

The Fight over the Settlement Construction Freeze

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On Wednesday evening, November 25, 2009, in a hastily arranged press conference, Prime Minister Binyamin Netanyahu announced a ten-month freeze on all new construction in Judea and Samaria (the West Bank). The prime minister clarified that the freeze would not apply to construction that had already begun (where the foundation had already been laid), to the 2900 housing units for which permits had recently been issued, to essential public buildings, or to construction within the city limits of Jerusalem. The dramatic announcement by the prime minister culminated six months of tough, behind the scenes negotiations between the United States and Israel and temporarily suspended the tension between the two countries.

The Building Moratorium in the West Bank

The origin of the unprecedented settlement construction freeze lies in the first meeting between then-newly elected President Barack Obama and the Israeli prime minister, Binyamin Netanyahu, which took place in Washington on Monday, May 18, 2009. At that meeting, President Obama surprised Prime Minister Netanyahu by demanding a complete freeze on any and all new construction in the settlements in the West Bank and East Jerusalem. The prime minister was clearly taken by surprise by such a far reaching demand by the president, especially at their very first encounter; people in his entourage even claimed that the prime minister was the victim of an “ambush” by President Obama. Mr. Netanyahu responded that he could not accept such a demand and indeed could not be expected to accept

a demand to which no other Israeli prime minister had ever agreed, but that he was perfectly willing to live by the understandings on the settlement construction issue reached between President Bush and Prime Ministers Sharon and Olmert.

The Israeli position was that according to the understandings previously reached between Israel and the United States, Israel would not establish any new settlements or expropriate private land, but would be entitled to undertake new construction in existing settlements in order to meet the needs of “natural growth,” it being understood that for the most part such construction would be concentrated in Jerusalem or in the large settlement blocs that presumably would eventually be incorporated into Israel. However, whether such an understanding was indeed ever reached is an open question. Many voices in the United States as well as in Israel claim that this understanding was subject to the demarcation of the actual “building line” of each settlement – something that Israel never did. Others believe that any understanding regarding future settlement activity was subject to Israel’s fulfilling its part of the understanding, namely the removal of 26 unauthorized outposts constructed after March 2001 – another action that Israel did not perform. In any case, President Obama rejected the Israeli position and reiterated his demand for a total settlement freeze. The meeting ended without agreement and on a sour note.

In the aftermath of the unsuccessful meeting between the two leaders, tension between the two countries rose. Secretary of State Hillary Clinton publicly denied that any understandings existed between the United States and Israel with regard to settlement construction. This led to further recriminations between the parties. Key officials of the previous administration, such as Deputy National Security Advisor Elliot Abrams, publicly contradicted Secretary Clinton, claiming that the United States was indeed backtracking on previous understandings with Israel. As the controversy evolved, the crisis deepened.

Eventually, cooler heads prevailed. The Americans seemed to realize that an open-ended, complete, and total construction freeze, including in East Jerusalem – which in Israeli eyes is sovereign Israeli territory and part of its capital – is something that Mr. Netanyahu, and indeed no Israeli prime minister, could possibly accept. The Israelis realized that the

Americans were serious, that former understandings or the readiness of previous administrations to look the other way was not acceptable to the Obama administration, and that Israel would have to accept some form of construction moratorium in the West Bank.

As a result, the parties agreed to commence behind the scenes, clandestine negotiations between the prime minister's trusted advisor, advocate Yitzchak Molcho, and the president's special envoy for Middle East peace, Senator George Mitchell, in order to find a mutually satisfactory arrangement. Given the sensitive nature of the issue, the efforts toward such an arrangement lasted for close to six months. This should come as no surprise. No previous government or prime minister in Israel had ever agreed to publicly declare a complete freeze on housing construction in settlements throughout the West Bank. The sole exception was Prime Minister Menachem Begin's agreement, at the signing of the Camp David accords with Egypt in September 1978, to freeze all settlement construction in the territories for a period of three months. However, this sole precedent should be seen in its proper context: it occurred over thirty years ago, at a time when there were barely a few thousand Jewish residents of the territories – not the 300,000 people in the West Bank alone as is the situation today. Moreover, Mr. Begin's concession was overshadowed by the euphoria of the Israeli-Egyptian peace agreement and was indeed limited to three months. Thus for Israel, and especially for the current prime minister and his government, agreeing to a settlement construction freeze was quite a difficult challenge.

The key question here is what prompted the change in American policy that led President Obama to put such emphasis on the issue of the settlements. There is no single answer to this question. Some believe that the Americans simply became fed up with what they viewed as Israeli antics and lack of credibility regarding the whole settlement construction issue or that they wanted to put an end to Israel's foot dragging with regard to its oft-repeated commitment to remove the 26 unauthorized outposts. Others believe that as part of Obama's agenda for an overture to the Islamic world, the new administration wanted to demonstrate a more even-handed approach to the Israeli-Palestinian conflict and chose an issue they believed would invite significant support among public opinion.

That the settlements are not popular with the American body politic or the American Jewish community, or even among many Israelis, has long been documented. In a public opinion study conducted in May 2009 by INSS, as part of its National Security and Public Opinion Project, a representative sample of the adult Jewish population in Israel was asked whether the settlements should be expanded even at the price of a confrontation with the United States. Forty-two percent said that the settlements should not be expanded, 41 percent responded that the settlements should be expanded but not if it would lead to a confrontation with the United States, and only 17 percent were of the opinion that the settlements should be expanded regardless of the United States position. What the administration overlooked, however, was that once the settlement issue was put in the context of a major confrontation between America and Israel, and President Obama was seen as adopting a pro-Palestinian position, the Israeli public, as would be expected, rallied behind the government and the prime minister.

By early November 2009, the United States and Israel had come to an understanding as to the parameters of a limited freeze – both in time and in scope – on construction in the settlements, to be announced unilaterally by Israel. The understanding reflected considerable compromise by both parties and included the following main components:

1. The government would impose and enforce a freeze on new housing construction in all the settlements in the West Bank for a period of ten months – this being a compromise between six months as suggested by Israel and a year or more as requested by the United States.
2. The freeze would not apply to ongoing construction, defined as all buildings for which the foundations had already been laid and completed, nor would it apply to the approximately 2,900 housing units for which permits had recently been issued.
3. The freeze would not apply to public buildings such as schools, synagogues, health clinics, and other such edifices that were necessary to meet the needs of natural growth in the various settlements.
4. The freeze would not apply to East Jerusalem, where no restrictions would be put on future construction.

5. The United States would welcome Israel's unilateral announcement, portraying it as a significant and unprecedented step by Israel, although falling short of American expectations and wishes.

Upon reaching the above understanding with the United States, the prime minister turned his attention to the home front and internal political constraints. Even while the negotiations between Israel and the United States were underway, the prime minister likely devoted a great deal of effort to garner support within his party and within the coalition for the eventual agreement. In this endeavor, Mr. Netanyahu was highly successful, even beyond most people's expectations. To a certain degree, the prime minister also built on the element of surprise. Thus while during the entire six month period between the initial Netanyahu-Obama meeting and the announcement of the construction freeze there were constant leaks regarding the talks, nothing definitive or conclusive was made public.

On November 25, 2009, Prime Minister Netanyahu presented the understanding reached with the United States for a temporary freeze of housing construction in the West Bank to the 15-member ministerial Committee on National Security, otherwise known as the cabinet. The committee approved the prime minister's proposal by a vote of twelve to one. All the ministers from Mr. Netanyahu's party (including the two foremost right-wingers – former IDF chief of staff Moshe Yaalon and Benny Begin) as well as all the Labor party ministers and two of the three ministers from the right wing Yisrael Beiteinu party (including its leader, Foreign Minister Avigdor Lieberman) supported the prime minister. Only Uzi Landau of Yisrael Beiteinu – its most right wing minister – voted against, while the two members (Eli Yishai and Ariel Attias) from the ultra-Orthodox Shas party absented themselves from the meeting.

Within hours of the cabinet decision, strong statements from the office of the defense minister and the office of the Civil Administration in the Territories (who is under the authority of the defense minister) emerged regarding strong steps that would be taken to guarantee full implementation of the government's decision on the construction freeze. These statements were indeed subsequently followed by visits of inspectors from the Civil Administration to almost all the settlements in order to hand out legally binding orders calling for a freeze on all new construction and to assess the

situation on the ground in each of the settlements. The main reason for this burst of activity was the desire of the Israeli government to demonstrate to the United States that it was serious regarding the construction freeze and that it was not playing games (as many claimed it had done in the past). An additional factor was the desire of Defense Minister Barak to use the opportunity to deflect the serious and vocal criticism within his own party for continuing to be part of a right wing government.

The Domestic Response

The decision announced by the prime minister and the highly visible and publicized activity that followed resulted in protests by right wing back-bench MKs of the ruling Likud party and other coalition members, the settlement movement (first and foremost its official organ – the Judea and Samaria Council), and other representatives of the right throughout the Israeli public. Although the rhetoric was at times quite extreme and in many settlements residents physically and sometimes even violently opposed the work of the inspectors, attempting to prevent their very entry into the settlement, in the final analysis the opposition remained little more than howls of protest. The settlers claimed that the decision was illegal, illegitimate, and a clear violation of the promises Mr. Netanyahu had made prior to the elections. They organized demonstrations, acts of non-compliance, and civil disobedience, and even brought an action against the government in the Supreme Court – a petition the Supreme Court rejected, although it compelled the government to grant monetary compensation to individuals (families or contractors) who were financially harmed by the construction freeze (a sum of 150 million NIS was appropriated by the Treasury for such compensation). Nevertheless, in reality and in Israeli terms, the protest barely got off the ground.

There were a number of reasons for this phenomenon. First, the fact that the foremost supporters of the settlers and the settler movement in the government supported the freeze took the wind out of the sails of protest. Indeed, Benny Begin, son of the former prime minister Menachem Begin, even appeared on television in support of the government's decision. Second, it was quite clear that the government enjoyed wide public support for its action. Again, in the INSS public opinion survey of May 2009,

almost half of Israeli Jews were firmly opposed to further construction in the settlements and less than one fifth supported continued construction under any circumstances. In a public opinion poll conducted by Dahaf and reported in *Yediot Ahronot* on March 19, 2010, 44 percent of the Israeli public supported an extension of the construction freeze in the settlements, while 46 percent were opposed. Clearly the majority of the Israeli public was willing to go along with a temporary settlement freeze, especially as it was presented as an act designed to prevent a crisis with the United States.

The main reason for the limited protest, however, was that the West Bank residents themselves did not view the temporary freeze as something that they could not live with. Indeed, had they believed the prime minister's promise that the freeze was indeed temporary and would end on September 25, 2010, there would likely have been even less protest. Given the circumstances of the construction freeze – continuation of construction already underway above foundation level, beginning construction on 2900 new housing units, and almost no moratorium on construction of public buildings, the residents could tolerate such a freeze not only for ten months but for a year and even beyond. What most aroused them, therefore, was not the temporary freeze itself, rather their grave concern that the freeze was merely a harbinger of more drastic steps to come, namely, a permanent construction freeze and eventually an evacuation of certain settlements.

Proponents of the settlements do not trust Binyamin Netanyahu, especially after his public acceptance in June 2009 of the “two states for two peoples” formula. They still have not fully recovered from the trauma of the great betrayal – as they view it – of their mentor and spiritual father, Ariel Sharon, and they have always been suspicious of Netanyahu who, unlike Sharon, was not seen as genuinely “one of their own.” There were voices within the leadership of the settlement movement that expressed concern that if the temporary freeze was not vehemently opposed, Netanyahu would feel free, presumably under American pressure, to further curtail settlement activity and take even more far reaching steps. In the end, the settlement movement decided to undertake a vociferous protest campaign in the political and public arena as well as on the ground, but not to cross red lines and not to burn their bridges with Netanyahu.

On the ground, the construction freeze has by and large been implemented. Since the freeze applies to over 100 settlements and given the lack of cooperation and even resistance by the residents themselves, it would be unreasonable to expect full, air-tight implementation. Nevertheless, the government and especially the defense establishment did make a serious effort to implement the freeze, and with fairly good results. Stop-work orders were issued for over 400 buildings, and over 40 vehicles – mainly tractors – were confiscated.¹

Ongoing Bilateral Tensions

If many in Israel, and first and foremost the government itself, believed that the crisis in American-Israeli relations had more or less ended or at least subsided, they were in for a rude awakening. In less than four months, it became quite clear that the crisis was very much alive and kicking. On March 8, 2010, Vice President Biden began an official visit to Israel, a visit that was supposed to signify the infusion of a new atmosphere. In reality, the visit had the exact opposite effect. The day after Mr. Biden arrived and began to issue what was planned to be a series of declarations of support for Israel and confirmation of the strong and unbreakable ties between the two countries, the District Planning Board of Jerusalem issued a press release announcing its decision to approve the construction of 1,600 new apartments in the Jewish neighborhood of Ramat Shlomo, located in East Jerusalem. The American reaction was immediate and extreme and left no doubt as to the depth of the crisis between the two countries. All the attempts by the prime minister to publicly apologize for the “mishap” and to explain that this was a bureaucratic and not political decision of which he was not even aware were of no avail. The United States did not suffice with public condemnation of Israel’s action but in a tense thirty minute telephone conversation with Netanyahu, Secretary of State Hillary Clinton issued a series of demands from Israel, which reportedly included a demand for a four-month moratorium on all housing construction in East Jerusalem. On March 23, Netanyahu met for close to three hours with President Obama at the White House – a meeting that by all indications was tense and failed to result in any agreement.

Once again, it is hard to know what exactly is behind the American policy, what its real objectives are, and where it is heading. Again, East Jerusalem was not included in the settlement freeze. Nevertheless, what evidently caused the extreme American response was the sheer scope of the building plan, and the blatant embarrassment caused by announcement of the grand project during the goodwill visit of Vice President Biden. At the same time, in this case the administration did not choose an “easy” issue in terms of public opinion, rather an issue on which there is a consensus in Israel as well as among American Jewry, namely, Jerusalem. Indeed, it was the issue of Jerusalem that galvanized noted American Jews, including Elie Weisel and prominent Democratic senators, to come to Israel’s defense and criticize the administration. Do the American actions mean that the administration is ready for an all-out fight with Israel? The events of the last days in April and May suggest otherwise. It seems that once again both sides are making a concentrated effort to calm the situation. The opening of proximity talks between Israel and the Palestinian Authority is certainly a major step in this direction. Nevertheless, it would be naive to believe that the profound crisis in American-Israeli relations is over.

The moment of truth regarding the settlement freeze will come on September 25, 2010, i.e., at the end of the ten-month moratorium. If at that time there are no serious negotiations between Israel and the PA or such negotiations will have reached an impasse, Mr. Netanyahu will, in all probability, declare an end to the settlement moratorium – as he publicly promised to do. If on the other hand the parties are in the midst of serious negotiations, with a strong and highly visible American involvement, Mr. Netanyahu will find himself in a highly sensitive situation, poised between Scylla and Charybdis. A formal declaration of an end to the construction freeze would almost certainly result in the Palestinians immediately breaking off the negotiations, which would lead to a major confrontation with the United States. An extension of the settlement freeze would have far reaching domestic consequences for the prime minister. It would question his credibility, endanger his coalition, fuel a revolt in his own party, and bring about a total rift with the settlement movement and with large segments of the right wing.

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How will the prime minister solve this dilemma? There is always the possibility that Mr. Netanyahu will not formally extend the moratorium but at the same time will, in effect, prevent any new construction in the settlements. There are even reports – albeit strongly denied by Netanyahu – that this is the de-facto arrangement he reached with the United States regarding East Jerusalem. Such an option, however, necessitates a very tight rope for the prime minister to walk on.

Note

- 1 Amos Harel, “150 Million NIS Allotted for Construction Freeze Compensation,” *Haaretz*, March 21, 2009.