
Avoiding the Costs of Negotiation: A Commentary on “Is Unilateralism Always Bad?”

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The article “Is Unilateralism Always Bad? Negotiation Lessons from Israel’s ‘Unilateral’ Gaza Withdrawal” by Robert Mnookin, Ehud Eiran, and Shula Gilad (page 131) frames an excellent question that, at first blush, seems genuinely puzzling: Why, if an outcome is in the interests of both sides, should it not be *negotiated* rather than unilaterally *imposed*?

In making the case “for negotiation,” the authors cite legitimacy and goodwill among its key benefits. But even more powerful reasons may favor negotiation: frequently, the parties lack a fine-grained understanding of each other’s real interests, beliefs, and priorities. Neither side may see the existence of pure shared interests as well as the possibility of reciprocal moves that could offer high value (to one side) at low cost (to the other), moves that could generate joint gains beyond what one side unilaterally chooses. Even when negotiating explicitly, parties often leave such potential gains unrealized for well-known and established reasons from the psychological to the strategic (see, e.g., Lax and Sebenius 1986, 2006; Arrow et al. 1995; or Thompson 2001). Without overt negotiation, the chances of realizing higher-value outcomes for both sides decline correspondingly.

Nonetheless, I am persuaded that the authors are correct in their analysis that behind-the-table conflicts would have made a Gaza-only negotiation difficult, if not impossible. It would have gone against the premise of the Oslo process and the “package deal” commitment of the Palestinians. Moreover, without Israeli Prime Minister Ariel Sharon’s studied ambiguity about his long-term plans for the West Bank (“Gaza First?”), it is doubtful that key factions on his own side would have gone along with a Gaza deal and could have blocked the whole process. Hence, to achieve the otherwise

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unachievable issue of separation — and to avoid potentially costly linkage as well as activating potential blockers on his own side — Sharon acted alone. In this case, Sharon was, in fact, capable of bringing about the withdrawal outcome unilaterally. Of course, in many kinds of deals and disputes, given interdependence, neither side by itself can bring about a mutually desired outcome on a specific issue.

Without invoking ignorance of each side's real interests or behind-the-table conflicts, however, it is quite possible for a mutually desired outcome on a single issue to go unrealized for tactical reasons. Suppose that, in a multi-issue negotiation, two sides both want (identical) Outcome X on Issue A, but that X is of great importance to Side One, but of modest importance to Side Two, which wants a set of outcomes on the other issues that are modestly contested by Side One. Side Two may invest a great deal of credibility in refusing to agree to Outcome X (on Issue A) unless Side One concedes the other issues. If Side Two overdoes it, impasse may result and mutually desired Outcome X may go unrealized. (To those sophisticated readers who would rightly call me on interpersonal comparisons: I speak loosely, but the tactical argument can readily be made to work. Apparently anomalous results of similar kinds can occur around the tactics of "negotiation arithmetic" or the linkage and separation of parties and issues; for example and analysis, see Sebenius 1983)

In my view, the authors have identified an even broader set of reasons not to negotiate explicitly — even though joint gains from the negotiation process may be possible. I would lump these under the category of the "costs of negotiation." In many cases, the costs of any perceived "concession" are too high even where the resulting deal is preferable to no deal. For example, the presidents of two neighboring countries with a longstanding, emotional border dispute may privately concur that resolution would be valuable — and may well agree on the acceptable terms of a border deal. But to overtly negotiate and be seen to "concede" anything, for either or both sides, may be too costly in terms of the internal opposition it would arouse.

Submitting the dispute to an appropriately constituted international arbitration process, however, may be seen as an acceptable "willingness to go along with international law," with an arbitrator's award viewed as something that falls outside the will of the two presidents. Thus by this process device, the two presidents could avoid this cost of negotiation. A similar dynamic without the strength of arbitration may obtain when each side is amenable to a mediator's proposal but not to the identical proposal if advanced by the other side. (This can occur independent of the psychology of "reactive devaluation" in which an identical proposal offered by the other side is thereby judged to have less value — reactive devaluation is a twist on Groucho Marx's refusal to join a club that would accept him as a member:

the negotiation equivalent occurs when one side refuses to consider joining any resolution that would have his or her opponent as a sponsor.)

I was recently involved in an advisory capacity negotiating the settlement of a huge lawsuit in which the chief executive officer of a large company completely agreed, privately, with our client on a good resolution in light of the merits and likely court outcome (privately acknowledged by both sides). But to compromise with our client was too personally costly for the CEO to contemplate given a powerful, hardball board chairman, who was also the founder of the firm and its major shareholder. From the CEO's perspective, it was much better to litigate to the bitter end and be forced by the courts to pay (a lot more than the proposed settlement and after tens of millions of legal fees) than to risk the wrath of a powerful boss by conceding even a lesser amount. This was bad for shareholders but very much in the perceived personal interest of the CEO.

Now each of these examples involves a constituency, although not necessarily a divided one, and might simply suggest a divergence between principal (the constituency) and agent (the negotiator — in these two examples, the country presidents and the CEO). Even so, the result is similar to that analyzed by Mnookin, Eiran, and Gilad in this article: one or more parties eschew a jointly preferred outcome (sometimes privately). What differs from the Gaza example, other than the mechanism, is the capacity of one side to unilaterally realize (sometimes impose) the jointly preferred outcome.

Further, I have often seen cases in which the term “negotiation” carries unfavorable connotations of “compromise” or “weakness” or “legitimizing the other (often supposedly evil) side.” A fairly common response of negotiators to such situations is to hotly deny that one is “negotiating.” “*Au contraire!* We’re just ‘discussing’ the situation or ‘coordinating,’ but *not* ‘negotiating’ anything, heaven forbid.” This semantic ruse is surprisingly useful and common. I wonder if Sharon might well have used a variant of this in the case analyzed by the authors. For the question of why Sharon might not coordinate with the settlers, the article is fairly persuasive, but I wonder if some pretext might have been found for “non-negotiation negotiation” with the Palestinians.

The abject failure of the unilateral Gaza withdrawal with respect to many of its stated objectives (security, etc.) is nicely described in the article. Those consequences seem less a function of the unilateral nature of the disengagement *per se*, however, than what the authors clearly lay out as pre- and post-withdrawal failures to focus on the other side's internal challenges. I find this to be a common and more general aspect of explicit negotiations: when the deal itself (e.g., the merger, the joint venture, the contract, etc.) is highly salient but follow-up is lower profile and neglected.

I also must wonder whether, had Mohammed Dahlan prevailed and had Hamas been thwarted by Fatah, the bad outcomes cited by the authors

might have been avoided. The authors are, however, persuasive that Sharon's unilateral action undercut the moderates on the Palestinian side, perhaps inadvertently, when a more savvy approach could have strengthened them. More recently, a similar phenomenon obtained when the government of Prime Minister Benjamin Netanyahu negotiated with Hamas over the release of kidnapped Israeli Defense Forces soldier Gilad Shalit in return for the release of a large number of Palestinian prisoners. This action harmed the credibility of the relatively more moderate Fatah, whose tactics had not led to prisoner releases.

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