

REPORT ON ISRAELI SETTLEMENT IN THE OCCUPIED TERRITORIES

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SETTLEMENT FREEZE REDUX*

By *Geoffrey Aronson*

Israel's ever-expanding network of civilian settlements in the occupied territories is viewed by its partisans and opponents alike as the most significant obstacle to the creation of a viable, sovereign Palestinian state. Palestinian Authority chairman Mahmoud Abbas is conditioning a renewal of discussions with Israel on an Israeli commitment to freeze all settlement, echoing a demand originally made in 1992 during the pre-Oslo Washington talks.

"We consider settlements to be a central issue," explained Palestinian delegation leader Haidar Abdel Shafi in a January 1992 memorandum, "and if there is no cessation of the settlement process, that practically means there is no peace process."

An Israeli commitment to a settlement moratorium is viewed by proponents as a necessary demonstration of good faith toward a diplomatic process leading to an end to occupation and the creation of secure and recognized boundaries for two states—Israel and Palestine. Yet, for more than three decades, on again off again promotion of a settlement freeze by the U.S. has failed to slow settlement expansion, thereby undermining the credibility of

"If there is procrastination by Israel on the two-state solution or there is no clear American vision for how this is going to play out in 2009, then all the tremendous credibility that Obama has worldwide and in this region will evaporate overnight if nothing comes out in May."

**King Abdullah of Jordan,
The Times, May 11, 2009**

U.S. diplomacy. More often than not, attempts to establish a freeze resulted in U.S. support *for* settlement expansion, most notably the Clinton administration's endorsement of the "natural growth" of settlements.

Settlements must be evacuated as part of a final status plan that establishes Palestinian sovereignty and enhances Israeli security, but to do so will require a degree of commitment—not to a freeze in settlements but to their removal—that neither Israel nor the international community has yet been able or willing to muster.

The administration of President Barack Obama is considering resurrecting the freeze idea as a key element of its policy. Israeli prime minister Benjamin Netanyahu has signaled his opposition, noting that, "if Israelis cannot build houses in the West Bank, Palestinians do not need to build either."

U.S. officials believe that despite the failure of all previous attempts to freeze

settlements, the idea still has merit. But achieving the goal of peace and security for both Israelis and Palestinians requires a strategy rooted in historical experience and the vital requirements of both peoples. A settlement freeze falls short of this standard. Settlement evacuation, not a freeze, is a more credible and necessary objective, more closely attuned to the essential long-term interests of both parties and firmly rooted in past Israeli practice, most recently in Gaza.

Placing a freeze at the center of a U.S. diplomatic effort that calls for confidence-building measures from all parties invites failure, and risks eroding the credibility of a much-anticipated U.S. effort to end the conflict. The only context in which a freeze could be implemented is as a consequence of an Israeli decision to remove settlements and the Israeli army from occupied territory. The history of the last 40 years suggests that if Israel makes such a momentous decision, freezing settlements becomes moot.

A Settlement Freeze Is Far More than a Confidence-Building Measure

A cessation of settlement requires Israel to repudiate the linkage between settlement, security, and sovereignty that is at the heart of its defense and settlement doctrine in the occupied territories. Neither Israelis or Palestinians see an Israeli implementation of a freeze as

*Portions of this article first appeared in "The Israeli-Palestinian Roadmap: What a Settlement Freeze Means and Why it Matters," International Crisis Group, Middle East Report N°16, July 25, 2003.

TO OUR READERS

There are clear signs that President Barack Obama and his team are creating a new “made in America” policy toward the Israeli-Palestinian conflict. The shape of the new policy is yet to emerge, but it will give greater weight to U.S. national security interests and be less deferential to the needs of the Israeli government. A new peace initiative is most likely to succeed if it offers a broad new American vision of peace between Israel and Palestine and in the rest of the region. It should focus on the end-game of two states that meets the interdependent needs of security for Israel and freedom for Palestine. It should include specific recommendations for resolving the hard issues of settlements, borders, Jerusalem, refugees, and security.

Such a new policy will require a more honest relationship between Israel and the United States to replace the comfortable evasions and avoidance of tough decisions used in the past to avoid tensions. The

American-Israeli alliance and the U.S. commitment to Israel’s security should be used to help Israel and Palestine overcome their dysfunctional politics and make peace, not as a blank check for any Israeli policy.

Today, Israel’s character and security as a Jewish and democratic state, as well as its traditional alliance with the United States, are threatened in the long run by Israel’s continuing policy of occupation and settlement of Palestinian territory. The United States, as Israel’s closest friend, should explain these painful realities. Alliances endure over time only if the interests of the partners are mutual. The “shared values” that underlie the U.S.-Israeli alliance will become a hollow phrase if Israel cannot untangle itself from its forty-two-year adventure in occupation and settlement.



A military court has ruled in favor of a settler from Kedumim who 12 years ago, with the encouragement of the local council, took control of a plot of land owned by a Palestinian. Over the years, he planted a few trees and held classes at the site, which is outside the settlement. In 2007, the settler fenced in the area and planted it more intensively.

Palestinians from the nearby village of Qaddum opposed the land grab, arguing that they had planted the area for many years until being denied access to it.

The civil administration responded to their complaint by issuing an evacuation order against the settler based on the recommendation of the Sasson report, which Prime Minister Ariel Sharon had commissioned to examine outposts. The report’s findings resulted in a 2007 order forbidding cultivation of private Palestinian property by West Bank settlers. (On the Sasson report, see *Settlement Report*, March–April 2005.)

Citing Ottoman law, however, the military court ruled that if the settler had cultivated the land for at least three years before the civil administration issued its order, he could not be removed. The court also criticized the original order from the civil administration because it applied only to Jews.

The ruling makes it easier for settlers to claim rights over private Palestinian land.

Ha’aretz, April 3, 2009

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FROM MITCHELL TO ANNAPOLIS AND BEYOND: THOUGHTS ON THE AMERICAN ROLE IN PALESTINIAN-ISRAELI PEACEMAKING

The following are excerpts from remarks of Frederic C. Hof, chief of staff of the Mitchell Committee and currently a deputy to George Mitchell, special envoy for Middle East Peace, at The Palestine Center of the Jerusalem Fund, on March 20, 2008.

My personal belief is that a determined, disciplined American effort to help implement the [Mitchell] fact-finding committee recommendations [in 2001] might have averted a disastrous worsening of the violence and might have helped put the parties on the path to renewed negotiations. . . . It would have required banging heads together in order to produce a tightly choreographed timing and sequencing scheme: party A will do this by such and such a date and time; party B will immediately do this in response, upon which party A will do such and such. . . .

Is it possible to explore a negotiated end to violence on the Gaza front so long as the U.S. views Hamas entirely and exclusively through the optic of the Global War on Terrorism? If we define Hamas as the reverse side of the Al Qaeda coin—as part of a global problem involving violent forms of political Islam—instead of seeing it in its Palestinian-Israeli context, can we be part of the solution? . . . If Hamas cannot be beaten militarily at an acceptable price and if there is to be no effort to bring it into the Annapolis process, then what is there to do beyond watching one Annapolis beam drag down the other?

Please do not imagine that I assume Hamas wants in. Please do not assume that I presume Hamas can be brought in. Please do not put me down as a fan of Hamas ideology or as an apologist for the deliberate targeting of noncombatants—it is reprehensible at all times and under all circumstances. But you may certainly put me down as suggesting that Hamas be removed from the Global War on Terrorism context and put back where it belongs: in the Palestinian-Israeli context.

Once we place Hamas in the proper context we can do the proper diplomatic due diligence to see what might be possible. We could certainly support those in the Governments of Israel and Egypt who support seeking a sustainable cease fire, even though such a cease fire would inevitably relax the economic blockade that has been in place since Hamas neutralized Fatah [in June 2007]. . . . We could explore, perhaps with Saudi Arabia and Egypt taking the lead, what it would take for Hamas to join the rest of the Arab World in endorsing the Arab Peace Initiative. We could explore with Israel and the Palestinian side whether a Hamas endorsement of this vital initiative—combined with a willingness to stop violence and respect past agreements—might admit the organization to the Annapolis process as part of a restored Palestinian unity

government. . . . I am painfully aware that Hamas has a vote in this matter and it may choose for reasons of its own to follow a course designed to torpedo negotiations, defeat Fatah and prolong the agony. What then is to be done? . . .

What I believe as an American is that we must act as if the two state option is alive until it becomes crystal clear that it is dead. To bring it about, however, we need to involve ourselves much more seriously and diligently than we have heretofore. . . .

If the administration desires a written agreement to be produced by [the end of 2008] in spite of ongoing conflict and chaos, I think serious consideration should be given to proceeding on the basis of an American text. Yes, this would mean that the parties would be negotiating with us as well as one another. Yes, this would mean that someone within the administration would have to organize and direct the drafting of an American text. Yes, this would mean debate, dissent

and disruption within the administration over words and even punctuation. . . . [T]he parameters and contours of the eventual two-state agreement are already fundamentally known—the problem is getting from here to there. From the Clinton Parameters, to Ayalon-Nusseibeh to Geneva there is no shortage of ideas

and language from which to draw. . . .

I certainly hope that the next president—Democrat or Republican—will try something different. Given that it takes time for an incoming administration to find its “sea legs” on matters of foreign policy, one approach might be to commission someone with the prestige of a George Mitchell to undertake 60 or 90 days of intensive consultations with the parties and a wide range of experts and produce an agreed text that would form the basis of the U.S. government view of what a sustainable two-state solution would look like. If acceptable to the new president, this text would be the basis of concentrated American mediation starting perhaps this time next year. . . .

But make no mistake: without a comprehensive diplomatic strategy featuring a central American role involving the power and prestige of the presidency, we are choosing a one-state outcome; we are saying “No” to the prospects of a Jewish democracy and “No” to the birth of a sovereign Palestinian state. I hope this will not be our choice. I hope that the next administration will agree with the conclusion the Bush administration took nearly seven years to reach: that the influence and prestige of the United States will not be fully restored in the Middle East unless and until this dispute is either settled or at least seen by virtually all as being on the irreversible course to settlement. . . . ♦

“Without a comprehensive diplomatic strategy featuring a central American role involving the power and prestige of the presidency, we are choosing a one-state outcome.”

SETTLEMENT TIME LINE

March 1 Dozens of pigs belonging to Israeli settlers attack a Palestinian man in al-Hamra. (Ma'an News)

March 2 Army Radio reports the new housing minister of the Netanyahu government will receive plans drafted by the Housing Ministry to expand settlements in the West Bank. Plans include 73,000 housing units, 19,000 of which are east of the separation barrier and more than 3,000 in the E-1 area. (Army Radio)

Israeli authorities demolish two Palestinian houses in East Jerusalem, one day before the arrival of U.S. secretary of state Hillary Clinton. (*Ha'aretz*)

March 3 Israeli security forces demolish an animal pen on the Federman farm near Kiryat Arba. The farm was destroyed months ago on the grounds that it was built illegally. The family continues to live nearby. (Amnesty International)

Demolition orders for 50 Palestinian homes in Ras Khamis, Jerusalem, are presented on the same day as Jerusalem mayor Nir Barkat meets with Secretary Clinton. (Ir Amim)

Ha'aretz reports that seven years after construction began, delays and budget constraints have resulted in significant gaps in the separation barrier.

March 4 The Jerusalem municipality issues demolition orders for 55 houses in the Shu'fat refugee camp because of permit issues. Owners are given 72 hours to evacuate. (*al-Quds*)

The al-Aqsa Institution for Palestinian Property and Heritage reports on Israeli plans to dig two additional tunnels at the Sharaf Quarter to link it with the Jewish Quarter in the Old City of Jerusalem. (*al-Quds*)

An Israeli settler and three Palestinians are arrested on charges of forging and selling property documents in Jerusalem. (*al-Ayyam*)

March 5 Israeli authorities issue orders to 20 citizens of the Aqraba village, near Nablus, for the demolition of their homes and agricultural installations. (*al-Ayyam*)

The Jerusalem municipality delivers evacuation orders to the owners of two seven-story buildings in Abu Tor. The 650 residents are given 10 days to evacuate. (OCHA)

March 6 Palestinians from the East Jerusa-

lem neighborhood of Silwan throw rocks at Israeli officials to protest the recent demolition of two homes in the neighborhood. (*Yediot Yerushalaim*)

March 7 Ma'an News reports that 88 houses are slated for demolition in the al-Bustan neighborhood of Silwan to make room for a park.

The U.S. government informs the office of the Palestinian prime minister that there will be no home demolitions during Secretary Clinton's visit to the region. (*al-Quds*)

March 9 Israeli authorities issue demolition orders for 20 homes in Nablus. (Ma'an News)

Dozens of disguised settlers, guarded by Israeli police, break into the al-Aqsa mosque. (Ma'an News)

March 10 Israeli authorities issue orders confiscating 142 dunams of land in the West Bank. (*al-Ayyam*)

March 13 Citing a lack of building permits, Israeli authorities issue demolition orders for a building housing seven Palestinian families in the Burj Laqlaq area in Jerusalem's Old City. (*al-Ayyam*)

A Jerusalem court freezes demolition orders issued to dozens of Palestinian houses in East Jerusalem. (Ma'an News)

March 16 Army Radio reports that since becoming mayor of Jerusalem, Nir Barkat has ordered 34 houses demolished and filed more than 100 indictments each month demanding more. This is a significant increase in comparison with the actions of the previous mayor, Uri Lupoliansky.

Ma'ariv reports the sale of 11 housing units in the Tal housing project in the settlement of Har Adar, in January and February. They sold for \$2.95 million. The construction company Dona sold 17 housing units in Ma'ale Adumim, Modi'in Ilit, and Ariel in February for more than \$4.4 million.

March 22 Women-in-Green co-founder Nadia Matar clarifies remarks made during a speech in which she called for the death of PA president Mahmoud Abbas. She explains that her words were not a call for people to take the law into their own hands. (*Yediot Aharonot*)

March 23 The Amana organization, which builds and populates settlements in the West

Bank, announces its new goal of strengthening Jewish identity and spreading the Jewish faith. (*Ma'ariv*)

Defense Minister Ehud Barak informs the High Court of Justice that he will not evacuate settlers from nine houses in Ofra built on land belonging to the Palestinian village of Ein Yabrud. See entries for June 4, 8, and 19, 2008, in the *Settlement Report*, vol. 18, no. 5. (*Ma'ariv*)

Ha'aretz reports on Defense Minister Barak's approval of a new settlement in south Mount Hebron and the construction of 440 new housing units for it. Under the plan, the settlement outpost of Sansana will be authorized and attached to the Eshkolot settlement, despite the two-mile distance between them.

Israeli forces open the Qusin-Nablus gate to Palestinians after five years of restricted access. (Ma'an News)

The High Court of Justice authorizes the confiscation of 30 dunams of Palestinian land in the Shu'fat neighborhood of East Jerusalem to expand a military checkpoint. (*al-Quds*)

March 24 Israel's Foreign Ministry requests a formal apology from the government of Britain for alleging that Israeli businesses were falsifying addresses in order to sell products in Europe that were produced in West Bank settlements. (*Ha'aretz*)

March 25 The Jerusalem municipality freezes plans to build 250 homes for settlers in the Palestinian neighborhood of Abu Dis, East Jerusalem. (*Ha'aretz*)

The High Court of Justice instructs the state to explain within two months why it is not carrying out demolition orders for nine buildings in Ofra that were built on private Palestinian land. The judges criticized the conduct of security officials. (Israel Radio)

March 26 Israeli security forces demolish buildings and homes in the Maoz Esther and Ma'ale Shlomo outposts. (Arutz 7)

March 27 Israeli police arrest six settler youths for throwing rocks at Palestinians. The police baited the settlers by sending a car with Palestinian license plates into the Gilad Farm outpost near Kedumim after reports of settler violence against Palestinians near the outpost. (Arutz 7).

SETTLEMENT TIME LINE

March 30 The New York Campaign for the Boycott of Israel holds a demonstration in front of Motorola offices in New York because they supply equipment to the IDF. (*Ma'ariv*)

April 1 Israeli troops begin fencing in the northern side of the West Bank Palestinian village of Azun, effectively separating villagers from its agricultural lands. (Ma'an News)

April 2 Dozens of Israeli settlers, backed by police, forcibly take over a Palestinian house in the Old City of Jerusalem. (Ma'an News)

Personnel from the Jerusalem municipality issue demolition warnings to several Palestinians in the al-Issawiya neighborhood. (Ma'an News)

A boy from the Bat Ayin settlement is killed and another is seriously injured by an axe-wielding Palestinian man. The military wing of Islamic Jihad and the Imad Mughniyeh Group claim joint responsibility. (*Ha'aretz*)

April 3 The British embassy in Israel cancels plans to relocate to another building because of the property owner's affiliation with settlement construction. (Associated Press)

The Israeli internal security minister extends the closure of Palestinian institutions in Jerusalem, including Orient House and the Arab Chamber of Commerce, for another six months. (*al-Ayyam*)

April 4 Settlers from Hebron riot in the Palestinian neighborhood of Jebel Johar to protest the IDF's plan to allow Palestinian traffic on the road between the Tomb of the Patriarchs and Kiryat Arba. (Israel Radio)

April 7 Soldiers forcibly evict the family of Husam Taysir Dwayat, who had gone on a rampage in Jerusalem on a bulldozer, from their home in Jabal Mukabber. (Ma'an News)

Palestinian stone-throwers injure a settler driving on a settler-only road north of Ramallah. (Ma'an News)

The Israeli High Court of Justice rejects an appeal by two Palestinian families who were evicted from their homes in Sheikh Jarrah, Jerusalem. (*al-Ayyam*)

April 8 Fifteen armed settlers from the West Bank settlement of Bat Ayin enter the

Palestinian village of Beit Omar and fire shots into the air, damaging Palestinian homes and property. (*Yediot Abaronot*)

Yediot Yerushalaim reports the freezing of a plan to construct 400 housing units in the East Jerusalem settlement of Har Homa.

April 11 The Israeli Interior Ministry approves an addition to a building on the northern section of the Western Wall plaza. The area will have a police station, the Chain of Generations Center, and services for visitors and workers. (*Yediot Abaronot*)

April 15 The Palestinian Authority (PA) condemns Israeli settlers' attempts to storm the al-Aqsa mosque compound, calling it a reflection of the Israeli authorities "Judaization" of Jerusalem. (Ma'an News)

Marwan Barghouti, the jailed leader of the Fateh Tanzim organization, says that Palestinians should not renew peace negotiations with Israel until it frees thousands of Palestinians prisoners, ends settlement activity, lifts the blockade on Gaza, and removes West Bank roadblocks. (Israel Radio)

April 16 Hatem Abdul Qader, advisor to Prime Minister Fayyad on Jerusalem affairs, says that 1,000 Arab dwellings in East Jerusalem are threatened with demolition. (*al-Ayyam*)

April 17 Israeli forces open fire on Palestinians throwing Molotov cocktails at the Bet El settlement, killing a Palestinian boy and injuring a Palestinian man. (OCHA)

Thousands of Palestinians from Jerusalem gather at the al-Aqsa mosque to frustrate entry by Jewish religious groups. Israeli police officers, in charge of preventing the Jewish groups from performing religious rituals in the mosque compound, were allegedly seen praying there themselves. (*al-Ayyam*)

An armed Palestinian is shot dead after entering a settlement in the West Bank. (Ma'an News, Arutz 7)

April 20 Members of the Palestinian Legislative Council demand an investigation into the release of Palestinians accused of selling land to settlers. (*Yediot Abaronot*)

April 22 Palestinian residents of Na'alim petition the High Court of Justice to order the Modi'in Ilit settlement to demolish a 5.4-acre park it built on land belonging to Na'alim. (*Yediot Abaronot*)

April 23 Israeli forces demolish eight Palestinian houses southwest of Nablus and one Palestinian house in Jabal Mukabber, Jerusalem. (Ma'an News, *Ma'ariv*)

April 24 Four Palestinians and two Israelis are lightly injured in a clash outside the Yitzhar settlement in the northern West Bank. (*Ma'ariv*)

More than 100 Palestinians and several European representatives demonstrate in Bil'in to protest the death of Bassam Ibrahim Abu Rahma, a Palestinian organizer killed on April 17 by Israeli forces during a protest. Twenty-five Palestinians and 13 Israeli troops are lightly injured. (*Ma'ariv*)

April 26 The Israeli Defense Ministry, in response to a court order, offers to return 750 out of 2,000 dunams of expropriated land in Bil'in to Palestinian residents. The Palestinians say the offer is insufficient and will not be accepted. (Army Radio)

The Israeli Interior Ministry recommends that approximately 12,000 dunams, including the Kedar settlement, be added to Ma'ale Adumim. (*Ha'aretz*)

April 27 Construction begins on a new East Jerusalem settlement in Talpiot, near Arab al-Suahara. Authorities approved the plan in 2000.

The axe-wielding Palestinian who killed a 13-year-old settler on April 2 is apprehended. (*Mideast Mirror*)

A Palestinian teenager from the village of Madama is hospitalized after being shot by a settler near the Bracha settlement. Palestinians claim that the boy was farming when the settler shot him. Settlers assert that the boy had thrown stones toward an Israeli car. (*Yediot Abaronot*)

Nonviolent demonstrators convince Israeli settlers to re-route a road in the village of Umm al-Khayr to avoid the demolition of a Palestinian house. The legality of the road is being adjudicated. (Ma'an News)

April 28 A Palestinian man is sentenced to death by a PA military court for selling land to Israeli settlers. (Ma'an News)

April 30 The Israeli civil administration reports that a higher percentage of settler homes than Palestinian homes are demolished for being constructed without permits. (*Ma'ariv*)

a mere confidence-building measure, but as a precursor to settlement evacuation, marking a radical reversal of Israel's core security, political, and ideological principles.

Moreover, a freeze as currently understood does not address the symbiotic relationship between settlements and security at the heart of Israel's policy of occupation and settlement. It assumes that settlements can be addressed while ignoring the broader security framework in which they exist. If the Obama administration is committed to ending the conflict, promotion of a freeze is of less consequence than a forthright initiative to create a new security framework that protects legitimate Israeli and Palestinian national security interests and that ensures the removal of settlements and an Israeli military withdrawal from the occupied territories.

In order to comply with the requirements of an effective settlement freeze, Israel will have to undo the system by which the military establishment, the legislative and executive arms of the state, settlers, and public, private, and supranational communal organizations collaborate in the encouragement and expansion of settlements. Laws empowering individuals and private and public bodies to increase settlement will need to be reformed, and military orders must be rescinded and new ones issued. Major elements of national legislation and administrative practice that have devolved planning and budgetary power to settlements will have to be undone, as will the host of decisions taken by representative settlement councils. Powers of taxation, planning, courts, and construction will require radical revision to reflect the requirements of a freeze as will the complex system of material and budgetary incentives granted to individuals and business enterprises to encourage settlement expansion.

The requirements necessary for an effective settlement freeze reveal an undertaking so complex and requiring an Israeli political decision so profound that no Israeli government would undertake except as a result of a broader decision to terminate occupation.

Evacuation, Not a Freeze

It is important to recognize that, as Abdel Shafi warned in 1992, the credibility of the Oslo process was undermined not only by the working assumption of the U.S. and Israel that peace and settlement expansion were compatible. It also suffered because Israel refused to meet even modest U.S. benchmarks regarding settlement expansion and removal of new settlements, and it received no penalty for its failure to do so.

The re-creation of a diplomatic process based in part on an Israeli commitment to a freeze would soon be undermined if Israel failed to comply. Moreover, Israelis may well believe that a renewed U.S. initiative that centers on a freeze can, like all previous efforts, be exploited to consolidate settlements and the occupation rather than progress toward an agreement requiring settlement evacuation. Were Israel to engage Washington in negotiations on the parameters of a freeze, it may

well signify a prescription for stalemate rather than an expression of goodwill.

The Begin-Carter Settlement Freeze

The freeze idea was born at a time when settlement expansion was in its infancy. Israel had occupied the West Bank for hardly a decade, and with the exception of East Jerusalem, settlements claimed only small numbers of inhabitants; most had yet to shed an air of impermanence. There were less than 5,000 Israelis living in less than 30 West Bank settlements. The settler population in East Jerusalem numbered 50,000. Administration of all settlement-related activities in the West Bank and Gaza Strip was largely controlled by the Israel Defense Forces (IDF), and the integration of settlements and settlers into the routine bureaucratic life of Israel's civilian ministries was still some years off. In this era, marked by the election of Menachem Begin in 1977, there was a legitimate basis to view a cessation of settlement as a confidence-building measure.

In a letter to President Jimmy Carter delivered after the September 1977 Camp David summit, Begin offered a three month moratorium on establishing new settlements rather than the longer moratorium preferred by Washington. Restrictions on the expansion of existing settlements had been dropped at Israel's insistence. On the face of it, Begin's agreement to halt new settlement creation for even three months was a bold and surprising concession. Yet, and not for the last time, Israel's commitment to a moratorium did not constrain settlement but rather established categories of expansion implicitly endorsed by Washington. The temporary moratorium on new settlements notwithstanding, the Begin government continued to "thicken" and "strengthen" settlements, at times establishing new sites kilometers away from existing colonies during the three month period. Carter administration officials were frustrated by Israel's actions, but acquiesced.

In contrast to Begin's agreement to the partial, temporary, and ineffective restrictions on Israeli settlement actions in the West Bank and Gaza—East Jerusalem was excluded implicitly—the peace treaty with Egypt signified a strategic Israeli decision to trade territory for new security mechanisms that required Israel's evacuation of all settlements in territory returned to Egyptian sovereignty. Only in the context of an Israeli decision to withdraw from Egyptian territory was it possible for Israel, through its complete evacuation of the Sinai Peninsula, to adopt and enforce an effective halt to settlement expansion. Indeed Israeli settlement activity in Sinai *increased* in the months before evacuation until the IDF forcibly removed the Sinai settlers. Settlement activity undertaken within the strategic context of imminent evacuation proved to be irrelevant.

Settlement Freeze Reborn: The Oslo Years

Baker-Bush I

The emigration of Jews to Israel after the implosion of the

Soviet Union, and the Madrid diplomatic process that followed the 1991 American victory in the Gulf War, returned the issue of a settlement freeze to the U.S.-Israel diplomatic agenda. The freeze idea was raised by President George H. W. Bush without success in the context of a U.S. agreement to provide loan guarantees to Israel during the 1990–1992 period. The idea was also prominent among the confidence-building measures sought by Palestinians before and after the Madrid conference. In neither context was the concept incorporated into subsequent agreements, nor did its appearance as an issue on the negotiating and bilateral Israeli-U.S. agenda prove an effective instrument for formally or informally constraining settlement expansion.

The Bush administration called on Israel to stop construction in new or existing settlements with increasing frequency after the beginning of Secretary of State James Baker's diplomatic initiative in March 1991. Presaging ideas currently being considered by the Obama administration, Baker at one point suggested that a settlement freeze would be reciprocated by a cessation of the Arab economic boycott of Israel. During the October 1991 Madrid conference, Baker broadened the proposal to include an end to the Palestinian intifada as well as U.S. provision of the loan guarantees in return for a temporary settlement freeze.

The Baker offer reflected a lack of American understanding of two issues vital to the proposed deal. First, the boycott of Israel, both primary and secondary was, by that time, ineffectual. Second, and more important, the offer illustrated Baker's failure to comprehend the centrality of the settlement enterprise to the Shamir government.

"Once the government of Israel accepts any kind of freeze," explained Shamir aide, Yossi Ben Aharon, "it violates a very basic principle in its policy—the right of Jews to live in any part of this land west of the River Jordan."

If Israel were to concede what in effect it considers its national birthright, it would demand a quid pro quo far more substantial than an end to the feeble boycott or even, as the Palestinians suggested, an end to the intifada. The offers of such a lopsided bargain—and they weren't the last ones—invited rejection. Shamir did not take the U.S. proposal to stop settlement seriously. It was, he remarked, "merely the expression of a wish."

A similar conceptual disconnect is apparent in the road map. The plan's sequencing suggests that the major penalty to be paid by Israel for failing to freeze settlements—the elements of which remain undefined—is to postpone the creation of a Palestinian state with provisional borders. This is a "penalty" the current government of Israel would welcome.

Rabin Builds

In the wake of the 1992 election of Yitzhak Rabin, the Bush administration's demands for a settlement freeze were transformed into a two-tiered and somewhat contradictory

[President George H.W. Bush] wanted to know what Rabin intended to do [about settlements]. Rabin laid the cards on the table. "Mr. President," he said, "I can put a stop to the planned construction of some 7,000 housing units in the West Bank at once, but I cannot stop the construction of another 10,000 housing units which are already in various stages of construction. That will cost me a lot of money."

Bush: "And what about private construction? Not only government's financed construction is going on there."

Rabin: "I cannot stop the private construction. If private people construct, I have nothing to do with that."

Bush: "But so much money is being transferred there, what about that?"

Rabin: "I have no intention whatsoever to starve the settlements in the territories. We will continue to supply them with education, health, religion, and whatever they need. What I am willing to guarantee is that we will not expand the settlements beyond those which already exist."

Bush: "And what will happen if currently there are five classes of children in an elementary school and in two years time they will advance to a high school and you have to build high school classrooms? Are you calling this an expansion beyond what already exists or not?"

Rabin: "I mean that I will not expand the settlements beyond the natural growth of the settlers already living there today. I will build high school classes."

Bush: "Then I will take that sum out of the total of loan guarantees. According to the agreement I have with the Israeli government, dating from the Likud administration, we will cut from the loan guarantees everything that Israel invests in the territories."

Rabin: "If you take of just what we transfer to there, we agree. . . ."

Hadashot, October 29, 1994

policy of exacting decreasing and largely illusory financial penalties for settlement expansion—associated with the provision of \$10 billion in loan guarantees—while formally acknowledging, for the first time, Israel's right to *expand* settlements, according to the undefined requirements of their "natural growth."

In the wake of his August 1992 agreement with President Bush to expand settlements according to this standard, Rabin sought to dispel the impression that the agreement with Washington meant that Israel had imposed a settlement "freeze."

Look, I do not know what you mean when you say settlement freeze, when we are talking of the continued construction of 11,000 units in the territories. . . . Let us keep things in proportion. I am not happy with the situation, but I found . . . that we cannot practically cancel the construction of more than 6,000 to 7,000 housing units that were planned before, and for some of which initial groundbreaking work had begun. The construction of 11,000 units continues, nonetheless. Is this a freeze?

Soon thereafter, the Bush administration proposed legislation to grant Israel \$10 billion in loan guarantees over five years. Absent was any reference to earlier demands for a cessation of settlement. In its stead, the president was empowered, beginning with the second annual disbursement of guarantees, to impose a dollar-for-dollar penalty “for activities which the President determines are inconsistent with the objectives of this section [resettling immigrants, infrastructure, housing, and ‘other purposes’] or understandings reached between the United States Government and the Government of Israel.” As a consequence of this legislation, Israeli expenditures for civilian settlement expansion were deducted in progressively smaller amounts from the loan guarantees made available by Washington.

These sanctions failed to produce a meaningful change in settlement expansion or to prompt a change in Israeli settlement policy. U.S. support for the “natural growth” of settlements became official policy, further eroding Washington’s long-standing opposition to settlements as an obstacle to peace. Loan guarantees were provided, and the mechanism employed to determine Israeli expenditures on settlements segregated large parts of Israel’s settlement budget from penalty. The principles established by this process were not related in any fashion to an effective cessation of settlement but rather centered on (virtual) financial penalties exacted for some settlement-related investments. With the exception of the establishment of new settlements, which Rabin opposed for his own reasons, settlement expansion continued apace. Beginning in 1996 the establishment of new settlements—euphemistically known as “outposts”—was renewed.

During the rest of the decade the freeze idea became on various occasions an element of bilateral discussions between Jerusalem and Washington. The U.S. engaged in fruitless discussions with the first Netanyahu government to establish that there would be “no substantial expansion” of settlements. Prime Minister Ehud Barak rebuffed criticism of his expansion efforts, explaining that the imminent conclusion of a final status agreement with the Palestinians would resolve the issue.

The Mitchell Committee

The settlement freeze and evacuation recommendations made in 2001 by the Sharm el-Sheikh Fact-Finding Com-

West Bank construction has been accelerating for several months, putting Israel on a collision course with a U.S. administration taking a hard line on settlement expansion.

A new outpost, new roads, and other building projects have raced ahead in and around the settlements, often without legal permits, producing the biggest construction drive since 2003, according to Dror Etkes of the Israeli advocacy group Yesh Din. . . .

Construction in outposts: Between Talmon and Nahliel, west of Ramallah, a stone house and another structure have been built without a permit next to a vineyard set up by settlers a year and a half ago. The Israel Defense Forces’ civil administration has recently issued an order to stop the project.

Illegal construction has been carried out on Palestinian land at the outposts Mitzpeh Ahiya and Adei-Ad, north of Ramallah. A mobile home has been set in an outpost near Susia south of Hebron. An outpost that was vacated near Hebron has been reinstated.

Construction east of the separation fence: New houses have been built in the Eli settlement, Rechelim, Ma’aleh Mikdash and Kochav Hashahar north and east of Ramallah. A neighborhood has been built in Na’ale, and there are at least 10 houses in Halamish and new houses in Talmon (all west of Ramallah) under construction. . . .

Defense Minister Ehud Barak recently reached an agreement with the settlers to evacuate the largest outpost, Migron, and transfer it to the nearby settlement Adam. But the agreement has yet to be implemented. . . .

Amos Harel, “Settlement Expansion Seeing Biggest Boost Since 2003,” *Ha’aretz*, May 7, 2009

mittee (Mitchell Committee) challenged a number of assumptions at the heart of Israel’s settlement strategy. By establishing a cessation of all settlement activity, including the provision for natural growth agreed to by the Clinton administration, as a key element in constructing a viable diplomatic process, Mitchell contested Israel’s power to define the terms under which diplomacy would be conducted. In a letter to President George W. Bush opposing a settlement freeze and its linkage to the second Palestinian intifada, Prime Minister Ariel Sharon wrote that it would be impossible to grant to PA chairman Yasser Arafat, as a consequence of violence, a prize that he failed to receive from any Israeli government during a decade of negotiations.

The Mitchell recommendations repudiated a key assumption of the Oslo process—namely, that settlement expansion and progress toward peace could proceed in tandem. The commission acknowledged a key Palestinian claim that settlement growth undermines the prospects for Palestinian sovereignty. As the Palestinians had long argued, it viewed an effective settlement freeze as a necessary confidence-building measure required from the outset of negotiations, even those conduct-

ed during the interim period before final status talks began.

Furthermore, the Committee sought to disaggregate Israeli security from settlement expansion. Implicit in this suggestion, at odds with Israeli security doctrine, was a challenge to Israel's ability to unilaterally determine its security requirements in the occupied territories. Indeed, it suggested that settlement expansion endangered Israeli security.

Mitchell also called upon Israel to consider evacuation of some settlements. Within the committee there was minority support for the evacuation of all settlements in Gaza.

Israel deflected Mitchell's call for a freeze. In a May 15, 2001 official comment on the his report, Sharon noted,

[T]he question of the settlements is a matter that, together with, principally, Jerusalem, refugees, and borders, has specifically been agreed by Israel and the Palestinian side as one for treatment in the permanent status negotiations. There is nothing in the bilateral agreements between the two sides that suggests that the question of settlements is to be regarded as one that could be separated from the others and unrelated to the overall solution of those other problems. Indeed, the Committee itself noted that the issue of settlements is one of the core issues to be negotiated between the sides. The outcome of such negotiations, in which each side has legitimate positions and claims, should not be prejudged. On the substance, it must be recalled that it is already part of the policy of the Government of Israel not to establish new settlements. At the same time, the current and everyday needs of the development of such communities must be taken into account.

Foreign Minister Shimon Peres went a step further, explaining shortly after publication of the Mitchell report,

[A] freeze is already in effect. Actually, a freeze is only the third stage of the Mitchell plan—first comes a cease-fire, then a cooling-off period, then confidence-building measures, such as freezing settlements—such that there is nothing to even talk about regarding such a freeze until six weeks after it begins. But in practice, the coalition negotiations stipulate that there be no new settlements, and we also agreed that there would be no land-expropriations to expand existing settlements, and then we added a third thing, to which the government, Mr. Sharon, agreed, and that is that there be no new construction outside the built-up areas within the existing towns—such that in practice, there is a freeze on construction in Yesha.

The Mitchell Commission's call for a settlement freeze was ambiguous and incomplete. There were no details about the elements of a freeze—its geographic scope, duration, methodology, oversight, monitoring and assessment mechanisms, or penalties for infractions. Discussion on some of these issues was considered by the Bush administration and the Sharon government—centering on defining approved (by Washington) buildable areas for each settlement—but never initiated.

Mitchell's call for a freeze was incorporated in the 2003

road map, which also called for the evacuation of new settlements created after (but not before) March 2001, now numbering around 50. Israel endorsed the road map, including the freeze and outpost provisions, noting however, that 'there will be no involvement with issues pertaining to the final settlement. Among issues not to be discussed: settlement in Judea, Samaria and Gaza (excluding a settlement freeze and illegal outposts).'

On May 12, 2003, it was reported that Prime Minister Sharon had rejected a settlement freeze as "impossible" due to the need for settlers to build new houses and start families. Sharon famously challenged Secretary of State Colin Powell, saying, "What do you want, for a pregnant woman to have an abortion just because she is a settler?"

Gaza Evacuation

Sharon's bold decision in 2004 to "redeploy" from the Gaza Strip, removing all permanently stationed IDF forces, and evacuating all 7,500 settlers, like the Sinai evacuation 25 years earlier, reaffirmed the notion that settlement evacuation rather than a freeze can be a more effective alternative to occupation. The decision to evacuate Gaza's 17 settlements was made in the context of a new Israeli security paradigm for Gaza. Sharon believed that Israeli security could be *enhanced* through withdrawal, redeployment, and settlement evacuation. Freezing settlements simply had no place in the new policy. Indeed, settlements continued to be expanded, often with government support, almost until the day of evacuation.

Facing the Future

If the Obama administration pursues a settlement freeze will it want to undertake the onerous task of negotiating with Israel the mechanisms required to define, implement, police, evaluate, and if, necessary impose sanctions for infractions? In order to avoid this, Washington, echoing the Mitchell committee recommendations, might opt for a declaration that Israel cease settling without engaging Israel in defining a freeze. The U.S. may even impose sanctions more severe than those associated with the loan guarantees in response to an Israeli failure to heed Washington's demand. There is a seductive appeal to these policy options. They build upon past efforts and they have an intuitive appeal. After all, if settlements are a problem does it not make sense to stop building and expanding them? Even in the unlikely event that a freeze succeeds, settlements will remain. The urgency of the situation and the failure of all previous efforts to freeze settlements point to the conclusion that U.S. policy should focus, for the first time, on removing settlements, defining the border between the states of Israel and Palestine, creating new security mechanisms, and ending the conflict.

"I can see a freeze for three or six months, maybe, for the duration of the talks," explained Israel Harel, a founder of the settlement movement and a resident of Ofra near Ramallah. "It won't be implemented, but sabotaged. In Ofra we won't stop [building], well maybe for a week or two." ♦

World Bank Report: Assessment of Restrictions on Palestinian Water Sector Development—April 2009

The World Bank estimates that Israel's national water carrier, Mekorot, supplies 75 million cubic meters (MCM) to Israeli settlements of which, 44 MCM is produced from wells controlled by Israel or settlers within the West Bank.

Palestinian extraction has been in line or less than the amount allocated to them in the Oslo II agreement. Israel has over-extracted 80 percent more than the agreed upon amount.

Israeli authorities have often insisted that any wastewater project for Palestinians connect to Israeli settlements and require an effluent quality standard that is considerably higher than the internationally recommended World Health Organization norms, well beyond the capacity of the PA or the financial means of the Palestinians. Wastewater plants must also be situated far from cities; which means investments must be made in Area C, further complicating progress due to the need for Israeli Civil Administration approval. Had all the PA plans since 1999 been approved and implemented an improved water supply would have been provided for half of the West Bank population.

Settlements have also been discharging raw sewage into

the environment. Untreated sewage from the Ariel settlement flows only 15 meters from the spring that serves as water supply for the Palestinian town of Salfit. Residents of Salfit built a 15 meter wall to protect their spring; Germany allocated money for a wastewater treatment plant for Salfit which was initially blocked by Israel, approved, and then halted due to the plant's potential site falling too close to an area allocated for future Jewish settlements. A new site for the Salfit plant is planned, though Germany has withdrawn its funds. The Betar Ilit settlement treats its water before pumping into the environment. However, the residents of the ultra orthodox settlement cannot work on Saturdays, leaving the wastewater untreated, threatening the nearby Palestinian village of Wadi Fukin. Compounding the declining level of water access and treatment for Palestinians is the deteriorating quality of the water and the increasing prevalence of water borne illnesses. With water usage as low as 10 liters per capita per day in some areas, some communities of the West Bank, notably Area C, face water access comparable to that of refugee camps in Congo or Sudan. ◆

“The solution to the Israeli-Palestinian conflict lies in a two-state solution, and that continues to be the policy of President Obama, and one that we will pursue with great energy and vigor. We believe that a comprehensive Middle East peace is not only in the interests of the people in the Middle East, of Palestinians, Israelis, Egyptians, Arabs from many other countries, but it is also in the national interests of the United States. And in the interests of people around the world. And we recognize the complexities, the difficulties, we are aware of the long history of expectations being raised and then not being met. But we are going to proceed carefully and as rapidly as possible with a full commitment toward that objective: a comprehensive peace in the Middle East.”

Remarks by George Mitchell,
U.S. special envoy for Middle East peace, Cairo, April 19, 2009

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