173.
- 22 Pardo and Peters, Uneasy Neighbors, p. 26.