

**THE ISRAELI-PALESTINIAN ROADMAP:
WHAT A SETTLEMENT FREEZE MEANS
AND WHY IT MATTERS**

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

Settlement expansion in the Palestinian occupied territories is endangering the viability of the Roadmap and, most importantly, of the two-state solution it contemplates and which forms the core of President Bush's stated vision. Freezing settlements is not the Roadmap's only requirement and, to Israelis, may not appear as the central one. But unless action is urgently taken, there is a serious risk that Israeli steps will jeopardise any realistic prospect of a fair and sustainable territorial solution. The seriousness of President Bush and the wider international community about the objective of achieving a two-state solution must be matched by an equal commitment to halting the settlement enterprise that is jeopardising it.

Israeli efforts to expand settlements are not new. But their cumulative impact, in particular a series of projects launched over the past few years, are inflicting grievous harm to Palestinian territorial integrity. These include efforts to consolidate and expand the presence of Jewish areas in and around Jerusalem, the erection of caravans and attendant infrastructure in what are euphemistically called "settlement outposts", and the construction that is underway of the security (or separation) fence.

The history of Middle East diplomacy is replete with efforts to slow down or halt settlement expansion. All have failed. In every case, exceptions were allowed in response to seemingly reasonable Israeli requests (e.g., to bar only the establishment of "new" settlements or to accommodate "natural growth"); the exception ended up swallowing the rule, thereby not only making possible settlement growth but providing it with a U.S. imprimatur as well. It is important that this time the Quartet – and principally the U.S. – strictly define for Israel what it means by a

settlement freeze and that the Israeli government be held to the high standard expressed unambiguously in the internationally-endorsed Roadmap.

In this endeavour, there is a conundrum. While the freeze demanded by Washington and its partners needs to be hermetic if it is to be meaningful, the failure of past efforts reflects something more than either lack of U.S. resolve or Israel's ability to circumvent restrictions through agreed-upon exceptions. It reflects as well the practical and political difficulty faced by any Israeli government, including the most peace-minded, in implementing a genuine and airtight settlement freeze as part of an incremental, confidence-building measure. The settlement enterprise has, by now, become an integral part of Israel's political, economic, social and legal system. The informal system by which settlers and officials have entrenched the settlement project is harder to quantify; it also may be harder to undo.

Achieving a real, comprehensive freeze as demanded by the Roadmap, in other words, will require a momentous effort. In all likelihood, it will be achieved only in the context of a diplomatic endgame in which the Israeli government and its people are engaged in a process designed to end the conflict with the Palestinians – and, therefore, to evacuate the vast majority of the settlements. Like the demand that the PA dismantle the armed infrastructure of Hamas or Islamic Jihad even at the cost of a difficult and potentially bloody internal struggle, the demand that Israel wholly freeze settlements is one that is difficult to be undertaken at the front-end of an ill-defined and uncertain journey.

As the experience of the Oslo years amply demonstrates, the way out of this dilemma is not to disregard the need for a genuine settlement freeze

or to dilute its contents any more than it would be to disregard the need for genuine and serious Palestinian action on the security front. To allow settlement activity to proceed in the run-up to the endgame is to endanger the possibility of ever getting to that endgame. Rather, insistence on a real settlement freeze must remain a centrepiece of diplomatic efforts and of on-the-ground monitoring. Diplomatic and political pressure should be exerted to maximise Israel's adherence to it and publicly pinpoint any violations. In particular, the Quartet, with the U.S. front and centre, should highlight those aspects that are most threatening to the viability of a future Palestinian state – e.g., the outposts, construction around Jerusalem and the central West Bank, and the location of the security fence.

Certain exceptions related to basic needs of settlers may be allowed but, unlike in past cases, the Quartet, acting through a joint committee with Israel that is under U.S. chairmanship, will need to define them narrowly, approve them on a case-by-case basis and rigorously monitor compliance through on-the-ground and aerial surveillance.

While a gap between Israeli obligations and performance is to be anticipated initially, it too can serve a political purpose. The difficulties entailed in implementing a genuine freeze will, one hopes, make it clear to the international community and to large segments of the Israeli public itself that, ultimately, the solution lies in a rapid evacuation of those Israeli settlements that will not be annexed by mutual agreement with the Palestinians. Such a solution would also help remove uncertainty among members of the settler community – both those in settlements that will become part of Israel through agreed border modifications and those who will return to Israel and seek compensation.

The Roadmap, by espousing an incremental, step-by-step approach, multiplies along the way the obstacles it is designed to overcome. As the process unfolds, and as implementation problems become ever more apparent, the argument for rethinking and accelerating the current approach ought to gain resonance. As ICG has argued consistently for more than a year,¹ by fleshing out rapidly the

contours of a final agreement and leap-frogging the myriad steps called for in the Roadmap, the U.S. and its Quartet partners would have a far better chance of achieving its ultimate objective.

RECOMMENDATIONS

To the United States Government and other Members of the Quartet:

1. Make clear to the government of Israel their insistence on a genuine settlement freeze in all territories occupied in 1967 that includes the following core elements:
 - a) dismantling all settlement outposts erected since March 2001, including all related infrastructure (e.g., electricity, water pipelines);
 - b) ending all demolition and confiscation of Palestinian land, homes and property;
 - c) ceasing all construction of new settlements and, within existing settlements, all construction of settler by-pass roads and settlement infrastructure, including other roads, water and electricity;
 - d) revoking existing construction permits and prohibiting the issuing of new ones;
 - e) prohibiting all financial incentives and special budgetary support to settlers and settlements;
 - f) limiting those powers devolved to local settlement authorities, in particular those related to expansion of settlements and facilities, incentives to settlers and issuance of building permits; and
 - g) establishing the principle that the route of the proposed security fence be along the lines of 4 June 1967 (“the Green Line”).
2. Make clear that the only exceptions that will be accepted to the prohibition on construction will be in the following four categories:

¹ ICG Middle East Report No. 2, *Middle East Endgame I: Getting to a Comprehensive Arab-Israeli Peace Settlement*, 16 July 2002; ICG Middle East Report No. 3, *Middle East Endgame II: How a Comprehensive Israeli-Palestinian*

Settlement Would Look, 16 July 2002; ICG Middle East Report No. 14, *A Middle East Roadmap to Where?*, 2 May 2003.

- a) construction within the built-up areas of Jewish neighbourhoods/settlements in East Jerusalem within the municipal boundaries, but precluding any land confiscation, any addition of new neighbourhoods/settlements, and the establishment of any “mini-settlements” or single-dwelling settlements in Palestinian neighbourhoods;
 - b) completion of certain housing units where construction is beyond the foundations stage and that will not further harm the prospects of a viable Palestinian state;
 - c) addition of certain vital public amenities (kindergarten, schools, playgrounds, etc), in particular in settlements with high birth rates; and
 - d) repair of important services.
3. Establish a joint Quartet-Israel committee under U.S. chairmanship to:
 - a) monitor compliance with the above; and
 - b) review on a case-by-case basis, in a transparent and public manner, requests for exemptions to the above prohibitions in the four categories identified in recommendation 2.
 4. Contribute to Israeli-established funds designed to:
 - a) compensate Israeli contractors for economic losses incurred as a result of the freeze; and
 - b) facilitate the voluntary relocation of settlers to pre-1967 Israel.

5. Publicise any violation of these obligations.
6. Make clear to the government of Israel that, should the Quartet conclude that it has failed to adhere to the settlement freeze, it will consider accelerating the Roadmap’s stages and put forward its own more detailed vision of a final status agreement.

To the Government of Israel:

7. Publicly announce its intention to enforce a settlement freeze, rigorously adhere to the freeze as defined by the Quartet and take all legislative and administrative steps necessary to enforce its implementation.
8. Cooperate with the U.S. chairman and the Quartet in the joint committee, and in particular:
 - a) provide it with all requested information concerning activity in the settlements; and
 - b) facilitate ground and aerial monitoring that should be conducted by the U.S. on behalf of the Quartet.
9. Set up a fund designed to compensate Israelis harmed by the settlement freeze.
10. Redirect resources previously used to encourage Israelis to move to settlements so as to provide financial incentives for Israeli settlers desiring to relocate in areas of pre-1967 Israel.

Amman/Jerusalem/Brussels, 25 July 2003



THE ISRAELI-PALESTINIAN ROADMAP:

WHAT A SETTLEMENT FREEZE MEANS AND WHY IT MATTERS

I. INTRODUCTION

The hastily arranged, back-to-back visits to Washington of the Palestinian and Israeli Prime Ministers in late July 2003 are symptomatic of the state of the Roadmap. The progress that has been registered made the visits possible; the deep-rooted problems that continue to be faced made them necessary.

On the plus side, the level of violence has been significantly reduced, with even the typically sceptical Israeli military acknowledging a steep decline in the number of alerts.² Though there have been some exceptions, and despite intense intra-Palestinian power struggles, the *hudna* (or temporary suspension of hostilities) seems to be holding. Israeli officials also recognize a notable moderation in the tone of the Palestinian media, and Prime Minister Mahmoud Abbas has made unequivocal calls for the end of the armed intifada and a return to the negotiating process. For its part, Israel has dismantled some settlement outposts, withdrawn from parts of the territories re-occupied over the course of the past two and a half years and reportedly is considering other steps to ameliorate living conditions on the ground. Finally, meetings between Israeli and Palestinian officials have resumed and may soon become as natural a feature of the landscape as they once were.

But deep problems lie beneath. Palestinians complain bitterly that the Israeli withdrawal is proceeding at a snail's pace, that they still cannot move freely as a result of the checkpoints and that new settlement

outposts seem to be appearing as quickly as existing ones are removed. Perhaps the most emotional issue – and the one most likely to derail the process at this point -- is that of the approximately 6,000 Palestinian detainees being held in Israel, many without charge, and whose release has become a rallying cry for all Palestinian political forces. For their part, Israelis remain unconvinced of the Palestinian Authority's intention to dismantle the armed infrastructure of radical Palestinian groups such as Hamas or Islamic Jihad. They fear the cease-fire is merely a tactical ploy that will allow these organisations to regroup and regain their strength in anticipation of the next round.

The contradictory outlooks of the two sides reflect the roadmap's underlying shortcoming that ICG has previously described.³ Because both parties harbour deep doubts about the other's intentions, each is loath to implement the kind of far-reaching decisions that are needed to unlock the situation. Every incremental step involves wrenching decisions from the side that takes it and generates only marginal satisfaction for the side it is supposed to benefit.

The most immediate, damaging consequence of this state of affairs is to weaken Abbas's position within the Palestinian polity. Without tangible evidence that his conciliatory approach is bearing fruit, domestic opposition toward him – never far from the surface – is likely to grow in strength and visibility. So far, on issues that matter most to the Palestinian public – the prisoners, the checkpoints and the settlements – he has little more than vague promises to show. Palestinians perceive that he is being caught in a security monologue in which demands for tough steps against radical Palestinian groups are all Israel and the

² See *Ha'aretz*, 7 July 2003.

³ See ICG Report, *A Middle East Roadmap to Where?*, op. cit.

U.S. appear to care about. Without a further and rapid push to move the process forward – presumably from the U.S. – the risks that the Roadmap will flounder will only grow.

Effectively tackling the settlements issue is, in this regard, a crucial step. It can shore up the Palestinian Authority and, by demonstrating that the Roadmap will bring tangible benefits to the Palestinian people, give added momentum to the fledgling process while weakening both the influence of more extremist groups and the prospects of a return to violent confrontation. For the U.S. administration, moreover, this ought to be one of the less problematic demands placed on Israel: unlike some others, it has little if any bearing on Israel's security. Indeed, the settlement enterprise has been recognised by most observers as contributing to, not lessening, the security risks faced by Israel. For these reasons, the Roadmap's call for a settlement freeze is likely to figure prominently in the Palestinian Prime Minister's conversations with U.S. officials and in subsequent discussions between officials from the U.S. and other Quartet members on the one hand, and Israeli and Palestinian officials on the other.⁴

Paradoxically, for something that is so central to Israeli-Palestinian diplomacy, the issue of a settlement freeze has been the object of remarkably little in-depth analysis. Authors of the Mitchell report, whose call for such a freeze is at the political and intellectual origins of the Roadmap's own, conceded to ICG that they had never sought to define what it would entail or how it could be enforced. U.S. officials involved in past efforts to freeze Israeli settlements similarly acknowledged the absence of any concrete understanding of the concept.

The purpose of this briefing paper is to fill that gap. Drawing from the record of past efforts to implement a freeze and from an assessment of the current situation in Israel, it seeks to provide policy makers in Washington and other Quartet capitals with a practical assessment of what can and ought to be done.

⁴ Palestinian participants in the 20 July 2003 meeting between Prime Minister Sharon and Prime Minister Abbas told ICG that Abbas raised the settlement freeze issue but Sharon declined to discuss it. The Palestinians also noted that the issue would feature prominently in Abbas's meetings with U.S. officials on 24-25 July 2003. ICG interviews, Ramallah, July 2003.

II. SETTLEMENTS AS A THREAT TO A VIABLE TWO-STATE SOLUTION

A. SETTLEMENTS VERSUS PRESIDENT BUSH'S VISION

The settlement enterprise has long been viewed by the international community as a principal obstacle to resolving the Israeli-Palestinian conflict. Settlements are seen as a clear violation of international law and of Israel's obligations under the Geneva Convention not to transfer its citizens into occupied territory.⁵ They are also often viewed as, *inter alia*, an indication of Israel's intention to rule over these areas permanently, a unilateral action that undermines the prospect for a peaceful resolution of the conflict, and (for many Israelis) a policy that threatens the prospect of a Jewish demographic majority in areas under Israel's control.⁶ To Palestinians, who see the failure to deal effectively with the settlements as a key reason for the collapse of the Oslo process, the litmus test of any new negotiating process will be the degree to which it produces a change in the decades-long momentum of land alienation and Israeli settlement expansion.⁷

Perhaps most ominously, a growing number of Palestinians and outside observers argue that settlements pose a strategic threat to the vision of a two-state solution precisely at the time when it has gained maximum international support. The feasibility of such a solution, in this sense, can be said to depend on three interrelated factors: *practical viability* (i.e., a Palestinian state that is territorially contiguous, possesses necessary and adequate transportation networks, economic resources and the like); *Palestinian political viability* (i.e., a territorial compromise that meets

⁵ Article 49 of the Fourth Geneva Convention (1949) relative to "Protection of Civilian Persons in Time of War", states: "The occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies".

⁶ Israelis have warned that, should the process continue, their country would face two equally unpalatable options: outright annexation of the occupied territories, which would in a short period of time threaten the Jewish character of the state, or establishment of a *de facto* apartheid regime in which Palestinians were denied basic rights. ICG interviews, Tel Aviv, June 2003.

⁷ ICG interviews, Ramallah, Gaza, June 2003.

with widespread Palestinian acceptance); and *Israeli political viability* (i.e., something that Israel can implement given the number of settlers to be evacuated, which of course increases as settlements expand).

Striking this balance was difficult at the time of the Camp David summit and subsequent Israeli-Palestinian negotiations in Taba.⁸ But should settlement expansion continue, and should the number of settlers increase, fashioning a solution that meets the needs of both sides risks becoming practically and politically unfeasible. (On the issue of the connection between settlement growth and the prospects for a permanent status settlement, it is worth mentioning a contrary view held by some Israelis. From their perspective, continued settlement growth sends a clear signal to the Palestinians that the longer they reject compromise, the more their patrimony will be endangered; indeed, it is the only real incentive the Palestinians have to negotiate. Accordingly, the issue of settlements ought only to become a subject for diplomatic discussion during the final status negotiations.)⁹

Currently, there are approximately 200 distinct settlement areas in Palestinian territories occupied by Israel since June 1967, containing a total population of approximately 400,000.¹⁰ In the West Bank, more than 120 settlements house over 230,000 settlers (compared with some two million Palestinians in that area); in the Gaza strip, 16 settlements are inhabited by some 7,000 settlers (compared with some one million Palestinians), and approximately 180,000 settlers live in eleven settlements or neighbourhoods in East Jerusalem (compared with 225,000 Palestinians).¹¹ Most settlements are no longer temporary constructs, but

fully developed towns and villages. The highways and bypass roads that have been constructed to link settlements and allow direct passage to areas within pre-1967 Israel, the infrastructure that has been built to accommodate them, the confiscation of Palestinian land to allow for their establishment and subsequent expansion, all form part of a highly entrenched network.

While it is not the purpose of this briefing paper to describe in detail either the history or the current status of Israel's settlement policy, several important and ongoing developments deserve mention:

□ The expansion of existing Jewish neighbourhoods/settlements in and around East Jerusalem and the construction of new ones are rapidly jeopardising the possibility of establishing a contiguous, economically viable Palestinian capital.¹² Current construction is choking Arab East Jerusalem, surrounding it with Israeli settlements north, south and east, thereby cutting off its links to other hubs within the future Palestinian state, such as Bethlehem and Ramallah. Particularly problematic in this regard is the so-called E1 plan, already approved and on the brink of implementation, which contemplates the creation of a sophisticated land bridge between the city of Jerusalem and the settlement of Ma'ale Adumim. Such a development project would do grievous and perhaps irreparable harm to any possible connection between Arab neighbourhoods of East Jerusalem and the West Bank.¹³ Moreover, the current private sector-developed project of settling Jewish families in Ras al-'Amud constitutes the single largest settlement enterprise in an existing Palestinian neighbourhood in Jerusalem since 1967. Six out of 52 families have already taken up occupancy.

□ Settlement growth occurs through the phenomenon of settlement "outposts" – initially lone and apparently innocuous

⁸ On this, see ICG Reports, *Middle East Endgame I* and *Middle East Endgame II*, both op. cit.

⁹ ICG interviews with Israeli Likud members, June 2003.

¹⁰ Because of problems of definition and lack of information, the precise number of settlements is a matter of some controversy.

¹¹ Figures come from the Israeli Central Bureau of Statistics, dated 31 December 2001. Israel does not consider the Jewish neighbourhoods in East Jerusalem to be settlements. Quoting Interior Ministry statistics, Israel Radio reported on 24 July 2003 that there are 231,443 Jewish settlers living in the West Bank and 7,000 in Gaza. It said that these numbers have increased by 5,415 since the beginning of 2003, and the largest settlements are Ma'aleh, Adumim, Mod'in Illit, and Betar Illit.

¹² Both President Clinton's parameters and the subsequent Israeli-Palestinian negotiations took as their point of departure that Arab areas of East Jerusalem would come under Palestinian sovereignty and form the capital of the new state.

¹³ ICG interviews with Israeli and Palestinian settlement experts, Jerusalem, Ramallah, May-July 2003.

caravans erected by a group of settlers and that can be situated several hundred metres away from the “mother” settlement. This often is only the first step in a web-like process that, through the construction of roads and other infrastructure for water and electricity, results in more settlement expansion. Since the onset of the second intifada over 60 such outposts have been established.¹⁴

- In other areas of the West Bank, such as the Jordan Valley and the western hills, territorial contiguity, as well as rational urban and economic development, is put at risk due to continued settlement activity.
- The most recent, and potentially most damaging development, is the work currently underway to build what is projected to be a “security fence” to bar the unauthorised entry of Palestinians from the West Bank into Israel and thereby prevent attacks against Israelis. The project, which draws from lessons learned in Gaza and South Lebanon, is much more than a fence; altogether, the zone covered by this barrier will extend some 400 metres in width and, from east to west, will include a barbed wire fence, a trench, an electronic fence designed to warn of any infiltration attempt, a so-called “trace” road intended to reveal any footprints, an asphalt road for vehicle transportation, and, finally, another barbed-wire fence.¹⁵ At some locations, a wall will be erected to protect against gunfire. The Israeli military will have responsibility on both sides of the fence. So far, only initial phases have been completed.

While the initial impetus for the fence was to protect Israeli lives against Palestinian attacks, it soon became embroiled in a domestic dispute regarding its financing, location and potential relevance to Israel’s future borders with a Palestinian state. The deeper the fence runs into the West Bank and takes in settlements, the more costly, the more detrimental to the

Palestinians and, also, the more controversial internationally. Israelis who favour a unilateral withdrawal from large parts of the occupied territories generally argue that the fence ought to run relatively close to the Green Line – and, for example, include neither the settlement of Ariel nor the Jordan Valley. Although the Israeli government approved the plan in principle on 23 June 2002, the final location of the route is to be determined by the Israeli Prime Minister and Minister of Defence.¹⁶

To date, no official maps of the planned route exist. The Israeli government, while claiming that the location of the fence should not prejudice Israel’s borders, reportedly has proposed a route that would dig deep into the West Bank and entail the incorporation of a number of large settlements. Should this project be adopted (it is running into problems in the Knesset, principally for financial reasons),¹⁷ the fence would create a series of Palestinian enclaves to its west and east, in certain areas separating Palestinian communities from substantial portions, and in some cases virtually all, of their farmland and livelihood. Around Jerusalem, the fence reportedly would annex parts of Bethlehem and surround Palestinian areas. Such a fence would lead to significant confiscation of Palestinian land, further restrictions on Palestinian freedom of movement and, it is feared, relocation of Palestinians economically harmed by the fence.

Although no final decision has been taken, the Israeli government also is considering the construction of a security fence along the mountain ridge west of the Jordan Valley, thereby taking in important areas of the Valley and at once almost doubling the fence’s physical length and cost. According to current estimates, the total length of such a fence would run roughly 600 kilometres, at a cost of over U.S.\$1 billion.¹⁸ Should it be established

¹⁴ “Settler representatives assert that nearly all the outposts that currently exist have been issued with at least initial approval from the Defence Minister”, ICG interview with Ezra Rosenfeld, Foreign Spokesman for YESHA Council, Jerusalem, May 2003.

¹⁵ ICG interview with Israeli expert, Washington, July 2003; see also the report, “Behind the Barriers”, March 2003, by B’tselem, an Israeli NGO.

¹⁶ Government decision 2077, cited in “Behind the Barriers”, op. cit., p. 7.

¹⁷ A Likud member of the Knesset explained: “I am unwilling to mortgage the future by authorising such a large outlay of funds without holding a serious discussion”, *Ha’aretz*, 23 July 2003.

¹⁸ For a discussion and history of the project, see “Behind the Barriers”, op. cit.

according to the government's proposal, the fence could reportedly leave on the "Israeli" side roughly 50 per cent of the West Bank and over 300,000 Palestinians who live in the West Bank and East Jerusalem.¹⁹

Terrorised by the persistence of deadly suicide attacks against Israelis, and frustrated by the failure of other means to prevent them, increasing numbers of Israelis from the Right and the Left have come to see in the fence a legitimate and critical tool in the fight against Palestinian violence.²⁰ What the Israeli people appear not to have understood thus far is that international opposition to the fence is principally related to its location beyond the borders of 1967 (the Green Line), not to the principle *per se*.²¹ Thus far, no serious

explanation effort appears to have taken place. The U.S. and other members of the Quartet, who have expressed their concerns about the location of the fence while acquiescing in the fact that any construction along the Green Line would be within Israel's sovereign right to decide, ought to clearly describe this position to the Israeli public.²² ICG, which has expressed its support for a hard border between Israel and the future Palestinian state,²³ similarly believes that it is the location of the fence rather than its principle that should be condemned.²⁴

Overall, according to a close confidant of the Palestinian Prime Minister, ongoing settlement activity, including the erection of the fence, constitutes "the principal strategic threat to the Roadmap's two-state vision".²⁵ In the words of a Palestinian analyst,

The geo-political map of Palestine is being transformed and with it the possibility of a resolution based on the idea at the heart of the current political process: partition between the "state of Palestine and the state of Israel living side-by-side in peace", according to President Bush's "vision".²⁶

¹⁹ See "Report on Israeli Settlement in the Occupied Territories", July-August 2003, Foundation for Middle East Peace, Washington, D.C. A projected map of the proposed fence is at Appendix C. Jan de Jong, a geographer and cartographer specialising in Israeli settlements, told ICG: "The manner of the construction of the separation wall belies claims that it is a security measure. One indication is its physical location – it is located east of the Green Line rather than on sovereign Israeli territory or on the Green Line. Second is its permanent character. We are not talking about barbed wire and watchtowers but a massive project involving huge construction efforts and infrastructure at a cost of U.S.\$1 million per kilometre. Not the kind of thing you establish as a temporary security measure pending the conclusion of negotiations. Most important, however, is the actual route of the wall. The route proposed by the IDF would separate 45 per cent of the West Bank from the rest of the West Bank". According to de Jong, "The separation wall will leave 15.7 per cent of the West Bank Palestinian population west of the wall, more accurately separated from the rest of the West Bank, an additional 18.7 per cent of the population separated from their lands (to varying degrees – in some cases separated from over 90 per cent of their lands). . . . In the long-term, Palestinian cities – and specifically Qalqilya, Bethlehem, Ramallah/El Bireh, and Hebron – will be the worst affected. The Palestinian population is expected to double within the next twenty years. But the cities will not be able to expand – no urban expansion, development of infrastructure, access roads etc. can take place any more once the wall is completed, dooming these places". ICG telephone interview, July 2003.

²⁰ Indeed, many Labour Party officials criticize the government for proceeding too slowly with construction. ICG interviews, Tel Aviv, June 2003.

²¹ As Otniel Schneller, a settler and former Secretary General of the YESHA Council told ICG, "the security fence currently under construction, as it includes certain settlements and excludes others, unilaterally draws a boundary that will be difficult to reverse in the future". ICG interview, Jerusalem, May 2003.

²² ICG interviews with U.S. and Palestinian officials, Washington, Ramallah, June-July 2003. Although Abbas expressed to ICG his dislike for the idea of the fence and for what it signals for future Israeli-Palestinian relations, he added that anything within the Green Line would be Israel's business. ICG interview, Ramallah, July 2003. That said, some observers have warned against excessive focus on the route of the separation fence. They argue that, in response to U.S. concern, Israel may be prepared to be flexible on the trajectory, and then create a series of individual security perimeters around key settlements. The end result, in their view, would be a Pyrrhic victory: a claim to have "stopped the wall" coupled with continued hardship to the Palestinians. ICG interview with settlement expert, Washington, July 2003.

²³ See ICG Report, Middle East Endgame II, *op. cit.*

²⁴ One prominent moderate member of the Likud took issue with international criticism of the location of the fence, arguing that only by making clear to the Palestinians that they faced a genuine danger would they be willing to take the necessary security measures and negotiate in good faith the remaining issues of the Roadmap. ICG interview, Tel Aviv, June 2003.

²⁵ ICG interview with official in the Prime Minister's office, Ramallah, July 2003.

²⁶ Ahmad Khalidi, "The End of the Two-State Solution", *The Guardian*, 18 July 2003.

Some have warned that, should the settlement process continue, the struggle will shift from one for partition to one for equal rights within a single, binational state.²⁷

B. FROM THE MITCHELL REPORT TO THE ROADMAP

The first mention of a settlement freeze in the context of the post-Camp David era came from the Mitchell Committee, set up by President Clinton in the fall of 2000 to investigate the outbreak of violence in September of that year. Its report, endorsed by the Bush administration, issued a call for a complete freeze in settlement expansion and suggested that Israel consider the evacuation of some settlements for security reasons. The report argued that “the GOI [government of Israel] should freeze all settlement activity, including the ‘natural growth’ of existing settlements. The kind of security cooperation desired by the GOI cannot for long co-exist with settlement activity”.²⁸ Indeed, the Committee viewed it as self-evident that “a settlement freeze was a potential tool in suppressing violence”.²⁹ A member of the Committee, former U.S. Senator Warren Rudman, remarked: “The settlements make no sense. The

Israelis claim that the settlements buttress their security, but in fact they detract from it”.³⁰

Of even greater significance is the Roadmap, which was officially presented to the two parties by the United States, the European Union, the United Nations Secretary General and Russia on 30 April 2003. Seeking both to put an end to the deadly round of Israeli-Palestinian violence and to promote a two-state solution, the document called for three sets of actions related to settlements in its first phase:

- ❑ the immediate dismantling of settlement outposts erected since March 2001 (i.e., since the time Ariel Sharon assumed the premiership), in accordance with the Israeli government’s own commitment that no new settlements would be established;
- ❑ a freeze on all settlement activity “consistent with the Mitchell Committee report”; and
- ❑ an end to all Israeli “actions undermining trust, including ... confiscation and/or demolition of Palestinian homes and property, as a punitive measure or to facilitate Israeli constructions; destruction of Palestinian institutions and infrastructure”.³¹

The inclusion of this language in the Roadmap was no small achievement; indeed, such settlement-related demands have never before appeared in a diplomatic framework introduced by the international community and supported – at least insofar as their declared policy is concerned – by Israeli and Palestinian representatives.³²

²⁷ ICG interviews with Palestinian activists, Ramallah, July 2003; see also Khalidi, “The End of the Two-State Solution”, op. cit: “For Palestinians, the fight may have to shift from a national-territorial focus to a struggle based on mutuality, equality and fundamental political and human rights”. Ismail Habbash, a Palestinian film director, told ICG: “Leave the settlements where they are and increase their population as far as I am concerned, it’s already too late for partition so let’s concentrate upon forging a one-state solution with equality for all, Palestinian and Israeli alike. Because of the settlement enterprise, geographical separation is no longer possible”. ICG interview, Amman, July 2003. During an October 2002 visit to the United States, a Palestinian Authority delegation stressed that the prospect of a two-state solution was disappearing as a result of Israeli settlement expansion. ICG interviews, Washington, Ramallah, October-November 2002. Michael Tarrazi, a legal adviser to the Palestinian Authority, stated that “unless the trend of Israeli expansion is stopped or reversed, Palestinians will have to start asking themselves if a viable Palestinian state is any longer possible”. Cited in the *Financial Times*, 9 October 2002.

²⁸ Report of the Sharm el-Sheikh Fact-Finding Committee, headed by former Senator George J. Mitchell, issued on 30 April 2001.

²⁹ ICG interview with Fred Hof, senior member of the Mitchell Committee staff, 16 January 2003.

³⁰ Cited in Mark Perry, “Diplomatic Passport, Bush Administration Debates Policy”, in *Palestine Report*, 30 May 2001. Israel, however, strongly argued against a link between Palestinian violence and Israeli settlement activity. As former Foreign Minister Shimon Peres said: “It is forbidden that they will tell us that there is terror because of settlements”. Quoted in *Ha’aretz*, 16 May 2002.

³¹ During the second phase of implementation, the Roadmap envisages “further action on settlements in conjunction with [the] establishment of a Palestinian state with provisional borders”, in order to “enhance maximum territorial contiguity” of this state. A copy of the “Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict” is published as Appendix A to ICG Report, *A Middle East Roadmap to Where?*, op. cit.

³² In the aftermath of the presentation of the Roadmap, U.S. Secretary of State Colin Powell made the point that “the settlements are a problem. There is a question in the minds of Palestinians, and questions in the minds of many people

III. PAST DIPLOMACY AND SETTLEMENT FREEZES

The Roadmap's novelty aside, the notion of a settlement freeze has a long pedigree in Middle East diplomacy. Indeed, on several occasions the U.S. has sought to extract from Israel a commitment to stop the expansion of settlements.³³ The history of those efforts – and of their failure – carries important lessons. On at least two occasions, in 1978-1979 and again in 1992, Israel reached bilateral agreements with the U.S. on what were then described as “settlement freezes”; at other times, Washington received assurances meant to limit settlement expansion strictly. In all instances, U.S. administrations either failed to define with precision what was meant by a freeze or agreed to various (and, it turned out, broad) exemptions. Nor was there an effort to establish a mechanism for monitoring Israeli performance. At no time did the implementation of these understandings result in more than a marginal change in Israel's policy of settlement expansion. Indeed, more often than not, the terms defining a settlement freeze established protected categories of settlement expansion, thereby allowing for a significant growth in settlements and resulting in their legitimisation by the U.S.. In the words of a former U.S. official intimately familiar with this issue, “never in the past 25 years of Middle East diplomacy have the United States and Israel had an

around the world, as to whether or not one can actually bring into being a viable Palestinian state without doing something about the settlement activity and the outposts, and the settlements that are there”. Interview with Israel Channel Two, 11 May 2003.

³³The concept of a settlement freeze as a diplomatic instrument was first employed by the administration of President Gerald Ford in 1976. According to Yitzhak Rabin, who was Israel's Prime Minister at the time, he prevailed upon President Ford to withdraw an official, non-public U.S. call upon Israel to stop settlement in the occupied territories. ICG interview with settlement expert, Washington, May 2003. In the 1982 plan that bore his name, President Ronald Reagan asserted: “The immediate adoption of a settlement freeze by Israel, more than any other action, could create the confidence needed”. Cited in Report of the Sharm el-Sheikh Fact-Finding Committee, headed by former Senator George J. Mitchell, issued on 30 April 2001.

honest, candid discussion about settlements and Israel's settlement policy”.³⁴

A. THE BEGIN-CARTER SETTLEMENT FREEZE

In the context of the 1978 Israeli-Egyptian Camp David Summit, President Carter sought from Prime Minister Begin a commitment to halt settlement activity in the occupied Palestinian territories. Carter's assumption that in 1978 Israel's policy of expansion could in practical terms be halted was not unfounded. Israel had occupied the territories for hardly a decade, and with the exception of East Jerusalem, settlements held only small numbers of inhabitants and for the most part lacked any air of permanence. Overall, fewer than 5,000 Israelis lived in a little more than 30 West Bank and Gaza Strip settlements. The settler population in East Jerusalem numbered 50,000.³⁵ Administration of settlement-related activities, including their expansion, remained largely controlled by the Israeli military, the IDF. The integration of settlements and settlers into the routine bureaucratic life of Israel's civilian ministries was still several years off. Ultimately, in a letter delivered after the conclusion of the summit, Begin offered Carter a three-month moratorium on establishing new settlements rather than the longer moratorium requested by Washington.³⁶ Restrictions on the expansion of existing settlements had been dropped at Israel's insistence.

On the face of it, Begin's agreement at Camp David to halt new settlement creation for even three months was a bold and surprising concession. Yet Israel's commitment was not viewed by the Begin government as constraining settlement policy; rather, it was understood as establishing classes of expansion implicitly endorsed by Washington. The temporary moratorium on new settlements notwithstanding, the Begin government continued to “thicken” and “strengthen” existing settlements, at times establishing new sites some kilometres

³⁴ ICG interview, Washington, July 2003.

³⁵ Yehezkel Lein with Eyal Weizman “Land Grab: Israel's Settlement Policy in the West Bank”, B'Tselem, May 2002, pp. 7-8.

³⁶ Carter believed that Begin had promised a moratorium for the duration of the talks on Palestinian self-rule. See Cyrus Vance, *Hard Choices: Critical Years in America's Foreign Policy*, p. 228 (New York, 1983).

away from existing settlements during the three-month period.³⁷

B. FROM SHAMIR TO BARAK

By 1990, the settler population had increased to almost 100,000 in the West Bank and Gaza Strip, where they inhabited some 140 settlements. The Jewish population in East Jerusalem had reached some 125,000. More importantly, the status of settlers and settlements in Israeli legal, political, and bureaucratic life had changed significantly since Begin's tenure. The laws and rules regulating the personal status of settlers and their relationship to state institutions were now all but indistinguishable from those governing Israelis residing in pre-1967 Israel – and where they differed, settlers generally were given preferential treatment. The presence and expansion of settlements were promoted by the government and facilitated by myriad benefits and financial subsidies as well as by the direct civil administration of their everyday affairs. As a successful and growing political constituency, with formal and informal links to Israeli political actors and officials, settlers and settlements claimed more than their fair share of the national treasure, and the goal of expanding settlements had become a cardinal, albeit politically contentious, element in the nation's life.

In the wake of the 1990-1991 Gulf War, and with a frequency that increased with the unfolding of the U.S. diplomatic initiative in the Middle East, the administration of President Bush (senior) called upon Israel to stop construction in new or existing settlements. Secretary of State Baker at one point suggested that a settlement freeze would be reciprocated by an end to the Arab economic boycott of Israel. During the Madrid conference, Baker broadened the proposal to include an end to the Palestinian intifada and the provision of U.S. loan guarantees in return for a temporary settlement freeze.³⁸ In September 1991, Baker told Prime Minister Shamir that Israel would receive the loan guarantees only if it agreed to freeze settlement expansion and to stop the flow of money to the

occupied territories. Baker also called for the establishment of an apparatus that would enable the U.S. to monitor Israeli expenditures over the Green Line, in order to assure that funds guaranteed by the U.S. were not expended there and to confirm that Israeli funds made available as a result of the loans were spent within Israel as well.

But U.S. demands were never fleshed out or detailed. As one former U.S. official put it: "I am sure that Baker didn't know what he meant by a settlement freeze".³⁹ The U.S. plan fell far short of a comprehensive settlement freeze. It permitted completion of thousands of dwelling units begun before 1 January 1992, while prohibiting new construction after that date. The applicability of the construction ban to East Jerusalem was unclear. Still, the government of Prime Minister Shamir remained adamantly opposed to it.

The crisis with Israel was not fully resolved until Rabin's assumption of the premiership in July 1992. His government pledged to the U.S. that it would not establish new settlements and would halt the expansion of existing ones, with the exception of construction needed to meet the "natural growth" of the local population. Consistent with its view that Jewish neighbourhoods in the Jerusalem area were not settlements, the Israeli government also considered that construction in East Jerusalem and its surrounding West Bank hinterland ("Greater Jerusalem") was not covered by its commitment. Notwithstanding these pledges, a large number of housing units were constructed during this period.

C. THE CREATION OF PROTECTED CATEGORIES

The various exceptions allowed under Rabin's government set the stage for U.S. policy over subsequent years while accommodating a large increase in settlement activity and in the settler population. During the tenures of Prime Ministers Netanyahu (1996-1999) and Barak (1999-2001), even the limitations and concept of a freeze adopted by Rabin were abandoned. Efforts to deal with settlement expansion were the object of periodic bilateral discussions between Jerusalem and Washington. However, these were never detailed or

³⁷ "Creating Facts: Israel, Palestinians, and the West Bank", Geoffrey Aronson, Institute for Palestine Studies, 1987, p. 99.

³⁸ *Ha'aretz*, 1 November 1991. Loan guarantees had become an urgent necessity for Israel given the very large influx of Jews from the Soviet Union at that time.

³⁹ ICG interview, Washington, January 24, 2003.

vigorously pursued.⁴⁰ The sharpest increase in the number of housing units being built occurred under the government of Prime Minister Barak.

Two of the principal exceptions that allowed settlement growth under cover of a settlement freeze (or lesser constraint) were the Greater Jerusalem exemption and the concept of “natural growth” (that settlers ought not be penalised, that their children needed to be accommodated with new homes, schools, buildings and so forth). Israeli governments also have claimed that they were not establishing new settlements but rather building on existing ones, or that they could not rightfully cancel contracts that were already “in the pipeline”. Finally, Barak responded to criticism of his settlements policy by pointing out that the imminent conclusion of a final status agreement with the Palestinians would resolve the issue: new construction would not harm the Palestinians in those settlements slated for annexation and would not affect eviction plans in those due to be turned over. U.S. officials proved receptive to the argument.⁴¹

Ultimately, none of the various brakes put on the settlement effort succeeded in halting its growth. Since the beginning of the Oslo period, the number of housing units has increased by roughly 50 per cent;⁴² the settler population in the West Bank and Gaza virtually doubled to reach over 215,000;⁴³ the Jewish population of East Jerusalem approached 200,000; and a modern transportation infrastructure designed to facilitate future expansion came into existence.⁴⁴

In light of this history, a former Israeli official concluded that “a freeze has to be hermetic. If one leaves a hole, Israel will find a way to increase the number of settlers”.⁴⁵ A former U.S. official also highlighted the risks inherent in seeking to negotiate a category of exceptions with the Israeli government:

You will be nicked and dined to death and expend an enormous amount of diplomatic energy, negotiating the parameters of a freeze. You’ll chew up two to three years doing this. Loopholes that will necessarily be built in – on Greater Jerusalem and security needs, for example – will kill it.⁴⁶

⁴⁰ ICG interview with former U.S. official, Washington, July 2003.

⁴¹ ICG interview with former U.S. official, Washington June 2003.

⁴² “Land Grab, Israel’s Settlement Policy in the West Bank”, op. cit., p. 16.

⁴³ Israeli Central Bureau of Statistics.

⁴⁴ Avishai Margalit, “Settling Scores”, *New York Review of Books*, 22 August 2001. Khalil Toufakji, a member of the technical committee assisting Palestinian negotiating teams since 1992, pointed to these statistics to illustrate “the failure of a ‘freeze’ focused upon preventing the establishment of new settlements, because the main growth has been within existing settlements, whether the built-up area or lands zoned as part of these settlements, and within the outposts which Israel defines as outposts of existing settlements to get around opposition to new settlements. Huge tracts of land have since Oslo also been expropriated

to establish so-called bypass roads, pursuant to Military Order 50 of 1983. The story of settlement expansion since Oslo is largely one of the revival of authorisation granted to pre-existing plans, and this needs to be clearly understood”. ICG telephone interview, Ramallah, July 2003.

⁴⁵ ICG interview with Yoram Gabbai, Tel Aviv, 18 May 2003.

⁴⁶ ICG interview, Washington, 7 February 2003.

IV. HOW TO IMPLEMENT A COMPREHENSIVE SETTLEMENT FREEZE

While many observers have called over the years for a complete and comprehensive end to settlement expansion, and while the language of the Roadmap suggests this is what is contemplated by the Quartet, there has been remarkably little effort to analyse what such a freeze would have to look like and how it would be implemented.⁴⁷ Constructing a protocol that anticipates the myriad avenues through which communities grow and expand, and adopting measures to prevent such growth, is a challenging task. Indeed it is unlikely that there is any precedent for such an effort.

A principal lesson from past efforts at curbing settlement expansion is that Israel should not be permitted to define for itself protected categories. A settlement freeze needs to be strict, hermetic and all-encompassing. As one U.S. official told ICG:

At bottom, settlements are about land and money: the expropriation of Palestinian land makes the settlement enterprise possible, the state subsidies makes it affordable. A real settlement freeze will have to tackle both head on.⁴⁸

In other words, what is required is a multi-faceted effort focused on barring land confiscation and removing financial incentives to settlers and settlements.

Some exceptions should be allowed, if only for reasons of practicality and common sense. Where such is the case, however, they ought to satisfy three important criteria: they should be strictly defined by the U.S. and the Quartet rather than unilaterally by Israel; they should be allowed only on a case-by-case basis after consideration by a joint Quartet-Israeli committee under U.S. chairmanship; and they should be rigorously monitored by that same committee.

- *Duration.* The Roadmap does not specify the duration of a freeze; however, the implication

of its timetable clearly is that it be in force until conclusion of a final status agreement.

- *Functional Coverage.* In order to be effective, a settlement freeze will need to address the various areas described above. In particular, and in accordance with the Roadmap, all outposts erected since March 2001 as well as accompanying infrastructure should be removed for they contain the seeds of settlement expansion;⁴⁹ the demolition or expropriation of Palestinian land and property should cease; and, consistent with the exceptions mentioned below, all construction in settlements should presumptively come to an end, and all construction tenders should be revoked.
- *An end to subsidies.* Settlements have grown largely if not principally as a result of a generous package of financial benefits, including, inter alia, business and housing grants, subsidised mortgages and tax breaks that have encouraged and facilitated both residential settlement and commercial enterprises in the occupied territories.⁵⁰ To be meaningful and effective, a settlement freeze will have to end this formal system of subsidies.⁵¹ Given the current Israeli economic crisis and resulting budget cuts affecting welfare spending, such a move is likely to generate strong domestic support. Slashing benefits for the generally well-heeled and over-funded settlements would be both highly popular and relatively painless

⁴⁹ Although some hard-line settlers have put up highly-visible resistance to outpost evacuation, polls suggest widespread acquiescence to it among the settler population. According to a Peace Now survey, 66 per cent of settlers agreed that the outposts should be dismantled. Peace Now survey, 23 July 2003.

⁵⁰ "If a settler buys an apartment worth U.S.\$100,000, he will receive from the government a standing loan of U.S.\$20,000, which in practice comes close to turning into a grant after five years. Moreover, he also gets U.S.\$12,000 as a flat grant; and he pays such low interest on his mortgage (2.5 per cent compared to 5.5 per cent in Israel proper) that he saves U.S.\$40,000 in mortgage payments over twenty years". Margalit, "Settling Scores", op. cit.

⁵¹ According to Finance Minister Netanyahu's new economic plan, which introduces a number of cuts in general government expenditure, income tax breaks for settlers will be cancelled, and housing mortgages or loans will be reduced. However, additional incentives have been added for settlers in the Jordan Valley.

⁴⁷ The PLO Negotiations Affairs Department and UN representatives in Israel have developed their lists.

⁴⁸ ICG interview, Washington, July 2003.

politically. In the Knesset, members of the ultra-orthodox Shas party (hardly known for its anti-settler stance) have been using colourful language to call for the transfer of settlement budgets to welfare spending.⁵² Interior Minister Avraham Poraz, a member of the secular Shinui, was quoted as saying he would use his budgetary discretion to “dry up the settlements” and channel funds to the Galilee.⁵³

- A “no new settlements” pledge? Israelis have long argued that, so long as new settlements are not established, they are in compliance with a freeze. But the exception has swallowed the rule. Settlements are divided into three areas: built-up areas (areas in which there has been some kind of development); municipal boundaries (a vaster area over which the local committee or council enjoys jurisdiction according to the settlement master plan); and regional councils (the broadest area, which includes land seized by Israel for possible future expansion). Currently, the built-up area of West Bank settlements comprises less than 2 per cent of the West Bank’s 5,500 square kilometres; the territory under the direct municipal jurisdiction of individual settlements amounts to approximately 10 per cent of that area; and ten regional settlement councils have limited jurisdiction over approximately 41 per cent of the West Bank.⁵⁴ Building within the municipal jurisdiction has been the principal way to establish settlements that are new in all but name. When Israel establishes a settlement in a location outside the built-up area but within the far larger municipal boundary, it claims that it is adding a neighbourhood to an existing settlement. This also is the means chosen to “launder” outposts and try to make them legal while greatly expanding settlements. The important point is that settlements can be expanded substantially

within existing municipal boundaries,⁵⁵ and that, as a result, the U.S. and the Quartet should not be satisfied with a “no new settlements” pledge.

- *An Exception for Natural Growth?* Traditionally endorsed but never defined by the U.S., this has proven to be one of the more damaging exemptions. Indeed, it has become a standard loophole through which all Israeli governments have sought to justify settlement expansion. In fact, there is nothing “natural” about such growth; it results from a process of planning and zoning rather than from some automatic right to build next to one’s parents’ home. But “natural growth” has been invoked by Israeli governments to encompass more than birth rate; it also includes migration, which is encouraged through the system of subsidies and incentives described above.⁵⁶ Indeed, the average population growth rate among settlers is roughly three to four times greater than that among the Jewish population in Israel proper. Mindful of this history, the Mitchell Report and, subsequently and by reference, the Roadmap explicitly rejected any exception for settlement expansion due to “natural growth”.

That said, and assuming an end to the financial subsidy mechanisms, there are instances where the addition of specific public amenities (a kindergarten, school, playground or other community facilities) would be justified. This is particularly the case in settlements boasting exceptionally high birth rates (such as the two ultra-orthodox settlements of Betar Illit and Qiryat Seffer/(Mod’in Illit).⁵⁷ Approval of such exceptions should be strictly governed by the joint committee described above.

⁵² ICG interview with members of Knesset Finance Committee, including Shas MKs, July 2003.

⁵³ *Ma’ariv*, 22 July 2003.

⁵⁴ Figures are taken from Israeli Ministry of the Interior; B’Tselem, *Land Grab: Israel’s Settlement Policy in the West Bank*, op. cit.; and the Americans for Peace Now website, <http://www.peacenow.org/nia/briefs/Settlements0301.html>.

⁵⁵ Prominent Israeli columnist Nahum Barnea described the settlers’ strategy as follows: “You increase the area of jurisdiction of every settlement to the size of a large city. A settlement with a few dozen families living in it gets an area the size of Givatayim, for example. The new settlement is put up at the edge of the jurisdiction zone of the existing settlement”. *Yediot Aharonot*, 25 October 2002.

⁵⁶ “Natural growth is not only births, it is also the desire of people to join up and settle in that place”, Minister of Housing and Construction Effi Eitam, quoted in *Ha’aretz*, 2 June 2003.

⁵⁷ See *Ha’aretz*, 13 July 2003.

- *An Exception for “Built-Up” Areas?*⁵⁸ The argument has been made that building in already-developed areas will inflict no further territorial harm and will not broaden the geographical area of the settlements. But the tasks of defining the built-up areas of the roughly 200 settlements and monitoring such deviations would seem daunting; indeed, in many cases it would be virtually impossible to determine whether construction had expanded or conformed to the built-up area. Settlers are likely to be far more proficient at this game than outside observers.⁵⁹ Palestinians also register a demographic concern. Construction would make possible the infusion of new inhabitants in the built-up areas. If a principal goal is to protect the viability of the two-state solution, such population increases would only further complicate it by diminishing the political feasibility of evacuation.

In a similar vein, in their discussions with Israel, U.S. officials reportedly have been discussing the possibility of winning agreement to restrict settlement expansion to specified geographic locations in the settlements.⁶⁰ ICG strongly believes that this should be avoided, lest the putative freeze once more serve as cover for actual growth. Will the U.S. negotiate accepted expansion perimeters for each of the more than 200 settlements? Will it effectively monitor construction to ensure it is so limited? If so, how?

- *Geographic scope:* The Roadmap is unclear as to the status of East Jerusalem. In the past, the Israeli government did not agree to, nor did the U.S. demand, construction cutbacks in the areas of Israeli municipal Jerusalem.

⁵⁸ This exception supposedly formed the basis for an understanding between Secretary Powell and then Foreign Minister Peres. ICG interview with U.S. and Israeli officials, Tel Aviv, May 2003.

⁵⁹ Jan de Jong claims moreover that the exception for built-up areas “does not properly appreciate the geographical reality of settlements in the West Bank, many/most of which tend to have a dispersed rather than compact nature. The spaces between these individual concentrations within a single settlement will continue to be developed”. ICG telephone interview, July 2003.

⁶⁰ ICG interviews with U.S. and Palestinian officials, Washington, Ramallah, July 2003.

Israel treats such areas as special cases; according to its law, they have been annexed and thus the arrangements, permits and procedures that apply in the West Bank and Gaza are not relevant. U.S. administrations have tended to shy away from what typically has been a highly emotional and politically charged domestic issue, thereby turning a blind eye to Israeli practices. However, as previously discussed, to create an outright Jerusalem exemption would be to allow construction in an area that presents one of the more serious threats to the viability of the two-state solution. Moreover, for Palestinians and the rest of the international community, East Jerusalem has the same status as other occupied territory; an exception, therefore, would have no legal basis.

In light of Jerusalem’s special status, the circumscribed area involved and the fact that these neighbourhoods/settlements are almost certain to become part of sovereign Israel in any final deal, however, this is a case where ICG believes some flexibility may be justified. Specifically, this would involve application of the “built-up area” exception. This exception would have to be strictly monitored in order to prevent the addition of any new neighbourhood/settlement or any harm to existing Palestinian neighbourhoods. In particular, Israel should not demolish any Palestinian property, confiscate any additional areas of East Jerusalem, including for public use, or allow “mini-settlements” or “single-dwelling settlements” to be established in Palestinian neighbourhoods, a practice that is being used to encroach upon Palestinian neighbourhoods in the areas of Har Homa – Jebel-abel-Ghneim,⁶¹ Ras Al-Amud, Silwan, Abu Dis and Sheikh Jarah.⁶² (It is worth noting the highly anomalous situation that, with this exception, Israelis would be allowed to build, albeit very

⁶¹ The extensions of the Har Homa neighbourhood to the planned additional areas of Har Homa B and C should be strictly prohibited.

⁶² There are worrying signs that the government is supporting specific building plans that have been submitted for Jewish “mini-settlements” in Abu Dis, Burej-laq-laq in the northeastern corner of the Muslim Quarter of the Old City as well as in the eastern gate area. ICG interviews with Israeli experts on Jerusalem, July 2003.

restrictively, in East Jerusalem while Palestinian construction is virtually precluded).

- *An exception for ongoing construction or contracts that are “in the pipeline”?* Israeli officials argue that to cancel existing contracts would be prejudicial to contractors, an argument to which U.S. officials have been sympathetic.⁶³ However, Palestinians (and some Israelis) point out that settlers have become adept at amassing large numbers of such contracts as insurance against periods of more intense U.S. pressure.⁶⁴ The end result has been long queues of tenders that ensured large-scale housing construction. Palestinians also point to an Israeli Supreme Court ruling that the government could legitimately cancel contracts.

Though as a general matter this exception should be rejected, there are cases in which completion of already-initiated construction of housing units could be permitted. Application of the exemption ought to depend on the process being in an advanced stage (i.e., past the foundations stage), the unit already having been purchased when the construction was begun. (in order to discourage any last-minute rush to build), and how harmful completion would be. Moreover, this provision would of course exclude the publishing of any new tenders or promotion of any new contracts/developments.

Israeli contractors prejudiced by the revocation of contracts should be compensated; a joint U.S.-Israeli fund⁶⁵ should be set up to that effect. The U.S. might allow loan guarantees to be used for this purpose in the future.

- *An exception for repairs and maintenance?* Repairs of important services ought to be allowed, again subject to strict monitoring. The goal of a freeze is not to “prevent repairs on burst sewage pipes” but to bar the extension and construction of those elements

constituting the matrix of control in the West Bank and Gaza Strip – houses, roads, and industrial zones – and to prevent any alteration to the status quo.⁶⁶ That said, particular attention should be paid to preventing further road construction and the laying of planned rail-tracks in the West Bank, activities that typically require land confiscation.

- *An exception for those areas slated for annexation in a permanent status agreement?* Some argue today that building should be allowed within settlement blocs located in territory that, based on President Clinton’s December 2000 parameters and subsequent discussions in Taba in early 2001, were assumed to be part of the Israeli-Palestinian land swap and slated for annexation by Israel.⁶⁷ They make the point that enforcement of a freeze in areas that Israel considers part of a broad domestic understanding of what will become sovereign Israeli territory would be very hard to justify.⁶⁸ However (and though ICG believes the rationale should be accommodated in the special case of Jerusalem), such an exemption prejudices an Israeli-Palestinian agreement on the final territorial compromise that currently does not exist. Indeed, the argument is curious in light of the present Israeli government’s refusal to endorse any of the territorial compromises suggested during those negotiations. Should Israelis and Palestinians reach agreement on even the broad territorial contours of a final deal – or should, as ICG has recommended, the U.S. and the Quartet put forward their own detailed vision of a final agreement – the Palestinians are likely to be far more amenable to accommodating Israeli requests for construction in areas designated for the land swap. (Conversely, of course, Israel would have to enforce a total freeze in all other areas). Short of that, Palestinians almost certainly will

⁶³ ICG interview with former U.S. official, Washington, June 2003.

⁶⁴ ICG interview with Israeli observer, Tel Aviv, June 2003.

⁶⁵ Other members of the Quartet, for example, the European Union, might wish to participate in such a fund as well.

⁶⁶ ICG interview with Dror Etkes, settlements expert, Jerusalem, 13 May 2003.

⁶⁷ These include the settlement blocs of Ma’ale Adumim, Gush Etzion, Givat Ze’ev. ICG interviews with former Israeli officials, Washington, Tel Aviv, May-June 2003.

⁶⁸ Rabbi Yitzhak Pindrus, mayor of Beitar Illit, asked, “If Beitar is annexed in the end, then why implement a freeze here?”, ICG interview, Beitar, 26 May 2003.

not acquiesce in advance to any suggestion that presumes future Israeli annexation.⁶⁹

- *Monitoring a freeze.* A joint Quartet-Israel committee (in which the U.S. would act as chairman) should be set up to monitor strict implementation of the freeze. For activity such as infrastructure and housing construction and other building or demolition activity, the Quartet can rely on open sources (non-governmental organisations and the media), complemented by its own information. Interested governments, and in particular the U.S., have devoted considerable resources, both in materiel and personnel, to monitoring Israeli settlement policies. Using a combination of satellite imagery and personnel on the ground, U.S. officials have been able to gain a relatively accurate picture of Israeli settlement activity.⁷⁰ According to a former senior IDF official, “the United States has more real-time information on what is going on regarding settlements in the West Bank than does the IDF”.⁷¹ Israel should provide broad access and freedom of movement to the monitoring team charged with following settlement developments, including for aerial surveillance.

Monitoring of other issues, such as Israel’s system of subsidies, is more delicate. A system ought to be devised to facilitate effective oversight with minimal intrusion into the internal workings of the Israeli system. High-level technical experts from both sides should be charged with oversight. Israel should be responsible for appointing a single interlocutor to coordinate all relevant information from concerned bodies (including the ministries of Finance, Housing, Defense, Infrastructure, Trade and Industry and Agriculture).

V. OBSTACLES TO A SETTLEMENT FREEZE

A. THE COMPLEXITIES OF A FREEZE

Like ICG, Palestinian officials and UN officials in Israel have sought to devise lists of specific benchmarks for the implementation of an effective cessation of settlement growth. As these lists suggest, a whole range of current Israeli practices would have to come to a halt – relating to construction of buildings and infrastructure including roads; the issuance of tenders; relocation of Israelis to settlements; provision of subsidies or other forms of incentives to settlers; land confiscation; and home demolitions, among others. The story these lists do not tell is the extent to which such procedures and Israel’s general policy towards settlers and settlements have been deeply enshrined over the past four decades in Israeli law and judicial/administrative practices.

Any effort to achieve a genuine settlement freeze would have to contend with the following, non-exhaustive list of obstacles:

- Settlers and settlements are present in the occupied territories as a consequence of government policy and official encouragement.⁷² The state accordingly views itself as duty bound to provide for their everyday requirements. Settlers, the legislative and executive arm of the state, and public, private, and supranational communal organisations work together in the encouragement and expansion of settlements. Laws empower individuals and private and public bodies to expand settlements.
- Beyond these formal realities are the informal networks of solidarity that link settlers to politicians and officials. In particular, the system of subsidies and incentives involves both formal and informal networks within the structure of governance, involving most ministries as well as quasi-governmental agencies, the IDF, municipalities and even non-governmental settler organisations. The formal arrangements may be more sophisticated, but

⁶⁹ ICG interview with Palestinian official, Ramallah, June 2003.

⁷⁰ The CIA, for example, has for more than a decade compiled an annual book on settlements, including high resolution photographs of each settlement and current construction data.

⁷¹ ICG interview, Tel Aviv, July 2003.

⁷² David Levy, mayor of the Jordan Valley Regional Council, confirmed this in a May 2003 interview with ICG, in which he stressed that settlers were being encouraged to move to the mainly agricultural settlements in the Jordan Valley for longer-term strategic reasons.

the informal ones may be harder to overcome and often involve no more than supportive, well-placed individuals within the system. As Nahum Barnea wrote:

There is a “Judea, Samaria, and Gaza underground”, a group of politicians, senior civil servants, IDF officers and rabbis who are loyal to the cause....Their motives are ideological and sectarian...The secret is the people: if you have people in key positions, you control the information, the decisions, the funds. You can abandon an outpost, but you must never abandon a position.⁷³

- Since 1967, the order of priorities adopted by the IDF has meant that it can invoke military necessity to justify various settlement activities such as road construction or land confiscation.
- Over the years, significant planning and budgetary power (regarding taxation, courts, construction and the like) has been devolved to local settlements.⁷⁴ Legislation confers autonomous planning and revenue-raising powers to representative bodies in settlements.
- Also over time, the status of settlers in the occupied territories has been civilianised; in other words, they have become thoroughly integrated into the life of Israelis living within pre-1967 boundaries. Legal and administrative provisions have effectively erased the distinction between these two categories. This stands in sharp contrast to the situation that

⁷³ “A Bitter Harvest”, Yediot Aharonot, 25 October 2002.

⁷⁴ A significant proportion of services received by Israeli citizens is provided through local authorities, i.e., municipalities, local councils and regional councils. Some services are provided by local authorities on an independent basis, while others are provided in cooperation with various government ministries. The former category includes, for example, the maintenance of the water and sewage systems, the provision of cleaning services, sanitation and veterinary supervision, the preparation of local outline plans and the granting of building permits, the maintenance of public buildings, roads and public parks, and the collection of municipal taxes. Services provided in cooperation with government ministries include the maintenance of school buildings, the operation of pre-school kindergartens, cultural activities, the maintenance of museums, libraries and sports facilities, the operation of family health clinics, therapy and support for distressed youth and families, support for the religious councils, and the like.

prevailed prior to 1979, when the IDF was the sole intermediary between settlers, settlements and the state. A series of military orders have ceded powers in the occupied territories (including planning powers and the issuance of building permits) to Israeli civilian authorities. The exigencies of an effective settlement freeze may thus require the re-militarisation of the relationship of settlers and settlements to the state. In the words of Menachem Klein, a former advisor to Prime Minister Barak on the issue of Jerusalem, “the question is where the state of Israel ends – in terms of law, control, administration, and infrastructure”.⁷⁵

B. THE ROADMAP’S FLAWED APPROACH

1. Settlement freeze as confidence-building measure

As previous sections illustrated, the failure of past efforts to halt settlement expansion was to a large extent due to the creation of categories of exceptions that allowed significant settlement growth. But there was another reason. All attempts to date to effectuate a settlement freeze have treated it as a confidence-building measure, an initial incremental step designed to prove Israel’s good faith and to be reciprocated by similar Palestinian measures. Classic cases include James Baker’s endeavour to persuade Shamir and the current Roadmap exercise.

In the former, Israel was asked to freeze its settlement activity in exchange for an end to the Arab boycott and to the first Palestinian intifada. The Roadmap similarly views a settlement freeze as a confidence-building measure to be implemented during the interim period preceding final status negotiations. In both instances, the placement of a settlement moratorium reflects an under-appreciation of the difficulties entailed in effectuating a genuine freeze. Its effective and thorough implementation – a complete cessation of settlement throughout all of the occupied territories – would require Israel to transform the premises under which it has conducted settlement and security policies for more than a generation in what has in effect been a preferred “national project”. While this is, of course, the objective of proponents of the idea, it is difficult to

⁷⁵ ICG interview, Jerusalem, 27 January 2003.

imagine such a decision being taken in any context but final status deliberations.

Should such a change in Israeli policy occur, the central settlement-related element would not be freezing settlements, but rather the evacuation of the vast majority.⁷⁶ It is not simple for Israel – or any country for that matter – to provide a third party the kinds of oversight rights described above. So long as settlement protection is considered part of the IDF's duty, it will resist any restriction on its freedom to act in the territories. Indeed, this is a view widely held in Israel, including among many Israeli supporters of a freeze.⁷⁷

The notion of a settlement freeze was born at a time, more than two decades ago, when settlement expansion was still a discreet, limited and one-dimensional affair. In that context, there may have been a legitimate basis to view a cessation of settlement activity as a confidence-building measure as the parties sought to establish the parameters of a peace agreement. When the idea was resurrected in the early 1990s, however, the transformation of Israel's civilian presence in the occupied territories had turned it into an idea requiring deep structural changes and intrusive monitoring. The lack of attention to the meaning or mechanics of a freeze, including by those who have championed it in the international community or in Israel, further suggests that it has been envisioned more as a political instrument than a real policy option, a tool of diplomatic pressure against Israel rather than a practical measure.

The diplomatic options being discussed in the aftermath of the failure of the Oslo process continue to envision, as if by habit, the idea of a settlement freeze as a workable confidence-building measure whose

effective implementation will demonstrate Israeli goodwill. Yet a close examination of the requirements for implementing an effective settlement freeze reveal a dauntingly complex undertaking. Indeed, it could be argued that the decisions required of the Israeli government are such as to make the call for a freeze either unrealistic – and thus damaging to the credibility of any diplomatic process that incorporates it – or unnecessary, since any government willing to freeze settlements effectively would be prepared to evacuate them. The Palestinians' likely unwillingness or inability to dismantle the quasi-military infrastructure of Hamas or Islamic Jihad similarly reflects the shortcomings of the Roadmap and its expectation that the parties will take difficult strategic steps as early confidence-building measures.

The Roadmap, in this respect, is analogous to an exercise of shadow-boxing between two opponents pointing to the other's deficiency (on settlements in one case; on the armed groups in the other) as justification for ignoring obligations they appear to have no intention of truly implementing.

2. The settlers as a political force

Practical and administrative problems aside, and assuming Prime Minister Sharon were committed to a genuine moratorium on settlement growth, it would have to be implemented over the opposition of a constituency within the Israeli public that has proven adept at mobilising government support in its favour and subverting, when necessary, similar though far less comprehensive efforts to limit its authority and ability to expand settlements. The settler movement enjoys significant political power. Hard-line, so-called ideological settlers in particular wield disproportionate influence, thanks to their well-oiled organisation involving both political parties that directly represent their interests and wide-ranging lobbying efforts inside and outside the Knesset.⁷⁸ Ron Nachman, the mayor of

⁷⁶ ICG has described in detail a comprehensive final peace agreement pursuant to which, inter alia, "The borders of the state of Palestine will be based on the lines of 4 June 1967 with modifications. Israel will annex no more than 4 per cent of the West Bank to accommodate a majority of its settlers while dismantling the majority of its settlements, and Palestine will be compensated by the transfer of Israeli land of equal size and actual or potential value. Borders will be drawn to protect the contiguity of the West Bank, minimise the number of Palestinians brought within Israel or relocated, and ensure Palestinian access to water resources and sovereignty over international borders with Jordan and Egypt". ICG Report, *Middle East Endgame 1*, op. cit., p. 15.

⁷⁷ ICG interview with Amiram Goldblum, 29 January 2003.

⁷⁸ The current government coalition comprises the National Union and the National-Religious Party (NRP), both of which represent settler interests and voted against endorsement of the Roadmap, in addition to the Likud, almost half of whose MKs are part of the Yesha lobby. In the 2003 elections, the National Union gained seven mandates in the Knesset (5.5 per cent). Among West Bank settlers, the party gained a record 15.6 per cent and became the second-strongest party behind the Likud. The party is led by its chairman, Yisra'el Beitenu, and Transportation Minister Avigdor Lieberman, who lives in the settlement of Nokdim and advocates the transfer of the Palestinians to Jordan. The NRP ('Mafdal') has gradually come to represent Jewish settlers in the West Bank and Gaza Strip.

Ari'el, rates his current job more highly than his previous position as a member of the Knesset because, he says, "I am a fact on the ground; I created a fact on the ground with this city 25 years ago; now nobody can dismantle this city".⁷⁹ The Likud, and Prime Minister Sharon in particular, entertain strong and old relations with the settler community. Eighteen out of 40 Likud MKs joined a pro-settler lobby in the Knesset in April 2003. Its self-professed aim is to "ensure the preservation and strengthening of the settlements in the West Bank and Gaza and to prevent any move that could endanger the settler movement".⁸⁰

The powerful YESHA Council of settlers (*Mo'etzet Yeshu'a*), which functions as a coordinating body, regional parliament and interest group, argues that implementation of a freeze is impossible on practical grounds: "There can be nothing more unnatural than a stop to natural growth. Should women be using birth control? Soldiers discharged from the army cannot come home and build their own houses next to their parents' homes?"⁸¹ Other settlers echo this view and the notion that discrimination against settlers would be unjustified: "What about schools, security measures, environmental investments?"⁸²

Led by former army general and current Minister of Housing and Construction Effi Eitam, the party's platform for the 2003 elections stated that settlements form "an integral part of the State of Israel", and that "Judea, Samaria and the Gaza Strip should be annexed into Israel and settlement should expand". The party won six seats (4.2 per cent). Its share among West Bank settlers was 14.4 per cent. The mayor of the Jordan Valley regional council of settlements, David Levy, argued, "There won't be a freeze; people will interpret the call for a freeze how they wish to. Do you think [National Union MK and Minister of Tourism] Benny Elon and [NRP leader and Minister of Housing and Construction] Effi Eitam will implement a freeze?" ICG interview, Tel Aviv, 29 May 2003. In a statement sent to ICG, Tourism Minister Benny Elon wrote: "No positive results will ever come from 'settlement-freezing' because these settlements are civilian neighbourhoods that do not cause harm to anyone. On the contrary, these villages represent life, growth and building, while the neighbouring PA outposts are spreading terror, mayhem and death in the region"; letter to ICG on behalf of Minister of Tourism, National Union MK Rabbi Benny Elon, 19 May 2003, #2003-0001-672.

⁷⁹ ICG interview with Ron Nachman, mayor of Ari'el and former Likud MK, Ari'el, 28 May 2003.

⁸⁰ See Nadav Shragai, "Almost Half of Likud MKs Join 'YESHA lobby'", in *Ha'Aretz*, 28 April 2003.

⁸¹ ICG interviews with Ezra Rosenfeld, foreign press spokesman for the YESHA Council, Jerusalem, 12 May 2003; and Ron Nachman, mayor of Ari'el and former Likud MK, Ari'el, 28 May 2003.

⁸² ICG interview with David Levy, mayor of the Jordan Valley regional council, Tel Aviv, 29 May 2003.

Recent Israeli steps to implement the Roadmap's call for an immediate evacuation of all outposts erected since March 2001 illustrate both the determination of some settlers to circumvent any restrictions and the government's apparent unwillingness to confront them. The evacuation, billed as the government's first act of compliance with the roadmap, turned into a cat-and-mouse game. The by-and-large theatrical spectacle of the evacuation of outposts has, to date, been of little moment, as dismantled outposts were re-established almost immediately.⁸³ The Council of YESHA Rabbis issued a call to evacuate outposts in line with army instructions and then concentrate on the establishment of new outposts: "We will willingly leave the outposts and let them be held by the IDF, and on the very same day, we will go to alternate sites that have been prepared in advance."⁸⁴ One outpost has been dismantled five times in less than three days.⁸⁵ For every outpost that is dismantled, several others are constructed.⁸⁶

⁸³ See Nadav Shragai, "Settlers Have Set Up More Than Ten Outposts in Last Two Weeks, in *Ha'Aretz* online update, 22 June 2003, and Settlers Erect 'Ariel Hill' Outpost Named for Prime Minister, in *Ha'Aretz* online update, 24 June 2003; at <http://haaretzdaily.com>.

⁸⁴ Quoted from Nadav Shragai, "Rabbis: 'Build New Outposts Instead of Fighting for Old'", in *Ha'Aretz* online update, 26 June 2003; at <http://haaretzdaily.com>.

⁸⁵ See Nadav Shragai, "Evacuations Proceed Amid Clashes", in *Ha'Aretz*, 27 June 2003.

⁸⁶ See "Enough Playing Games" (Editorial), in *Ha'Aretz*, 2 July 2003.

VI. CONCLUSION

The Quartet and its principal actor, the U.S., face a difficult conundrum: bringing to a rapid halt the ongoing settlement activity is of vital importance if they wish to salvage both the Roadmap and the prospect of a two-state solution; allowing for the types of exceptions utilised in the past is a recipe for continued, injurious settlement growth; achieving a more airtight, comprehensive freeze in the context of the Roadmap and in light of the entrenched nature of the settlement enterprise is a complex proposition. From this, one might conclude that the evacuation of settlements, not their freeze, is the optimal immediate solution. However, that is not what the Roadmap prescribes.

As a result, and despite the obvious difficulties, the U.S. and the Quartet have no real choice but to exert maximum effort to help achieve a genuine settlement freeze. It is both a necessary and long overdue ingredient of any political process that seeks to sustain an atmosphere of security and peaceful negotiations. In its capacity as member of the Quartet, the U.S. should take the lead in strictly defining the terms of a freeze, extracting a commitment from Prime Minister Sharon that his government will implement it and establishing the capacity to monitor compliance seriously. Allowances can be made for four categories of exceptions: built-up areas in the Jewish neighbourhoods/settlements in municipal East Jerusalem; certain construction that is at an advanced stage; repair and maintenance of important infrastructure; and, particularly in settlements with high birth rates, provision of additional public amenities such as new schools and kindergartens. These exceptions should be narrowly defined, and a joint Quartet-Israeli committee chaired by the U.S. should approve them on a case-by-case basis and monitor them. Beyond these categories, however, the Israeli government should be held to the strict standard described in the Roadmap: a settlement freeze that makes no exception for natural growth.

The U.S. ought to be particularly vigilant and intransigent with regard to those activities most threatening to President Bush's own vision of a two-state solution. These include the maintenance and addition of settlement outposts; the precise route of the separation fence; the further expansion of settlements in the central region of the West

Bank such as between Ramallah and Nablus; and action in the Jerusalem area that jeopardises the contiguity and economic and political viability of the future Palestinian capital.

Some Israeli violations are likely. But, in the long run, assenting to broader or vaguer protected categories would be more damaging still, all at once demonstrating to Israel and the Palestinians that the international community does not take this issue seriously and allowing further harm to a putative territorial partition.⁸⁷ Indeed, the consistent public reporting of such violations could serve a salutary purpose: deterring more flagrant abuse; highlighting the continuing injury being inflicted by settlements as well as the centrality of the issue; and indirectly conveying the message that, ultimately, the only genuine and truly workable solution lies in a wide scale settlement evacuation and, therefore, in a more rapid movement toward a permanent status agreement.

Enforcement presents another serious challenge. As it presently is set up, the sole consequence arising from Israel's failure to live up to its commitment to freeze settlements is a delay in progress from Phase I to Phases II and III of the Roadmap (which contemplate the creation of a Palestinian state with provisional borders and reaching a final status agreement, respectively). That hardly represents an incentive for the Israeli government to abide by its obligation. Instead, the Quartet should make clear to Israel that – whatever other negative responses they might provoke in terms of bilateral assistance or political support – breaches would force it to accelerate rather than retard consideration of settlement evacuation. Equally, the Quartet should make clear that it would see continued settlement activity as a threat to the realisation of the two-state solution and would therefore consider steps to move more rapidly toward a final agreement, in particular through the public presentation and

⁸⁷ Being vigilant about the most damaging Israeli actions and publicly condemning any action inconsistent with a freeze is essential, however. The credibility of the Oslo process was undermined in large part by the fact that each party ignored (without cost) commitments made to the other. The credibility to Palestinians of a diplomatic process based in part upon Israel's commitment to a freeze during the interim period runs the risk of being seriously weakened if Israel were seen to be ignoring its provisions. The scope of the changes demanded of the Israeli government almost assures that this will take place to some degree.

promotion of its own fleshed-out accord. Indeed, any interim arrangement, including the Roadmap's Palestinian state with provisional borders, would be virtually untenable absent a genuine freeze and therefore would need to be bypassed.⁸⁸

Finally, as a means of facilitating both a settlement freeze and the eventual resolution of the conflict, the relocation to Israel proper of settler families inclined to do so ought to be encouraged. ICG interviews and other data suggest that a considerable number of families would like to move out of the settlements but lack the ability to do so without governmental assistance;⁸⁹ having bought highly subsidised houses, they are presently unable to sell them due to a lack of demand and cannot otherwise raise the money necessary for alternative housing within the Green Line. Israel could use funds saved from the zeroing out of subsidies for settlements to that effect; the U.S. and perhaps also the EU could contribute. In addition to financial assistance, settlers could be offered the opportunity to embark in a new pioneering enterprise within Israel proper. Making a similar point, Gilad Sher, Barak's former Chef de Cabinet, argued forcefully that settlement evacuation needs to be on the agenda sooner rather than later:

Instead of deceiving [the settlers] with winks that at the end of the process most of the settlements will remain in place, [the government] should be planning a renewed settlement enterprise for those who will be evacuated from Judea, Samaria and Gaza, and resettled inside the state of Israel, with all

the national resources needed allocated for the purpose.⁹⁰

Israel's sharp budgetary problems and resulting irritation at settlement expenditures, growing public support for settlement evacuation in the context of a unilateral separation, the fall of the Baathist regime in Iraq and the concomitant end of the "Eastern threat" that once served to justify the establishment of settlements in the Jordan Valley – all these developments point toward settlement evacuation as the preferred, more workable and ultimately necessary solution.⁹¹

Amman/Jerusalem/Brussels, 25 July 2003

⁸⁸ Palestinians interviewed by ICG wonder how the PA would or should react in the event settlement activity continued. For many Palestinians, the PA's principal fault during the Oslo years resided in its willingness to continue negotiating despite such activity. Eager to avoid a repetition, some have suggested taking up the call for a one-state solution should Israel fail to meet its obligations. ICG interviews, Ramallah, June-July 2003.

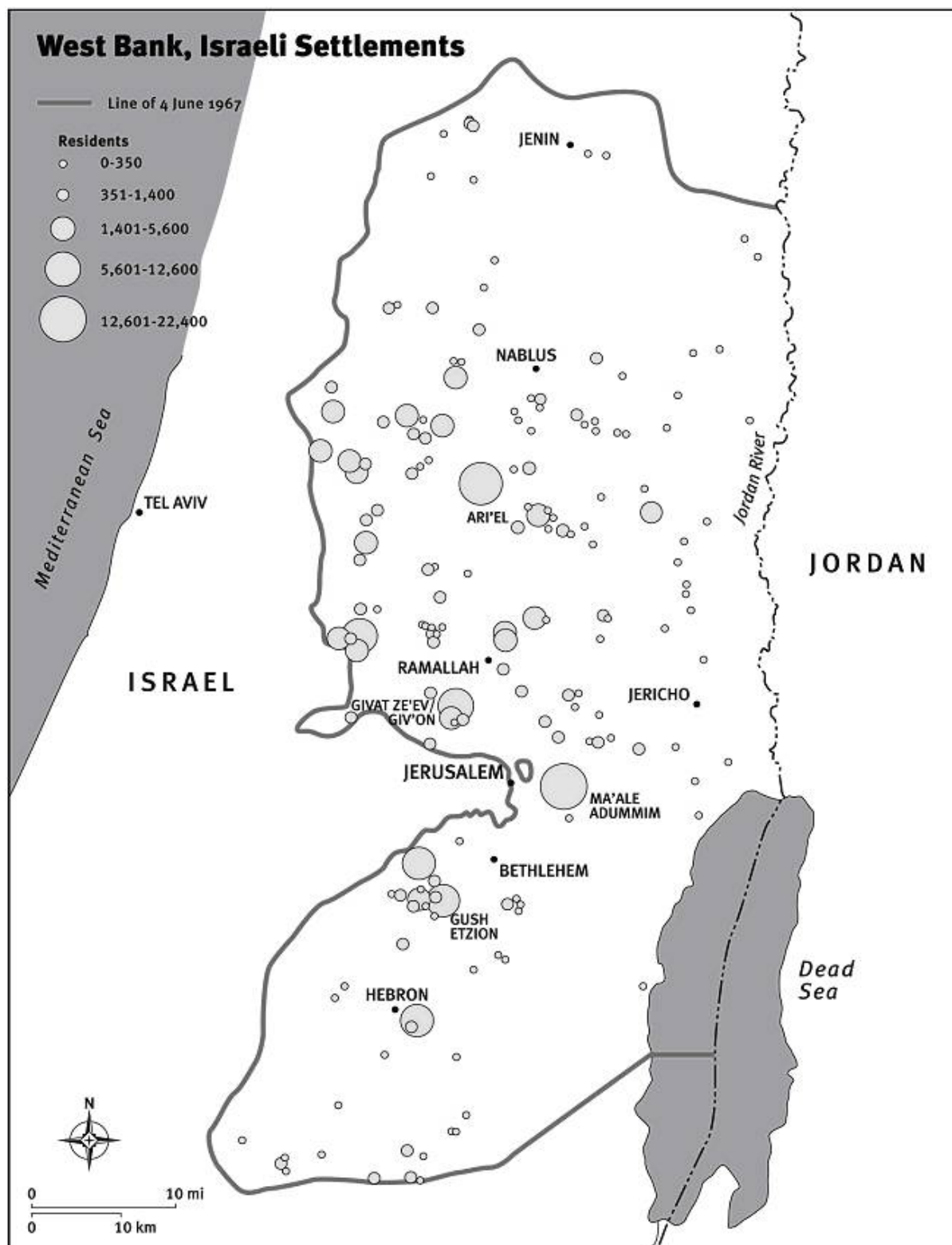
⁸⁹ The elected representative of an ultra-orthodox settlement echoed this view: "People would go and live anywhere if the government developed other neighbourhoods in the country". ICG interview with Rabbi Yitzhak Pindrus, mayor of Beitar Illit, Beitar, 26 May 2003. According to a large-scale survey conducted by Peace Now, 77 per cent of all settlers are motivated by "quality of life" as opposed to ideological or religious considerations. See "Settler Attitudes towards Withdrawal from the Territories".

⁹⁰ *Yediot Aharonot*, 21 July 2003.

⁹¹ Another reason to consider at least some settlement evacuation at an earlier stage in the Roadmap is that the continued widespread presence of settlements in the occupied territories is making it difficult for the IDF to remove checkpoints or to ease travel restrictions and closures on Palestinians. Palestinian and Quartet officials have questioned whether it will be possible for the IDF to produce any meaningful easing of restrictions on Palestinian movement absent a change in the settlements map. ICG interviews, July 2003.

APPENDIX A

MAP OF WEST BANK ISRAELI SETTLEMENTS



APPENDIX B

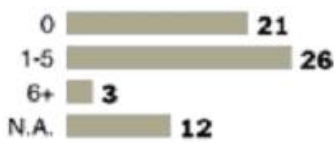
MAP OF ISRAELI OUTPOSTS ESTABLISHED IN THE WEST BANK SINCE MARCH 2001

OUTPOSTS ESTABLISHED SINCE MARCH 2001

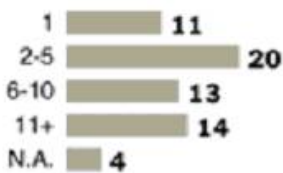
Outposts typically consist of a handful of structures with several families living there, if they are inhabited at all.

0 Miles 10

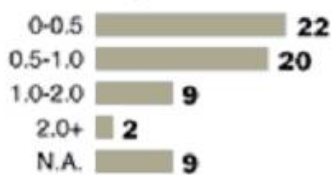
Number of families



Number of structures



Miles from parent settlement

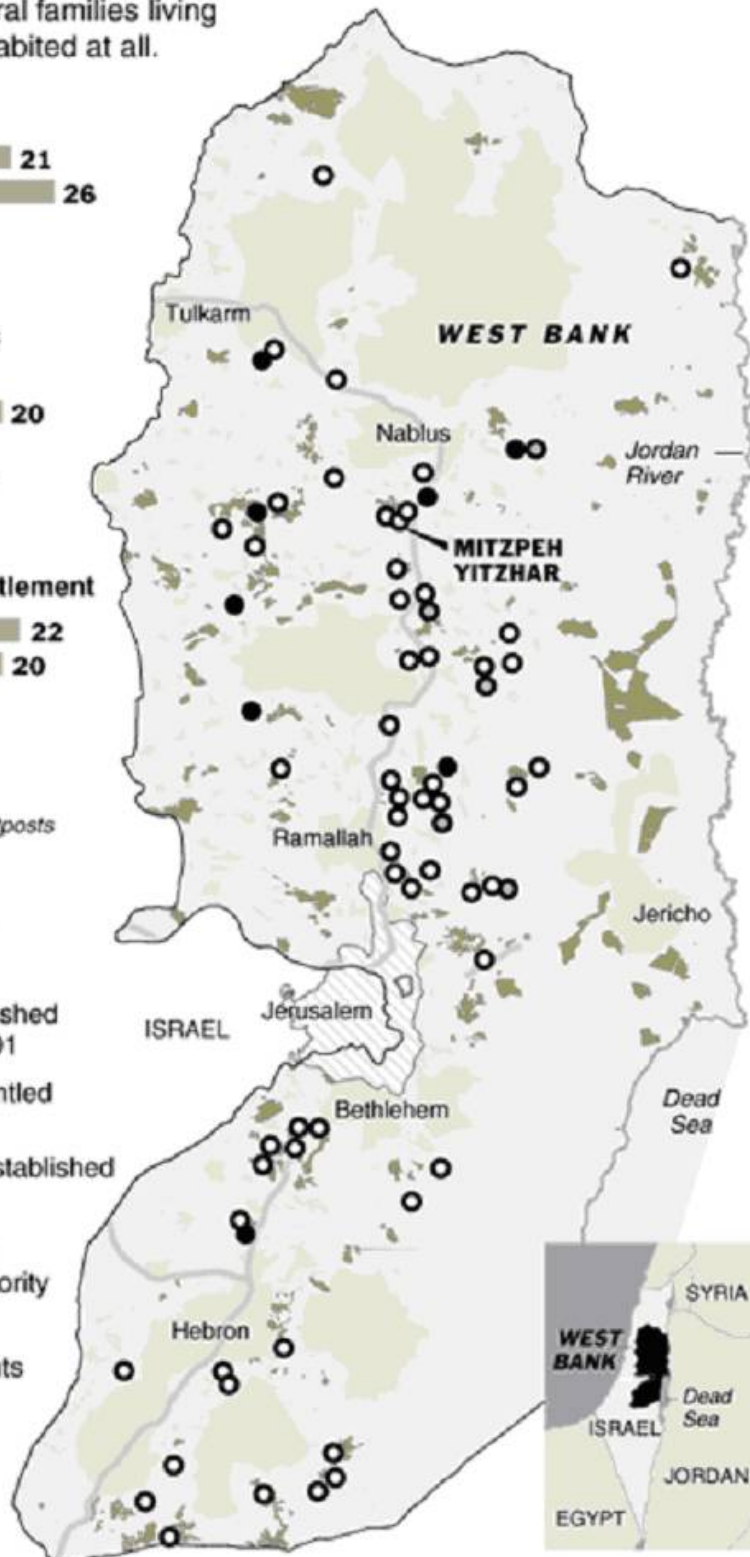


Does not include the five outposts established this week.

MAP KEY

- Outposts established since March 2001
- Outposts dismantled last week
- ◉ New outposts established this week
- Areas of formal Palestinian authority
- Boundaries of Israeli settlements

Locations of two dismantled settlements were not available.

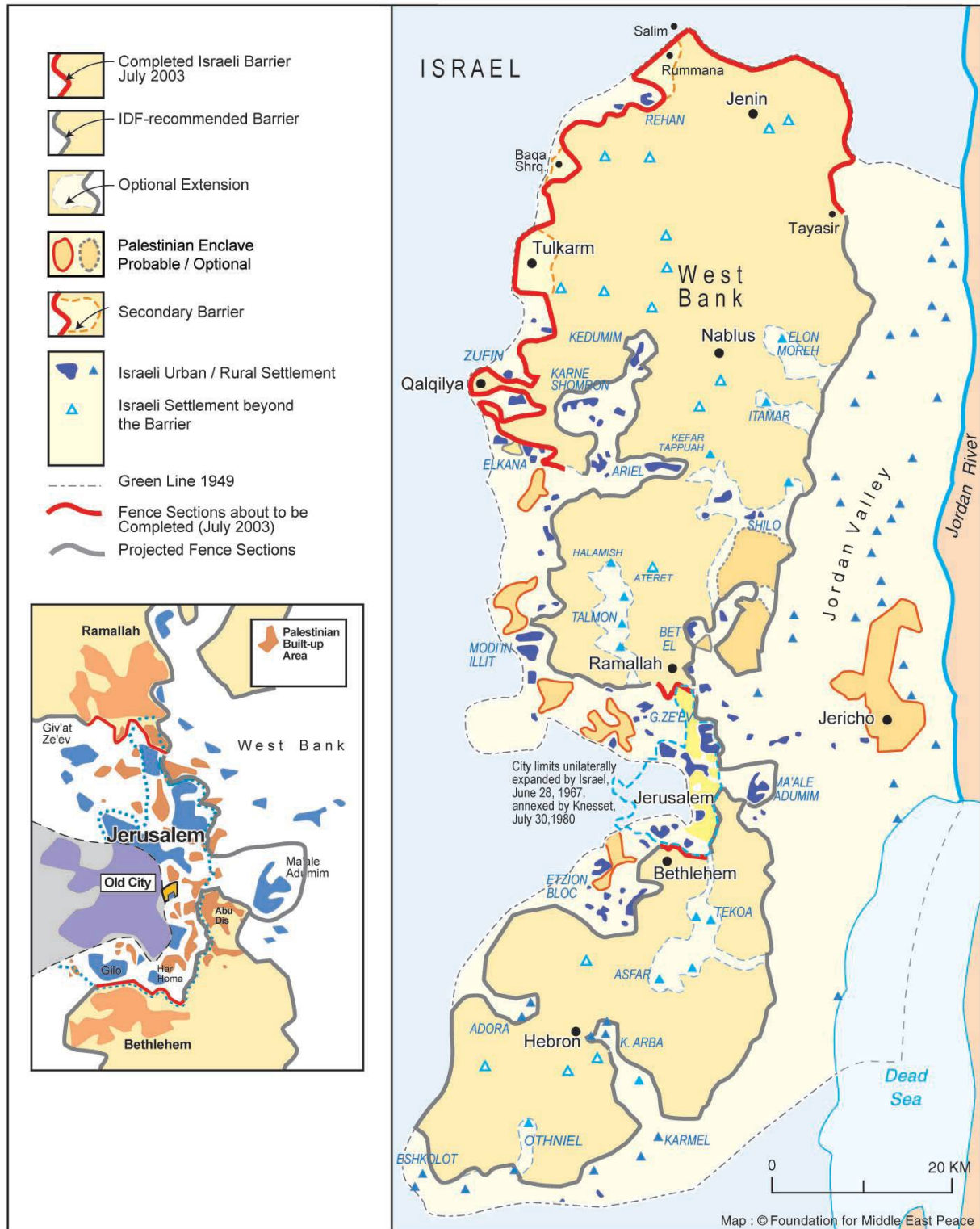


Source: Peace Now

APPENDIX C

MAP OF PROJECTED ISRAELI SECURITY FENCE

Israeli Separation Options for the West Bank—July 2003



Source: Foundation for Middle East Peace, "Report on Israeli Settlement in the Occupied Territories", July – August 2003

APPENDIX D

Excerpts from the Report of the Sharm el-Sheikh Fact-Finding Committee, headed by former Senator George J. Mitchell, issued on 30 April 2001

INTRODUCTION

Some Israelis appear not to comprehend the humiliation and frustration that Palestinians must endure every day as a result of living with the continuing effects of occupation, sustained by the presence of Israeli military forces and settlements in their midst, or the determination of the Palestinians to achieve independence and genuine self-determination.

WHY DID IT HAPPEN?

The Palestinian Perspective: Palestinians are genuinely angry at the continued growth of settlements and at their daily experiences of humiliation and disruption as a result of Israel's presence in the Palestinian territories. Palestinians see settlers and settlements in their midst not only as violating the spirit of the Oslo process, but also as application of force in the form of Israel's overwhelming military superiority.

The Israeli Perspective: From the GOI [Government of Israel] perspective, the expansion of settlement activity and the taking of measures to facilitate the convenience and safety of settlers do not prejudice the outcome of permanent status negotiations.

Israel understands that the Palestinian side objects to the settlements in the West Bank and the Gaza Strip. Without prejudice to the formal status of the settlements, Israel accepts that the settlements are an outstanding issue on which there will have to be agreement as part of any permanent status resolution between the sides. This point was acknowledged and agreed upon in the other agreements between the two sides. There has in fact been a good deal of discussion on the question of settlements between the two sides in the various negotiations toward a permanent status agreement. [Israeli submission]

Indeed, Israelis point out that at the Camp David summit and during subsequent talks, the GOI offered to make significant concessions with respect to the settlements in the context of an overall agreement.

Settlements: The GOI also has a responsibility to help rebuild confidence. A cessation of Palestinian-Israeli violence will be particularly hard to sustain unless the GOI freezes all settlement construction activity. The GOI should also give careful consideration to whether settlements that are focal points for substantial friction are valuable bargaining chips for future negotiations or provocations likely to preclude the onset of productive talks.

The issue is, of course, controversial. Many Israelis will regard our recommendation as a statement of the obvious and will support it. Many will oppose it. But settlement activities must not be allowed to undermine the restoration of calm and the resumption of negotiations.

During the half-century of its existence, Israel has had the strong support of the United States. In international forums, the U.S. has at times cast the only vote on Israel's behalf. Yet, even in such a close relationship there are some difficulties. Prominent among those difference is the U.S. Government's long-standing opposition to the GOI's policies and practices regarding settlements. As the then-Secretary of State, James A. Baker, III, commented on May 22, 1991:

Every time I have gone to Israel in connection with the peace process, on each of my four trips, I have been met with the announcement of newsettlement activity. This does violate United States policy. It's the first thing that Arabs – Arab Governments, the first thing that the 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 bigger obstacle to peace than the settlement activity that continues not only unabated but at an enhanced pace.

The policy described by Secretary Baker, on behalf of the Administration of President George H. W. Bush, has been, in essence, the policy of every American administration over the past quarter century.

Most other countries, including Turkey, Norway, and those of the European Union, have also been critical of Israeli settlement activity, in accordance with their views that such settlements are illegal under international law and not in compliance with previous agreements.

On each of our two visits to the region, there were Israeli announcements regarding expansion of settlements, and it was almost always the first issue raised by Palestinians with whom we met. During our last visit, we observed the impact of 6,400 settlers on 140,000 Palestinians in Hebron and 6,500 settlers on over 1,100,000 Palestinians in the Gaza Strip. The GOI describes its policy as prohibiting new settlements but permitting expansion of existing settlements to accommodate "natural growth." Palestinians contend that there is no distinction between "new" and "expanded" settlements; and that, except for a brief freeze during the tenure of Prime Minister Yitzhak Rabin, there has been a continuing, aggressive effort by Israel to increase the number and size of settlements.

The subject has been widely discussed within Israel. The Ha'aretz English Language Edition editorial of April 10, 2001 stated:

A government which seeks to argue that its goal is to reach a solution to the conflict with the Palestinians through peaceful means, and is trying to at this stage to bring an end to the violence and terrorism, must announce an end to construction in the settlements.

The circumstances in the region are much changed from those which existed nearly 20 years ago. Yet, President Reagan's words remain relevant: "The immediate adoption of a settlement freeze by Israel, more than any other action, could create the confidence needed ..."

Beyond the obvious confidence-building qualities of a settlement freeze, we note that many of the confrontations during this conflict have occurred at points where Palestinians, settlers, and security forces protecting the settlers, meet. Keeping both the peace and these friction points will be very difficult.

Actions and Responses: We are deeply concerned about the public safety implications of exchanges of fire between populated areas. Palestinian gunmen have directed small arms fire at Israeli settlements and at nearby IDF positions from within or adjacent to civilian dwellings in Palestinian areas, thus endangering innocent Israeli and Palestinian civilians alike. We condemn the positioning of gunmen within or near civilian dwellings.

RECOMMENDATIONS

Rebuild Confidence: The GOI should freeze all settlement activity, including the "natural growth" of existing settlements. The kind of security cooperation desired by the GOI cannot for long co-exist with settlement activity described very recently by the European Union as causing "great concern" and by the U.S. as "provocative."

The GOI should give careful consideration to whether settlements which are focal point for substantial friction are valuable bargaining chips for future negotiations or provocations likely to preclude the onset of productive talks.

The GOI may wish to make clear to the PA that a future peace would pose no threat to the territorial continuity of a Palestinian State to be established in the West Bank and Gaza Strip.

The GOI should take all necessary steps to prevent acts of violence by settlers.