

# ISRAELI SETTLEMENTS IN THE OCCUPIED TERRITORIES

## A Guide

A Special Report of the Foundation for Middle East Peace

March 2002

### CREATING FACTS: ISRAEL'S SETTLEMENT VISION

*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 Menachem Begin, who spoke these words in an address before the Israeli Knesset in May 1982, Jewish settlement throughout the “Land of Israel” was and remains an expression of the enduring vitality of Zionism and its moral vision. For Begin and many Israelis, there is no vital distinction between the Jewish settlements before the state was created in 1948 and those Israel has established in violation of international law in the West Bank, Gaza Strip, Golan Heights, and East Jerusalem after the 1967 war. All Israeli governments, Labor and Likud, pursued settlements after 1967 in order to consolidate Israeli control over the occupied territories and prevent the emergence of a Palestinian state.

The Zionist experience of state building in Palestine in the first half of this century led Israelis leaders to believe that civilian Jewish settlements were the building blocks upon which sovereignty was created and which defined its territorial limits. These leaders viewed security, sovereignty, and settlement as inextricably linked. For them, security achieved by settlement was an existential concept rather than a military imperative. As Moshe Detain explained, Jewish settlements in the occupied terri-

tories are 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 would be a foreign army ruling a foreign population.*”

During the first decade of occupation after the 1967 war, Labor-led governments established the infrastructure and institutions for the creation and expansion of permanent Israeli settlement in the territories. Labor’s approach was incremental, but after 1977, Begin’s Likud government embraced settlements as its *raison d’être* and the key to the Likud’s political renaissance. Aside from the ideological imperative to settle the land, Begin viewed settlements as his opportunity to create a political constituency rooted in the settlements of the West Bank just as Labor had done with its kibbutz and moshav settlements in pre-state Israel.

In July 1977 Begin refused President Jimmy Carter’s request to freeze settlement activity. At the time, there were about 50,000 Israelis living in annexed East Jerusalem, but only 7,000 settlers in 45 civilian outposts in the West Bank and Gaza.

In September 1977 Begin’s minister of agriculture, Ariel Sharon, unveiled “A vision of Israel at Century’s End,” calling for the settlement of 2 million Jews in the occupied territories. The Likud plan proposed settling Jews in areas of Arab habitation and for numerous settlement points as well as large urban concentrations in three principle 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; and

- the populated western slopes of the Samarian heartland of the West Bank.

This last wedge of Jewish settlement was of prime concern to Likud strategists, particularly Sharon, who was intent upon establishing Israeli settlements to separate the large blocs of Arab population on either side of the Green Line north of Tel Aviv.

Settlements under Likud were designed to bring about a “demographic transformation” of the territories and a Jewish majority there. The co-chairman of the World Zionist Organization’s Settlement Department, Mattityahu Drobless, 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 [of Jews] areas of Judea and Samaria.”

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 was stated clearly by Drobless more than twenty years ago. “The disposition of the settlements must be carried out not only *around* the settlements of the minorities [Arabs], but also *in between them*. . . .” When negotiators met during 2000 at Camp David to

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## THE CARTER ADMINISTRATION VIEW “SETTLEMENTS ARE INCONSISTENT WITH INTERNATIONAL LAW”

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

### 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

1. 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 exercise 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.

2. 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.

The 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.

4. 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. ♦

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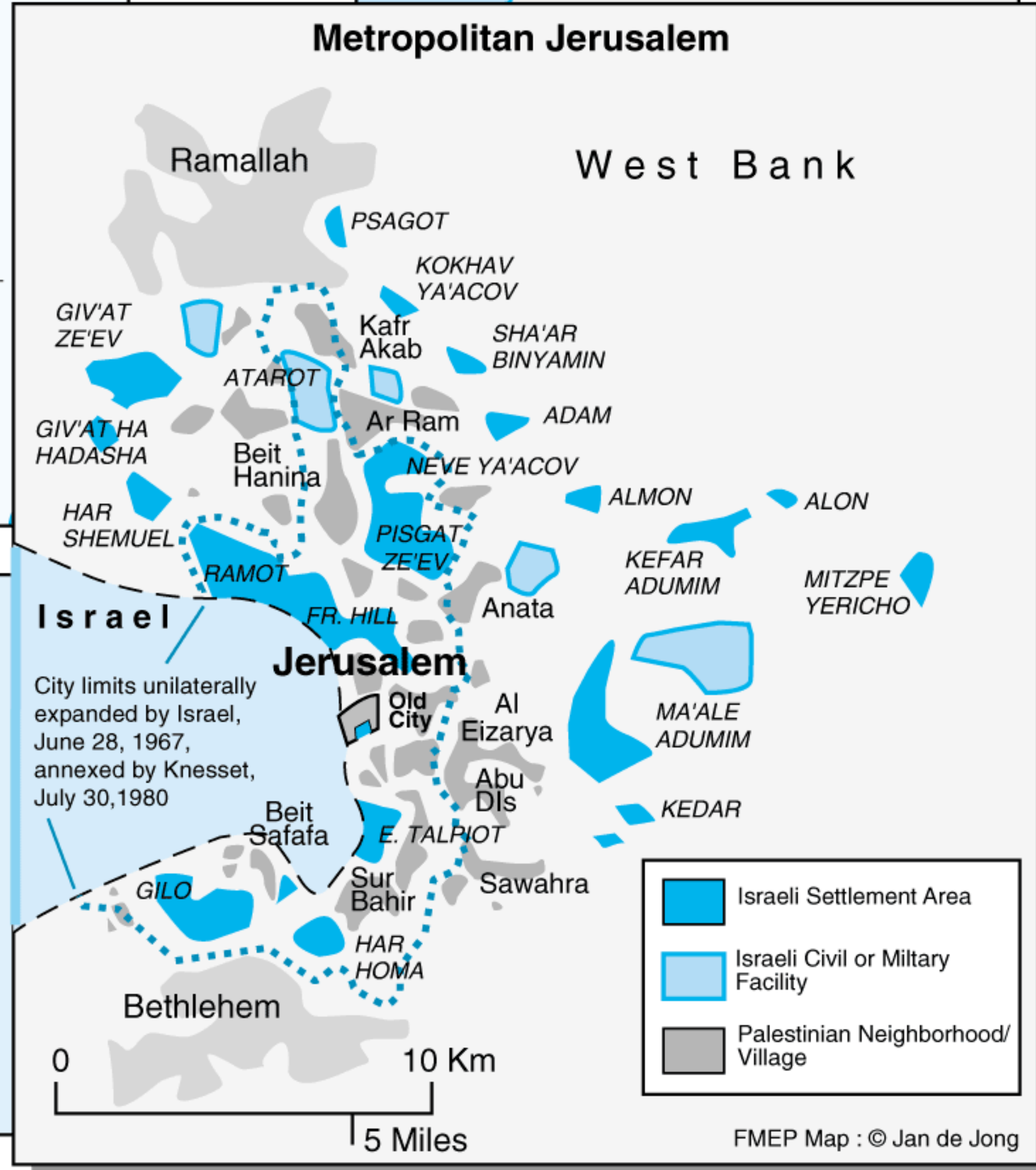
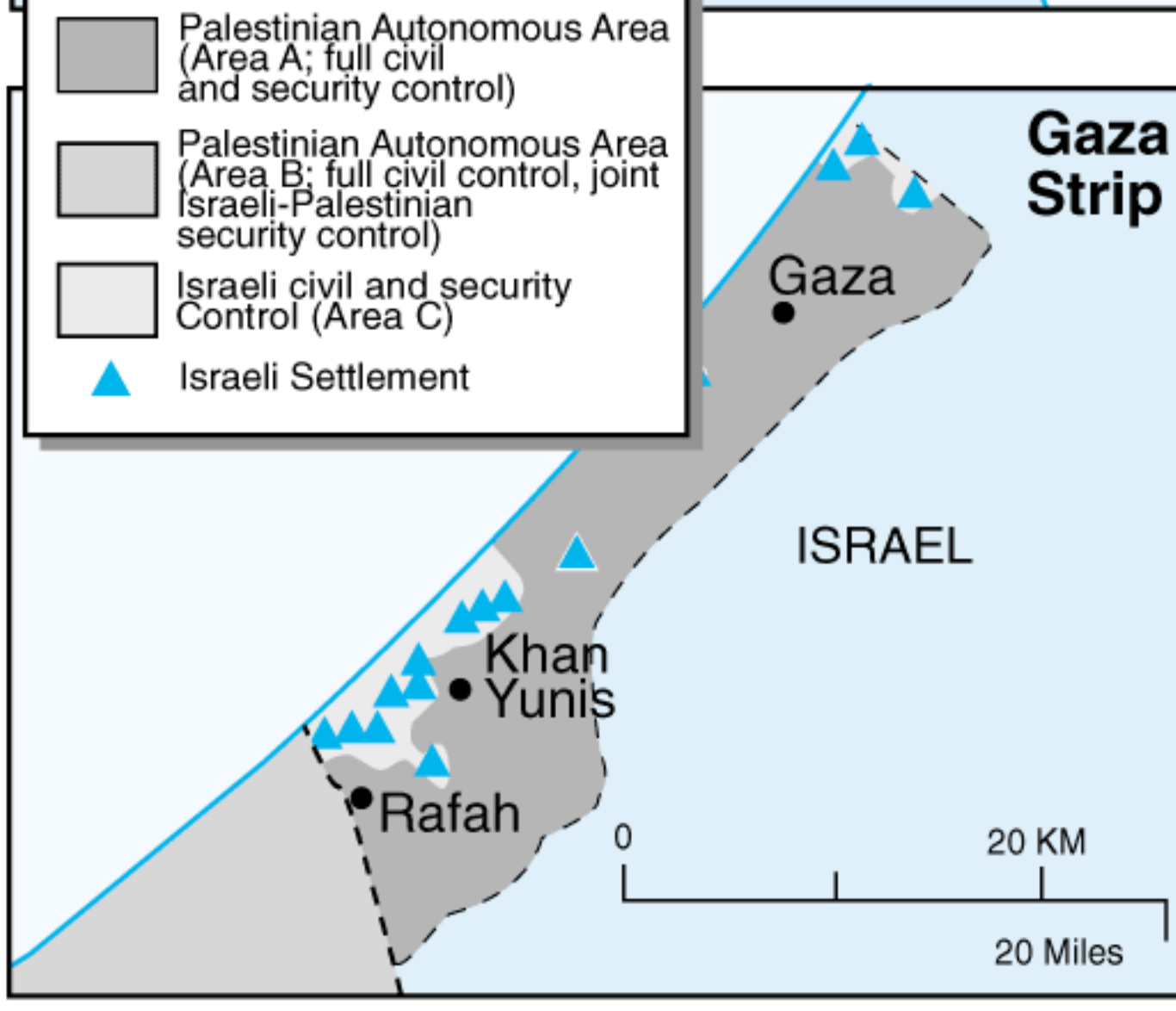
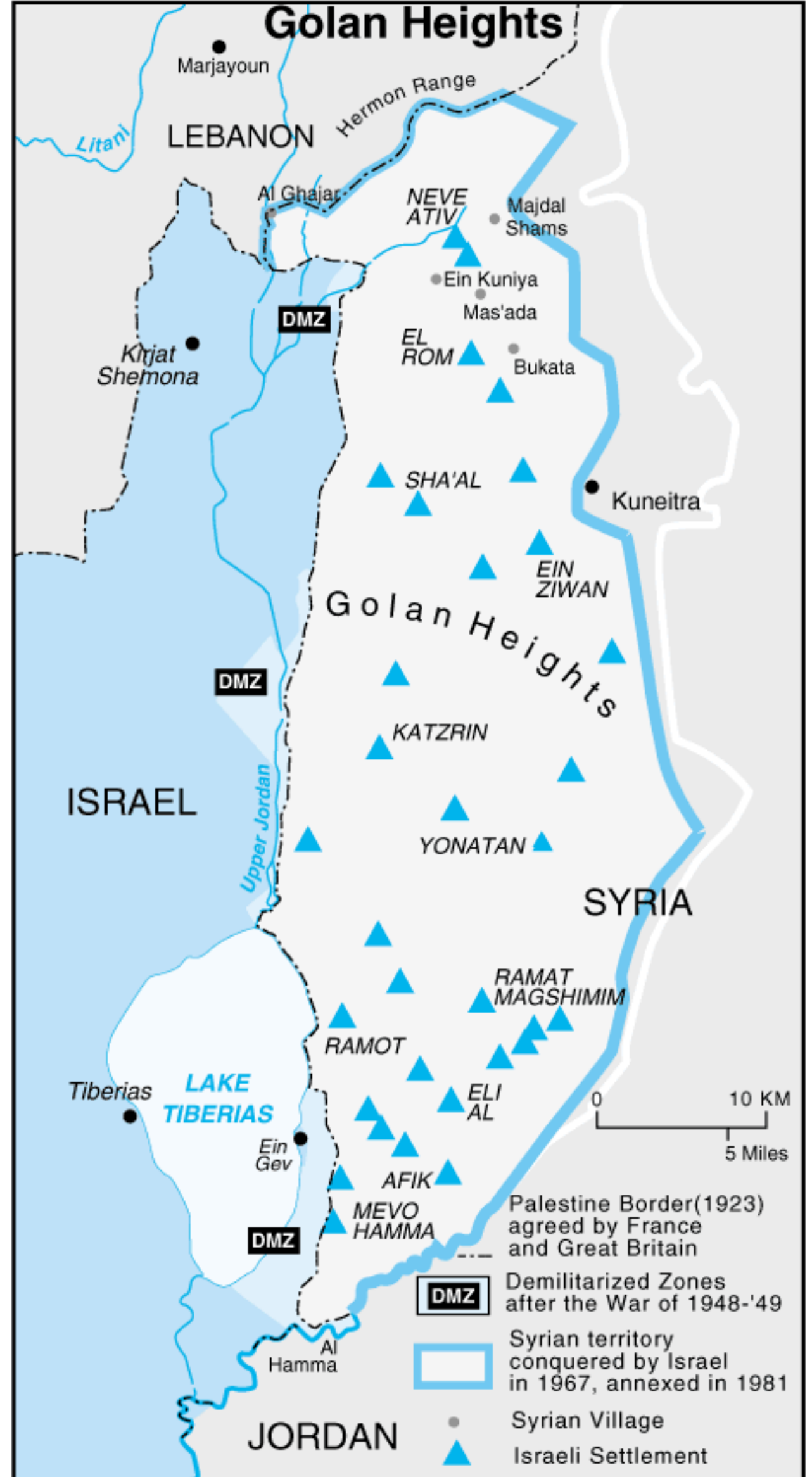
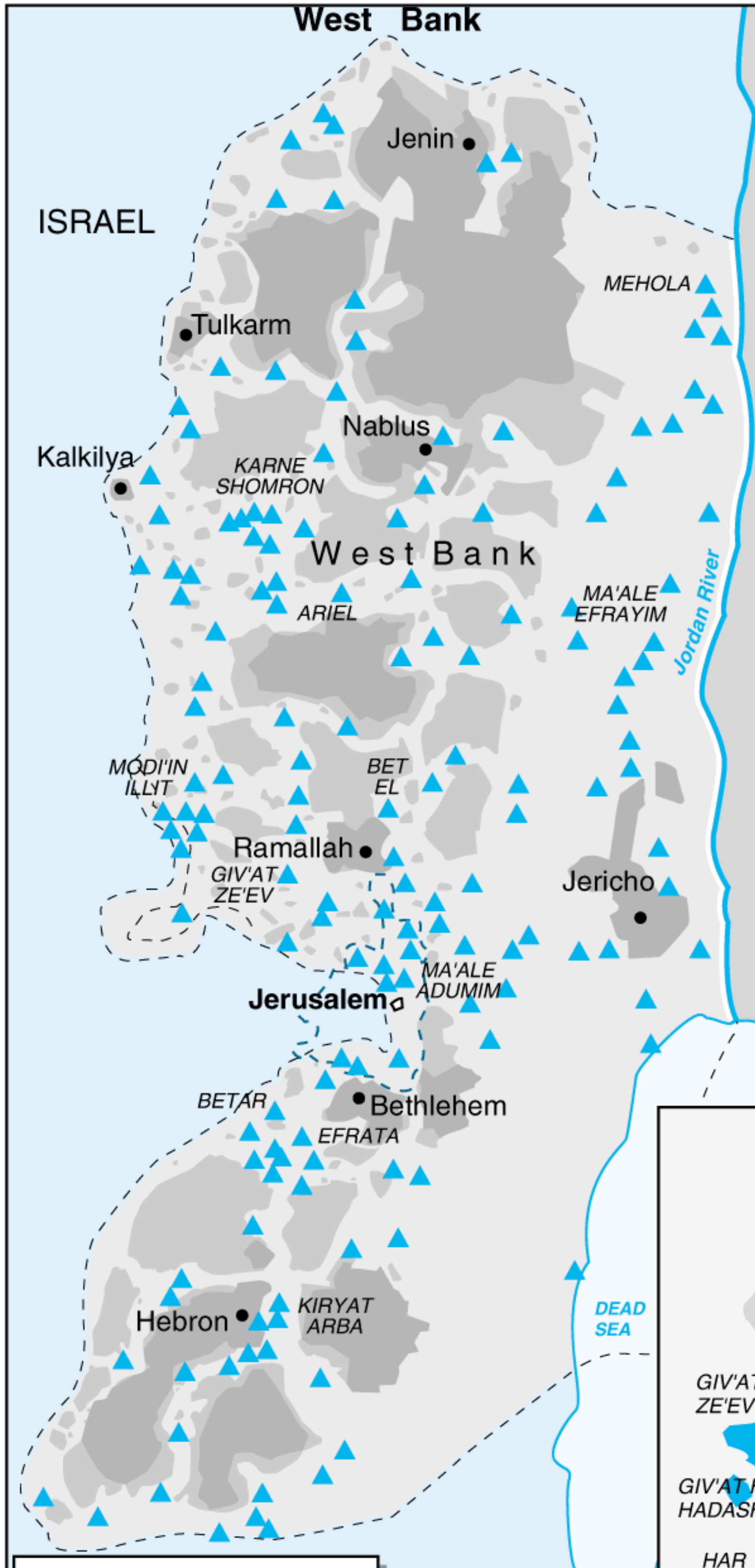
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# Israeli Settlements in the Occupied Territories - 2002



reach a permanent agreement on a border, they had to deal with an area in which Palestinian cities, town, and villages were often surrounded and separated by Israeli settlements and roads.

The Government of Israel has used legal ruses to confiscate Palestinian land for settlements. It has allocated hundreds of millions of dollars annually for the development and expansion of settlements in occupied territories. Settlement construction fluctuates between 2,000 and 5,000 housing units each year. By the end of 1985, the settler population in the West Bank and Gaza stood at 42,000, a 100 percent increase since 1982. By 1990, it stood at 76,000. In addition, 120,000 Israelis had settled in East Jerusalem, 10,000 more were in the Golan Heights, and 3,000 lived in Gaza.

### Settlements and the Oslo Agreements

The 1993 and 1995 Oslo Agreements did not expressly prohibit expansion of settlements and deferred negotiation of borders and settlements until final status talks to be held by 1996. However, they preserved the “integrity and status” of the West Bank and Gaza during the interim period. Nevertheless, settlement construction continued and the population in the West Bank and Gaza doubled again. As of February 2002, there are 400,000 Israelis living in occupied territory. In the West Bank, there are 206,000 Israeli settlers and 2 million Palestinians, although settlements, adjacent confiscated land, settlement roads and other land controlled by the IDF cover 59 percent of the area. In the Gaza Strip, 7,000 settlers control 20 percent of this 140 square mile area amidst about 1.1 million Palestinians. There are 170,000 settlers in East Jerusalem and 16,000 in the Golan Heights. Many Israeli settlements in the West Bank are strategically located to command access to the main aquifer underlying the West Bank and Israel. Settlers consume six times more water per capita than Palestinians.

### American Policy Toward Settlements

Until the early 1980’s, the U.S., like all other states except Israel, viewed Israeli settlements as a violation of the Fourth Geneva Convention. After President Reagan declared that settlements were not “illegal,” in contrast to previous U.S. policy, the U.S. took no legal position on settlements, although all subsequent administrations have opposed settlements as an obstacle to peace. No U.S. administration has been able to persuade Israel to halt or significantly slow settlement growth.

In December 2000, President Clinton proposed borders for a Palestinian state encompassing 94–96 percent of the West Bank that would have required abandonment of scores of settlements, but allowed the retention of large bloc settlements near the Green Line in exchange for swaps of Israeli land to the new Palestinian state. Clinton’s proposals became moot after the elections of Prime Minister Ariel Sharon and President George W. Bush. The Bush administration has made no

proposals for resolving the problem.

### Policy of Israeli Prime Minister Ariel Sharon

Prime Minister Ariel Sharon, who has devoted his career to expanding settlements, has built 25 new settlement outposts since his election in January 2001. The Mitchell Plan, which is designed to bring about a cease-fire in the current uprising and a return to negotiations, calls for a “freeze” on settlements. Sharon has nominally accepted a freeze, but has reserved the right to continue “natural growth,” a formula that Israel has used in the past to mask settlement expansion. Sharon has accepted the concept of a Palestinian state, but only in 42 percent of the West Bank and Gaza, the area that is now under Palestinian administrative control. Sharon has said that Israel will not abandon any settlements.

### Settlements vs. Peace

Today, there is no prospect for a viable Palestinian state in the West Bank and Gaza without abandonment of most Israeli settlements. Palestinian negotiators have indicated that if there were agreement in principle that the borders of the Palestinian state are defined by the 1967 Green Line, including East Jerusalem, they would be willing to discuss border adjustments. Such an arrangement might cede to Israel large, heavily populated settlements located near the Green Line in return for Palestinian annexation of equivalent areas of land on the Israeli side of the line.

In 1980 Professor Jacob Talmon of the Hebrew University in Jerusalem, a renowned Israeli authority on Zionism and nationalism, wrote an open letter to Prime Minister Begin calling for an end to Israel’s policies of occupation and settlement. Foreshadowing the current violent confrontation between Palestinians and Israelis, Talmon said, “The combination of subjection, national oppression and social inferiority is a time bomb” for the future of Israel. He urged Begin: “Let us not compel the Arabs to feel that they have been humiliated until they believe that hope is gone and they must die for Palestine.”

Talmon’s warning was prophetic. If the settlements remain, as Sharon intends, blocking the creation of a viable Palestinian state, the outcome will be chronic civil war. Today, majorities in both societies support the concept of two states. Palestinians are unlikely to abandon their struggle for a sovereign state of their own, and no Israeli government is likely to attempt to “transfer” Palestinians, although one party in Sharon’s coalition advocates this. Israeli demographers predict that the fast-growing Arab population in Israel and the territories will exceed the Jewish population by 2020. Thus, if Israel is determined to preserve both a Jewish state as well as its settlements in the territories, it must continue to use military force to repress and dominate a hostile Palestinian populace that within this century will outnumber the Jews. Such an outcome would perpetuate violence, deny security for Israel, prevent justice for Palestinians, and corrupt and destroy Israel’s character as a democratic state. ♦

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## SHORT TAKES

Unless there is willingness in Israel to change its mentality or to evict settlements, and not only the isolated ones; unless Israel seriously considers going back to the 1967 borders—some minor adjustments here and there will be fine—then the conflict will continue for a very long period of time.

No Palestinian leader in his right mind will ever accept a situation in which Israel can keep its settlers happy and achieve peace.

Khalil Shikaki, Associate Professor of Political Science at Bir Zeit University and Director of the Palestinian Center for Policy and Survey Research in Ramallah, in *Palestine-Israel Journal*, Vol. VII, No. 3, 4, 2000

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Every time I have gone to Israel in connection with the peace process on each of my trips I have been met with the announcement of new settlement activity. This does violate United States policy. It is the first thing that Arabs—Arab governments—the first thing that Palestinians in the territories—whose situation is really quite desperate—the first thing they raise when we talk to them. I don't think there is any greater obstacle to peace than settlement activity that continues not only unabated but at an advanced pace.

U. S. Secretary of State James A. Baker  
May 22, 1991

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A cessation of Palestinian-Israeli violence will be particularly hard to sustain unless the Government of Israel freezes all settlement activity. The Government of Israel should also give careful consideration to whether settlements that are the focal points for substantial friction are valuable bargaining chips for future negotiation or provocations likely to preclude the onset of productive talks.

Report of the Sharm el-Sheikh Fact-Finding Committee  
(The Mitchell Report) May 20, 2001

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The Sharon Government, with the backing of the Labor Party, is continuing the settlement policy in the territories. The creation of new settlements inflames the conflict with the Palestinians and endangers more Israeli soldiers and civilians. The settlements policy also jeopardizes Israel's position in the new world constellation formed in the wake of the World Trade Center and Pentagon attacks. The Settlements are an obstacle to any future agreement, and, as in the past, the settlers are endangering Israel's security and leading us on a suicidal path.

Prof. Arie Arnon, Peace Now Update, October 4, 2001

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The settlements established in these territories through miserable decisions by all the governments of Israel, are draining the economy, undermining social solidarity and creating huge and harmful gaps between the settlers—who are granted encouragement and benefits by the government—and the citizens who live within the Green Line and carry a heavy burden. The injuries to innocent civilians, the unbearable delays at the roadblocks, the humiliation of hundreds of thousands of human beings, the insolent construction of new settlements—these are the bitter fruit of the occupation of the territories. The occupation is not only eroding the ability of the sovereign state to defend itself, and is not only undermining its moral standing in the eyes of the world, but is also splitting Israeli society. It is retarding its development and sowing violence and hatred within it.

*Ha'aretz*, Editorial, February 15, 2002

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The Six-Day War was forced upon us; however, the war's seventh day, which began on June 12, 1967 and has continued to this day, is the product of our choice. We enthusiastically chose to become a colonial society, ignoring international treaties, expropriating lands, transferring settlers from Israel to the occupied territories, engaging in theft and finding justification for all these activities. Passionately desiring to keep the occupied territories, we developed two judicial systems: one—progressive, liberal—in Israel; and the other—cruel, injurious—in the occupied territories. In effect, we established an apartheid regime in the occupied territories immediately following their capture. That oppressive regime exists to this day.

This is the harsh reality that is causing us to lose the moral base of our existence as a free, just society and to jeopardize Israel's long-range survival. Israel's security cannot be based only on the sword; it must rather be based on our principles of moral justice and on peace with our neighbors—those living next door and those living a little further away. An occupation regime undermines those principles of moral justice and prevents the attainment of peace. Thus, that regime endangers Israel's existence.

Michael Ben-Yair, Attorney General, Israel  
1993–1996, *Ha'aretz*, March 3, 2002

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The only way for Israelis to have security is, quite simply, to end the 35-year-old occupation of Palestinian territory. Israelis must abandon the myth that it is possible to have peace and occupation at the same time, that peaceful coexistence is possible between slave and master. The lack of Israeli security is born of the lack of Palestinian freedom. Israel will have security only after the end of occupation, not before.

Marwan Barghouti, General-Secretary of the Fateh Party  
(West Bank), *The Washington Post*, January 16, 2002

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## SETTLEMENTS AND INTERNATIONAL LAW

### UN Security Council Resolution 465 of 1980

5. *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, including Jerusalem, or any part thereof, 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 relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the

Middle East.

The Fourth Geneva Convention, to which Israel is a signatory states that "the Occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies".

**The Rome Statute of the International Criminal Court** (1998) defines "the transfer directly or indirectly by the Occupying power of parts of its own civilian population into the territory it occupies" as a **War Crime** indictable by the International Criminal Court. ♦

### SETTLEMENT FACTS

Number of settlements in the West Bank (5,640 sq. km.): 130

Number of settlements in the Gaza Strip (360 sq. km.): 16

Number of settlement areas in East Jerusalem: 11

Number of settlement areas in the Golan Heights: 33

Total settler population in the West Bank and Gaza Strip

1972: 1,500

1983: 29,090

1992: 109,784

2001: 213,672

Total settler population in East Jerusalem:

1972: 6,900

1992: 141,000

2000: 170,400

Total settler population in the Golan Heights: 17,000

Palestinian population:

■ 2 million in 650 locales in the West Bank (including 200,000 in East Jerusalem)

■ 1.1 million in 40 locales in the Gaza Strip

An estimated 100,000 Israelis, comprising 50 percent of the settler population, reside in eight settlements. The average population in the remaining one hundred forty settlements is 714.

Built-up settlement areas occupy 1.4 percent of the West Bank's 5,640 sq. km. Settlement boundaries enclose almost 10 percent of West Bank territory. In addition, with the outbreak of the al-Aqsa intifada in September 2000, Israel appears to

be planning "no-go" areas between 70 and 500 meters wide around each settlement and every military installation in the occupied territories.

According to the YESHA Council, 3,000 settlers—comprising 1.5 percent of the settler population of 200,000—in the West Bank (excluding East Jerusalem) and the Gaza Strip—moved out of the settlements during 2001. This exodus was more than compensated for by natural increase and an influx of new residents, enabling the settler population to grow at a rate of 5 percent.

On August 12, 2001, *Ha'aretz* reported that the settler departure rate had exploded to 5 percent—or 10,000 people. A typical annual rate is 1 percent.

At least 360 Palestinian homes were demolished in the Gaza Strip by the IDF during the first year of the intifada. Since October 2000, Israeli authorities have demolished more than 200 houses in the West Bank.

In September 1993, there were 32,750 dwelling units in the West Bank and Gaza Strip settlements. Between 1993 and July 2000, construction was initiated on an 17,190 units.

Settlers in the West Bank, Gaza Strip, and the Golan Heights received government mortgages during 2000 at a rate more than twice the national average. There were 16 new mortgages for every 1,000 settlers during the year 2000, compared to 6 per 1,000 Israelis.

Israel has uprooted 5.5 sq. km. of Palestinian orchards and destroyed 4.5 sq. km. of field crops. ♦

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