

Mayday for Oslo

—Joel Singer

ON ONE LEVEL the 1993 Oslo Agreement between Israel and the Palestinians involved a general commitment by both parties to resolve their dispute through negotiation and compromise rather than violence. On another level the Oslo Agreement—now, with its various supplements and implementing agreements, better understood as the Oslo process—involved a very specific set of mutual commitments and reciprocal obligations, the core of which was the old bargain of land for peace and security. Because the two sides were so far apart on the most difficult issues—Jerusalem, borders, refugees—they decided on a two-stage process: first a five-year “interim” period in which trust would build and the Palestinians would gain increasing autonomy and de facto control over the West Bank and Gaza, then negotiations over the difficult “final status” issues.

In recent months, PLO Chairman Yasser Arafat has been threatening to make a unilateral declaration of Palestinian statehood (UDI) when the interim period ends, and Israeli Prime Minister Benjamin Netanyahu has responded by saying that any such declaration would scuttle the peace process for good and trigger Israeli countermeasures, including the

annexation of parts of the West Bank and Gaza. To make matters worse, hotly contested Israeli elections are now scheduled for May 17, two weeks after the deadline, thus hardening everyone’s positions and bringing hard-nosed electoral calculations to the fore on all sides.

As so often happens in the Middle East, however, the situation is even more complicated than it seems and actually resembles nothing so much as a high-stakes game of chicken. For despite his threats Arafat probably does not want to declare statehood unilaterally. He would prefer the Oslo process to continue forward as before, and is using bluster to gain leverage in negotiations and boost his popularity among Palestinian hardliners. Netanyahu, meanwhile, might well find a unilateral declaration of Palestinian statehood attractive, because it would freeze the peace process in place and make future Israeli concessions unnecessary while putting the blame on Arafat’s shoulders.

If not handled skillfully and sensitively, the looming deadline for the conclusion of the final status negotiations—May 4, 1999 (or the end of 1999 if Arafat accepts the advice to postpone the UDI until after the Israeli elections)—could well represent the end rather than the beginning of hopes for a lasting settlement. Unless the United States steps in soon with a major diplomatic initiative, the Middle East peace process might collapse. This would be a disaster, and an unnecessary one at that. For the solution to this present

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dilemma, if not the larger ones behind it, is clear: the United States should encourage both parties to accept a limited extension of the interim period and use the time to see that the future of the peace process is decided by the true interests of both sides, rather than by old calendar markings that have long since been overtaken by events.

From Camp David to Oslo

THE OSLO Agreements' concept of a five-year interim period of autonomy was copied from the 1978 Camp David Agreement. Back then Israeli Prime Minister Menachem Begin had wanted autonomy to be the permanent solution for the West Bank and Gaza, but President Jimmy Carter convinced him to agree to a two-stage process. Begin accepted Carter's modification only because he believed that at the end of the five-year interim period, the parties would not be able to reach an agreement on permanent status, and as a result autonomy would be perpetuated by default. To prevent autonomy from effectively being transformed into a state-like entity, Begin also insisted on shaping it as a personal, rather than territorial, autonomy (that is to say, applying only to the Palestinians but not to the West Bank and Gaza territory). In the same vein, he opposed granting the Palestinians powers that could be interpreted as attributes of sovereignty, such as legislative powers and the authority to issue passports and stamps.

The Palestinians rejected the Camp David Agreement precisely for these reasons; they refused to enter into a process that would not guarantee statehood, if not immediately, at least at the end of the process. In the 1993 Oslo Agreement, however, Arafat accepted this very same formula, taking a calculated risk that, regardless of what this agreement said, the reality created on the ground would eventually lead to a Palestinian state. Arafat did not even request that the Oslo Agreements recognize a Palestinian right of self-determination, henceforth the most

basic Palestinian demand. Rather than insisting on this slogan, which would have foiled the agreement, he pragmatically opted for quickly obtaining a foothold on the ground. He also trusted Israel's Labor government of 1993 to be more receptive to Palestinian statehood than the Likud government of 1978.

Indeed, the Labor government under Yitzhak Rabin and Shimon Peres agreed to grant the Palestinians autonomy powers much larger in scope than those envisioned by Begin. They agreed to provide the Palestinians with legislative powers, passports, stamps and an international airport. More importantly, Arafat was given responsibility for security, exercised through an army-like police force, over an increasing portion of the West Bank and Gaza. More than anything else, the Palestinian security authority turned the autonomy into a territorial autonomy, which made it distinguishable from statehood only in name. At this point there is growing support among the Israeli Left for the idea of an independent Palestinian state and a realization on the part of the Israeli Right, including the Netanyahu government, that such a result, even if it is not warranted, is inevitable. Yet while a majority of Israelis would accept a Palestinian state at the end of the process, there is unanimity across the Israeli political spectrum opposing UDI or the termination of the Oslo Agreements—and with good reason.

The Legal Considerations

IN TALKING of the Oslo process one must differentiate between two components. The first consists of the fundamental agreement taken by Israel and the PLO to resolve their differences and achieve permanent reconciliation through negotiations rather than through unilateral actions. This concept was enshrined in the exchange of letters between Arafat and Rabin on September 10, 1993, known as the Mutual Recognition Agreement, and in the Declaration of Principles signed on September 13, 1993. It was intended to be permanent and not subject to any specific timetable.

The second component is time-sensitive. It consists of a series of implementing accords, including the Cairo Agreement (May 1994), the Oslo II Agreement (September 1995), the Hebron Protocol (January 1997) and the recently completed Wye Memorandum (September 1998). These were parts of an autonomy period that was scheduled to last until May 4, 1999 (the fifth anniversary of the signing of the Cairo Agreement). By this time, a permanent status agreement was to be completed. But the "Oslo process" itself does not expire on that date. When Arafat threatens a UDI, he obfuscates the fundamental distinction between the two aspects of the Oslo process. The fact that the five-year period of autonomy might conclude in May 1999 without a permanent status agreement does not mean that the open-ended agenda established in the historic White House lawn handshake between Arafat and Rabin for negotiating a permanent settlement of the Israeli-Palestinian dispute also expires. Furthermore, in Section 31(7) of the Oslo II Agreement, both parties undertook not to change unilaterally the status of the West Bank and Gaza even after the end of the interim period, "pending the outcome of the permanent status negotiations"; in other words, until a permanent status agreement is reached.

A unilateral Palestinian declaration of statehood would change the West Bank and Gaza's status and thus constitute a flagrant violation of the Oslo Agreements. This would indeed, as the Israelis argue, entitle Israel to take countermeasures such as the annexation to Israel of parts of the West Bank and Gaza.

Since it is difficult for Arafat to make a convincing legal case for UDI within the Oslo framework, he might justify such a course in a different way, as a rejection of the process and its earlier agreements. But even this action would not validate a unilateral Palestinian declaration of independence. One of the recognized conditions for establishing a state is freedom from foreign control, but Israel clearly continues to exercise control over the entire West Bank and Gaza. The Oslo

Agreements recognize Israel's supreme authority over these areas, even in those parts where local autonomy has been transferred in full to the Palestinians, such as in most of Gaza and the big cities of the West Bank. In fact, if Arafat terminates the Oslo Agreements, Israel can make a strong legal argument that, with the expiration of these agreements, the West Bank and Gaza's status would return to the status quo ante; in other words, all the authority currently exercised by the Palestinians should revert to Israel rather than being retained by the Palestinians, because the agreements transferred this authority for five years only.

Moreover, while Israel has long asserted a claim to sovereignty over the West Bank and Gaza, it decided not to effectuate it unilaterally, but rather to negotiate the West Bank and Gaza's status with Jordan and Egypt, from which Israel conquered these areas. In Camp David, Egypt abstained from asserting any sovereignty claims over Gaza, but Israel committed to a negotiated solution to the West Bank and Gaza. In its Treaty of Peace with Israel, Jordan too did not require the return of the West Bank, leaving its future to be resolved between Israel and the Palestinians per the Oslo Agreements. In the Oslo Agreements, Israel renewed its commitment to a negotiated solution for the West Bank and Gaza and undertook not to change the West Bank and Gaza's status pending the conclusion of the permanent status negotiations. However, if the Palestinians themselves terminate the Oslo Agreements, Israel might effectuate its claim for sovereignty, free of any commitment to the contrary to Egypt, Jordan or the Palestinians.

The Palestinian drift toward a UDI therefore is inherently destabilizing. If the Palestinians were no longer bound by the prohibition against unilateral actions, neither would Israel be so constrained. And once the two parties feel free to take unilateral steps regarding the disposition of the West Bank and Gaza, chaos could soon follow. What, for instance, might happen if, in a few months,

Arafat declares statehood and moves to apply Palestinian "sovereign authority" in the West Bank and Gaza, using his armed police force, while Israel moves to protect its interests by annexing the same territories and enforcing its laws with its soldiers? This is a recipe for disaster, as the U.S. government has recognized. In an interview given on January 16, 1999 to the London-based newspaper *Al-Sbarq al-Awsat*, President Clinton reiterated America's long-standing opposition to unilateral actions. He declared that the United States would oppose a UDI, stressing that "those who believe that they can declare unilateral positions or take unilateral acts when the interim period ends are courting disaster."

Arafat's and Netanyahu's Hidden Agendas

TO UNDERSTAND the situation fully, however, one must probe beneath the surface of each side's arguments. Arafat reads the Israeli political map very astutely. He recognizes that at the end of the process, a Palestinian state will be established. The real issue between Israel and the Palestinians is therefore not the establishment of a Palestinian state but rather its borders. Arafat's idea of threatening a UDI originated in his fears that even the most flexible Israeli position on borders will be short of his minimum requirements. His concern is that he would fall into a trap: either he agrees to Israel's unacceptable offer on borders or no permanent status agreement could be signed and autonomy would be perpetuated. In order to push Israel to a more flexible position, therefore, Arafat is playing the only card available to him. By threatening a UDI Arafat is attempting to turn the tables on Israel by creating a new default situation—the creation of a Palestinian state—if no permanent status agreement is reached. In fact, however, Arafat does not really want to see his threat materialize, because, among other reasons, he might end up with a mini-state comprised of non-contiguous enclaves. A UDI therefore may result in little more than the PLO's empty dec-

laration of independence of 1988. However, it could give Israel the pretext to stop the Oslo process. At the same time, Arafat needs to insist on his threat in order not to lose credibility, both vis-à-vis Israel and internally; and politically, he cannot just let May 4, 1999 pass without anything happening. His extraordinary brinkmanship skills and the high expectations built up among Palestinians might fail him this time and force him to make a move that would work against his best interests.

Like Arafat, Netanyahu too is quite possibly playing a double game. Initially, Netanyahu accepted Oslo very reluctantly, and only because he realized that politically he would not be able to get rid of the agreements that he had inherited from the previous Labor government. Like Begin, his first preference is to see the autonomy arrangements remain in effect indefinitely. If Arafat insists on a UDI or his interpretation that the Oslo Agreements expire on May 4, 1999, Netanyahu would benefit from a windfall: he would be rid of the hated Oslo Agreements without any blame being attributed to him. In a way, this would be, for Netanyahu, the best outcome: retaining the majority of the West Bank land that is also vacant of Palestinians while getting rid of the smaller part of the West Bank where all the Palestinians live.

Netanyahu understands that a Palestinian state is inevitable. He also understands that he will have to concede much more territory to Palestinian sovereignty in a negotiated permanent status agreement than as a result of Arafat's UDI. This is because a UDI would be limited to only those parts of the West Bank and Gaza where Arafat has effective control, while Netanyahu would be justified in immediately annexing the rest of the West Bank and Gaza to Israel.

Regardless of whether Arafat declares independence on May 4, 1999, or whether he postpones the declaration for a few months, allowing the Oslo Agreements to expire without a substitute agreement, with or without a UDI, would leave a dangerous and volatile vacuum in the Israeli-Palestinian relationship.

Without the continuation of the hundreds of laboriously negotiated and detailed Oslo arrangements on critical issues such as security, economic relations and water, and given the reality that now exists in the West Bank and Gaza where Israeli and Palestinian civilians and armed forces are completely commingled, misunderstandings will accumulate, causing Israeli-Palestinian relations to deteriorate and leading to confrontations and an inevitable armed conflict.

Neutralizing the Dangers

IN SUM, a negotiated settlement of the Palestinian-Israeli dispute is imperative and a continuation of the autonomy arrangements is a pre-condition to such a settlement. Yet neither Netanyahu nor Arafat is in a position to negotiate an extension of the interim period, let alone propose this idea to the other side. For Netanyahu, agreeing to an extension of the Oslo Agreements for a few months would mean that he has given up his claim that these agreements remain in force until superseded. If he is re-elected, he would face the same situation of a deadlock within a few months, but this time would not be able to argue that these agreements continue in force indefinitely. For Arafat, after promising his people statehood on May 4, 1999 for more than a year, he would find it difficult to postpone this date without any reciprocal Israeli concessions, which Netanyahu is not in a position to give in the pre-election period.

U.S. leadership is essential to defuse the looming confrontation between Israel and the Palestinians, and there is no time to waste. The United States should step forward to rescue the peace process by attempting to square the circle: to "extend" the autonomy for an additional period of time while allowing Netanyahu to stick to the position that the

Oslo Agreements do not expire in May 1999 and Arafat to argue that he has not given up his right to a UDI at the end of the "extension." An American plan to allow the parties to pass May 1999 safely should thus aim for an agreement by both parties on an extension of the interim period of autonomy envisioned under Oslo, during which the Oslo Agreements would continue to apply. This extension period should be long enough to permit negotiations on a supplemental agreement after completion of the Israeli electoral process and brief enough to allow Arafat to accept it politically—perhaps six to nine months. After the Israeli elections, a new government, comprised of a different coalition of parties, may make an agreement possible. More importantly, the mere formation of such a new government may convince Arafat to abstain from a UDI.

The extension agreement should be narrowly focused. While each party has a long list of grievances against the other party, the United States must not allow either party to attach any conditions or use this occasion to add other issues to the agenda. Finally, after the Israeli elections the United States should work with both parties to complete the permanent status agreement with dispatch. In order to achieve this objective the United States should promote a negotiating environment in which neither a UDI nor permanent autonomy can be used by the parties as a threat to influence the outcome of the negotiations.

The quest for a lasting peace settlement between Israel and the Palestinians has always been a triumph of hope over experience. The Oslo Agreements represent the best hope for peacefully resolving the fifty-year Israeli-Palestinian dispute. It would be a blunder of historic magnitude if the parties let the many accomplishments of Oslo fritter away because of a fluke of scheduling. □