An Intimate Disengagement: Israel’s withdrawal from Gaza, the Law of Occupation and of Self-Determination

Iain Scobbie*

1 INTRODUCTION

As the final text of this article was being prepared, Israel launched Operation Summer Rain on 28 June 2006 in response to the taking of Corporal Gilad Shalit by Palestinian militants following an attack on Israel Defence Forces on 25 June 2006. At the time of writing (July 2006), Israel’s military operations in Gaza are continuing, and the final outcome cannot yet be discerned. This is not the appropriate place to discuss the legality of these actions – whether those of Israel or those of armed Palestinian groups. As matters are still in a state of flux, it is premature to reach a definitive legal conclusion. Nevertheless, the deployment of Israel Defence Forces in Gaza has an obvious pertinence to the issue examined in this article, the international status of Gaza following Israel’s apparent withdrawal in August 2005. Consequently, where necessary and relevant, a provisional and tentative legal assessment of the implications of Operation Summer Rain will be attempted.

2 THE ISSUE IN QUESTION

In August 2005, Israel evacuated its settlements and withdrew its land forces from Gaza. This was in accordance with its Revised Disengagement Plan of 6 June 2004,1 the implementation of which was intended to ensure that:

In any future permanent status arrangement, there will be no Israeli towns and villages in the Gaza Strip. On the other hand, it is clear that in the West Bank, there

---

* Sir Joseph Hotung Research Professor in Law, Human Rights and Peace Building in the Middle East, School of Oriental and African Studies, University of London.

are areas which will be part of the State of Israel, including major Israeli population centers, cities, towns and villages, security areas and other places of special interest to Israel.\(^2\)

To this end, Israel claimed that its evacuation of Gaza had the consequence that there was no longer any permanent presence of Israeli security forces within Gaza.\(^3\) Sub-section 1 of Section 3 (Security Situation following the Relocation), however, provides:

1. The State of Israel will guard and monitor the external land 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.
2. The Gaza Strip shall be demilitarized and shall be devoid of weaponry, the presence of which does not accord with the Israeli-Palestinian agreements.
3. The State of Israel reserves its fundamental rights of self-defense, both preventive and reactive, including where necessary the use of force, in respect of threats emanating from the Gaza Strip.

The primary implication of the Disengagement Plan was set out in Principle Six (Political and Security Implications) of the Revised Disengagement Plan. This provides:

The completion of the plan will serve to dispel the claims regarding Israel’s responsibility for the Palestinians within the Gaza Strip.

The meaning of Principle Six is intentionally ambiguous: it refers to the termination of Israel’s responsibility for the population of Gaza, but says nothing about the status of the territory itself. Before the implementation of the Revised Disengagement Plan, Gaza was territory occupied by Israel: did the implementation of the plan entail a change in the international status of Gaza? In particular, once Israeli troops and settlers were withdrawn, was Gaza no longer occupied?

3 GAZA – OCCUPIED OR NOT OCCUPIED?

In anticipation of the implementation of the Revised Disengagement Plan, the Canadian Government’s International Development Research Centre commissioned a report – the Aronson Report\(^4\) – to examine the implications of disengagement. This noted that when then-Prime Minister Sharon initially announced the unilateral withdrawal plan in April 2004, one of the declared objectives was to end Israel’s role and responsibility as the occupying power in Gaza. In particular, Article 2 of the 18 April 2004 Disengagement Plan provided that, the completion of withdrawal would mean that there would be “no permanent Israeli civilian or military presence” in the evacuated areas, and

---

2 Revised Disengagement Plan, Section 1 (Political and Security Implications), Principle Three.
3 Revised Disengagement Plan, Section 2A (Main Elements: The Process), Article 3.1, The Gaza Strip.
4 A “lightly edited version” of this report has been published as Aronson, G., Issues arising from the implementation of Israel’s disengagement from the Gaza Strip, 34 Journal of Palestine Studies 49 (2005).