

The United States and the Israeli Settlements: Time for a Change

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Introduction

The issue of the Jewish settlements in the West Bank has been a source of disagreement within Israel for over forty years. Some governments viewed them as a vital national interest, especially from a security standpoint. Others viewed the enterprise as the realization of an ideological and religious belief, and the historic right of the Jewish people to the land of its forefathers. Still others viewed the settlements as the price to pay for coalition constraints. But all Israeli governments have invested significantly in the project in various ways.

In parallel, the issue of the settlements has been a bone of contention between Israel and the United States since the end of the Six Day War. This issue has strained the relationship between the two allies perhaps more than any other topic.

Almost every administration tended to define the position of the United States on the Jewish settlements on the basis of two parameters: one, that the settlements are not legal, and two, that the settlements are an obstacle to peace. Two Republican administrations were notable exceptions. Ronald Reagan declared that he did not accept the position that the settlements were not legal (“they’re not illegal”¹). At the same time, he criticized the manner and pace of establishing the settlements and saw them as a provocation. The other exception was the George W. Bush administration, which formulated a set of comprehensive understandings with Prime Ministers Sharon and Olmert over the

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settlements. The meaning of these understandings was a limited, de facto recognition of the settlement enterprise, assuming, however, that any construction was based on a framework agreed upon by both Israel and the United States.

In hindsight, one may say that America's longstanding opposition to the settlement enterprise did not achieve its objective. In practice, the project continued and expanded, and seems to have created an irreversible territorial and demographic reality in the Middle East. Under these circumstances, perhaps the American administration might consider whether there is any value in continuing to express sweeping opposition to the settlement enterprise. Experience proves that international opposition in general and American opposition in particular to the settlement project, complemented by support among many circles in Israel, failed to stop this national venture. Therefore, the administration might question if and to what extent maintaining American opposition is liable to damage the status and prestige of the United States in the international community. More concretely, the inevitable question is: has the time come for a change in US policy on the issue of Jewish settlements in the West Bank?

Despite the awareness on the part of the US administration of its failure to stop the settlement project, it will almost certainly not condone or accept the enterprise outright. According to the outlook of all US administrations, the settlement project severely damages not only American interests but also the interests of the State of Israel – a position widely held among much of the Israeli public and political establishment. The American opposition, based on moral, legal, and political considerations, is shared and supported by the international community, which takes an even more extreme position on the issue than the United States. Therefore, the administration cannot be expected to come to terms with the full expression of the settlement project.

On the other hand, given that the US policy on the settlements is in practice not implemented, the administration must necessarily consider whether maintaining sweeping opposition is liable to harm United States international status and prestige. Significantly, since 1967, US administrations have resisted the option of escalating the disagreement over the settlements to the point of a rupture in relations with Israel and even imposing sanctions against it. Moreover, while any such pressure would be met negatively by Israel, it is far from certain that stopping the

settlement project would advance an agreement with the Palestinians. Issues much more difficult to resolve are on the agenda, including the Palestinian Authority's insistence on the "right of return" – at least in part – of Palestinian refugees; the division of Jerusalem and recognition of East Jerusalem as the capital of a Palestinian state; and the future borders of the Palestinian state, which would require dismantlement of settlements.

In this situation, therefore, the most reasonable and effective option is an administration effort to formulate a document of understanding with Israel about the Jewish settlements in the West Bank. Such a document would allow Israel to continue the project on the basis of an agreed-upon, limited outline. Its main points would likely mandate that Israel:

- a. reiterate its acceptance of the land for peace formula, the Oslo accords, and the two-state vision;
- b. make clear that the settlement enterprise will not impact on the delineation of the permanent border between Israel and a future Palestinian state;
- c. refrain from establishing new settlements and expanding the territorial area of existing settlements;
- d. focus its activities on the settlements located inside the large settlement blocs;
- e. limit construction within existing settlements for the purposes of natural growth and maintenance of normal life; and
- f. refrain from confiscating Palestinian land for the purpose of Jewish settlements and from providing incentives to Israelis to move into settlements.

The American administration would refrain from voicing opposition to Israeli construction throughout Jerusalem.

Such a formula for a document of understanding could be acceptable to both right and left wing Israeli governments. A largely similar document of understanding was in place between President George W. Bush and Prime Minister Ariel Sharon. There is no reason for the current American administration not to adopt it as well.

The United States and the Settlements: The Core Issues

Since the end of the Six Day War, every US administration has evinced negative positions on the settlement enterprise, emphasizing their questionable legality and their obstruction of peace efforts. Since 1981,

following President Reagan's assertion that he does not accept the illegality of the settlements, the administration focused primarily on the impact of the settlements on the peace process.²

Administration figures occasionally presented the settlement activity as representative of a tendency by both Israel and the Palestinians to act unilaterally; unilateral measures were deemed unacceptable. In a letter to the Palestinian leadership on the eve of the Madrid Conference (October 24, 1991), the administration linked its opposition to the settlements to an overarching opposition to unilateral conduct on both sides. Nonetheless, most of the cases of unilateral action mentioned by the administration were the settlements, without specific mention of unilateral action on the part of the Palestinians.³

Some statements by administration officials indicated that the administration's opposition to the settlements reflected not only American national interests but also vital Israeli national interests. Daniel C. Kurtzer, who served as US ambassador to Israel in 2001-2005, made the point very clearly (May 29, 2002). Relying to a great extent on accepted opinion among widespread circles on the Israeli left, he stressed that Israel's status and security would improve if and when it ended the settlement project: "Our opposition to the settlements is political. Washington feels that Israel would be better protected and more accepted inside borders where there are no settlements."⁴

President George W. Bush added another element to the administration's opposition to the settlements. In his opinion (May 24, 2006), the settlements created serious friction between Jews and Arabs and thereby contributed to an intensification of the hatred and violence in the region. President Bush's statement in this context was intended to justify his support of Prime Minister Sharon's disengagement plan and his fairly supportive position toward Prime Minister Olmert's convergence plan. He also stressed the importance of Israel working in agreement with the Palestinians and emphasized the dismantlement of settlements as a move capable of enhancing peace in the region.⁵

The political foundation for these and other positions on the settlements was laid a few months after the end of the Six Day War, when the settlement phenomenon was still in its infancy and its dimensions were limited. The Johnson administration made its position clear when it stated that the Israeli government must not operate in the territories it occupied during the war in a way that might prejudice peace efforts and

realization of the land for peace formula. Beyond this, the administration argued that such activity was in contravention of Paragraph 49 of the Geneva Convention, which states that an occupying force will not move its own population into the territory it occupies.⁶

Subsequent administration statements infused additional nuances. The Johnson administration, for example, tried on several occasions to draw a connection, albeit indirect, between the settlement issue and the Arab-Israeli conflict, specifically, Israel's sense that the Arab world aimed at Israel's destruction. Linking the settlements to the state of the conflict was almost certainly related to the decisions of the Khartoum conference (August 29-September 1, 1967), which expressed an extreme Arab position on reaching a political agreement with Israel, and the ongoing War of Attrition along the Suez Canal.⁷ Against this background, it is possible to understand President Johnson's assertion that it was Israel's responsibility to persuade the Arab world that it had no policy of territorial expansion by means of the settlements in the West Bank. At the same time, he demanded that the Arab world persuade Israel that it had abandoned thoughts of Israel's destruction. This statement may have implied an idea held by other administrations as well, namely, an understanding of Israel's "right" to continue its settlement policy as long as the state of conflict with the Arab world prevails and as long as Israel has reason to suspect that the Arab world still aims to destroy it.⁸

Some of the statements on the settlements raised the issue of the status of Jerusalem in general and of East Jerusalem in particular. One June 27, 1967, the Knesset voted in favor of Amendment 11b to the Law and Administration Ordinance, whereby "the law, jurisdiction and administration of the State shall extend to any area of Eretz Israel designated by the Government by order."⁹ This amendment allowed the government to apply Israeli law to East Jerusalem shortly thereafter. Concurrently, Israel started a process of accelerated construction in the eastern part of the city in order to give concrete expression to its sovereignty over the united capital.

The US administration had reservations about this activity, and stated repeatedly that East Jerusalem is part of the territory Israel occupied in the Six Day War and was to be treated no differently than any other area in terms of settlement. From the administration's perspective, all steps Israel takes in East Jerusalem, including at historic and religious sites, and the application of Israeli law to Jerusalem, are in contravention of

international law and harm the mutual interests of both Israel and the United States. In a speech on July 1, 1969, Charles W. Yost, United States ambassador to the United Nations under the Nixon administration, declared that “the administration regrets and deplors” the steps taken by Israel in East Jerusalem, since from the US perspective, East Jerusalem is part of the territory occupied during the Six Day War and all international laws regarding control of an occupied territory apply there too. The administration made it clear to Israel that such steps would not affect a decision on the city’s status in any future agreement.¹⁰

Limited Power of Persuasion

At the same time, many of the references by administration officials to the settlements have tended to downplay their importance to discussions of an Israeli-Palestinian settlement and have questioned the level of intensity with which the United States ought to oppose the phenomenon. This tendency stemmed from several understandings. First, with Israel determined to continue the settlement enterprise, the international community in general and the American administration in particular lacked any real power to stop Israel from realizing its intention. Second, the settlement issue was only one disputed issue among many between Israel and the Palestinians, and there was no point in making this issue the focus of the conflict. Third, if and when a permanent Israeli-Palestinian agreement were reached, Israel would be prepared to dismantle settlements and relocate their residents to other areas.

The legal advisor of the State Department during President Nixon’s term gave prominent expression to the sense of the administration’s limited power with regard to construction in the settlements. In April 1973, he made it clear that the administration’s position on the settlements was that Israel is obligated to act on the basis of the Geneva Convention in the territories. At the same time, he was quite candid in stating that Israel was in practice refusing to realize its obligations on the basis of that convention.¹¹

President Jimmy Carter, one of the most blatant opponents of the settlement enterprise, provided another example of the administration’s implied recognition of the limits of its power against Israel and the settlement project. On March 3, 1980, he said he was opposed to sharply worded anti-Israel formulations in resolutions by international organizations and their call to dismantle the settlements: “This call for

dismantling [settlements] was neither proper nor practical.”¹² To a large degree this position may have stemmed from the fact that Israel was then headed by Menachem Begin, a right wing ideologue. The President likely assessed that even subject to intense pressure Begin would refuse to heed a directive to dismantle the settlements, and any such resolutions would remain on paper only, unfulfilled by the Begin government. Were that to happen, it would compromise the status of the United States and its authority as a superpower.

On another occasion, President Carter made it clear that the United States did not have to engage in extreme rhetoric against the settlement phenomenon or support extreme resolutions against Israel because the United States had accepted explicit Israeli commitments, both public and secret, that the settlements were not the expression of an Israeli policy of annexation and that Israel accepted the fact that the borders would be determined through negotiations and a political agreement. Thus, on August 23, 1977 Carter went so far as to make it clear in public that the United States was not going to go beyond an “open expression of our own concern” and opposition to Israel’s moves on the settlements.¹³ This formulation implied that the issue of the settlements should not be highlighted as an obstacle to an Israeli-Palestinian agreement, because if and when the sides arrive at an agreement on borders, Israel would be prepared to withdraw from the required settlements. In later years, especially in the initial stages of the dialogue with the Obama administration, the Israeli government made much use of this assertion to stress its opposition to the Palestinian rejection of negotiations with Israel as long as the settlement phenomenon continues.

Expressions of helplessness in face of the expanding phenomenon of the settlements were also prominent during the tenure of George W. Bush. On May 1, 2002 Secretary of State Colin Powell said: “Something has to be done about the problem of the settlements, the settlements continue to grow and continue to expand....It’s not going to go away.”¹⁴ The statement was made during the height of the second Palestinian intifada, when suicide bombings were commonplace in Israel. The administration could seemingly have used this context to demand an end to the settlements in no uncertain terms, especially as the settlements were more than once portrayed as being a key reason for Palestinian violence. More than a year later, on September 21, 2003, Powell admitted that the United States had failed to stop the expansion of the settlements: “Settlement activity

must stop. And it has not stopped to our satisfaction.”¹⁵ On May 29, 2002 Ambassador Kurtzer expressed in a fairly extreme manner the impotence felt by the Bush administration in face of the settlement project: “It is a fact that we have opposed the settlements for decades and you continue to build them and we have done nothing untoward to you [in response]. If Israel wants, it can even expand to the borders promised in the Bible. The question is whether it is able to do so from a security and political standpoint.”¹⁶

Some officials, including President George H. W. Bush and Secretary of State James Baker, threatened Israel should it not put an end to the settlement enterprise, making loan guarantees to Israel conditional on an essential change in Israel’s settlement policy. In his March 3, 1990 speech, the President made it clear that the administration’s position opposed the establishment of settlements in the West Bank and East Jerusalem. He stressed that he intended to realize this position fully and would examine the extent to which “people” – i.e., Israel – “can comply with that policy.”¹⁷

Secretary of State Baker too adopted a harsh stance on the settlements. On May 22, 1991 he complained that every time he came to visit Jerusalem he was met with announcements of the establishment of new settlements. He interpreted this – with a large degree of accuracy – as an attempt to embarrass him. He was afraid, and justifiably so, that the lack of a vehement reaction by the administration to these announcements would almost certainly be seen as a demonstration of the administration’s weakness and fear of a conflict with the Israeli government. It would almost certainly have led Israel to accelerate the settlement project even more, to the chagrin of the American administration. In the end, he too found himself complaining about a reality he found difficult to change and spoke of “settlement activity that continues not only unabated but at an advanced pace.”¹⁸

The increasing intensity of Palestinian violence, especially early in the second intifada, placed the Israeli-Palestinian conflict, including the focus on the settlements, high on the global agenda. In examining the events that touched off the intifada in the fall of 2000, the report written by George Mitchell (April 30, 2001) stated that the settlements were a major source of Palestinian violence. It demanded a total freeze, including construction for the purposes of natural growth. According to the report, it would be very difficult to prevent a recurrence of Palestinian-Israeli violence unless the Israeli government stopped all settlement construction. The report

further determined explicitly that “the kind of security cooperation [with the United States] desired by the GOI [Government of Israel] cannot for long co-exist with settlement activity.”¹⁹

Shifts in Outlook

The first dramatic change in position with regard to the settlements occurred under President Reagan. On February 2, 1980, shortly after assuming office, Reagan declared that he does not accept the common claim of the illegality of the settlements, or in his explicit comment, “they’re not illegal.” According to Reagan, the West Bank must be open to settlement by members of all religious faiths – Jews, Muslims, and Christians. Nonetheless, he criticized the way in which the settlement project was conducted, as he felt it was “unnecessarily provocative” and contrary to the Camp David peace agreements.²⁰

The Reagan plan for the Middle East dating to early September 1982 contained additional hints of America’s understanding of the improbability of stopping the settlement project entirely. Therefore, the plan spoke mostly about avoiding the “use of any additional land for the purpose of settlements,” i.e., avoiding the establishment of new settlements or expanding the size of existing settlements. The implication is that it was acceptable to continue building within the limits of existing settlements. This principle subsequently served as the basis for the understanding between President George W. Bush and Prime Ministers Sharon and Olmert about the settlements. At the same time, the Reagan plan also perfunctorily recommended that Israel freeze settlement construction in order to create an easier atmosphere for negotiations and allow different sides to join the talks.²¹

A number of statements by recent administrations evinced some understanding for settlement activity on its own terms, with a concomitant attempt to delimit its proportions on the basis of a joint Israeli-American outline. A prominent expression of this came during President Clinton’s tenure. Assistant Secretary of State for Near Eastern Affairs Edward Djerejian stated on March 9, 1993 that the United States understood the need for some settlement activity: “There is some allowance for, I wouldn’t use the word ‘expansion,’ but certainly continuing some activity, construction activities in existing settlements. And that’s basically...in terms of natural growth and basic, immediate needs in those settlements. I want to get away from the word ‘expansion’

per se.”²² Nearly a decade later, on April 12, 2001, Djerejian – this time under the Bush administration – made his position even clearer. He stated: “Some of the major settlements could be consolidated, and these settlers could become more confident of their eventual status as part of Israel.”²³

The events of 9/11 and America’s embarking on a war on radical Islam in Iraq and Afghanistan created a relatively convenient foundation for a more comfortable position on the settlements from the Israeli perspective. During the tenure of George W. Bush, detailed understandings with the Sharon government were reached about settlement construction: settlements would not be expanded and construction would be allowed only within the existing construction outlines. Israel committed itself not to establish any new settlements and not to confiscate Arab land for construction purposes.²⁴

President Bush gave explicit expression to these understandings when in the press conference following a meeting with Sharon on April 14, 2004 he stated: “In light of new realities on the ground, including already existing major Israeli populations centers, it is unrealistic to expect that the outcome of final status negotiations will be a full and complete return to the armistice lines of 1949.” This assertion was restated in his April 14, 2004 letter to Sharon, approved by a large majority of the Congress. It clearly implies recognition of Israel’s right to continue the settlement project according to an agreed-upon outline and on the basis of assumptions about regions that would in any case remain in Israeli hands even after a permanent agreement with the Palestinians.²⁵

The Obama Experience

President Obama showed the most intensive opposition to the settlement project in Judea and Samaria early in his term in office. It was expressed in a number of rounds of talks with Israel on the issue, which at times assumed the nature of blunt confrontation. One memorable statement was made in President Obama’s June 2009 Cairo speech, when he said that “the United States does not accept the legitimacy of continued Israeli settlements. This construction violates previous agreements and undermines efforts to achieve peace. It is time for these settlements to stop.”²⁶ The Netanyahu government refused to accept this demand. An intensive dialogue began between Israel and the US, primarily through the offices of Special Envoy to the Middle East George Mitchell, which

eventually led to a decision by the Israeli government to a partial, 10-month construction freeze in the settlements. The decision was unprecedented in its scope.

A second confrontation occurred after Vice President Biden's visit to Israel in March 2010. At its center was the administration's demand that Israel stop construction in Jerusalem. The Netanyahu government refused to accept the demand as it was stated, but seems to have expressed willingness in practice to slow down construction. A third confrontation took place after the 10-month freeze, when the administration demanded that Israel extend the freeze without receiving anything in return. This too was opposed by the Netanyahu government, and indeed, since the end of the freeze, there has been a construction drive in Judea and Samaria unprecedented in terms of its scope. From time to time, especially after the granting of construction permits, administration spokespeople reiterate that the phenomenon is an obstacle to peace.

Conclusion

Since the Six Day War, all American administrations have opposed the settlement project in the West Bank at one level of intensity or another, on political, legal, and moral grounds. In most administrations, the opposition was primarily verbal and did not carry with it real threats against the Israeli government should it fail to heed US administration demands. The administration of George H. W. Bush was different, in light of his threat to deny loan guarantees to Israel unless it froze construction in the territories.

After more than four decades, it is evident that widespread opposition to the settlement enterprise on the part of the international community in general and the American administration in particular, and within large circles in Israel itself, has not succeeded in shutting it down. Many – even among the most ardent opponents of the settlement project and even senior members of the Palestinian leadership – feel that the settlement project has created an irreversible territorial and demographic reality in the Middle East that affects a wide range of issues, especially prospects for the regional peace process.

As a rule, the foreign policy of the United States combines an ideological, moral approach with a practical, pragmatic one. Historical experience shows that in many cases, when the United States understood its opposition to certain moves was pointless, it changed its policy and

adapted it to the prevailing reality. The United States was vehemently opposed to moving Israeli government ministries and the Knesset to Jerusalem after the War of Independence. Eventually, it made its peace with the fact, if only partially. The United States was bitterly opposed to Israel developing a nuclear option, yet eventually arrived at understandings with Israel over this sensitive issue. For many years, the United States was opposed to recognizing China, but was finally forced to change its position in light of the prevailing reality.

Should the administration come to recognize the limits of its power to affect the settlement enterprise in a significant manner, the necessary conclusion is that it would be in America's national interests to arrive at understandings with Israel about the settlements on the basis of the outline described above. Continuing to embrace the routine formula opposing the settlements in a sweeping manner damages the status of the United States and its relations with Israel, and does not lead to an achievement that would serve the national interests of the United States.

Notes

- 1 Statements from U.S. Government Officials Concerning Israeli Settlements," http://www.cmep.org/content/us-statements-israeli-settlements_short#Reagan.
- 2 The administration used different phrases in this context, such as "an obstacle to peace," "counterproductive," and "not helpful." See Donald Neff, "Settlements in U.S. Policy," *Journal of Palestine Studies* 23, no. 3 (1994): 53-69.
- 3 "Statements on American Policy toward Settlements by U.S. Government Officials – 1968-2009," <http://www.fmep.org/analysis/analysis/israeli-settlements-in-the-occupied-territories> (henceforth: "Statements on American Policy").
- 4 Quoted in Churches for Middle East Peace Website, http://www.cmep.org/content/us-statements-israeli-settlements_short#Bush2.
- 5 Michael Doran, Senior Director for Near East and North African Affairs, National Security Council, "Ask the White House," May 24, 2006, <http://2001-2009.state.gov/p/nea/rls/rm/2006/66736.htm>.
- 6 "Statements on American Policy."
- 7 While the Khartoum conference resolution did not rule out a political resolution, it also stated that political efforts would be made on the basis of the following principles: no to peace with Israel, no to recognition of Israel, no to negotiations with Israel. See Boaz Vanetik and Zaki Shalom, *The Yom Kippur War: The War That Could Have Been Prevented* (Tel Aviv: Resling Press, 2012), pp. 25-26.
- 8 "Statements on American Policy."

- 9 See Israel Ministry of Foreign Affairs, <http://www.mfa.gov.il/MFA/Foreign+Relations/Israels+Foreign+Relations+since+1947/1947-1974/13+Law+and+Administration+Ordinance+-+Amendment+No.htm>
- 10 "Statements on American Policy."
- 11 "Statements on American Policy."
- 12 "Statements on American Policy."
- 13 "Statements on American Policy."
- 14 Quoted in Coalition for Peace with Justice website, <http://www.peace-with-justice.org/letters/041003sizer.html>.
- 15 See note 4.
- 16 See note 4.
- 17 "Statements on American Policy."
- 18 Quoted in "The West Bank Settlements," <http://www.angelfire.com/pro/canthos/SettlementsQuotes.html>.
- 19 The Mitchell Report, completed April 30, 2001 and published on May 20, 2001, http://www.mideastweb.org/mitchell_report.htm.
- 20 "Statements on American Policy."
- 21 Reagan Plan, September 1, 1982. See Yehuda Lukas, ed., *Documents on the Israeli-Palestinian Conflict, 1967-1983* (Cambridge: Cambridge University Press, 1984).
- 22 "Statements on American Policy."
- 23 "Statements on American Policy."
- 24 Speech by Ariel Sharon at the Herzliya Conference, December 18, 2003, <http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2003/Address+by+PM+Ariel+Sharon+at+the+Fourth+Herzliya.htm>
- 25 White House Website, <http://www.whitehouse.gov/news/releases/2004/04/20040414-4.html>.
- 26 The White House, Office of the Press Secretary, "Remarks by the President on a New Beginning," June 4, 2009, <http://www.whitehouse.gov/the-press-office/remarks-president-cairo-university-6-04-09>.