

REPORT ON ISRAELI SETTLEMENT IN THE OCCUPIED TERRITORIES

A Publication of the Foundation for Middle East Peace

Winter 1991-1992

A Settlement Primer

SETTLEMENT FACTS

West Bank

Israeli settlements: 150
Israeli settlers: 85,000
Palestinian population: 1 million

East Jerusalem

Israeli settlements: 9
Israeli settlers: 140,000
Palestinian population: 150,000

Gaza Strip

Israeli settlements: 16
Israeli settlers: 5,000
Palestinian population: 750,000

Golan Heights

Israeli settlements: 35
Israeli settlers: 12,000
Syrian population: 15,000

Israel's Settlement Program

Israel's building plans, superintended by Minister of Housing Ariel Sharon, envision the construction of housing in the occupied territories for an additional 40,000-120,000 Israelis annually for the 1991-1993 period. Israeli expenditures for FY1992 are approximately \$2 billion. ♦

250,000 ISRAELIS NOW SETTLED IN 210 COMMUNITIES ON LANDS CAPTURED IN 1967 WAR

Israel captured the West Bank and Gaza Strip, as well as Syria's Golan Heights and Egypt's Sinai Peninsula, during its war with Jordan, Syria, and Egypt in June 1967. Sinai was returned to Egypt in April 1982, as agreed in the Camp David peace treaty. In the other areas, occupied and governed by Israel's armed forces, Israel continues to execute its disputed settlement program—moving Israeli Jews into government-financed communities on Arab land taken by conquest. By the end of 1991, about 250,000 Israelis will be living in 210 settlements in areas occupied since 1967.

The West Bank, where settlement activity is centered, is 2,270 square miles of Palestinian land situated between Israel and the west bank of the Jordan River. In September 1967, an Israeli census showed a Palestinian Arab population of 595,900. Not included in this figure were 200,000 Palestinians, most of them refugees from the 1948 war, who fled to Jordan during the 1967 hostilities, and the Arab residents of East Jerusalem. Today the population of the West Bank numbers one million.

The Gaza Strip, hugging the Mediterranean coast in the south of Israel, occupies an area of 135 square miles. Israel's 1967 census showed a population of 389,702, including 260,000 refugees from the 1948 war and their descendants. Today the population is 750,000.

Israel, by virtue of its military conquest, acquired exclusive, but temporary, authority over the West Bank, Gaza, and the Golan Heights. A military occupation, no matter how lengthy, however, does not confer any claim to sovereignty under international law.

On June 27, 1967, Israel's national legislature, the Knesset, nevertheless established the legislative framework for Israel's transformation from an occupying power—whose military forces were only temporarily and incidentally in control of the occupied territories—into a sovereign power. The legislation empowered the government to extend "Israeli law, jurisdiction, and public

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CREATING FACTS: ISRAEL'S SETTLEMENT PHILOSOPHY

"Settlement—scores, almost one hundred years ago, in areas of the Land of Israel populated by Arabs and sometimes solely by Arabs—was it moral or immoral? Permitted or forbidden? One of the two. If it was moral, then settlement near Nablus is moral. . . . There is no third way."

For Israeli Prime Minister Menachem Begin, who spoke these words in an address before the Israeli Knesset in May 1982, Jewish settlement in the Land of Israel was and remains an expression of the enduring vitality of Zionism and its moral vision. For Begin, and indeed for Israelis generally, there is no vital distinction between the settlement policies implemented in the pre-state era under British rule and those that have been pursued during Israel's military occupation of the West Bank, Gaza Strip, Golan Heights, and Sinai.

The Zionist experience of nation-building in Palestine in the first half of this century taught Israeli leaders that civilian Jewish settlements were the building blocks upon which sovereignty was created and which defined its territorial boundaries.

Moshe Dayan, the minister of defense who laid the foundations for settlement policy, believed Jewish settlements in the occupied territories were essential "not because they can ensure security better than the army, but because without them we cannot keep the army in those territories. Without them the IDF [Israel Defense Forces] would be a foreign army ruling a foreign population."

Israelis have consistently viewed settlement not as an obstacle, but as an act of peace. "It may sound outlandish," remarked Yossi Ben Aharon, a top aide to Prime Minister Yitzhak Shamir, on August 12, 1991, "but I believe if the Arabs become convinced that we are here for good—and not merely within the 1967 lines, but throughout the Land of Israel—they will come to realize that they need to attain a *modus vivendi* with us."

The Labor Party inaugurated Israel's settlement program in the territories

occupied in its 1967 victory. For Israelis, then as now, the preeminent question has not been whether or not to settle, but where to settle.

Labor's settlements were located according to what in an Israeli context was a minimalist, but ever expanding conception of its territorial and ideological requirements. The "Allon Plan," named after Labor Party leader Yigal Allon, called for the annexation and settlement of these areas:

- East Jerusalem and its immediate environs.
- A "security belt," 12 miles wide, running the length of the Jordan River valley.
- The entire Judean desert, possibly including Hebron.

Approximately 40 percent of the West Bank's territory and population was to be annexed by Israel according to Allon's program. The northern Gaza Strip would also be annexed, as would the Golan Heights and a strip of Sinai linking Eilat to Sharm al-Sheikh.

The Allon Plan was succeeded by a "Dayan Plan" in 1973. Dayan believed in a functional rather than a territorial solution to the disposition of the occupied territories. Israel, according to this concept, would settle throughout the territories and award Palestinians a measure of autonomy consistent with Israeli interests. Dayan exhorted his countrymen to "create facts in the territories—to settle. . . ."

During the first decade of occupation, Labor established both the physical infrastructure and political institutions for the creation and expansion of permanent Israeli settlements in the territories. But what Labor had adopted incrementally over the course of a decade, the Likud Party embraced as its *raison d'être* and the key to its political renaissance. Aside from the ideological imperative to settle the land, which the Likud shared with its predecessor, Menachem Begin viewed the settlement enterprise as his opportunity to create a political constituency

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CREATING FACTS, *continued on page 3*

rooted in the settlements of the West Bank, just as Labor had done with its communal settlements in the pre-state era.

In July 1977, Begin refused U.S. President Jimmy Carter's request to freeze settlement activity. At that time, perhaps 50,000 Israelis were living in annexed Jerusalem, but only 7,000 settlers lived in the 45 civilian outposts in the remaining territories.

Likud's Vision

In September 1977, Begin's minister of agriculture, Ariel Sharon, unveiled "A Vision of Israel at Century's End," calling for the settlement of two million Jews in the occupied territories. The Likud plan was not inhibited by concerns over settling in areas of Arab habitation. It stressed the establishment of numerous settlement points as well as larger urban concentrations in three principal areas:

- A north-south axis running from the Golan through the Jordan Valley and down the east coast of Sinai;
- A widened corridor around Jerusalem;
- The populated western slopes of the Samarian heartland, which Labor had only just begun to colonize.

This last wedge of Jewish settlement was of prime concern to Likud strategists, particularly Sharon, who was intent on establishing Jewish settlements to separate the large blocs of Arab population on either side of the pre-1967 border northeast of Tel Aviv.

Jewish settlements under the Likud government were to become an essential instrument in the "demographic transformation" of the territories and the creation of a Jewish majority there.

Mattityahu Drobles, cochairman of the World Zionist Organization's Settlement Department, noted that the Likud plan "will enable us to bring about the dispersion of the [Jewish] population from the densely populated urban strip of the coastal plain eastward to the presently empty areas of Judea and Samaria."

Drobles's "Master Plan for the Development of Settlement in Judea and Samaria" envisioned 80 Jewish settlements with a population of 120,000 [not including annexed East Jerusalem] by 1985. By 1985, however, fewer than half that number had been realized.

In keeping with the Likud's social and political origins, the numerous settlement points established did not reflect Labor's historical attachment to self-sufficient, agriculturally-oriented communities. Rather, most would be bedroom communities without local sources of employment or industry. Only recently has the creation of an economic infrastructure in the settlements received attention.

Drobles clearly stated the Likud's intention to preempt the possibility of a territorial division of the land and to

strike at the basis of potential Palestinian sovereignty by destroying the continuity of Palestinian-controlled territory: "The disposition of the settlements must be carried out not only around the settlements of the minorities [Palestinians], but also in between them, this in accordance with the settlement policy adopted in the Galilee and in other parts of the country. . . ."

The security justification for establishing these isolated small settlements was repudiated by then Defense Minister Ezer Weizman, who refused to fall into "the trap of security reasons" by approving the establishment of the Elon Moreh settlement near Nablus in the late 1970s. Israel's High Court of Justice ordered the settlement to be evacuated.

A new rationale superseded the security justification rejected by the court—Israel simply declared lands required for Jewish settlement to be "State Lands," which according to the Israeli definition comprised at least 25 percent of the West Bank's 1.4 million acres. This new program removed even the pretense of a security justification for the Likud's settlement plans, which continued unaffected by the High Court ruling.

Israel did withdraw from the 15 settlements established in Sinai under terms of the peace treaty between Israel and Egypt. Israel removed approximately 5,000 settlers from Sinai and, despite an Egyptian purchase offer, destroyed all remaining infrastructure and homes.

Settlements Take Off

During the 1980s, the Israeli government allocated approximately \$300 million annually for the development and expansion of Jewish settlement in the West Bank. Annual construction fluctuated between 1,000 to 2,000 housing units each year. This investment in infrastructure and housing created the conditions for a take-off in the settler population. By the end of 1985, the population stood at 42,000, a 100 percent increase from 1982. By 1990, it stood at 76,000. In addition, 120,000 Israelis were living across the pre-1967 border in annexed East Jerusalem, 10,000 more were in the Golan Heights, and 3,000 had settled in Gaza.

The combination of the exodus of Jews from the Soviet Union and the need to counter stepped-up U.S. diplomacy has precipitated the biggest building boom in Israel and in the occupied territories since occupation began 24 years ago. A new line of settlement, along and across the Green Line [the pre-1967 border], is in the first stages of implementation. It aims at physically erasing the old border by placing large concentrations of Jews between Arabs living on either side of it. Perhaps 25 percent of Israel's housing construction in the coming years will take place across the Green Line.

SETTLEMENTS AND ISRAELI SECURITY

"One doesn't have to be a general in the reserves to know that civilian settlements do not themselves add any security to the country: not against a standing army or against terror. The settlements require us to devote more army to the territories not less; in the threat of war they will be evacuated as were the Golan settlements in 1973."

—*Ha'aretz* editorial, April 9, 1991.

Since the first Israeli settlement was established almost a quarter of a century ago, Israel's leaders have contended that these civilian outposts are vital to Israel's security. The absolute connection established between settlements and military security is, however, a myth, albeit a powerful one—and dangerous as well. Such a connection

- precludes the possibility of limiting Israel's designs for a permanent and expanding civilian presence in the occupied territories;
- ignores the practical success of negotiated separation-of-forces arrangements on the Golan Heights and Sinai; and
- disregards the insistent and convincing efforts of many Israeli analysts to distinguish Israel's legitimate security requirements from the policies of military occupation and Jewish colonization.

Israel has not always attached preeminent importance to a permanent civilian presence in the occupied territories. Israeli Prime Minister Levi Eshkol instructed U.S. Permanent Representative to the United Nations George Ball in July 1968 to tell Jordan's King Hussein that in return for peace—that is, a political agreement—"Israel would be prepared to return the West Bank with minor modification to his authority." And on June 19, 1967, the Israeli cabinet unanimously approved a decision according to which "Israel offers the signing of a peace treaty with Syria on the basis of the international border and Israel's security needs."

More recently, an August 11, 1991 report in the Israeli daily *Ha'aretz* noted that "many senior elements [in the IDF] actually contend that ceding the Golan will not necessarily affect the ability to defend Israel. In their estimation, Israel's security needs on this front may be met through demilitarization arrangements, introducing U.S. soldiers or observers into the Golan, the establishment of early warning stations, and additional security mechanisms. . . . From the purely professional military point of

view, the IDF's withdrawal from the Golan and its demilitarization may yield quite a few security advantages. . . ."

David Ben Gurion, Israel's first prime minister, merely stated the obvious when he wrote in 1971 that "our security is built firstly and principally on the reserve army, not on border settlements."

This lesson, first learned during Israel's first war in 1948, was repeated on the morning of October 6, 1973, when, hours before the fighting began, Israel's General Staff ordered the evacuation of civilians from all Golan Heights settlements.

On the Golan Heights, Israel was relearning the bitter lesson that settlements do not provide security. On the Egyptian front it was forced to realize the illusion of security provided by natural, defensible borders as the Egyptian army rushed across the Suez Canal and rolled over Israel's own Maginot Line, the once-heralded Bar Lev Line.

Since Israel's High Court of Justice ordered the dismantling of the Elon Moreh settlement near Nablus 12 years

ago, Israel has abandoned even the pretense of a military security rationale for its settlement drive in the West Bank. During the critical 1979 dispute about the security value of the settlement of Elon Moreh, former chief of staff Haim Bar Lev wrote that "the Jewish settlements in the populated areas of Judea and Samaria have nothing whatever to contribute to ongoing security. On the contrary, they inter-

fere with security." Ezer Weizman, defense minister at the time, concurred, declaring that "weak and isolated settlements are a burden and a nuisance in military terms."

Political and ideological imperatives, not legitimate security needs, are at the heart of the settlement drive. Yisreal Harel, a key leader of Gush Emunim, Israel's settler movement, wrote recently that "we are talking about homeland territories, not only strategic depth; about the Land of the Fathers, not just an incidental place of sanctuary.

"Anyone who cannot assert that with complete conviction and total internal self-persuasion cannot, in the final analysis, contend security or any other secondary arguments."

Today, voices from within the heart of Israel's establishment call for a repudiation of what former director of military intelligence Yehoshafat Harkabi labels the "Zionism of acreage." Occupation and settlement endanger rather than promote Israeli security and make the prospect of war more likely. ♦

"The Jewish settlements in the populated areas of Judea and Samaria have nothing whatever to contribute to ongoing security. On the contrary, they interfere with security."

—Haim Bar Lev, former Israeli chief of staff

MILITARY USES OCCUPATION LAW TO JUSTIFY ISRAELI SETTLEMENT

By Geoffrey Aronson

Because of Israel's internationally recognized responsibility to maintain security and public order in the occupied territories, Israel has a duty to uphold the laws of these areas and to adapt them to the changing needs of the Palestinian population under its rule. In the clash between Israel's international obligations and its own settlement policy programs, the latter have proved to be more important.

In 1970, then Defense Minister Moshe Dayan considered replacing the West Bank's legal code—which Israel was bound by international law to uphold—with Israeli legislation. Such an action would have been tantamount to de jure annexation. Dayan concluded, however, that the same objective could be met without the political ramifications of annexation if Israel made substantial amendments to existing Jordanian law.

The result has been the decree of more than 1,000 military orders—orders that form the legal framework for granting a permanent and privileged status to Israel settler population in the occupied territories.

These orders demonstrate that Israel is prepared to meet its international obligations to the population under occupation only insofar as these responsibilities do not impede the transfer of land, water, and other resources from Arab to Israeli control and to the extent that they do not obstruct Jewish settlement. "If you look at [the system of military orders]," explains Raja Shehadeh, a West Bank Palestinian lawyer, "adherence to international law has not been a dominant factor. Law is only a vehicle to fill the occupiers' changing needs and objectives. That is what the military orders help us to identify."

Military orders have legislated the following changes in the legal codes of the occupied territories:

- The power to expropriate land without judicial review by local courts. This measure effectively removed the central issue of land seizures from Palestinian judicial review and control.
- End of land registration, leaving the title to approximately 60 percent of the land in the West Bank unsettled. Palestinian landowners were often left without documentation of land ownership required by Israeli authorities. Subsequent military orders exploited this situation by transferring lands for which ownership was not registered to Israeli control.

- Extension of military jurisdiction over any business transaction involving land or real property, giving Israeli authorities broad control over land and property sales.
- Amendments to the Jordanian planning law to ease zoning and licensing requirements for Israeli settlement.
- Relaxation of Jordanian restrictions on the purchase of land by foreigners.
- Establishment of a special registration process for lands taken for Jewish settlement.
- Establishment in 1979 of the administrative infrastructure for six Jewish regional councils in the West Bank, totally separate from the Palestinian municipal system. This new institutional structure is identical to that governing local authorities within Israel. It gives concrete expression to the intention to create a unified administrative system for services ranging from health, commerce, labor, personal status, and taxes for Israelis residing in Israel and the West

Bank. The budgets of the six councils are supervised by Israel's Ministry of the Interior. Distinctive blue signs announcing entry into the jurisdictions of the councils—extraterritorial islands of Israeli sovereignty encompassing more than half a million acres—dot West Bank highways.

"The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."

Article 49(6)
Fourth Geneva Convention
on Protection of Civilian Persons
in Time of War, 1949

Israeli settlements in the West Bank today have become de facto extensions of Israel, subject to Israeli laws and jurisdiction. To take one example, Israeli settlers are never tried before local Arab courts—although there is no law or military order exempting them from Arab jurisdiction—but before Israeli courts.

Health services, utility rates, elections, tenders, pensions for local officials, and business licenses are among the issues affecting Jewish settlements that have been brought into conformity with Israeli legislation and practice.

Separate offices have been established to oversee "local and regional authorities" (Jewish), which are administered in concert with Israeli law; and "village and municipal authorities" (Palestinian), which are ruled by the military administration. There are also two distinct departments for land planning—one for Palestinians and one for Israelis.

The extraordinary scope of military orders relating to settlement, outlined briefly above, far exceeds the bounds of narrowly construed security concerns, and it is a convincing repudiation of Israeli claims of fidelity to the standards set forth in international law. ♦

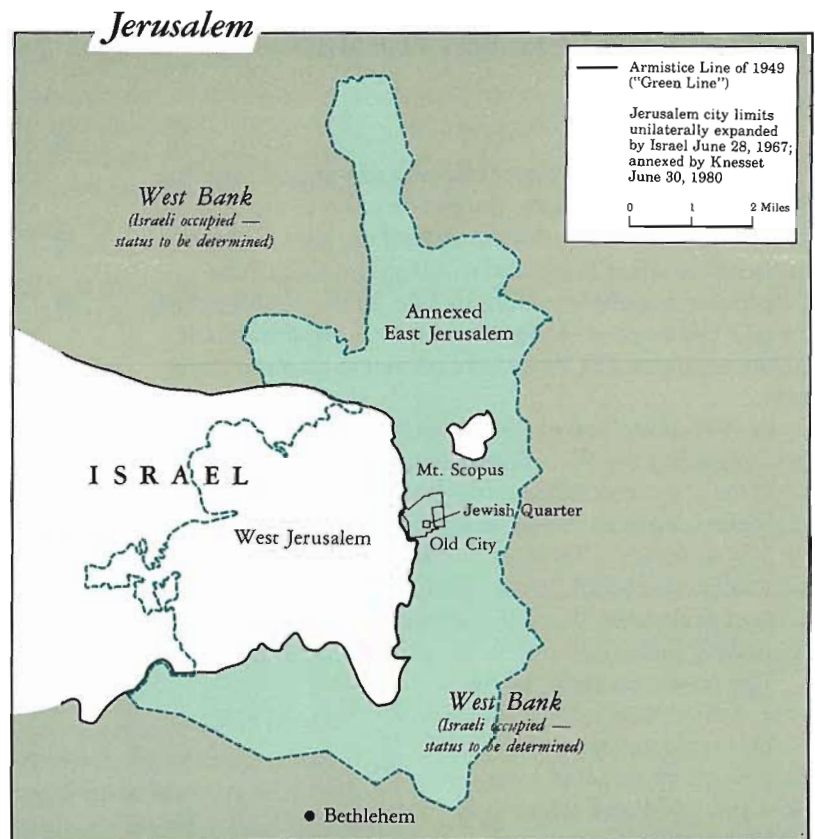
JERUSALEM

Jerusalem is a city of many and often competing definitions. It is a spiritual center for Christianity, Judaism, and Islam, the focus of Palestinian aspirations for political independence, and the “reunified” capital of the State of Israel.

In the wake of the 1948 Arab-Israeli war, the Israeli portion of Jerusalem, West Jerusalem, was declared the national capital. The Arab sector of the city, East Jerusalem—which included the walled Old City and its major religious shrines—was annexed by Jordan.

Israel’s conquest of the West Bank in June 1967 created the opportunity to “reunify” East and West Jerusalem under exclusive Israeli control.

The lands annexed by Israel and incorporated into the unified Jerusalem, totaling 28 square miles, included areas of the West Bank far beyond the 2.3-square-mile Jordanian municipal boundaries of East Jerusalem, as far north as Ramallah and as far south as Bethlehem. Today, 140,000 Israelis live in communities established in these areas, approximately equal to East Jerusalem’s Arab population. ♦

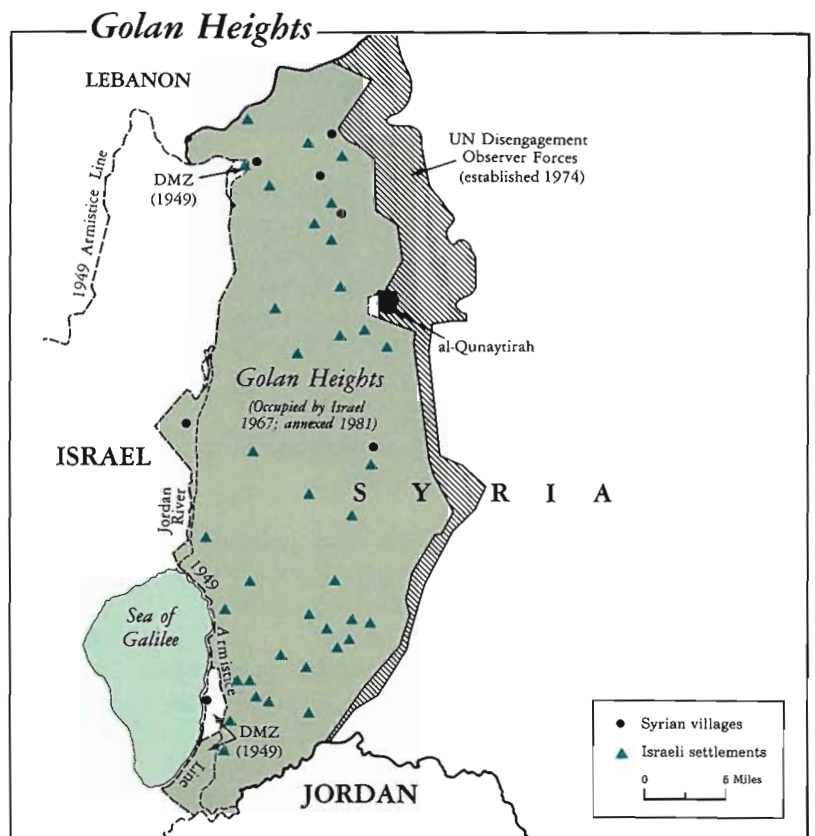


GOLAN HEIGHTS

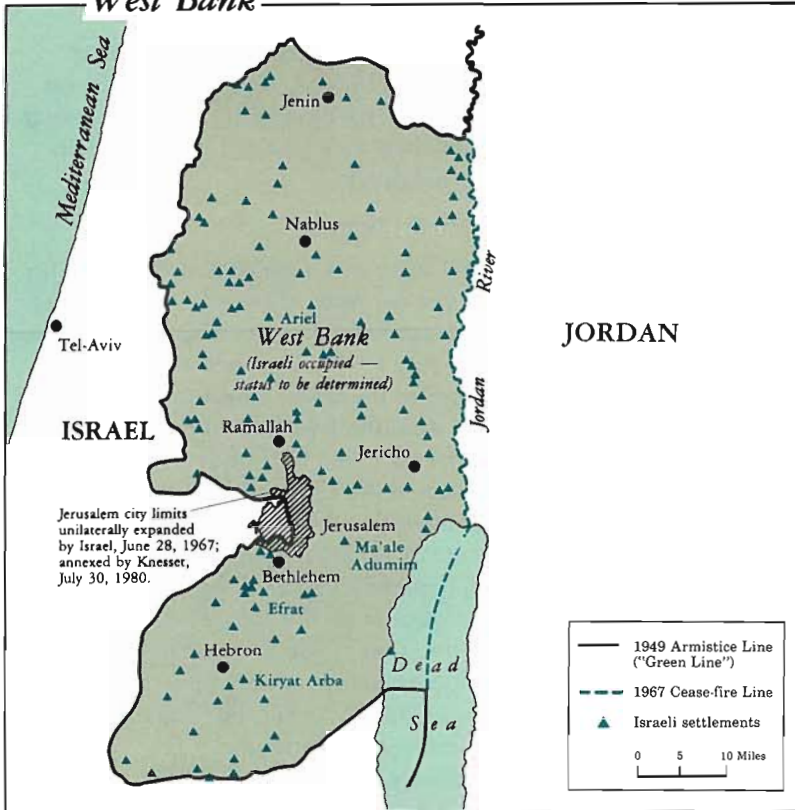
The Golan Heights is a 500-square-mile plateau that overlooks Israel’s central heartland to the west and to the east opens a territorial gateway to Syria’s capital, Damascus.

Formally annexed to Israel in December 1981, the region was a primary focus of the then ruling Labor Party’s settlement drive during the first decade of occupation. The number of settlers today, however—12,000 in 35 settlements—pales before Israel’s colonization of the West Bank and Jerusalem. Current plans envision doubling the Jewish population in the next few years.

The Golan was largely depopulated during the June 1967 war. Of a prewar population of 100,000, barely 10,000 Syrians remained in four northern villages after the war. Today the Syrian population has grown to 15,000. ♦



West Bank



WEST BANK

The West Bank is at the heart of the latest chapter in the Israeli-Palestinian contest for control of historical Palestine. As occupying power, and as a result of land confiscation, Israel is now in direct control of approximately 60 percent of the West Bank's 2,270 square miles (an area slightly larger than Delaware).

The West Bank, including East Jerusalem, has a Palestinian population of 1.15 million, increasing annually at a rate of between 2 and 3 percent. It has a Jewish population of 225,000, including the Jewish population of 140,000 in annexed East Jerusalem. Current plans are to construct housing for at least 25,000 new Israeli residents annually during the next few years.

Israel's settlement and land acquisition plans reflect an effort to erase the "Green Line"—the border between Israel and the West Bank—by isolating and surrounding Palestinian population centers. Through Israeli territorial control and civilian Jewish settlement, the plans also preempt the possibility of Arab control, expansion, or sovereignty over the land. ♦

Gaza Strip



GAZA STRIP

The Gaza Strip is a true stepchild of international diplomacy. Not since the days of the Ottoman Empire has it been ruled by a self-declared sovereign power. Administered in turn by Britain, Egypt—and since June 1967, by Israel—the Gaza Strip, along with the West Bank, is today a principal focus of Palestinian aspirations for nationhood and sovereignty.

Lacking natural resources and home to 750,000 Palestinians—including half a million refugees from the 1948 Arab-Israeli war—Gaza is dependent on remittances (now shriveling) from family members abroad and the casual labor of 60,000 workers employed in Israel.

Almost 50 percent of Gaza is under exclusive Israeli control. Approximately 5,000 Israelis live in two settlement clusters—one in the northwest corner and the other along the southern coast. ♦

U.S. POLICY ON ISRAELI SETTLEMENTS IN OCCUPIED TERRITORY

Israeli responsibilities in the occupied territories are defined by the international consensus embodied in The Hague Convention of 1907 and the 1949 Fourth Geneva Convention on Protection of Civilian Persons in Time of War. The convention states:

“The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”

Successive Israeli governments, however, have denied the applicability of such constraints to their right to settle their own population in the occupied territories.

The U.S. position on the status of Israeli settlements has undergone noteworthy revision over the last quarter century. Highlights of this evolution follow.

The Johnson Administration

Israel’s settlement program was in its infancy during the Johnson presidency. Shortly before leaving office, President Lyndon B. Johnson declared that “Arab governments must convince Israel and the world community that they have abandoned the idea of destroying Israel. But equally, Israel must persuade its Arab neighbors and the world community that Israel has no expansionist designs on their territory.”

The Nixon Administration

Except for opposition to Israel’s decision to annex East Jerusalem, the Nixon administration did not make specific reference to Israeli settlement activities until a UN Security Council debate on the subject in September 1971, which resulted in Resolution 298. U.S. Ambassador to the United Nations George Bush stated, “We regret Israel’s failure to acknowledge its obligations under the Fourth Geneva Convention as well as its actions which are contrary to the letter and the spirit of this convention.”

The State Department’s deputy legal adviser, George H. Aldrich, reaffirmed this position, which applied as well to annexed East Jerusalem, when he noted in April 1973, “Israel, as occupant of the territories seized during the fighting in 1967, is bound by the Fourth Geneva Convention—that for the protection of civilians—but Israel refuses to apply the convention.”

The Ford Administration

The Ford administration upheld the interpretation formulated in the Nixon years. During a Security Council debate on the occupied territories, occasioned by the establishment of the first Jewish settlement in the Samaritan hills, U.S. Ambassador to the United Nations William Scranton told the Security Council in March 1976, “[S]ubstantial resettlement of the Israeli civilian population in occupied territories, including East Jerusalem, is illegal under the convention and cannot be considered to have prejudged the outcome of future negotiations

between the parties on the locations of the borders of states of the Middle East. Indeed, the presence of these settlements is seen by my government as an obstacle to the success of the negotiations for a just and final peace between Israel and its neighbors.”

The Carter Administration

President Jimmy Carter was more determined than his predecessors to resolve the issue of Israel’s occupation of the West Bank and Gaza Strip. In talks with Prime Minister Menachem Begin in July 1977, Carter notes in his memoirs, “I then explained to the Prime Minister how serious an obstacle to peace were the Israeli settlements being established within the occupied territories . . . I reminded Begin that the position of the United States had always been that any settlements established on lands occupied by military force were in violation of international law.”

At Camp David, President Carter thought he had won Israel’s approval for a freeze on the construction of new settlements for the duration of post-summit negotiations. Israel claimed that a moratorium of only three months had been agreed and that it did not cover the “expansion” and “strengthening” of existing settlements.

The State Department’s legal adviser, Herbert Hansell, informed Congress that “the establishment of the civilian settlements in those [occupied] territories is inconsistent with international law.” [See page 10.]

U.S. characterization of settlements as “illegal” was reaffirmed by Secretary of State Cyrus Vance in testimony before Congress on March 21, 1980: “U.S. policy toward the establishment of Israeli settlements in the occupied territories is unequivocal and has long been a matter of public record. We consider it to be contrary to international law and an impediment to the successful conclusion of the Middle East peace process

“Article 49, paragraph 6, of the Fourth Geneva Convention is, in my judgement, and has been in the judgement of each of the legal advisors of the State Department for many, many years, to be . . . that [settlements] are illegal and that [the Convention] applies to the territories”

The Reagan Administration

President Ronald Reagan wanted to forge a “strategic consensus” with Israel and was less inclined to dispute continuing settlement. The writings of former Under Secretary of State Eugene V. Rostow offered legal cachet to Reagan’s revision of U.S. policy, explained in a February 2, 1981, interview.

“As to the West Bank and the settlement there, I disagree with the previous administration as they referred to them as illegal. They’re not illegal—not under U.N.

U.S. POLICY, *continued on page 9*

resolutions that leave the West Bank open to all people, Arab and Israeli alike . . .” In Reagan’s view, Israeli settlement was “ill-advised” and “unnecessarily provocative.”

The State Department, however, sought to reassert customary U.S. policy. Assistant Secretary Nicholas Veliotis told Congress in October 1981 that “the establishment of the civilian settlements in those territories is inconsistent with international law . . .”

Still, U.S. policy on this issue was not clearly articulated. Secretary of State George Shultz added to the confusion when he told a news conference a few days before unveiling the Reagan Plan in September 1982 that “. . . the question isn’t whether they [settlements] are legal or illegal; the question is are they constructive in the effort to arrange a situation that may, in the end, be a peaceful one . . . [President Reagan’s] answer to that is no, expansion of those settlements is not a constructive move.”

The Reagan Plan stated that

“The United States will not support the use of any additional land for the purpose of settlements during the transition period (5 years after Palestinian elections for a self-governing authority). Indeed, the immediate adoption of a settlements freeze by Israel, more than any other action, could create the confidence needed for wider participation in these talks. Further settlement activity is in no way necessary for the security of Israel and only diminishes the confidence of the Arabs that a final outcome can be freely and fairly negotiated.”

The Bush Administration

President Bush has reiterated that East Jerusalem is still considered occupied territory. The Bush administration has not reverted to the pre-Reagan administration characterization of Israeli settlement activities as illegal, but Secretary of State James Baker has criticized settlement as “de facto annexation.”

“Building settlements,” explained a State Department spokesman in January 1990, “or putting even more settlers in the territories is an obstacle to the cause of peace.”

In the wake of the establishment of a new West Bank settlement in April 1991, White House spokesman Marlin Fitzwater reiterated that “the settlements are an obstacle to peace, and their continuation does not contribute to the development of the peace process which we all have been working for.”

Subsequently, President Bush himself appealed directly to the Israeli people: “We’re not giving one inch on the settlements question. . . . We’re not going to change our position on settlements. So please, those in Israel, do what you can to see that the policy of settlement after settlement is not continued. It is counterproductive.” ♦

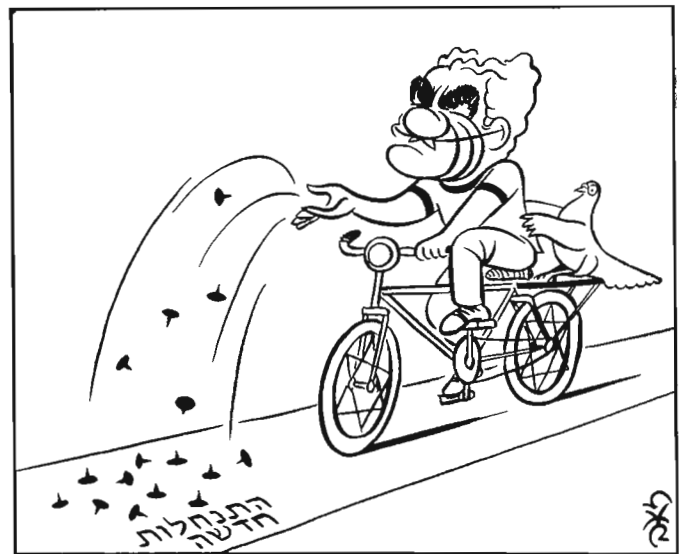
More than 240,000 Israelis currently live in occupied territory—140,000 in annexed Jerusalem, 5,000 in the Gaza Strip, 12,000 in the Golan Heights, and 85,000 in the West Bank. Israel’s building plans, championed by Minister of Housing Ariel Sharon, envision the construction of housing in occupied areas for an additional 40,000-120,000 Israelis annually for the coming three years.

This unprecedented settlement drive has prompted calls for Israel to freeze such activities. But the current government of Israel views any such concession as an acknowledgment of Arab claims to the territories.

Israel remains unwilling to withdraw from the territories, and it views diplomacy as a vehicle for forcing Arab and international recognition of the settlement “facts” that it has created during the last quarter-century.

“For all those who helped build this settlement,” declared Prime Minister Yitzhak Shamir at the inauguration of a new settlement straddling the Green Line “the term, the ‘Green Line,’ doesn’t exist.” ♦

“New Settlements”



Source: [Ha'aretz](#), August 7, 1991

THE CARTER ADMINISTRATION VIEW:

“Settlements are Inconsistent with International Law”

Following are excerpts from the April 21, 1978, opinion of Herbert J. Hansell, the legal adviser of the Department of State, to the Congress on the legal status of Israeli settlements in the occupied territories.

The Territories Involved

The Sinai Peninsula, Gaza, the West Bank and the Golan Heights were ruled by the Ottoman Empire before World War I. Following World War I, Sinai was part of Egypt; the Gaza Strip and the West Bank (as well as the area east of Jordan) were part of the British Mandate for Palestine; and the Golan Heights were part of the French Mandate for Syria. Syria and Jordan later became independent. The West Bank and Gaza continued under British Mandate until May, 1948.

In 1947, the United Nations recommended a plan of partition, never effectuated, that allocated some territory to a Jewish state and other territory (including the West Bank and Gaza) to an Arab state. On May 24, 1948, immediately prior to British termination of the Mandate, a provisional government of Israel proclaimed the establishment of a Jewish state in the areas allocated to it under the partition plan. The Arab League rejected partition and commenced hostilities. When the hostilities ceased, Egypt occupied Gaza, and Jordan occupied the West Bank. These territorial lines of demarcation were incorporated, with minor changes, in the armistice agreements concluded in 1949. The armistice agreements expressly denied political significance to the new lines, but they were de facto boundaries until June 1967.

During the June, 1967 war, Israeli forces occupied Gaza, the Sinai Peninsula, the West Bank and the Golan Heights. . . .

The Settlements

. . . . Israel began establishing civilian settlements in 1968. Civilian settlements are supported by the government, and also by non-governmental settlement movements affiliated in most cases with political parties. Most are reportedly built on public lands outside the boundaries of any municipality, but some are built on private or municipal lands expropriated for the purpose.

Legal Considerations

As noted above, Israeli armed forces entered Gaza, the West Bank, Sinai and the Golan Heights in June, 1967, in the course of an armed conflict. Those areas had not previously been part of Israel's sovereign territory nor otherwise under its administration. By reason of such entry of its armed forces, Israel established control and began to exer-

cise authority over these territories; and under international law, Israel thus became a belligerent occupant of these territories.

Territory coming under the control of a belligerent occupant does not thereby become its sovereign territory. International law confers upon the occupying state authority to undertake interim military administration over the territory and its inhabitants; that authority is not unlimited. The governing rules are designed to permit pursuit of its military needs by the occupying power, to protect the security of the occupying forces, to provide for orderly government, to protect the rights and interests of the inhabitants and to reserve questions of territorial change and sovereignty to a later stage when the war is ended. . . .

On the basis of the available information, the civilian settlements in the territories occupied by Israel do not appear to be consistent with these limits on Israel's authority as belligerent occupant in that they do not seem intended to be of limited duration or established to provide orderly government of the territories and, though some may serve incidental security purposes, they do not appear to be required to meet military needs during the occupation.

Article 49 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, August 12, 1949, 6 UST 3516, provides, in paragraph 6:

The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

Paragraph 6 appears to apply by its terms to any transfer by an occupying power of parts of its civilian population, whatever the objective and whether involuntary or voluntary. . . .

Israeli civilian settlements thus appear to constitute a “transfer of parts of its own civilian population into the territory it occupies” within the scope of paragraph 6. . . .

It has been suggested that the principles of belligerent occupation, including Article 49, paragraph 6, of the Fourth Geneva Convention, may not apply in the West Bank and Gaza because Jordan and Egypt were not the respective legitimate sovereigns of these territories. However, those principles appear applicable whether or not Jordan and Egypt possessed legitimate sovereign rights in respect of those territories. Protecting the reversionary interest of an ousted sovereign is not their sole or essential purpose; the paramount purposes are protecting the civilian population of an occupied territory and reserving permanent territorial changes, if any, until settlement of the conflict. . . .

Conclusion

While Israel may undertake, in the occupied territories, actions necessary to meet its military needs and to provide for orderly government during the occupation, for the reasons indicated above the establishment of the civilian settlements in those territories is inconsistent with international law. ♦

UN SECURITY COUNCIL RESOLUTIONS ON SETTLEMENTS

- **Resolution 242**, November 22, 1967, affirms that “the establishment of a just and lasting peace . . . should include . . . withdrawal of Israel armed forces from territories occupied in the recent conflict.” Vote: unanimous.
- **Resolution 252** May 21, 1968, adopted in response to Knesset action extending Israeli law and jurisdiction over parts of the captured West Bank and Arab Jerusalem. The resolution calls on Israel “to rescind all measures to change the status of Jerusalem.” The resolution notes “that all legislative and administrative measures and actions taken by Israel, including expropriation of land . . . are invalid.” Vote: 13 to 0, 2 abstentions (Canada and the United States).
- **Resolution 267**, July 3, 1969, “censures in the strongest terms all measures taken to change the status of the City of Jerusalem.” It calls upon Israel “once more” to refrain from all measures “which may tend to change the status” of the city. Vote: unanimous.
- **Resolution 271**, September 15, 1969, reaffirms Resolutions 252 and 267 and “calls upon Israel scrupulously to observe the provisions of the Geneva Convention¹ and international law governing military occupation. . . .” Vote: 11 to 0, 4 abstentions (Colombia, Finland, Paraguay, and the United States).
- **Resolution 298**, September 25, 1971, “confirms in the clearest possible terms that all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of population and legislation aimed at the incorporation of the occupied section, are totally invalid and cannot change that status. . . .” Vote: 14 to 0, 1 abstention (Syria).
- **Resolution 446**, March 22, 1979, “affirms once more” the applicability of the Geneva Convention “to the Arab territories occupied by Israel since 1967, including Jerusalem; determines that the policy and practices of Israel in establishing settlements . . . have no legal validity and constitute a serious obstacle to achieving a comprehensive, just, and lasting peace . . .”; and calls upon Israel “to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own population into the occupied Arab territories. . . .” Vote: 12 to 0, 3 abstentions (Norway, United Kingdom, and United States).
- **Resolution 452**, July 20, 1979, reaffirms that settlements “constitute a violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War” and “calls upon the Government and people of Israel to cease, on an urgent basis, the establishment, construction and planning of settlements. . . .” Vote: 14 to 0, 1 abstention (United States).
- **Resolution 465**, March 1, 1980, reaffirms the applicability of the Geneva Convention to the occupied territories, including Jerusalem; “deplore[s]” official Israeli support for settlement; “determines that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967 . . . have no legal validity and that Israel’s policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention . . . and a serious obstruction to achieving a comprehensive, just, and lasting peace in the Middle East.” It “strongly deplores” pursuing these “policies and practices and calls upon the government and people of Israel to rescind those measures, to dismantle the existing settlements and in particular to cease, on an urgent basis, the establishment, construction, and planning of settlements . . . [and] calls upon all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories.” Vote: unanimous.
- **Resolution 476**, June 30, 1980, restates the unlawfulness of Israel’s annexation and transfer of its population to Jerusalem; reiterates that “such measures which have altered the geographic, demographic and historical character and status of the Holy City of Jerusalem are null and void and must be rescinded. . . .” Vote: 14 to 0, 1 abstention (United States).
- **Resolution 478**, August 20, 1980, “censures in the strongest terms the enactment by Israel of the ‘basic law’ on Jerusalem² and the refusal to comply with relevant Security Council resolutions; affirms that the basic law . . . constitutes a violation of international law and does not affect the continued application of the Geneva Convention . . . in the Palestinian and other Arab territories occupied since 1967, including Jerusalem”; and declares the recently enacted basic law “null and void.” Vote: 14 to 0, 1 abstention (United States).
- **Resolution 497**, December 17, 1981, declares Israel’s decision “to impose its laws, jurisdiction and administration in the occupied Syrian Golan Heights is null and void and without international legal effect”; demands that Israel annul the decision; and reaffirms the applicability of the Geneva Convention. Vote: unanimous.

1. Article 49(6) of the Fourth Geneva Convention states that “the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”

2. On July 30, 1980, the Knesset enacted the Jerusalem Law, formally reaffirming the “complete and united Jerusalem” to be the capital of Israel.

administration over the entire area of the Land of Israel”—an undefined territorial designation including but not limited to Israel and the West Bank.

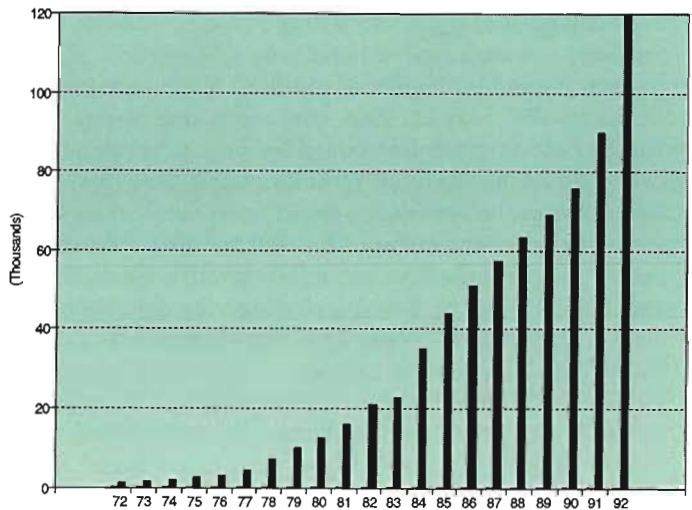
An editorial in *Davar* (the newspaper of the Labor Party, headed by Prime Minister Levi Eshkol) observed on June 28, 1967, that the Knesset had established the legal foundation to annex “parts of the liberated Land of Israel” freed from the “foreign yoke” by the war three weeks earlier.

What is known today as East Jerusalem was annexed to the State of Israel according to the provisions of this measure on June 28, 1967. On December 14, 1981, the Knesset enacted similar legislation annexing the Golan Heights.

In addition to performing traditional responsibilities under international law, the military government conducts a program of land expropriation and settlement of Israel’s own population throughout the West Bank and Gaza Strip in contravention of international law and of its responsibilities as an occupying power.

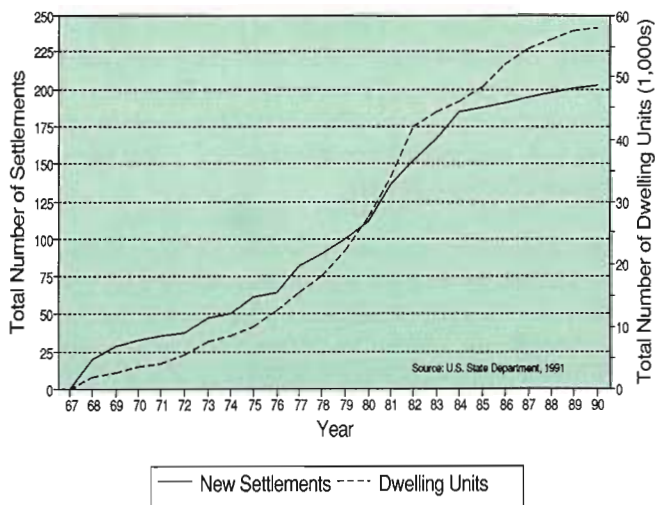
Paragraph 6 of Article 49 of the 1949 Fourth Geneva Convention on Protection of Civilian Persons in Time of

Jewish Population in the West Bank*



* Not including 120,000 Jews living in annexed Jerusalem. Population figures vary (sometimes by as much as twenty percent) depending upon the source. The figures for 1989 and 1990 were cited by Danny Rubinstein in *Ha'arets*, December 14, 1990. These numbers should be considered conservative approximations.

Settlement Activity in the Israeli Occupied Territories



War states: “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”

Israel rejects the applicability of Article 49, claiming that it is not an occupying, but an administering power due to the competing claims of sovereignty over the West Bank and Gaza Strip.

The objective of Israel’s settlements has been to establish Israeli sovereignty in the territories occupied in 1967. According to Israeli attorney Avigdor Feldman, who has contested Israeli land seizures in the West Bank on behalf of Palestinian landowners, “Israel regards the occupation not as a military episode, but as a national Jewish and Zionist affair. Military reasons for Jewish settlement are in the best case secondary, and in most cases a cover-up.”

Settlements range from small clusters of trailers on a mountain hilltop to suburbs like Kiryat Arba near Hebron and Ma’ale Adumim on the eastern outskirts of Jerusalem, with populations up to 15,000. ♦