



PALESTINIAN CENTRE FOR HUMAN RIGHTS

Human Rights and the lessons of ‘peace plans’: from the Geneva Accords to Sharon’s disengagement plan.

A Position Paper by
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Introduction

The Israeli occupation, which began almost forty years ago, has continued despite some efforts of the international community to restore, or indeed impose, some sort of balance of power settlement on the conflict. Throughout the thirty-eight years of occupation the Palestinian civilian population, while suffering from grave breaches of international humanitarian law and extensive violations of human rights norms, has requested the implementation of three aspects of international law:

- (1) the end to the Israeli occupation;
- (2) the realisation of the right of the Palestinian people to self-determination;
- (3) and, finally, in the interim period (that is to say, the period until steps 1 and 2 are implemented completely) the full implementation of international humanitarian law, particularly the Fourth Geneva Convention.

This position has been held by Palestinian civil society, political and legal experts for a considerable amount of time. The international community has supported them through various UN resolutions which have confirmed that these rights should be accorded to the Palestinian people.

Peace plan after peace plan has been brought to the table, careers have risen and fallen on the limited success and then subsequent failures of various peace initiatives – and despite this the conflict rages on. Turning points are reached - only for the parties to turn back again. In each case, on each occasion, the same key element is lacking: the inclusion of international law as the foundation of each peace agreement.

However, as outlined above, both Palestinian civil society and the international community have called for the full implementation of human rights and humanitarian law. The key party with ideological differences over the implementation of international law is Israel.

The Israeli government, under any and each administration, has never departed with its position that international law is not applicable to the territory it has occupied since 1967. In practise, this has had grave consequences for the Palestinian civilian population who have suffered from: wilful killings, torture, excessive and disproportionate use of force, arbitrary arrest and detention, being deprived of the right to a free and fair trial, expropriation and wanton destruction of land and property, illegal transfer of Israeli settlers into the OPT in order to change the character of the territory being occupied (i.e. settlement of the OPT by Israelis), collective punishment, and restrictions on freedom of movement.

On each one of these questions, which are variously, breaches, grave breaches and violations of IHL and human rights law, the Israeli authorities have refused to acknowledge that there is something astray in their policy.

This failure to acknowledge poor practise, and the tolerance by the international community of Israel's contentions, has provided an international context where the behaviour of the Israeli military, on both a command level and an individual level goes unquestioned, unchallenged and consequently unpunished. The impunity granted to Israel, in the full knowledge of what the Israeli military is doing in the OPT, must be seen as part of a broader picture in which a conspiracy of silence permeates the international political culture. It is this very conspiracy which allows international humanitarian and human rights law to be ignored and to be omitted in each peace plan.

In the aftermath of the Oslo Accords euphoria abounded – there was a sense among many that this long running conflict had finally been put to bed, if not quite tucked in for the night. Yet ten years after the Oslo process the message is out again



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that a turning point has been reached – but how many more turning points will we reach before we realise that we are going in circles?

The death of Arafat is not the turning point that it is being portrayed to be. To be sure Abu Mazen, for a variety of reasons, is having some success introducing measures which may bring some semblance of basic law and order to the OPT. He is deploying the Palestinian security forces around certain areas in the Gaza Strip so that they can be used to protect Israeli settlers and Israeli civilians living inside Israeli itself.

But, of course, their deployment is rather symbolic than substantive. If the entire might of the Israeli military – with its Helicopter gunships, American Fighter-Jets, Tanks, heavy artillery, heavily equipped personnel – if all of this could not prevent the deployment of *Qassam* rockets (and so bring “peace”) then how can we expect that the deployment of some poorly equipped, shabbily kitted out Palestinian security personnel will have any impact?

The change, of course, has been one of political will – the decision has been taken by militant groups, in a kite they flew months before Arafat’s departure, that a respite from the armed struggle is required. How long this respite will last is uncertain, what can be achieved in the meantime is also uncertain.

The only certainty in the conflict is that the continued Israeli failure to act to implement and apply international law will continue to bring instability to the OPT and, indeed the entire region.

If Israel continues to fail to apply international law in its daily attacks against the Palestinian civilian population how can it be expected to accept the implementation of international law in any peace deal? The Israeli position is so substantially at variance from the norm that it is becoming increasingly more difficult for the Israeli political and military machine to comply with those norms. Israel is like a child who has been spoilt for too long – if anybody tries to put the lid back on the sweet jar Israel will lash out; those who pay the price for this are the Palestinian civilian population.

Both internationally and regionally people have short memories. After each turning point is passed euphoria wanes into mundanity and the devil of detail takes over. Then the cracks in the dam, which should have been obvious from the outset, begin to expand and the dam bursts.

During the formulation of each suggested peace plan, particularly the notorious Oslo Accords, human rights and international law were sacrificed to ‘make way for security requirements.’ However the fundamental principle of human rights is human security, the core of international humanitarian law is security for civilians. Human rights must not be seen as an obstacle to security, not even seen as a complement to security but rather as the basis of security.

The intention of this paper is to provide an analysis of various peace projects which have been heralded in the post-Oslo period. It will focus on three substantial projects: the People’s Voice plan, much celebrated because of the people who formulated it include an ex-Israeli member of the security services; the Geneva Accords also celebrated because of its sub-state, supposedly grass-roots nature; and, finally, Sharon’s disengagement plan, a unilateral plan which led to Ariel Sharon, one of the most cumbersome of all Israeli war criminals, being proclaimed as a man of peace. Of course Sharon’s strategy has always been and will continue to be to hold an armalite in one hand while proudly displaying a decayed olive branch in the other.

Throughout this paper PCHR will contend that without reference to international law, either in broader terms or in the specifics of the individual plans, these plans are either doomed to failure or, in the case of the unilateral disengagement plan designed to inflict further suffering on the civilian population of the OPT.



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The proposed peace plans detailed in this paper must serve as a warning to the international community: peace can not be built without the implementation, integration and application of human rights as an integral part of any plan: peace can not be built on partition of Palestine: peace will only come with an end to the occupation.

From the outbreak of the Intifada to the Geneva Accords

The Roadmap² was initiated in June 2002 by the United States government after a period when no peace initiative whatsoever existed. It was intended to restore calm in the OPT and set in place a series of measures supposed to accompany the creation of a Palestinian State. It is remarkable that the initiative places much more responsibility on the Palestinian Authority. Indeed, the conditions for the implementation of the Roadmap is a full end to violence and terrorism, along with a very impressive set of reforms, while on the Israeli side only a withdrawal from Palestinian areas occupied from September 28, 2000, and a freeze of settlement activity is envisaged during this stage. In this respect, it is worth noting that it is the only process Israel has agreed to since the beginning of the second Intifada³, although this fact has not prevented Sharon from making no less than fourteen reservations to the Quartet initiative⁴. Apart from a complete dismantlement⁵ of Hamas, Islamic Jihad, Popular Front, Democratic Front and Al-Aqsa brigades organisations, Israel asked for a waiver of any right of return for Palestinian refugees, and accepted a reference to Resolutions 242 and 338 only as an outline for the conduct of future negotiations on a permanent settlement. Any such permanent settlement would be an autonomous one, deriving its authority from the Roadmap alone which means that any commitments Israel makes would not hold fast in another context if the Roadmap process failed. The US promised to “fully and seriously address” these concerns. This shows how reliable and steadfast the Roadmap is.

Once again, Palestinians are being asked to put armed struggle aside and wait for a better future. But what is the credibility of assurances given by a US-led initiative when one recalls how reluctant the American government is to pressurise Israel when it does not comply with its own obligations? Despite the very precise and detailed schedule drawn in the plan, it was not clear, from the start, whether the US had any real intention to force the parties to respect it. This initiative is more evidence that the international community is ready to accept supporting any move towards peace, insofar as no political involvement is required. The lack of international concern for the situation in the Occupied Palestinian Territory paved the way for a series of ‘peace plans’ which will be examined in more detail in the following pages.

The first of two supposedly grassroots’ initiatives, the People’s Voice, intended to provide a general framework on which a peace settlement could develop. It consists in a Statement of Principles agreed upon by Ami Ayalon, former head of the Shin Beit, and Sari Nusseibeh, a Palestinian academic and President of Al Quds University in Jerusalem. The Statement aims at obtaining the maximum signatures⁶ from Palestinians and Israelis, in order to initiate a dynamic which would result in a more comprehensive draft.

Although it is very short and doesn’t go into details, the text presents serious imperfections regarding international law. Supposedly based on “the June 4, 1967 lines, UN resolutions, and the Arab peace initiative”, it nonetheless provides for border modifications “based on an equitable and agreed-upon territorial exchange (1:1) in accordance with the vital needs

² The Roadmap follows President Bush’s speech of 24 June 2002. It was welcomed by the EU, Russia and the UN in the 16 July and 17 September Quartet Ministerial statements. It is available on the US Department of State’s website.

³ The US agreed with Israel on the matter: “The United States ... promised to prevent any attempt to impose on Israel any other agreement or agenda which is not the Roadmap”. PM Ariel Sharon’s Address at the Herzliya Conference, 16 December 2004.

⁴ See Haaretz, *Israel’s road map reservations*, May 27, 2003.

⁵ Israel now claims that these reservations are “part of the Roadmap process” despite the fact that even the government of the U.S.A. has only stated that it will “consider them” but has not accepted them as part of the text or the obligations of the Roadmap.

⁶ So far, the People’s Voice claims to have collected around 135,000 Palestinian and 170,000 signatures.



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of both sides including security, territorial contiguity, *and demographic considerations*⁷ (emphasis added by PCHR). Given the settlements' location in the West Bank, *demographic considerations* are likely to be very prejudicial to the Palestinian side. Even if territorial exchange is envisaged on a 1 to 1 basis, it is hard to foresee how the future map of Palestine could be acceptable for its citizens – and it will be almost impossible to achieve *territorial contiguity*.

Furthermore, the Statement of Principles, regarding “the capital of two States”, says that “Arab neighbourhoods will come under Palestinian sovereignty, *Jewish neighbourhoods under Israeli sovereignty*”. Looking at a map of *Jewish neighbourhoods*⁷ in Jerusalem suffices to convince anyone that in fact East Jerusalem, supposedly Palestinian according to UN resolutions, is now mostly inhabited by Israeli Jews. The implementation of the Statement of Principles, as a result, would create a Palestinian capital deprived of most of its quarters. A solution that would indeed be impossible to put in place, and that would, last but not least, be fully inconsistent with international law, both regarding the right of self-determination and humanitarian law, which prohibits the transfer of its own population, by the occupying power, into occupied territory.

Another very important flaw lies in the fact that the Statement says: “upon the full implementation of these principles, all claims on both sides and the Israeli-Palestinian conflict will end”. It implies granting full impunity to soldiers and settlers responsible for crimes committed against the Palestinian people and their properties, which is inconsistent with human rights law and the duty to prosecute criminals.

In many aspects, the People's Voice resembles the peace initiative which followed, and the same flaws appear in both texts, undermining the pretence that they would solve the Israeli-Palestinian conflict, as will be shown now.

The Geneva Accord, an unofficial peace proposal drafted and endorsed by a group of Palestinian leaders and Israelis, including former members of the Israeli government (with the sponsorship of the Swiss Foreign Ministry who should be acting in their capacity as depositaries of the Geneva Conventions), was released in October 2003 and promoted as the “realization of the permanent status peace component envisaged in ... the Quartet Roadmap process”⁸.

The document intends to give a detailed and comprehensive overview of the ‘compromises’ that are required for a “reconciliation between Palestinians and Israelis”⁹ to occur. Despite the fact that it has been totally overlooked by the Israeli government - which found it unacceptable - it has been seen as a “breakthrough” in peace negotiations. Presented as a grassroots' initiative with wide support among both populations, it has yielded considerable backing from many governments and from the media. It has been described as a fair, just and balanced plan for both Palestinians and Israelis, although it has very often not been read thoroughly. The Geneva Accord is the best example and illustration of the fact that too many, in the international arena, are ready to sell Palestinian rights at a low price when it comes to reaching a peace agreement. But actually, as has been said above, only a just and fair solution, that is, conforming to international law can bring a lasting peace. There are many reasons to think that the Geneva Accord if implemented would inevitably collapse due to its failures in this regard.

The territorial sovereignty regime drawn in the Geneva Accord, for example, is a very worrying shortcoming. While the aim of a final settlement should be to get rid of any Israeli presence in Palestinian areas (and, in so doing, allow the Palestinians to realise their right to self-determination) the text provides that “Israel will maintain a small military presence in the Jordan Valley under the authority of the MF [Multinational Force] and subject to the MF SOFA as detailed in Annex X for an additional 36 months”¹⁰. Moreover, paragraph 8.(a) of the same article provides that “Israel may maintain two

⁷ In fact, Jewish settlements, which are of course illegal under international law.

⁸ Geneva Accord (G.A.), preamble, paragraph 11.

⁹ G.A., preamble, paragraph 12.

¹⁰ Article 5.7.(f)



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EWS [Early Warning Stations] in the northern, and central West Bank at the locations set forth in Annex X”. Not only will the future Palestinian State be fully demilitarized¹¹, it will also have to accept a foreign military presence on its soil, for an indefinite period. Also, in the same vein, paragraph 9.(b) provides that “the Israeli Air Force shall be entitled to use the Palestinian sovereign airspace for training purposes in accordance with Annex X, which shall be based on rules pertaining to IAF use of Israeli airspace”. Though such agreements might be passed by sovereign States if they feel that it is in their interest, it is doubtful whether they would please a Palestinian population severely harmed by the Israeli Air Force shelling.

More importantly though, the Accord provides for the construction of a ‘corridor’ linking the two parts of Palestine, Gaza Strip and West Bank. Now, if the Accord states that this ‘corridor’ shall be permanently open, article 4.6. further explains that it “shall be under Israeli sovereignty”¹². One can wonder on what basis a sovereign State would have to rely on a neighbouring State for its territorial contiguity. Permitting that Israel keeps sovereignty over the ‘corridor’ amounts to saying that the legal right of a Palestinian to travel from one part of the country to the other is not absolute, and this is highly problematic¹³.

When it comes to the borders of the future Palestinian State, the Geneva Accord states that “in accordance with UNSC Resolution 242 and 338, the border between the states of Palestine and Israel shall be based on the June 4th 1967 lines with reciprocal modifications on a 1:1 basis as set forth in attached Map 1”. But a glance at the map reveals that most of the biggest settlements are to be included in the Israeli State! In full contradiction with international law, which prohibits the acquisition of territory by force, contrary to international humanitarian law, which forbids the transfer of part of the occupying power’s population into an occupied territory, and despite the numerous United Nations Security Council resolutions which call for an unconditional withdrawal from territories occupied during the Six Days war of 1967, the Geneva Accord negotiators have simply decided to annex important parts of the West Bank.

Besides, it is interesting to note that the Palestinian negotiators for the Geneva Accord did not get *any* of the land they were asking for as part of the 1:1 swap. It is underlined by Nick Kardahji, who characterizes it as an “extremely unjust arrangement”¹⁴. Indeed, in return for the annexation of fertile lands rich in water resources and wells, Israel would give uncultivated wild land, unsuited to any productive use, southwest of Hebron, and some land adjacent to the Gaza Strip. Finally, the Accord is very ambiguous in its formulation. Regarding “Israel’s capacity to relocate, house and absorb settlers”, the agreement states that “while costs and inconveniences are inherent in such a process, these shall not be unduly disruptive”¹⁵. Although the wording of the Article is not clear, it would seem to imply that if the costs became too important, Israel would have the right not to carry out evacuations. According to a critic of the Geneva Accord, “furthermore, the nature of such “costs” and “inconveniences” are not spelled out; they could be economic or political, meaning that political turmoil might be regarded as sufficient reason for not carrying out the withdrawal”¹⁶.

¹¹ Article 5.3.(a) provides that “no armed forces, other than as specified in this Agreement, will be deployed or stationed in Palestine”. Paragraph 3.(b) reads further: “Palestine shall be a non-militarized state, with a strong security force. Accordingly, the limitations on the weapons that may be purchased, owned, or used by the Palestinian Security Forces (PSF) or manufactured in Palestine shall be specified in Annex X”.

¹² Article 4.6. of the Geneva Accord.

¹³ As Nick Kardahji recalls, “under the terms of the Oslo Agreements, Israel was supposed to open such a route from Gaza to the West Bank, but it was frequently closed, cutting off the two areas from one another and seriously harming the fragile Palestinian economy. Past experience regarding ‘safe passage’ corridors is therefore not very encouraging”, *The Geneva Accord: Plan or Pretense?*, PASSIA, Jerusalem, 2004, p.31.

¹⁴ *Ibid*, p.30. The author further notes that “the fact that the Palestinians negotiators were prepared to accept it is deeply worrying”.

¹⁵ Article 5, Section 7 (c) of the Accord.

¹⁶ *Op.cit.* note 7, p.38.



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The real question lies here: why should Israel be rewarded for having occupied Palestinian lands for so long? Why would it be the only 'realistic' choice for Palestinians, as if it wasn't 'realistic' to expect the Israelis to leave areas which are not theirs? Is it coherent, moreover, for countries like Switzerland to support such annexations after having denounced the occupation of the very same areas?

The question of the borders of Jerusalem is of the same nature. The Accord envisions the Holy city as the capital of two States, but provides for a strict border regime, factually dividing Jerusalem in two parts, East and West Jerusalem, with special arrangements concerning the Old city. Apart from the fact that it is undesirable, such a regime might also prove unworkable given the close ties linking the two parts. The Accord appears like "an attempt to cement Jewish dominance of the city and prevent any serious revival of the Palestinian districts". Indeed, it would annex several settlements blocs in East Jerusalem.. Although it not too clear from the wording of the Accord, one can expect the largest settlements to be integrated to Israel, along with dozens of thousands Israeli citizens. On the other hand of course, Palestinian quarters in the western part of the city would remain under Israeli sovereignty, which highlights the unbalanced nature of the deal the Palestinian negotiators have agreed on.

Regarding the issue of refugees, the Accord is not any more acceptable. If article 7.1.(a) rightly claims that "an agreed resolution of the refugee problem is necessary for achieving a just, comprehensive and lasting peace between them", it does not place the responsibility of the 'problem of refugees' on Israel and on the large-scale expulsions that were carried out by the Israeli forces during the 1948 war and those which followed. Admitting the moral responsibility of Israel, however, is a necessary condition if one really intends to reach a 'just and lasting peace'. But the Israeli side refused to do so, and Yossi Beilin, one of the initiators of the Geneva Accord, felt free to say that "the authors did not dwell on 'narratives', mutual recriminations and assigning responsibility for the past", as if such issues are peripheral.

It has of course a direct effect on the solutions provided for in the Accord. If the Accord states that "the Parties recognize that UNGAR 194, UNSC Resolution 242, and the Arab Peace Initiative (Article 2.ii.) concerning the rights of the Palestinian refugees represent the basis for resolving the refugee issue"¹⁷, it offers no viable solution for the refugees themselves, which is in return not consistent with the proclaimed aim to respecting international legality. Let us recall that Resolution 194 in fact reads: "*Resolves* that the refugees wishing to return to their homes and live in peace with their neighbours should be permitted to do so at the earliest practical date and that compensation should be paid ... [to] those choosing not to return". Of course, refugees would be allowed to settle in the Palestinian State or to foreign countries ready to host them. But all which Israel offers in regard to refugees, who would like to come back to their homes in what is now Israel, is a right of return "at the sovereign discretion of Israel and [that] will be in accordance with a number that Israel will submit to the International Commission". In other words, Israel would be entitled to refuse any refugee at her borders. It is scarcely believable to imagine Israel acting otherwise. Of course, this would be the final word of Israel in respect of the refugees. As the Accord puts it, "this Agreement provides for the permanent and complete resolution of the Palestinian refugee problem. No claims may be raised except for those related to the implementation of this Agreement"¹⁸. Here lies clearly a case of distorting international law to fit to political preferences of Israel, which sets yet another worrying precedent.

On the important issue of compensation for Palestinians who have suffered as a result of Israel's policies, the Geneva Accord is utterly silent. The demolition of property, confiscation of land, destruction of orchards groves, detention without trial, loss of income due to Israeli closure and curfew policies, death and injuries caused by the Israeli security forces, and many other illegal deeds for which Israel should be held accountable, would be thrown into the abyss for ever. After all, this last aspect shows how justice, based on international humanitarian and human rights laws' provisions, is simply dismissed as irrelevant in this so-called 'peace plan'.

¹⁷ Article 7.2.(a) of the Geneva Accord.

¹⁸ Article 7.7.



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Rejected outrightly by the Israeli government, with Prime Minister (PM) Ariel Sharon quoted as saying that these kinds of initiatives were the greater danger Israel could face in the present time, the Geneva Accord was soon considered ancient history, after having enjoyed so much publicity. Instead, the Sharon government chose to adopt the so-called 'disengagement plan'.

Disengagement plan

This is the latest example of an initiative supposed to help bring peace to the region. It has yielded wide international support, despite tremendous flaws regarding international law, and despite the declared aim, which is to ensure Israeli control over most of the West Bank.

The 'disengagement plan' was first announced by PM Sharon during a conference in Herzliya on December 18, 2003¹⁹. The context was that of a continuous war being waged by the Israeli army in the Gaza Strip, very costly in lives and detrimental to the Israeli image on the international scene. It was designed to be a unilateral action, to be taken outside any negotiated settlement with Palestinian counterparts²⁰. It follows the adoption by the Quartet of the Roadmap, based on President Bush's June 2002 speech. The initiative gained more support with the American approval following an exchange of letters between PM Sharon and President Bush, on April 14, 2004. A first draft of the content of the 'disengagement plan' was communicated by the Prime Minister's Office on April 18 of the same year. It was then revised and a final draft was approved by a Cabinet resolution on June 6, 2004. The Knesset voted on the text on October 25, 2004, and adopted it thanks to the support granted by the Labour Party.

The plan intends to dismantle all Israeli settlements in the Gaza Strip, and four isolated settlements in the northern West Bank, and to redeploy the Israeli Occupying Forces along new 'security' lines. It has been portrayed in the media and by politicians worldwide as a real disengagement, i.e. a full withdrawal of Israeli presence from the Gaza Strip, and therefore praised as a step towards peace.

Regarding international human rights law and humanitarian law, the adoption and the future implementation of the Sharon initiative pose two very serious questions. The first preoccupation regards the genuine content of the 'disengagement plan'. Is it a *full* and *permanent* withdrawal? Will it allow Israel to consider that there will be "no basis for claiming that the Gaza Strip is occupied territory"²¹ once the plan is implemented? As we will see, given the provisions of the plan, the Gaza Strip will in fact remain under belligerent occupation, and humanitarian law will continue to apply. The second important issue is concerned with what is expected in return, by the Israeli government, in exchange for their partial withdrawal from the Gaza Strip. As we will see, the steps taken by PM Sharon occurred at a time when Israel had not much choice but to *propose* something. It means, and it is very clear in Sharon's speeches, that the plan is seen as permitting Israel to keep other settlements in the West Bank. The danger faced by the Palestinians is therefore manifest.

Several elements of fact allow us to consider that despite assertions stating otherwise, the Gaza Strip will remain under Israeli belligerent occupation. When the members of the Knesset adopted the 'disengagement plan', they agreed on a text stating precisely how and when it would be implemented, and to what extent the army would withdraw. Now, it is striking to read that, if all settlements and army forces are to leave the Gaza Strip, "Israel will guard and monitor the external land

¹⁹ "Address by Prime Minister Ariel Sharon at the Fourth Herzliya Conference". The English translation of the speech is available at www.mfa.gov.il.

²⁰ See Sharon, Fourth Herzliya Conference: "if in a few months the Palestinians still continue to disregard their part in implementing the Roadmap then Israel will initiate the *unilateral security step* of disengagement from the Palestinians".

²¹ As stated in the first draft of the plan, April 18, 2004. Interestingly, this comment has been removed from the final draft. The sentence following which "the completion of the plan will serve to dispel the claims regarding Israel's responsibility for the Palestinians in the Gaza Strip", however, still appears on the Cabinet Resolution draft from June 6, 2004.



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perimeter of the Gaza Strip, will continue to maintain exclusive authority in Gaza air space, and will continue to exercise security activity in the sea off the coast of the Gaza Strip”²².

This has several huge consequences. First, as we will see later, the border between Egypt and the Gaza Strip will remain under Israeli supervision for an undetermined period. Second, no sovereignty will be exercised by the Palestinian Authority on its own airspace. The Plan does not mention a shared air space over Gaza, as it is in some way envisioned in the Geneva Accord: here, Israel maintains an “exclusive authority”, which is hardly reconcilable with the attributes that any State is entitled to enjoy. Finally, the “security activity in the sea off the coast of the Gaza Strip” is also a denial of sovereignty of a State on its own territorial waters. Moreover, fishing activity which has traditionally been very important in Gaza, has suffered a lot from the second Intifada. Fishing boats are prevented by the Israeli Navy from sailing beyond a 6 mile line, which is not even consistent with the Oslo Accords themselves²³. One must fear that the situation will not improve if the Israelis are to keep control of the sea off the coast of Gaza. This would result in a denial of the basic economic rights of the Palestinian people, as set forth in the International Covenant on Economic, Social and Cultural Rights of 1966²⁴.

Significantly, also, the plan states that “the State of Israel reserves its fundamental right of self-defence, *both preventive and reactive*, including where necessary the use of force, in respect of threats emanating from both the “Northern Samaria area” (i.e. Northern West Bank) and the Gaza Strip”²⁵. The notion of preventive self-defence, which has often been invoked by Israel in the past, is contrary to international law, and the fact that this country feels confident enough to mention it in a public document is worrying. It amounts to saying that Palestinians will continue to live under the constant threat of Israeli incursions and indiscriminate shelling.

Moreover, Israel “will continue to maintain a military presence along the border between the Gaza Strip and Egypt (Philadelphi Route)”²⁶. It also warns that “at certain locations, *security considerations may require some widening of the area* in which the military activity is conducted”²⁷. This is more evidence that the disengagement plan is in fact a unilateral *redeployment* plan aimed at controlling the most strategic areas while getting rid of those deprived of any interest for the occupying power. In light of this, the status of the Gaza Strip as occupied territory will not change, as is stated in the Convention IV Respecting the Laws and Customs of War on Land of 1907 (Hague Regulations)²⁸.

The plan also provides that “the evacuation of this area will be considered ... dependant on the security situation and the extent of cooperation with Egypt in establishing a reliable alternative arrangement”²⁹, and so it is worth noting that in the meanwhile, Israel wants to move the international crossing point of Rafah to “the “three borders” area (between Israel, Egypt and the Gaza Strip), south of its current location”³⁰. In one word, Israel would ask Egypt to guard the border between its own territory and the Palestinian territory but would remain able to prevent any Palestinian from leaving or entering the Gaza Strip. There is no example of a State having no control over its own borders, and once again this shows that, in fact, the occupation will remain in its legal and physical form.

²² Addendum A – 3. Security Situation Following the Relocation. Cabinet Resolution Regarding the Disengagement Plan.

²³ According to the Oslo Agreements, the limit was 20 miles.

²⁴ Article 1.2 of the.

²⁵ Addendum A – 3. Security Situation Following the Relocation. Cabinet Resolution Regarding the Disengagement Plan.

²⁶ Addendum A – 6. The Border Area Between the Gaza Strip and Egypt (Philadelphi Route).

²⁷ *Idem*.

²⁸ Article 42, Hague Convention, clearly states that: “Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised”.

²⁹ *Idem*.

³⁰ Addendum A – 11. International Passages.



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This will also enable Israel to continue the economic stranglehold from which the Palestinians have suffered so much in the last years. This is hardly reconcilable with the proclaimed Israeli “interest in encouraging greater Palestinian economic independence”. It is also disturbing to read further that the State of Israel “expects to reduce the number of Palestinian workers entering Israel, *to the point that it ceases completely*”³¹. Once again, the Palestinian economy will be fully dependant on Israel’s goodwill, which has been demonstrated not to be in Palestine’s interest in the past.

Finally, to complete the separation between the West Bank and the Gaza Strip, and to prevent any Palestinian from travelling freely from one part of the ‘country’ to another, “the Erez crossing point will be moved to a location within Israel in a time frame to be determined by the Government”. There is every indication that within a few years, the Erez crossing point will only be open for internationals and that no Palestinian will be allowed to cross anymore. There is deep concern that this decision will have a disastrous impact on the Gazan health system. The organisation Physicians for Human Rights has recently issued warnings to this effect, as the medical infrastructure in the Gaza Strip is already insufficient³². It would result in a grave breach of the right to health³³.

Apart from what has been said above, the ‘disengagement plan’ presents another kind of danger, namely the fact that it has largely misled the international community on Israel’s real intentions. Sharon is not, and has never been a man of peace.³⁴ For many observers however, his intention to ‘withdraw’ from the Gaza Strip has been interpreted as a major shift towards a two State solution. The members of the Quartet issued a statement after the announcement of the plan “welcom[ing] and encourag[ing] such a step, which should provide a rare moment of opportunity in the search for peace in the Middle East”.

In reality, Sharon has something very different in mind. Aware of the fact that the Gaza Strip is of minor importance to Israel, costly in Israeli lives and money, and that the international context (criticism of Israeli behaviour in the OPT, Advisory Opinion of the International Court of Justice, ...) is not favourable to Israel, Sharon has decided to enter into blackmail. Basically, in exchange for the redeployment of its army and the dismantlement of the settlements in the Gaza Strip and four minor ones in the West Bank, Sharon demands in return that the international community turn a blind eye to the Bantoustan system he is implementing in the West Bank. This aspect of the Disengagement Plan, although it has been very often hushed up in the media, is both fundamental and publicly acknowledged by Sharon and his closest aides. In his address to the Fourth Herzliya Conference for instance, Ariel Sharon declared that “in the framework of the ‘disengagement plan’, Israel will strengthen its control over those same areas in the Land of Israel which will constitute an inseparable part of the State of Israel in any future agreement”. This shows that Sharon never had in mind to give back the West Bank to the Palestinians³⁵. According to the Chief Advisor to the Israeli Prime Minister the disengagement plan means that effectively “this whole package called the Palestinian state, with all that it entails, has been removed indefinitely from our agenda ... [it] is actually formaldehyde”³⁶.

The pact between Israel and the US has already been passed. On April 14, 2004, responding to PM Sharon’s letter explaining the content of the ‘disengagement plan’ and asking for support from the part of the US, George Bush welcomed

³¹ Addendum A – 10. Economic Arrangements. In the first draft of the Disengagement Plan, dated April, 18, 2004, it was stated that Israel would “reduce the number of Palestinian workers entering Israel”. General Outline – 10. Economic Arrangements.

³² See Haaretz article by Akiva Eldar, *Israel warned over impending health disaster in Gaza*, January 27, 2005.

³³ Article 12 of the ICESCR.

³⁴ Despite this a typical interpretive commentary in an *Economist* editorial, issue dated 10th of February, described Ariel Sharon as having had “an ephiphany”.

³⁵ As he quotes himself as saying: “And I wish ... to say that many years before, in 1988 ... I said that I believe that if we do not want to be pushed back to the 1967 lines, the territory should be divided”. See quotation in ‘Prime Minister Ariel Sharon’s Address to the Knesset – The Vote on the Disengagement Plan’, October 25, 2004.

³⁶ See Haaretz, *Weisglas: Disengagement is Formaldehyde for Peace Process*, 8 October 2004.



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a step that would “mark real progress toward realizing my June 24, 2002 vision, and make a real contribution towards peace”. He accepted “that after Israel withdraws from Gaza and/or parts of the West Bank, and pending agreements on other arrangements, existing arrangements regarding control of airspace, territorial waters, and land passages of the West Bank and Gaza will continue”. Moreover, he gave full satisfaction to the Israeli side when saying that “in light of new realities on the ground, including already existing major Israeli populations centres, it is unrealistic to expect that the outcome of the final status negotiations will be a full and complete return to the armistice lines of 1949, and all previous efforts to negotiate a two-state solution have reached the same conclusion”³⁷. For the first time ever, the US, the supposedly fair and balanced broker, endorsed the annexation of Palestinian land even before a peace deal was found. Of course, this is a very dangerous precedent, and it could even have far-reaching consequences on the practice of international law itself. After all, it undermines the right of the Palestinian people to self-determination³⁸ and the interdiction of transferring persons into an occupied territory³⁹.

The ‘disengagement plan’, and its revised version, consecrated this catastrophic move by the US, stating that “on the other hand, it is clear that in the West Bank, there are areas which will be part of the State of Israel, including cities, towns and villages, security areas and installations, and other places of special interest to Israel”. Sharon was quoted as saying, a few months after, that “the understandings between US President George Bush and me protect Israel’s most essential interests: first and foremost, not demanding a return to the ’67 borders; allowing Israel to permanently keep large settlements blocs which have high Israeli populations; and the total refusal of allowing Palestinian refugees to return to Israel”⁴⁰. The right of return for those forcibly exiled from their homes is guaranteed by international law. Article 12.4 of the International Covenant on Civil and Political Rights, to which Israel is a state party, provides that “no one should be arbitrarily deprived of the right to enter his own country”. This has not prevented President Bush from assuring Sharon that “it seems clear that an agreed, just, fair and realistic framework for a solution to the Palestinian refugee issue ... will need to be found through the ... settling of Palestinian refugees [in Palestine], rather than in Israel”. The deal is crystal clear, but has raised few protests.

In fact, the international community has responded very enthusiastically to the Sharon plan. The latter has sometimes even been depicted as a ‘man of peace’, or the tough man who was able to make things change. Indeed, that is what Sharon was expecting and hoping for⁴¹. Firstly because it would enable him to claim that in compensation he wouldn’t allow a return to the ’67 borders, and secondly for the very reason that he expects an international participation for the redevelopment in Gaza and the West Bank.

Several talks have been recently held between Israeli authorities and claims have been voiced on the part of the Israelis asking for a financial aid to construct a complementary but inferior network of roads for the Palestinians in the West Bank and to help build the major checkpoints Israel is erecting at the entrance of several big cities in the West Bank, in occupied

³⁷ See the exchange of letters between PM Sharon and President Bush, available at www.mfa.gov.il.

³⁸ Enshrined in Article 1.1 of the ICESCR of 1966.

³⁹ Article 49, para 6 of the Fourth Geneva Convention of 1949.

⁴⁰ See quotation in ‘PM Ariel Sharon’s Address at the Herzliya Conference’, December 16, 2004. in the same vein, PM Sharon said during a speech to the Conference for Advancement of Export on November 11, 2004, that “this plan has yielded a series of unprecedented political achievements for Israel which will help us protect our vital interests in the future ... these achievements are an inseparable part of the Disengagement Plan, and their fulfilment is, of course, conditioned on Israel’s implementation of the plan”. In light of this, it is easily understandable why Sharon apparently took an important political risk in imposing the Plan upon his own party, the Likoud.

⁴¹ It is worth noting that the Cabinet resolution regarding the Disengagement Plan shows awareness on this question: “International support for this plan is widespread and important ... this support is essential”, (Addendum A – 1.8.) and expects help from the international community: “The State of Israel will assist, *together with the international community, in improving the transportation infrastructure in the West Bank*”. (Addendum A – 2.A.6.)



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territory. The USA has already agreed to pay partly for the redeployment of Israeli military units⁴², but they are also being asked to contribute to a US\$450 million proposal “to set up new crossing points and upgrade others along [Israel’s] separation fence”⁴³. That would be one more fact on the ground towards the *de facto* annexation of parts of the West Bank and the isolation of densely populated Palestinian areas, like what is happening in Bethlehem, totally cut off from neighbouring Jerusalem.

A month ago the World Bank was solicited to participate in this illegal enterprise. During a visit of the president of the World Bank, James Wolfensohn, PM Sharon asked the international organisation to finance the construction of two or three large terminals which “will ease the freedom of passage for Palestinians and the transport of Palestinian goods”⁴⁴. The contribution would amount to \$135 million. On January 27, 2005, at the World Economic Forum in Davos, Vice Premier Shimon Peres has asked the World Bank for \$140 million to finance new crossings in six locations⁴⁵. Fortunately so far, the World Bank objected to funding crossings along the Wall which are located on points beyond the Green Line, and has suggested that Israel relocate them.

To conclude - the situation faced by Palestinians is at its critical point. If nothing is done to prevent Israel from building more facts on the ground, the long-term strategy to annex large parts of the West Bank will succeed.

The international reaction to the aforementioned initiatives has regrettably been the same as the one following the 1993 Declaration of Principles. The fear of opposing Israel, the short-sighted feeling that any step towards ending violence is welcome whatever the return for the Palestinian side, exposes a strategy which does not take into account its ultimate outcome: the more the international community waits and postpones the necessary measures it should impose on Israel, the worse the situation will turn out to be in the future.

Facts on the ground, inflicted on a daily basis, have proved to have disastrous effects on the conflict since the very beginning. It is because the international community has always been so shy in denouncing these *faits accomplis* that Israel has turned them into an infallible strategy. The world prefers to hope for better futures, to spare Israel and believe that a man will come one day who will be ready for a just peace, but it may well never happen. So the abscess will continue to grow, until it reaches a point of no return.

The US bear a huge responsibility on this matter. Without American support, Israel would certainly have more difficulties justifying its policies in the Near East to the rest of the international community. It does not seem wise to rely on America for solving the Israeli-Palestinian conflict. Rather, the European Union and other prominent actors must take the necessary steps to impose a peace settlement. After all, the EU is the primary trade partner for the EU, and methods of retortion and means of coercion exist, awaiting only the political will for them to be implemented. A moral stance in favour of two States won’t suffice. As the saying goes, the road to hell is paved with good intentions. How long will it take until the international community understands this? The omission of human rights as the fundamental tenant upon which peace plans are built has already led the Palestinian civilian population to hell many times over – the international community must act over the course of any current and future peace plan to ensure that this is not repeated.

⁴² See Haaretz article, January 27, 2005: “In an interview with Haaretz, Ayalon said the U.S. will help Israel cover the expenses involved in transferring its forces from bases in Gaza to new ones inside Israel”.

⁴³ See Haaretz, January 12, 2005: “According to people briefed on the proposal, U.S. funding would help cover the cost of high-tech terminals in the fence designed to speed the inspection of Palestinian people and cargo”.

⁴⁴ See Haaretz article by Aluf Benn, December 26, 2004, *IDF planning to ‘civilianize’ West Bank, Gaza crossings*.

⁴⁵ See Haaretz article by A. Benn, N. Guttman, January 27, 2005, *Peres, Fayyad to meet to discuss economic side of disengagement*.