

Dividing the Land, Not the People:

Lessons from the Givat HaUlpana and Migron Evacuations

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Introduction

The two-state political framework presumes that borders between the two nation states of Israel and Palestine will ensure the future of Israel as a democracy that preserves a Jewish majority for generations to come. According to recent surveys, at least 65 percent of Israelis support this principle.¹ The separation from the Palestinians, either as a result of a bilateral agreement or a unilateral Israeli decision, will require mass evacuations of Jewish settlements in the West Bank located outside the large settlement blocs, even in the face of opposition by settlement residents and others. In order to preserve national unity, it is necessary to prepare now for the contingency and implications of such evacuations.

For decades the Israeli government has avoided taking a clear cut stance on the settlements in the West Bank, and at first glance the issue hardly seems to be the most burning item on the public agenda. However, at political crossroads – like the disengagement or negotiations with the Palestinians – the issue rises fully to the surface and shapes the worldviews of influential circles in society.² The government's abstention from taking a position affects Israel's ability to define national values and defend, promote, and use them when faced with political and strategic constraints from within and without. The question is whether or not Israel is able to resolve this issue without descending into an internal conflict or without inciting delegitimization against it on the international arena.

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The United States and the international community view the settlements as a hindrance to peace, and on this basis criticize Israel harshly. From the domestic Israeli perspective, the Israeli settlements in the West Bank often reflect a clash of two different worldviews, each of which has a different narrative in terms of the nature of the regime, the status of the rule of law, the borders of the state, and society's desired norms. This clash places ethical and normative challenges on the doorstep of the Israeli government, the IDF, and the defense establishment, including subversion and the refusal to carry out orders. The tensions between the groups are liable to spill over into actions similar to the "price tag" phenomenon – a local threat with far-reaching implications.

The issue of the settlements, and in particular those outside of the large settlement blocs, often generates practical friction and represents a clash of values, as follows:

- a. The settlements reflect the tension between social groups on issues of borders, national identity, and independence (legitimacy of the government).
- b. They affect the distribution of national resources on security, economic, and social issues.
- c. They obligate the security establishment to formulate policy and responses in the face of extremist actions of one kind or another.
- d. It appears that the fear of a civil war is not viewed as a threat to governance in Israel. First of all, Israel is deemed a stable nation capable of confronting most points of friction between various sectors.³ Second, events such as the sinking of the *Altalena* (1948), Land Day (1976), the evacuation from Sinai (1982), the October riots (2000), and the disengagement (2005) prove that rival groups within Israel have not opted for separation or civil war,⁴ and demonstrate rather that during internal conflicts in Israel rival groups try to curb tension and temper friction.

A mass evacuation of settlements located outside the large settlement blocs and home to about 100,000 people will be necessary if future Israeli governments will seek (or be required) to implement a two-state solution. In order to avert domestic divides, the government must now seriously consider how to engage with the settlers on new terms and change the discourse with them, in order to expand public support for the two-state solution, define the evacuation as a unifying move rather than the abandonment of an important part of the Israeli population, and justify

enforcement and removal by force should these become necessary. In fact, the day the residents of the settlements are required to move to within the borders of the State of Israel – however these are defined – will be too late to properly plan their relocation and start the necessary national preparations.

The disengagement from the Gaza Strip and northern Samaria in 2005 exposed systemic flaws in many areas, especially related to acknowledgment of the legitimacy of government action and the democratic process. For various reasons, there was no dialogue between the government and the settlement residents to explain to them the rationale for the government's decision and help them confront the difficult challenge of abandoning their homes and communities on the basis of a government decision. The Israeli public did not receive a clear message from its government about the urgent, critical need for the disengagement, and was not asked to help the evacuees or mend the ensuing rifts in society. There was no suitable national multi-system preparation to help rehabilitate the civilians who were removed from their homes, preparation that should have included planning in the urban, employment, economic, communal, educational, psychological, and social spheres. The absorption of the evacuees forced to leave their homes lacked the empathy of the public at large and encountered a complex, exhausting bureaucracy.⁵ The security preparations were also deficient and failed to consider the outcome of the security vacuum created the moment the IDF withdrew fully from the Gaza Strip.

Two additional areas evacuated in the seven years since the disengagement, albeit on a smaller scale, were the Givat HaUlpana area of Beit El and the Migron outpost. Unlike with the 2005 disengagement, where most evacuees were relocated within the Green Line, residents were evacuated to nearby locations in Judea and Samaria. This essay examines the two evacuations in terms of the conduct of the various parties, including the political system, the media, and the state institutions and authorities. Alongside the lessons to be learned from the 2005 disengagement, analysis of these two evacuations affords additional insight into the issue of mandatory withdrawal from settlements, and invites conclusions regarding practical implementation of extensive evacuations in particular and further thought about resolution of domestic conflicts in general.

The Evacuation from Givat HaUlpana

From Construction to Evacuation

The Givat HaUlpana neighborhood made headlines in 2008 because of a petition to the Supreme Court, but the story began 12 years previously. In 1996, a terrorist attack near Beit El ended with the shooting deaths of Ita and Ephraim Tzur. After the murders, the Beit El Yeshiva Quarter Development Society received a promise from Prime Minister Benjamin Netanyahu and Defense Minister Yitzhak Mordechai that a neighborhood commemorating the victims would be built in that location. In fact, two neighborhoods were constructed: Maoz Tzur and Givat HaUlpana.

Construction began in 1998, although one of the plots was only bought in June 2000, in the midst of the construction work.⁶ State authorities questioned the transaction; according to the police, the actual owner was not involved in the deal. Moreover, the plots, which seem to have been falsely registered, were sold as state land.⁷ Therefore, as early as 2000, the state issued the first injunctions to stop construction and demolish the buildings already built, but these injunctions were not enforced.

The Legal Front

Subsequent work on the land prompted the Palestinian owners to appeal to the Israeli justice system. The NGO Yesh Din (Volunteers for Human Rights) petitioned the Supreme Court in the owners' name, demanding that the injunctions to stop work and demolish existing structures be enforced. The petitioners asserted that work at the site was illegal: the land was registered with the Land Registry Office, meaning their ownership of the land was indisputable; no government decision had been made about the site; and planning for the site was insufficient to acquire construction permits. Moreover, according to the petitioners, the Civil Administration was aware of the illegal construction as early as 2006, if not before.⁸

The state sided with the petitioners: it recognized the construction as illegal and added that the Beit El Yeshiva Quarter Development Society did not receive approval for the land purchase. In February 2011, the government also decided on a framework to end construction at the site on the basis of policy considerations, whereupon the Supreme Court was willing to give a one-year extension for the injunctions to be enforced. A few days before the end of the one-year extension, the state asked

the court to reconsider the petition. The court rejected the request and instructed the state to evacuate the houses by July 1, 2012.⁹

The Political Front

The Supreme Court's decision angered several government ministers and Knesset members, resulting in two bills being placed before the parliament. One bill proposed that any building constructed in Judea and Samaria with the help of any government agency whatsoever should be considered as having been constructed on state land. If it can be proved that the land is private, the owners will be able to demand compensation for the value of the land before construction.¹⁰ A second bill proposed to limit the period of time for demanding evacuations from buildings built on private land to four years. Afterwards, owners would only be able to demand compensation for the value of the land.¹¹

The discussion of the first bill elicited a great deal of acrimonious verbiage. The evacuation was described as persecution; some of the left wing MKs were accused of hating Jews; and the Supreme Court was called a dictatorship.¹² Eventually the bill was removed from the Knesset agenda. The following week, the Prime Minister decided on evacuating the buildings, thereby siding with the Attorney General's office and the State Attorney's office to oppose the attempt to enact laws to circumvent a Supreme Court decision. Some government ministers announced they would vote in favor of other bills to circumvent the court, even at the cost of being dismissed from the government.¹³

A discussion of the second bill took place on June 6, 2012, during which some MKs claimed that such a law would prevent the demolition of the houses at Givat HaUlpana and in other settlements in the future. Minister Benny Begin asserted the proposed legislation was problematic, as it defied a Supreme Court decision and was liable to place the state and the settlements in direct conflict with one another. This bill too was removed from the Knesset agenda.¹⁴

The Civilian Front and the Evacuation

The residents of the Givat HaUlpana neighborhood and their supporters began a public relations campaign in favor of legislation to circumvent the Supreme Court ruling. As part of this campaign they set up a protest tent and launched a hunger strike. Rabbi Zalman Baruch Melamed, head of the Beit El Yeshiva, called for "a resolute struggle, dedication, and

willingness to sacrifice,” and members of his inner circle promised the struggle would be worse than the one over the evacuation of Amona and would be joined by all who were faithful to the Land of Israel.¹⁵ These calls reached an attentive audience: independent ad hoc groups made plans to block access to Beit El and fortify the buildings in contention. In addition, a pamphlet called “A Practical Guide to Saving the Outposts and Hilltops in the Holy Land” called for “price tag” type acts of retaliation against IDF bases and Arab villages “to destabilize the security situation of the establishment.”¹⁶ As part of the “price tag campaign,” cars in Neve Shalom were set on fire.

Preparations for violent resistance to the evacuation occurred alongside negotiations with government representatives. The sides arrived at an understanding that in exchange for a non-violent evacuation, 300 new housing units would be built in Beit El; the disputed houses would be moved and reconstructed at a different site; and hundreds of housing units would be built throughout the West Bank. The formula proposed to the ministers by Rabbi Eliezer Melamed (the son of Rabbi Zalman Baruch Melamed) and others was simple: a public statement that ten homes would be constructed for every house evacuated in exchange for ensuring that the evacuation went smoothly. When the agreement was signed, the neighborhood residents said that the very fact of the evacuation was a failure, but they were willing to evacuate because they were peaceful people and feared a violent evacuation.¹⁷ The evacuation of the Givat HaUlpana homes began on June 26, 2012, and was completed two days later without incident.

The Evacuation of Migron

Migron’s story is similar to the Givat HaUlpana story in several regards: the way the settlement was established, the legal process, the state’s decision, and the residents’ conduct. Migron was built illegally in March–July 2002, without permits or approved plans. At first the IDF authorized settlers to erect a cellular antenna on private Palestinian land, subsequent to which the area was fenced in and a guard booth and electrical system were built with the approval of the relevant authorities. Soon thereafter it was decided – this time without authorization – to pave an access road and place prefabricated housing units there.¹⁸

The first petition to the Supreme Court on Migron was submitted in June 2006 by Peace Now, representing the Palestinian landowners, and

requested the court to instruct the state to evacuate Migron on the basis of “trespass and intrusion on private land without permission.”¹⁹ The state admitted the settlement was built illegally and agreed to evacuate it, but only on the basis of voluntary evacuation.²⁰ In other words, Migron would be evacuated in exchange for fair and appropriate compensation that would provide for the residents’ travail and allow them to maintain their routines of life and places of employment as much as possible after the evacuation. The stages of the agreement were formulated over the next few years, and in 2009 the state decided to move Migron to Geva Binyamin (Adam) north of Jerusalem. The Defense Ministry approved the construction of 1,450 housing units there, 50 of which were to be reserved for former Migron residents.²¹ The Migron residents, however, rejected the plan and insisted that the only site acceptable to them as both a temporary and permanent solution was Givat Hayekev adjacent to Migron.²² Construction work in Givat Hayekev was begun in April 2012.

The defense establishment offered residents help in moving their belongings while also preparing for a forced evacuation, if necessary. The key challenge lay in keeping right wing extremists away from Migron and interfering with the evacuation.²³ Concern that the evacuation would lead to “price tag” incidents prompted restraining orders issued against radical activists the day before the scheduled evacuation. Although the evacuation went smoothly,²⁴ the defense establishment failed to prevent “price tag” incidents, including graffiti and car firebombings. Also after the evacuation, the entrance doors to the Trappist Monastery in Latrun were set on fire and defamatory graffiti was spray-painted on the monastery’s walls. These acts of vandalism were followed by severe public condemnations, with the residents of Migron themselves declaring, “This is a prohibited action representing moral depravation.”²⁵

Lessons from the Two Case Studies

Insights

Channeling the disagreement of values to a legal framework reduced the friction but intensified the public and political debate. The fact that the media and the political system entered the fray exacerbated the tension. The government, the most important meta-player in the process, opted for a short term arrangement, which saw the formulation of a legal solution to a specific problem. The affair also demonstrated that dialogue is an effective tool for formulating consensual solutions.

By contrast, there was no attempt to deal with long term challenges, which are much more complex, and no policy on fundamental questions was formed. The solutions that left the evacuees in the West Bank will be impracticable in an evacuation of a larger scale, whether it is the result of a unilateral Israeli decision or a political settlement.

The Circumstances

The buildings in Givat HaUlpana and Migron were erected on private land, whose ownership was registered at the Israel Land Registry, and therefore the legal dispute occurred in the proper legal setting and the solution – evacuation – was made on the basis of law. The settlements evacuated were not built on Israel state land and were therefore subject to international law, which forbids the establishment of settlements on private land for non-security purposes. The state accepted this principle in the 1979 Elon Moreh ruling, which had instructed the state to evacuate the settlement because it was not built on the basis of security considerations.²⁶ On the other hand, these areas form part of the Land of Israel and, in the opinion of some of the settlers, the government has no authority to evacuate them and forfeit the land because of the sanctity of the Land of Israel.²⁷

From this perspective, while the evacuation of the settlements was debated through the narrow lens of the law, the issue reflects a clash of values between the state's authority and religious commandment. Subordinating the moral disagreement to a legal procedure reduced the intensity of the friction, helped by the attempt to settle the dispute on the basis of precedent and rulings (the Elon Moreh ruling and property rights) as well as spreading the legal process over a number of years, thereby obviating the necessity of Israeli society to confront opposing worldviews head-on.

The Actors

The Givat HaUlpana and Migron residents viewed their efforts to prevent the evacuation as a failure. Some of them linked the failure to the trauma of the 2005 disengagement – “the expulsion,” in their terminology – and the 2006 evacuation of Amona. The evacuation of Gush Katif and the four settlements in northern Samaria sparked a crisis in the religious Zionist community, and many settlers were impelled to reconsider their allegiance to the State of Israel versus the Land of Israel.²⁸

The most hawkish and messianic of the settlers claimed that Israeli democracy was now passé. Benny Katzover and Daniella Weiss said that “Israeli democracy has done its job and must now dissolve and turn the key over to Judaism,” and when Jewish religious law replaces the laws of the state there will be no more evacuations; thanks to the settlements it will be possible to maintain the integrity of the land and expel any non-Jewish “robber” from it.²⁹

Moving the dispute to the Supreme Court intensified the public and political debate and thereby invited participation by two additional meta-actors – the media and the political system.³⁰ Although they were not themselves parties to the dispute and did not have to pay any personal price, they were quick, as is their wont, to take the disputes out of their original contexts and reframe them in order to advance an agenda. They have often exacerbated tensions and heightened disagreement, and in general, the political system is the most prominent meta-actor in this context.

The evacuation of the settlers clashed with the worldview of several Knesset members and was liable to affect the support they received from their constituents. Therefore, some took the rhetoric on the issue to an extreme, declared their willingness to slight the rule of law, and turned a debate on a Knesset bill into a struggle between the “good guys” (the government, the right wing political parties, and the settlers) and the “bad guys” (the left wing political parties, the Supreme Court, the Palestinians, Peace Now, and Yesh Din).

Unlike these MKs, the government resorted to the principle of containment of differences while setting a threshold of tolerable damage. The government has encouraged the settlement enterprise and strengthened it at the expense of negotiations with the Palestinians, and is therefore the target of international criticism. On the other hand, it has tried to avoid violent situations such as the Amona evacuation and “price tag” incidents, as well as actions that are flagrant violations of the law. The legal system operated in a similar manner and provided a legal solution to a particular dispute. The conduct of both systems served as a pressure valve to contain tensions and reduce specific friction, but did not confront the real challenge: to solve an internal conflict for the long term in order to keep it from escalating.

Most of Israel’s secular Jews, traditionalists, and Arab population are additional actors. The question of the settlements in the West Bank does

not preoccupy them in their daily lives, but for many the settlements are a manifestation of inequality in terms of budgets, housing subsidies, and assistance given to the evacuees at taxpayer expense.³¹ This sense is heightened by the doubts and even opposition among some settlers to Israel's identity as a democracy. Most of the Israeli public does not view the settlers' actions as a direct threat to its way of life, but the desire of a minority of settlers to have religious law override secular law may make large segments of Israeli society into objects of delegitimization, defiance, and even violence.

The Interaction

The tension between conflicting perceptions exposed by the two incidents is liable to be aggravated in a situation of mass evacuation. The deterioration in relations between social groups as a result of evacuations will almost certainly damage Israel's resilience in internal and external arenas. This concern behooves the state to examine and formulate a national, systemic response while there is still time. The most important conclusion of studies on internal conflicts in a range of situations is that dialogue is an effective tool in creating consensual rules for shaping a shared solution.

Concluding Remarks

This essay has analyzed the Givat HaUlpana and Migron evacuations, which exposed some of the internal domestic tensions among state authorities and parts of Israeli society. These incidents did not escalate into violent physical crises, like some similar incidents in the past. The executive and judicial branches assuaged the tension, but formulated only local solutions rather than long term policies.

Issues linked to future evacuations of settlements bear the potential for high intensity domestic conflict, liable to assume major proportions if large scale evacuations are called for as the result of a political settlement or an unconditional government decision. At such a time, contrary and hostile worldviews will emerge that will challenge the central authority's ability to contain the inner tensions and deal with them. Such a flare-up is liable to have severe ramifications for Israel's national security.

The explosiveness of the settlement issue stems from its situation at the intersection of the three major rifts in Israeli society: the national (Jewish-Arab), religious, and political. This point of intersection is where

national values converge, including the country's national identity (a Jewish state versus the democratic nation-state of the Jewish people), the state's physical borders, and its governance system.

Many of the prominent actors portrayed in this essay use ideological and political disagreements on the evacuation of the settlements for their own purposes, and some are also willing to take it to the extreme. The essay reviewed the specific balancing and moderating functions of the judiciary (the Supreme Court) and the executive (the government). It showed that each branch, according to its mandate and the tools at its disposal, served as an arena of confrontation where the positions of the various actors interfaced in an effort to find a suitable balance between them. Moreover, both those who were directly involved (the settlers and the Palestinians) and the other actors ultimately accepted the rules of the game in these arenas and obeyed the solution that was formulated. It is thus possible to claim that Israel's governmental structure has so far been able to contain tensions stemming from ideological or political disagreement. Considering the growing polarization of Israeli society and a possible scenario of mass evacuations, it is clear that the judiciary and the executive will be critical in moderating the rising tensions, as indeed they have been in the particular cases reviewed here. It is doubtful, however, whether under acute circumstances and without comprehensive preparations ahead of time they will be able to prevent deterioration to inter-Israeli hostilities and, in a gloomy scenario, even further to the point of civil war.

The role of the government is especially important. It must promote national interests while also balancing internal tensions. The government would do well to embark on a future-oriented preemptive policy, to prevent an ideological-political dispute over settlement evacuations from turning into an open conflict. The key tool to implement such a policy is a deep, empathetic domestic dialogue seeking the common denominator among the contending groups. It must therefore take place among all groups in society and between them and the authorities. In addition, it must deal with Israel's long term national interests and must allow the government to adopt a proactive, independent policy.

The governments of Israel over the last two decades declared their support for the two-state solution and worked – some more so and some less so – to implement this principle, whether through negotiations or unilaterally. This strategic principle ensures a Jewish majority in an

effective democratic form of government and curbs the risk to the Zionist vision inherent in the form of a bi-national state and Arab insistence on the right of return. Mass evacuations of settlements beyond the large settlement blocs will be necessary if future governments of Israel seek (or will be forced) to implement in practice the derivative of the two-state principle. On the basis of lessons learned from the disengagement from the Gaza Strip, the day that settlers are called to return to the other side of Israel's borders, however they are drawn and whether through negotiations or by Israel's independent, unconditional decision, will be too late to plan their return in an appropriate manner and start the national preparations required.

To prevent a domestic flare-up, the government must seriously consider changing its dialogue with the settlers, partly to expand public support for the two-state solution and to shape the evacuation as a unifying step rather than as the abandonment of an important segment of Israeli society. This will make it easier to deal with the challenge of the evacuation. Absorption of the evacuated settlers must occur empathetically and honestly, out of consideration for them and their dignity. At the same time, the government must send messages to the rest of the public about the critical need for implementing the two-state solution and extending fair, effective assistance to the evacuees returning to the land under full Israeli sovereignty. These steps will help mend the social rifts that are the result of longstanding disagreement over the settlements.

A similar requirement to build trust based on dialogue and candid communication applies at the international level: Israel's policy must be closely and substantively coordinated with the United States. Regained confidence between Israel and the international community should allow, in turn, for resumption of negotiations with the Palestinians so as to reach at least partial or gradual arrangements with no preconditions affecting borders, security, the economy, and statehood; after these are achieved negotiations would continue on the two issues at the core of the conflict – Jerusalem and the refugees. Trust in Israel would be similarly enhanced once the Israeli government starts preparing ahead of time for unilateral steps on the domestic level that depend solely on Israel's initiatives and decisions so as to proactively advance a regional reality congruent with its declared policy. In this context, one may mention steps such as preparing a national program for integrating the evacuated settlers;

freezing construction east of the security fence and in Jerusalem's Arab neighborhoods; passing a law on voluntary evacuation, compensation, and absorption of Israelis living east of the fence; and planning the IDF's stay in the settlement areas and sites willingly evacuated so as to preserve operational freedom of action there.

Conducting an empathetic discourse with the settlers and other groups is currently not high on the government's agenda and little urgency is attributed to it. However, dialogue between those holding contradictory worldviews and positions is, no matter how complex, both crucial and possible. Such a dialogue, as part of a preemptive, dynamic and multidisciplinary policy designed to strengthen the legitimacy of the state and its actions and prevent a domestic conflict, requires rethinking traditional tools of conflict resolution taken from the fields of diplomacy and international relations. This is an effort that would require the participation of sociologists, political scientists, behavioral experts, psychologists, anthropologists, intellectuals, statespersons, public representatives, mediators, military personnel, security personnel, and the police. This is indeed a complex and complicated effort but it pales in comparison with the threat stemming from internal tensions, a threat no less potent than an external threat seeking to impact on national territory. Should evacuation by force be necessary, a comprehensive effort of discourse and internal preemptive preparation will lend legitimacy to the entire process.

Preventing a violent clash between hostile groups based on contradictory values requires additional study and analysis and an examination of the need to use integrative intellectual approaches, such as critical thinking and tools for analysis and policy planning, and the integration of methodologies familiar from conflict resolution. This will allow development of a deep, empathetic discourse to emerge and help mitigate loci of internal friction, and even possibly prevent the outbreaks of such conflicts.

Notes

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