An Unsettled Question: Recalibrating U.S. Policy on Israeli Settlements

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Disclaimer:

The opinions, findings, conclusions, and recommendations expressed in this publication are solely those of the authors and do not necessarily reflect those of the organizational affiliations as outlined in the bios, aside from Israel Policy Forum, which is responsible for commissioning the paper and its content.
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Acknowledgments

This report is dedicated to countless acting and former U.S. officials, who throughout the years have sought to help Israelis and Palestinians avoid their worst tendencies. By navigating the political, diplomatic, and moral complexities of the Israeli-Palestinian landscape, many of which are embodied in the settlement enterprise and the struggle over its plight, these officials have endeavored to strike a balance between their personal values, U.S. principled positions, domestic political constraints, a flawed set of available policy options, and the ever-evolving political and territorial realities on the ground in the Holy Land. We pay tribute to their efforts at shaping this critical policy arena.

We thank these officials for graciously sharing their experiences and perspectives with us during dozens of interviews conducted for the purpose of the report. These insights provided windows into the historic and present-day intricacies of the issue, and the longstanding dilemmas that have plagued those seeking meaningful progress. We also extend our thanks to the Israeli, Palestinian, and U.S.-based analysts who have offered guidance, provided data, and created the pre-existing rich body of literature that has laid the groundwork for this study. We have done our absolute best to credit and cite these sources. Any omissions or errors are unintentional.

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Executive Summary

Key Proposition

Amid current shifting global landscapes, with major threats on the horizon and the potential for deleterious long-term damage to prospects for the two-state outcome, the United States has the responsibility and opportunity to recalibrate its position on West Bank settlements in order to better align its principles, objectives, and means in the service of more effective policymaking. This entails reorienting the U.S. position firmly and unambiguously in support of two states by highlighting the ways in which Israeli settlements make that outcome increasingly difficult, if not impossible. It also entails working toward a U.S.-Israel agreement over a partial but strict settlement freeze, implementing a policy of differentiating between different settlement construction in an attempt to identify spots where construction harms a future two-state outcome versus spots where new construction will not meaningfully impact the possibility of territorial separation.

Overview

The greatest point of tension in the U.S.-Israel relationship has historically been Israeli policy in the West Bank. Apart from its security dominance over the Palestinian arena, the starkest manifestation of Israel's occupation is the establishment, maintenance, and expansion of Israeli settlements. Israel and the United States repeatedly find themselves at odds over this contentious issue. Efforts to align positions, diplomacy, international law, historical and religious motivations, domestic politics, and security considerations have occurred against the backdrop of a deepening Israeli presence in the West Bank. Recurrent attempts by successive American administrations to achieve a two-state outcome to the Israeli-Palestinian conflict and to adequately rein in settlement construction have, up until now, failed.

This largely ineffective approach must now contend with a new phase of activity that is accelerating in ambition, scope, and velocity, coinciding with the formation of Israel's 37th government under Prime Minister Benjamin Netanyahu, the most far-right, pro-settlement government to date. This can be characterized by an ongoing, accelerated de facto annexation, which is propelling Israel toward a less secure and non-democratic one-state reality, occurring in parallel to creeping de jure annexation, defined as the redesigning of the Israeli legal and administrative landscape to change the nature of Israeli control of the West Bank without a formal declaration. The specter of formal de jure annexation looms large, but owing to substantial domestic and international opposition and the ability of the Israeli government to achieve some of its goals via alternative, "under the radar" means, we assess that its likelihood remains low.

Profile of the Settlement Enterprise

Almost every successive Israeli government has invested substantial resources and political capital in the settlement enterprise. Meanwhile, under every corresponding
U.S. administration, construction in the West Bank has occurred. Under such fertile conditions, settlements have thrived. The patchwork of settlements, outposts, agricultural swathes, networks of roads, and civilian and military infrastructure traversing the West Bank represents the most visible frontline of the conflict. The settlement enterprise is characterized by a number of major features and prevailing trends; its geographical spread driven by an interplay of factors; its population density concentrated within settlement blocs along the 1967 lines; its ideological nature rooted in national-religious and quality-of-life motivations; and the evolving legal framework surrounding and sustaining it.

**Implications of Expanding Settlement Growth**

Throughout history, initiatives aimed at resolving the conflict have proposed various formulas for partitioning the land into two states or political entities, reflecting the aspirations of two distinct peoples and national movements. Despite declining support for a two-state solution among the Israeli and Palestinian publics in recent years, it remains the primary anchor for the official positions of key actors. Achievement of this objective has been hindered by a lack of domestic legitimacy, owing to the disproportionate influence of national-religious veto-wielding constituencies, the absence of a viable political process, cyclical rounds of violence, the intra-Palestinian split, and the institutionalization of the occupation. The settlement enterprise plays a pivotal role in this reality, exacerbating Israel’s slide into a post-separation or irreversible, unequal one-state reality. With the passage of time, the prospects of realizing a two-state outcome diminish, and with it comes a host of detrimental implications for Israel’s political and diplomatic standing and the stability of the PA. This trend is exacerbated by the heavy burden of the settlements on Israel’s security establishment and economic integrity, as well as the pervasive humanitarian toll shouldered by the Palestinian people.

**Why Settlements Should Be Countered**

That said, Israeli settlements directly contravene U.S. interests and have consequently led to decades of American presidents and Congress seeking to limit the enterprise. On the security front, Israel’s role as a strong American partner in the Middle East able to devote resources to countering regional actors who threaten U.S. and Israeli interests is compromised by its investment in the West Bank arena. Politically, the revered shared values between the two countries suffer, as the growing disparity and inequities between Jews and Palestinians living in the West Bank increasingly clash with the democratic and liberal principles upheld by many Americans. Reputationally, the U.S. is increasingly seen as an outlier among Western democracies in its wielding of its U.N. Security Council veto on Israel’s behalf when confronted with resolutions on settlements. In pursuit of a fair resolution to the conflict, the settlements issue directly challenges the U.S.' role as a historical mediator as well as its policy on promoting democratic values and human rights outcomes. Moreover, the solidification of a new regional alignment through the Abraham Accords and normalization agreements presents another point of concern for the U.S. in countering settlements. The failure to broaden the framework, combined with other factors, has revealed that Israel’s increasing presence in the West Bank hampers the normalization process and caps strategic cooperation.
U.S. Policy on Settlements: Historical Overview

The U.S. approach to the question of Israeli settlements has varied over time and across different administrations. While influenced to some degree by the Israeli prime minister of the day, generally the U.S. has opposed the building and expansion of Israeli settlements, largely viewing them as illegal, illegitimate, and an obstacle to a peaceful resolution to the conflict. With few exceptions, U.S. opposition has remained direct in rhetoric. But American willingness to go beyond statements and diplomatic engagements has waned significantly over the past two decades, mainly because of a changing global and national order of strategic priorities, innate pro-Israel tendencies, fear of domestic political implications, and an aspiration that a resolution to the conflict would end the need to butt heads over this most contentious issue.

Over the years, American diplomats have held hopes that addressing the issue of borders within the framework of final-status negotiations would also pave the way for a resolution on settlements. This has been the case from the early years of President Johnson, when the matter gained prominence, to the dynamic attempts of President Bush George W. Bush to curb settlement expansion, to the near exclusive focus on a settlement freeze during President Obama’s first term that ultimately failed, to President Trump’s almost full departure from longstanding U.S. policy, to the full-frontal challenges faced by the Biden administration today.

U.S. Policies on Combating Settlements: A Typology

The United States possesses a range of tools at its disposal to counter settlements, which have been utilized to different degrees by various U.S. presidents.

- **Bilateral diplomatic pressure:** Direct diplomatic efforts by the U.S. administration to exert pressure on the Israeli government, including public statements and actions by U.S. officials and private diplomatic efforts.

- **Multilateral diplomatic pressure:** Efforts by the administration to exert pressure, or allow pressure from other parties to be exerted on Israel through international organizations or through joint action outside of the U.N context.

- **Cultural diplomacy:** Use of soft power to influence public opinion in both Israel and its allies in the international community.

- **Economic measures:** Use of economic disincentives to exert pressure on Israel to reverse, halt, or limit settlement activity, including withholding loan guarantees or aid or by imposing economic sanctions tied to Israeli settlement or annexation measures.

Major Threats in the Coming Months and Years

Israel’s 37th government’s policy in regard to control of the West Bank presents three major threats to the viability of a two-state outcome, the remnants of the Oslo framework, and the overall stability on the ground. All three share the same purpose and counter longstanding U.S. interests and positions, warranting steadfast American opposition.
The following risks encompass the core pillars of the settler agenda typified by applying Israeli sovereignty to the West Bank, upgrading national infrastructure, the legalization of settlements and outposts, the renewal of land registration, prevention of “illegal” Palestinian construction in Area C, and undermining of the PA.

**Threat 1: Accelerated de facto annexation of parts of the West Bank:** This refers to the consolidation of Israeli control over the West Bank, achieved through the expansion of Israeli settlements and other quantitative and qualitative means, without an official declaration or formal legal process of annexation to grant it the status of official Israeli territory. Over the past several years, there has been a noticeable acceleration of this kind of annexation, marked by the expansion of settlement infrastructure, evictions and demolitions of Palestinian homes, the takeover of Palestinian land through agricultural outposts, and the legalization of outposts. Creeping de facto annexation has been taking place for years, and the United States has confronted this dynamic with different tactics, mostly unsuccessfully in light of the results on the ground. The anticipated changes are outlined below, while the full report provides a comprehensive overview of the latest developments and relevant data points.

Expected quantitative changes include the following trends:

- Increase in funding for and approvals of the construction of settlements
- A surge in the demolition and forcible transfer of Palestinian communities aiming to consolidate Israeli control over Area C

Expected qualitative changes include:

- Strategic placement of settlements designed to control key areas and disrupt the contiguity of a future Palestinian state
- Legalization of outposts that are deemed illegal even under Israeli law
- Increase in funding for and legalization of the relatively new phenomenon of agricultural outposts, ultimately resulting in intensified land takeover
- Increase in funding for and approvals for settlement-related infrastructure, mainly roads
- Easing planning, approval, and construction processes
- Israeli takeover of Areas A and B

**Threat 2: Creeping de jure annexation of parts of the West Bank:** The newest category of expected actions in the settlement realm entails redesigning the Israeli administrative landscape to change the nature of Israeli control of the West Bank, without a formal declaration. Under such remodeling, Israeli settlers will come under a military regime in name only and will be subjected to increasing civilian control with adherence to Israeli civilian laws, regulation, and administration. These seemingly administrative changes further blur the lines between an allegedly temporary military control, pending a
Threat 3: Significant/formal de jure annexation of parts of the West Bank: This refers to the formal annexation of large areas of the West Bank, possibly arising from the culmination of the preceding two threats. The annexation of extensive parts of Area C would have serious consequences for all parties, likely triggering a chain reaction that
could lead to the collapse of the PA. Formal annexation would fundamentally erode the viability of a two-state outcome by altering the territorial balance between the two sides and effectively eliminate a Palestinian partner for a two-state agreement, thereby risking an almost immediate security deterioration. Moreover, annexation would undermine the regional normalization processes, including the 2020 Abraham Accords, which have ushered in a new era of relations between Israel and several Arab states, predicated on Israel halting its annexation of West Bank lands.

The possibility of major de jure annexation remains unlikely, but is still more than a theoretical concern owing to powerful factions within the Israeli government. Despite the successful prevention of formal de jure annexation, there is a risk that predominant U.S. focus on this threat may enable the progression of the two more proximate threats, making formal de jure annexation inevitable.

Policy Proposals

There are two elements to a U.S. policy adjustment on settlements. The first involves the adoption of a set of policies that will reorient the U.S. position firmly and unambiguously in support of two states by highlighting the ways in which Israeli settlements increasingly hinder and preclude its realization. The second proposes a shift in how the United States approaches the settlement issue with Israel either bilaterally or unilaterally. This shift prioritizes the functional impact of settlements on a future diplomatic resolution, rather than treating all settlements as functionally equivalent.

PROPOSAL 1: RE-ORIENTING U.S. POLICY IN SUPPORT OF TWO STATES

BUCKET 1: Adjust and Clarify U.S. Positions

• Clarify the U.S. position regarding its support for a two-state reality (and ultimately a permanent outcome) and the conditions for its emergence

• Adjust the U.S. position in support of a two-state outcome by recognizing the attachment of both peoples to the land

• Introduce and codify updated parameters for a two-state outcome, including the integrity of the 1967 lines with mutually agreed and equal swaps, making it clear that settlements are violations of international law until the conclusion of a final-status agreement

• Reassert U.S. opposition to settlements as longstanding bipartisan policy

• Reiterate U.S. position on the illegality and problematic nature of settlements and non-recognition of annexation based on international law

BUCKET 2: Improve U.S. Multilateral Approach

• Continue to codify opposition to Israeli annexation of the West Bank in the context of
further regional normalization agreements, and ideally attach Palestinian deliverables to future agreements

- Make clear to Israel that the United States will not exercise an automatic defense of settlement policies in international fora

**BUCKET 3: Bilateral U.S.-Israel Engagement**

- Mobilize a sustained public diplomacy effort that makes the case against settlement activity on Israeli terms
- Continue to exercise pressure on the settlement issue, even in parallel to negotiations
- Support Palestinian development in Area C, including zoning, planning, and construction
- Continue the systematic monitoring and reporting of settler violence to hold Israel accountable
- Continue to codify non-recognition of Israeli sovereignty in the West Bank via bilateral agreements and regulations
- Develop a set of economic incentives that counter settlements such as preferential trade conditions or investment opportunities in exchange for reversing and/or halting settlement activity
- Support a voluntary compensation and absorption law for those settlers living east of narrowly defined settlement blocs

**BUCKET 4: Improve U.S. Societal and Situational Understanding**

- Implement accessible, short geographical education for U.S. officials
- Develop literacy in settler and settlement-related worldviews and motivations, including religious and secular ideological drivers
- Increase U.S. investment in monitoring Israeli settlements in the West Bank

**PROPOSAL 2: DEVELOPING A U.S.-ISRAELI AGREEMENT OVER A PARTIAL SETTLEMENT FREEZE IN THE CONTEXT OF A DIFFERENTIATED APPROACH TO SETTLEMENT CONSTRUCTION**

While maintaining strong opposition to settlement activity, the United States should reach an agreement with Israel on a partial but strict settlement freeze, with clearly defined terms. This would differentiate between different settlement construction in an effort to identify areas where construction harms a future two-state outcome, versus areas where new construction will not meaningfully impact territorial separation. If such an agreement is not possible, the United States should internally determine how to differentiate such construction and tailor its response accordingly. More strident measures should be taken against Israeli construction in territory deemed problematic by the U.S. owing to its impact
Towards developing a differentiated approach, the United States should follow a strategy based on three principles. This approach should only be implemented through a bilateral agreement between the U.S. and Israel, ensuring clear Israeli commitments in return.

**PRINCIPLE 1:** In the context of a bilateral U.S.-Israel agreement, recognizing areas that will be part of Israel under any future permanent-status resolution and limiting settlement construction to those areas only.

Areas that will become part of Israel under any future agreement are those that the Palestinian leadership previously agreed to with an equal territorial swap and refer to the Palestinian “1.9%” map, presented by the PLO in the 2008 Annapolis negotiations. Incentivizing Israel to build in this area encompasses roughly 60% of the Israelis east of the 1967 lines, including most Jewish neighborhoods of East Jerusalem (except Har Homa, and additional harmful plans such as Atarot).

**PRINCIPLE 2:** In the context of a bilateral U.S.-Israel agreement, preserving a reasonable negotiating space between the 1.9% line and the line of the barrier without prejudging the outcomes of negotiations.

A realistic zone of possible agreement between the two sides both excludes from the freeze areas that include large numbers of settlers that are not overly intrusive into the West Bank (such narrowly defined built-up areas of Givat Ze’ev, Ma’ale Adumim, Efrat, and Har Homa), and includes in the freeze areas that are highly detrimental to the viability of a two-state outcome (such as Jewish construction in Arab neighborhoods of East Jerusalem, E-1, Givat Hamatos and the eastern development of Har Homa, Atarot, E-2, and future harmful plans).

**PRINCIPLE 3:** In the context of a bilateral U.S.-Israel agreement, clarifying commitment to a two-state outcome.

This approach clarifies that negotiations will focus on the area between the 1967 lines and the barrier when determining the final border between Israel and Palestine. It entails enforcing a total freeze in all areas east of the barrier, asserting Israel’s renunciation of sovereignty claims east of the barrier, and enacting voluntary compensation and absorption law for settlers living east of the barrier.

If such an agreement cannot be reached, the U.S. should unilaterally shift its position on settlement activity to accord with the same approach laid out in these three principles. This would involve a different strategy than a bilateral agreement as it would not grant formal approval to any type of settlement activity, but it would employ the same geographic criteria in order to assess the relative harm to a two-state outcome of Israel government settlement plans, and deploy varying levels of opposition to align with the severity of the plans rather than allow any settlement construction to take place unopposed.

Whether through a bilateral agreement or through a unilateral policy shift, the United States should pursue a differentiated approach to Israeli settlements. Doing so will clearly place a two-state outcome at the center of U.S. policy, allow administrations to focus their energies...
on the Israeli moves that are the most damaging to U.S. interests, and shift away from a
dynamic that has developed over five decades in which Israeli governments have a clear
advantage over the United States despite nearly unbroken American objections.
Preface

The greatest point of tension in the U.S.-Israel relationship has historically been Israeli policy in the West Bank. Apart from its security dominance over the Palestinian arena, the starkest manifestation of Israel’s occupation is the establishment, maintenance, and expansion of Israeli settlements across the West Bank. During the first six months of 2023 and leading up to the release of this report, to the backdrop of an overall security deterioration and a rise in settler violence, Israel’s 37th government has promoted more than 13,000 housing units in West Bank settlements, shattering an all-time record for annual settlement activity.

Time and again, Israel and the United States have found themselves at odds over this contentious issue, not least because Israeli governments, across the political spectrum, underplay the importance and ramifications of settlement activity to the Palestinians and the international community. Efforts to align principled positions, peace process diplomacy, international law, historical and religious motivations, domestic Israeli and U.S. politics, as well as real and imagined security considerations, have occurred against the continuous backdrop of a deepening Israeli presence in the West Bank: materially, legally, and administratively.

Especially since the beginning of the peace process in the early 1990s, the question of settlements has not existed in a vacuum, often finding itself out of the limelight as negotiations over interim or final-status agreements took center stage. And although the Israel-PLO declaration of principles identified settlements and borders as two (allegedly separate) issues, U.S. decision-makers hoped that a resolution to the question of borders in the context of final-status negotiations would also resolve the question of settlements.¹

Recurrent attempts by successive American administrations to achieve a two-state outcome to the Israeli-Palestinian conflict or to rein in settlement construction have, up until now, failed. Consequently, the United States repeatedly finds itself expressing principled opposition to settlement expansion while simultaneously contending with its inability to effectively address this dynamic of the Israeli-Palestinian landscape.

All but one administration since 1967 have consistently opposed settlement activity. With some anecdotal and few systemic exceptions, none have succeeded in halting or reversing the expansion of West Bank settlements. All but one administration endorsed the international consensus on this issue, including the landmark U.N. Security Council Resolution 242, and, when applicable, the 1967 lines as the basis for a conflict ending two-state outcome. With the notable exception of the Trump administration, U.S. administrations varied in their tone, level of prioritization, and investment of political capital

¹ “It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest.” See Israel-PLO Declaration of Principles on Interim Self-Government Arrangements, Article V—Transitional Period and Permanent Status Negotiations, Point 3, online at https://peacemaker.un.org/sites/peacemaker.un.org/files/IL%20PS_930913_DeclarationPrinciplesinterimSelf-Government%28Oslo%20Accords%29.pdf
when confronting settlement expansion. U.S. administrations seldom reverted to coercive measures in attempting to halt settlement expansion, confining their efforts to public criticism and direct engagement with Israeli governments behind closed doors.

This report’s writing period witnessed a dramatic acceleration of the velocity and nature of settlement activities, coinciding with the formation of Israel’s 37th government under Prime Minister Benjamin Netanyahu. Although the likelihood of formal annexation of West Bank territories remains low in the near term—due to meaningful domestic and international opposition as well as continuing trends of regional normalization and its implications for suspending formal annexation—creeping de facto annexation has accelerated. While this is not a new development, it propels Israel toward a less secure and non-democratic one-state reality, and accordingly presents challenges for American policy that are more complex than those pertaining to formal de jure annexation.

However, the early period of the sixth Netanyahu government has led to a different type of frontal challenge arising from policy objectives and administrative changes to the mechanics of Israeli control of the West Bank. This can be described as creeping de jure annexation, which we defined as the redesigning of the Israeli legal and administrative landscape in order to effectively change the nature of Israeli control of the West Bank, without formally declaring it as such. Under such creeping de jure annexation, Israeli settlers will come under a military regime in name only (or as little as possible), characterized by increasing civilian control. The goal of these seemingly administrative changes is to further blur the lines between a supposed temporary military control pending a final-status agreement and a permanent civilian control—ultimately amounting to de jure annexation.

American policy has been unsuccessful at translating its preferences for a two-state outcome to the Israeli-Palestinian conflict into effectively addressing settlement growth, which makes arriving at such an outcome far more difficult. This largely unsuccessful approach must now contend with a new phase of Israeli settlement activity accelerating in its scope and its ambition. As a result, a thorough re-examination of U.S. policy on the question of settlements and the methods employed to confront this challenge is needed.

Amid these turbulent times—globally, regionally and within Israeli, Palestinian and U.S. domestic landscapes—the United States has an opportunity to recalibrate its position to better align its principles, objectives, and means.

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2 Notable substantive exceptions to U.S. opposition to settlement building were focused on East Jerusalem and large, ambiguously defined ‘settlement blocs’ in the West Bank.
An Unsettled Question: Recalibrating U.S. Policy on Israeli Settlements

Israel, the West Bank, and the Gaza Strip

West Bank Areas:
- 1967 Lines
- Israeli Security Barrier
- Israeli Security Barrier (Planned)
- The Old City
- Area A (18%): Palestinian Civil and Security Control
- Area B (22%): Palestinian Civil Control and Israeli Security Control
- Area C (60%): Israeli Civil and Security Control
- Israeli Settlements and Neighborhoods
- Palestinian Towns

Mediterranean Sea

Dead Sea

Jordan
The Settlement Enterprise: A Profile

Since 1967, almost every successive Israeli government, driven by a range of ideological, political, and contextual considerations, has invested substantial resources and political capital in either building new, expanding existing, or securing supporting elements of the settlement enterprise. By the same token, under every corresponding U.S. administration, construction in the West Bank has occurred.

Anecdotal settlement freezes periodically implemented in response to U.S. pressure, and former Prime Minister Ariel Sharon’s 2005 Disengagement Plan, that included the evacuation of four West Bank (along with 21 settlements in Gaza), have done little to offset trends that point to an overall growth in frequency, population density, and political power of the settlement enterprise over the last 56 years. Effectively walking back this historic move by its predecessor, the current Israeli government amended the northern West Bank Disengagement Law, which allows for the return of Israeli presence to the evacuated area and removes a key obstacle to its resettlement.3

The patchwork of settlements, outposts, urban infrastructure, and agricultural swathes traversing the West Bank and East Jerusalem represents the most visible frontline of the conflict. It is here where nationalist and religious trends reinforce each other in a dynamic that makes compromise and restraint less likely, and where tactical Israeli security concerns spar with Palestinian humanitarian needs. Beyond settlements’ conspicuous physical footprint, a convoluted legal system and an elaborate security and political frameworks have helped sustain and, at times, invigorate it.

While decades of unimpeded Israeli policy have contributed to the settlement enterprise’s growth, Israeli governments have shied away from officially applying full sovereignty, or de jure annexing, portions of West Bank territory. The recent inauguration of the most pro-settler Israeli government to-date and the remodeling of the administrative and legal framework governing the West Bank brings new unprecedented challenges likely to alter the character and nature of Israeli control of the area. If left unattended, the settlement enterprise is liable to metastasize, resulting in annexation in everything but name.

Below we sketch out the major features and trends that have come to characterize the settlement enterprise: its demographic composition; its geographical spread; its ideological heterogeneity; its security justifications; and its legal framework. In order to present an updated portrait of the current lay of the land, and the context in which the recommendations for recalibrating U.S. policy are presented, we offer a comprehensive map of the major trends and characteristics epitomizing the settlement enterprise today, pointing to both enduring and emerging trends.

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3 On March 21 and 22, 2023, the Knesset approved an amendment to the Disengagement Plan Implementation Law of 2005. The amendment revoked articles 23-27 of the law, which had prohibited Israeli citizens from entering or residing in the areas evacuated during the 2005 Disengagement (Sa-Nur, Ganim, Kadim, and Homesh) and authorized security forces to enforce this (violators faced up to two years in prison). As a result of the changes, these restrictions no longer apply to the evacuated territory in the Northern West Bank.
Terminology

Among the disputed and loaded terminology associated with the Israeli-Palestinian conflict, language around settlements may be the most fraught. This is particularly acute when discussing Israeli construction in East Jerusalem. The overlapping complications of the city—without geographical qualifications—serving as Israel’s self-declared capital and recognized as such by the United States in 2017; East Jerusalem being east of the 1967 lines and categorized as occupied by the international community despite Israel’s formal annexation of everything inside the city’s expanded municipal boundary; questions over sovereignty in and the disposition of the Old City and its close surroundings, the Holy/Historic Basin; and the unique political and religious sensitivities pertaining to the city combine to make any discussion of Israeli activity in East Jerusalem an ideological litmus test.

This report covers Israeli construction in all areas beyond the 1967 lines, and takes as a starting point the supposition that some of this construction is uniquely damaging to a future two-state outcome. This includes Israeli construction in some areas of East Jerusalem, which in fact are among the most corrosive to a future separation and permanent status agreement between the two sides. Nevertheless, we acknowledge the heightened sensitivity in using the catch-all terms “settlements” and “settlers” when applied to East Jerusalem, particularly in the political contexts that operate in the United States and Israel. Accordingly, this report refers to Israeli civilian housing in East Jerusalem as Jewish neighborhoods rather than settlements. This does not reflect a determination that unfettered Jewish construction in East Jerusalem should be seen as acceptable by the United States or that, as President Donald Trump was fond of saying, Jerusalem is off the table. It rather reflects our desire for this report to highlight the detrimental consequences of certain Israeli construction beyond the 1967 lines without becoming embroiled in arguments over terminology, historical claims, or religious rights.

An Unsettled Question: Recalibrating U.S. Policy on Israeli Settlements

The Geographical Distribution and Physical Footprint

The Physical Footprint of Israeli Settlements

West Bank Areas:
- 1967 Lines
- Israeli Security Barrier
- Israeli Security Barrier (Planned)
- East Jerusalem (Israeli-defined)
- The Old City

Area A (18%): Palestinian Civil and Security Control
Area B (22%): Palestinian Civil Control and Israeli Security Control
Area C (60%): Israeli Civil and Security Control

Palestinian Towns

Israel

Dead Sea

West Bank

Israel

No Man's Land

West Bank Areas:
The contemporary map of settlements in the West Bank and Jewish neighborhoods in East Jerusalem is not dictated by a single set of considerations. It is a complex interplay of factors shaped by past and present security imperatives, legal requisites, national-religious ideological motivations, economic factors, and political aspirations, both pre-empting or pre-judging a future border line. Its visible footprint is defined by several key features including built-up towns, residential villages, a network of roads, industrial parks, farms, and military and civilian infrastructure. The size of its physical presence is deceiving, as its intangible elements—namely the security, legal, and political regimes—expand far beyond its material manifestation.

Israeli settlements are scattered across the northern (Samaria) and southern (Judea) regions, the Jordan Valley, and the Greater Jerusalem area, with varying levels of population and infrastructural density. All settlements are located in Area C, under full Israeli civil and military control. There are around 127 settlements and some 145 outposts, totaling around 465,000 Israeli residents. This spatially dominant expanse that is Area C covers 60% of the West Bank territory, of which settlement jurisdictions account for 10.7%. An assessment of a narrow delineation of the physical built-up area—comprising only buildings and excluding the unbuilt area within the perimeter fence/patrol road—shows that Israeli settlements and neighborhoods cover approximately 1.75% of the West Bank. A broader definition, including unbuilt land within the area controlled by the settlements (within the perimeter fence), raises this figure to the 3%-3.5% range. Area C surrounds disconnected territorial islands delineated as Area A and Area B, where the majority of the Palestinian population resides in cities and villages under full or partial Palestinian Authority governance.

For the most part, the geographical dispersal across the West Bank is strategically aimed at disrupting Palestinian territorial contiguity, achieved through the encirclement of Palestinian population centers, controlling of strategic areas and transportation arteries, and maintaining a hold over natural resources. Four longitudinal stretches across the West Bank illustrate varying patterns of spatial distribution driven by distinct motivations. The Eastern Strip, which encompasses the Jordan Valley and the northern shore of the Dead Sea, features settlements scattered along one of the primary north-south roads, Route 90, that emerged in accordance with the Allon Plan of the 1960s-70s, driven by the goal of establishing a

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5 See “Settlements Data: Population,” Peace Now, online at [https://peacenow.org.il/en/settlements-watch/settlements-data/population](https://peacenow.org.il/en/settlements-watch/settlements-data/population). For various administrative and methodological reasons, including merger of settlements into one municipal unit, there is a gap between some settlement watchers who count as high as 132 settlements and the Israeli Central Bureau of Statistics that lists demographic numbers for 127 official settlements as of 2021 (the most recent year for the ICBS population list).

6 Interview with Dr Shaul Arieli, publication forthcoming.

7 The 1995 Interim Agreement (known also as Oslo II), differentiated control of various regions in the West Bank into three discrete categories: Areas A, B, and C. In Area A, which covers 18% of the West Bank, Palestinians maintain civil and military control, comprising all major towns and cities in the West Bank (with the exclusion of H2, the settler enclave in Hebron). Area B, which contains primarily small towns and villages and takes up 22% of the West Bank, Palestinians have jurisdiction over civil affairs and Israel has military control. Area C, in which less than 10% of Palestinians live alongside all Israeli settlers, makes up over 60% of the West Bank by land area, and falls exclusively under Israeli civil and military jurisdiction.
defensible eastern boundary against land invasion from Jordan.\textsuperscript{8} The Mountain Strip area is home to the largest Palestinian cities including Jenin, Nablus, Ramallah, Bethlehem, Hebron, and East Jerusalem and is surrounded by numerous small and medium-sized Palestinian towns. Settlement growth in this area commenced in the late 1970s after the Likud party assumed power, with a focus on limiting Palestinian urban expansion and preventing intra-Palestinian connectivity. Settlements here are situated along the parallel main vertical artery road, Route 60 (Jenin-Jerusalem-Hebron route). The Western Hills Strip stretches from north to south, situated in close proximity to the 1967 lines. In the 1980s, settlements began to emerge in this area under the auspices of the Sharon Plan with the objective of avoiding densely populated Palestinian areas, while seeking to create contiguity with Israel proper.\textsuperscript{9} Lastly, the Jerusalem Metropolis extends to the Gush Etzion bloc of settlements in the south, Ma'ale Adumim to the east, and towards settlements on the outskirts of Ramallah to the north towards expanding the boundaries of the metropolis and preventing the city's division.

In East Jerusalem, the settlement enterprise assumes its own distinct character due to Israel's conquering of the land in 1967 and formally annexing it in 1980, its direct proximity to Israel proper, and the strategic, national, and religious significance of the city to the majority of Jewish Israelis. Twelve large Jewish neighborhoods, housing around 230,000 people, lie beyond the 1967 lines inside the Jerusalem municipal boundary.\textsuperscript{10} In addition, several smaller Jewish enclaves—either individual houses or clusters of houses—are embedded within, rather than adjacent to, Palestinian neighborhoods.\textsuperscript{11} Biblically inspired narratives relating to archaeological sites and national parks are used to further justify taking control of more land to entrench dominance beyond residential areas. Located principally within the Old City and its immediate environs, the estimated population size of Israeli Jews residing in enclaves numbers around 2,800, most of whom are driven by religious and nationalistic motivations.\textsuperscript{12}

Transportation routes, particularly roads, are strategic assets that serve as engines of growth and connectivity for the settlement enterprise, necessitating extensive and often invasive infrastructure that bisects the West Bank. Land acquisition is used to construct tunnels, build interchanges, increase road lane size, and establish roadblocks to prioritize settler movement over that of Palestinians. Investment, especially in lateral roads along the east-west routes of the West Bank, as well as in the paving of bypass roads that allow settlers to avoid commuting through congested Palestinian towns, facilitate increased suburbanization of

\begin{itemize}
  \item \textsuperscript{9} Ibid., p.100.
  \item \textsuperscript{10} Large Jewish neighborhoods in East Jerusalem encompass French Hill, Neveh Yaakov, Pisgat Ze'ev, Ramot, Ramat Eshkol East, Ramat Shlomo/Rekhes Shuafat, Ma'alot Dafna, Gilo, Har Gilo, East Talpiot/Arman Hanatziv, Har Homa and the Jewish Quarter/Old City.
  \item \textsuperscript{11} Jewish settlements within existing Palestinian areas in East Jerusalem are located in Wadi Hilweh/City of David, Silwan/Beit Yehonatan, Beit Orot, Jabal al Mukaber/Nof Tziyon, Ras al Amud/Ma'ale Zeitim, Sheikh Jarrah/Shimon Hatzadik, Abu Dis/Kidmat Tziyon, Musrara/Bab a Zahara, Abu Tor, A-Tur and Beit Hanina as cited in Daniel Seidemann, The Israeli Settlement Enterprise in East Jerusalem, 1967-2017.
\end{itemize}
the settlements and smoother integration with mainland Israel, enabling faster commutes.\textsuperscript{13} The roads, which are mostly well-built, seek to create a seamless experience for Israelis traversing the 1967 lines, also act as a physical buffer between Palestinian communities.\textsuperscript{14} The Road and Transportation Master Plan 2045, launched by the previous Netanyahu government and backed with substantial budgetary support by the current one, seeks to expand this network and develop an integrative grid of highways enveloping the entire expanse between the Mediterranean Sea and the border with Jordan.

As will be explained and deconstructed later in this report, the majority of West Bank settlers reside in "blocs," loosely defined as concentrated clusters of settlements that abut the 1967 lines, which are, by and large, densely-populated. Broadly classified, with no legal definition or exact delineation, the precise meaning of settlement blocs fluctuates depending upon political intent, and has changed over the years. Latest figures estimate that a rather-expansive definition of these blocs—based on the full trajectory of Israel’s separation/security barrier, both its completed parts and those that are planned but pending construction (see “delineating settlement blocs” below)—encompasses around 52 settlements bunched into several constellations with a population numbering 365,000, in addition to 234,000 Jews residing in East Jerusalem, in what Palestinians also label settlements and what mainstream Israeli society describes as neighborhoods.\textsuperscript{15}

Distinguishing between variations of settlement blocs and their implications on a two-state outcome remains a subject of contention. Some large settlement blocs that are adjacent to the 1967 lines are expected to fall under Israeli sovereignty in a future peace agreement (even according to past Palestinian border proposals); other iterations of blocs extend deeper into the West Bank and are more harmful to a two-state outcome, both by fragmenting the territory of the West Bank as well as retaining sensitive areas, mainly in and around Jerusalem, under Israeli control.

As Prime Minister Benjamin Netanyahu famously stated: "My blocs aren’t the blocs of the left."\textsuperscript{16} The full trajectory of Israel’s separation/security barrier, both constructed and planned, is a useful reference point for the traditional Israeli definition of settlement blocs often referred to by mainstream Israeli officials. But the most intrusive parts of the barrier

\begin{itemize}
  \item \textsuperscript{13} See Highway to Annexation: Israeli Road Transportation Infrastructure Development in the West Bank, Breaking the Silence, December 2020, online at www.breakingthesilence.org.il/inside/wp-content/uploads/2020/12/Highway-to-Annexation-Final.pdf
  \item \textsuperscript{14} Projects currently in planning or underway in the West Bank that will see the expansion of lateral roads, includes Highway 55 (which runs from Israel proper to the settlement of Kedumim), Highway 5/505 (which runs from Israel proper to the Jordan Valley through the settlement of Ariel, fragmenting the central West Bank from the northern West Bank), Highway 456 (which creates a settler corridor between the Palestinian cities of Ramallah and Salfit), and Highway 367 (which creates a settler corridor in western Gush Etzion) as cited in Highway to Annexation, op cited.
  \item \textsuperscript{15} David Makovsky, Beyond the Blocs: Jewish Settlement East of Israel’s Security Barrier and How to Avert a Slide to a One-State Outcome, The Washington Institute for Near East Policy, 26 April 2022, online at https://www.washingtoninstitute.org/policy-analysis/beyond-blocs-jewish-settlement-east-israels-security-barrier-and-how-avert-slide
impede Palestinian contiguity and do not lend themselves well to elegant land swaps in the context of a two-state outcome. This includes the more divisive blocs, such as Ariel and Kedumim, which are two parallel fingers of settlements extending approximately 21 kilometers and 23 kilometers into the West Bank, respectively, as well as the area of Ma‘ale Adumim and its satellite settlements, located to the east of Jerusalem, overlooking the West Bank’s north-south axis.

Outside of the blocs, over a hundred sparsely-populated settlements and unauthorized outposts, including agricultural farms, are scattered across the West Bank and bisect and constrict Palestinian land along key arteries. Outposts, currently deemed illegal under Israeli law, in contrast to authorized settlements that have passed through the official planning process and receive the necessary permits from the military commander, are often built in close proximity to pre-existing settlements. In order to justify formalization they are either fashioned as “satellite” neighborhoods, even if located far from the mother settlement, or declared as independent new settlements.

In a bid to expand Israel’s presence east of the full route—constructed and planned—of the barrier in February 2023 the Israeli government advanced the largest tranche of new housing units on record in a single meeting of the Settlement Higher Planning Committee. Of the 7,157 housing units promoted, 4,137 (equating to 58.3%) are planned to be built east of the barrier.17 Of the 15 outposts set to be legalized, 11 are situated to the east of the barrier.18 On June 26 2023, the Higher Planning Committee met to approve the advancement of approximately 5,700 settlement units, and together with the earlier approval, amounting to over 13,000 settlement units advanced in the first six months—breaking the record for the most West Bank units advanced in one year in a six-month period.19 While the full list of plans has not been published before this report went to press, preliminary analysis from settlement watchers indicate that over half will be located to the east of the barrier and inclusive of three unauthorized outposts.20

The success of the settlement enterprise at achieving spatial dominance of the West Bank—denoting land ownership, built-up areas, and infrastructure—has been a source of debate. Some argue that it does not negate the feasibility of a two-state outcome as

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19 Jacob Magid, Israel Advances Plans for 5,700 Homes, Breaking Annual Record in 6 Months, The Times of Israel, 26 June, 2023, online at https://www.timesofisrael.com/israel-advances-plans-for-5700-settlement-homes-breaking-annual-record-in-6-months/

20 See Peace Now bulletin for preliminary data gathered by Peace Now, collected prior to the publication of the full list of plans to be advanced, online at https://peacenow.org.il/en/record-breaking-year-more-than-13000-housing-units-promoted-in-the-west-bank-in-6-months
assessed through the spatial and physical prism, especially given Palestinian contiguity along the central mountain ridge. Others maintain that the cumulative growth of settlements over the last five decades, the intertwining of civilian infrastructure and Israel's control over land and resources, render this increasingly irreversible.

Toward achieving greater spatial and territorial dominance, the growing phenomenon of agricultural or shepherding outposts, the majority of which have been established over the last decade, aims to control large swathes of pasture land without the need to mobilize many settlements and settlers. Most are established on state land, or survey lands under the guise of allocating lands for grazing. There are approximately 77 farm outposts across the West Bank, with more than 50 built since 2017, often inhabited by one or two families. These outposts—permanent shepherd outposts, new agricultural outposts where the grazing element is secondary, or satellite outposts which are extensions of permanent shepherd outposts—take control over thousands of dunams (including land previously used by Palestinian shepherds) for crops and shepherding. According to a 2022 estimation by Kerem Navot, the area occupied by farm outposts encompass 242,811 dunams, amounting to 7% of Area C. Many are established in strategic locations, with nearly half of the new agricultural outposts built since 2017 located in the Jordan Valley to the east of Allon Road, helping to establish de facto annexation of land in that area. In addition to taking over private, registered Palestinian land, some settlers in these outposts use violence to drive Palestinian communities from the land, especially in the Jordan Valley and South Hebron Hills, where communities rely on shepherding for their livelihoods. As explained by Gush Emunim in 1980, "our hold over a stretch of land does not depend on the size of the population inhabiting it, but on the size of the area on which the population leaves its imprint."

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22 See “The Wild West,” Kerem Navot, May 2022, online at https://www.keremnavot.org/_files/ugd/a76eb4_9d3dee006d0e4decac505bf432bbd56e.pdf
Trajectory of Israeli Population Size in East Jerusalem and the West Bank: 2008-2021
(Source: ICBS)
Population Density

Land can be swapped or ownership transferred, yet the act of uprooting and evacuating people bears a psychological and human cost. Augmenting the population density within the settlements, especially those deep in the heart of the West Bank, has served as a strategic goal of the settlement enterprise designed to raise the cost associated with any potential future evacuation. Today, the patterns of population density correlate with the geographic locations of settlement blocs as defined by the full route of the separation/security barrier. These blocs—which make up roughly 8% of the West Bank territory and some of which are contiguous to Israel proper—are home to nearly 85% of Israelis living east of the 1967 lines.

Notably, the majority of settlers reside in a fraction of the settlements. According to 2021 population data from the Israeli Central Bureau of Statistics (ICBS), 270,000, or 58%, of West Bank settlers reside in the top-10 most-populated settlements, mainly in two large ultra-orthodox cities (Modi'in Illit and Beitar Illit) as well as Ariel and Ma'ale Adumim. Together with the 230,000 residents of the 12 Jewish neighborhoods of East Jerusalem, 71.5% of the 695,000 Israelis that reside east of the 1967 lines occupy 22 of the 139 Jewish localities there. According to David Makovsky's comprehensive analysis of population data in his book "Beyond the Blocs," while the number of settlers residing east of the barrier has nearly doubled between 2008 and 2020, as a proportion of the overall settler population, their growth has remained relatively stable, increasing only by 2% from 22% to 24%.

Connectivity to urbanized areas, greater employment opportunities, more reliable service provision, and a diminished security threat make settlements in the Israeli-defined blocs more attractive venues for permanent living. In contrast, the Jordan Valley area contains sparsely-populated, mostly agricultural settlements, with fewer than 12,000 residents in total. Despite various Israeli government efforts to incentivize Jewish settlement in the semi-desert area, it has remained undesirable given the vast distance from major population centers, the remoteness of the surroundings, and the relatively harsh climate. The settlements located along the central mountain ridge are home to the most ideologically-fervent population that are cumulatively less populous than those located west of the barrier but more strategically pernicious given that they include biblical locations prioritized by National Religious constituencies as well as trail Route 60 and disrupt contiguity between major Palestinian cities.

The situation in East Jerusalem is different. While 233,700 Israelis reside here beyond the...
1967 lines, the potential for ultimately demarcating a border between the two populations largely remains feasible because most live in relatively homogenous neighborhoods that for the most part are contiguous with West Jerusalem. Nevertheless, trends to advance construction in current unbuilt areas including, among others, Atarot in the north and Givat Hamatos in the south, along with efforts to expand existing neighborhoods such as Ramat Shlomo, Har Homa, and Gilo into adjacent Palestinian areas complicate any future agreement over a border in Jerusalem.

Increased Jewish-Israeli presence in Jerusalem’s environs impedes Palestinian contiguity by severing the West Bank from East Jerusalem and bisecting the territory into north and south. This trend is also accelerating.

Annual growth in settlements has fluctuated over the years, with growth generally tending to be higher in the settlements than within the 1967 lines (2.24% compared to 1.8% in 2020). Measuring the annual growth of West Bank settlements relies on two key indicators: migration to-and-from settlements, and the rate of natural growth. “Natural growth,” which denotes the difference between total births and deaths over a set period, came to be a somewhat loaded term with varied and creative interpretations used over the years. Employed by almost all of Israel’s governments, it has been used as a catch-all phrase to encompass not only natural increase of the existing population in the settlements but also growth resulting from immigration (openly encouraged by the governments through attractive incentive packages).

To accommodate what was framed as natural growth, Israel justified its need for ever more construction, exploiting this term to expand existing settlements and

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even establish new ones within the jurisdictions or boundaries of the adjacent settlements, irrespective of direct territorial contiguity and contrary to commitments delivered to the United States regarding freezes.²⁸

Natural growth, as opposed to migration, has served as the main driver of annual growth. The most significant instances of natural growth are exhibited in the two most populous settlements, Modi’in Illit and Beitar Illit, both of which are Haredi cities located adjacent to the 1967 lines with the highest recorded birth rates. Between 2009 and 2020, these two settlements accounted for approximately 35% of the entire West Bank settler population’s growth. Generally settlers, particularly Haredi communities, tend to have more children than the average family in Israel. The fertility rate in West Bank settlements surpasses that of other districts across the country with an average of around 5 births per woman, compared to the range of 2-4 births in Jerusalem, North, South, Central, Tel Aviv, and Haifa regions.²⁹ Moreover, the distribution of age demographics may contribute to shaping the trajectory and nature of settlement growth in the coming years given that the West Bank settler population is comparatively younger than within Israel, with a mean age of 19.2. Notably, this is most prevalent among the largest Haredi settlements.

Regarding migration to-and-from settlements, up until 2000 net migration to settlements increased gradually. Over the last two decades, however, there has been a steady decline in relocation to settlements, and in 2020 there was overall negative net migration for the first time.³⁰ Settler leaders attribute this to inadequate investment in infrastructure and construction. Despite the sheer political strength of the settlement movement and the economic incentives granted by the Israeli government, the decline in active migration to settlements is telling in terms of their attractiveness. Regardless of trends in population fluctuations over the years—Modin Illit (83,179 residents), Beitar Illit (63,974 residents), Ma’ale Adumim (37,470 residents) and Ariel (19,779 residents) remain, by far, the largest settlements by population size.³¹

In an effort to reverse this downward trend, Israeli Minister of Finance Bezalel Smotrich, an ardent annexationist who also holds a ministerial post in the Defense Ministry granting him extensive jurisdiction over civilian matters in the West Bank, is actively promoting a wide-scale plan to be implemented over the course of two years to bring an additional 500,000 settlers to the area. In pursuit of attracting more to existing communities and newly-legalized outposts, the plan encompasses a sweeping array of measures designed to revitalize Jewish communities in the West Bank through infrastructural improvement and enhanced service provision, encompassing transportation, education and more

²⁸ Ibid. p. 168.
³⁰ Arieli, Deceptive Appearances, 2022, p.20.
employment opportunities. This plan finds its roots in Smotrich’s Decisive Plan 2017, his flagship strategic vision for the future of the West Bank. The 2023-2024 state budget includes a substantial allocation of billions of shekels, earmarked to support and drive these initiatives.

Given the politically motivated intent to use population data by all sides, population statistics should be approached with caution. The Yesha Council, the overarching body of the settlement enterprise, actively pursues the inflation of population figures in settlements, promoting a triumphant narrative that emphasizes public support and aims to normalize the settlements in public discourse. One of their explicit objectives is the ambitious goal of populating the communities in Judea, Samaria, and the Jordan Valley with a minimum of one million residents. However, discrepancies in statistical reporting between Yesha Council data and the Israeli Central Bureau of Statistics reveal how figures are instrumentalized to serve an agenda.


33 The translation of Bezalel Smotrich’s plan, ‘Israel’s Decisive Plan’ 2017, Hashiloach, online at https://hashiloach.org.il/israels-decisive-plan/
Ideology, Politics, and Motivations

Far from being monolithic, the settlement enterprise is ideologically and politically diverse, with intersecting socioeconomic and quality of life motivations. Broadly speaking, settlers can be grouped into two major categories: those who are ideologically-motivated and those who are economically-motivated. Within these groupings, a more nuanced picture emerges. Slightly over one-third (38%) identify as ultra-orthodox (Haredim), an additional one-third (34%) as national religious, and the remainder (28%) identify as secular.34

Ideologically Motivated

Religious Zionist philosophy and theology has been shaped by a variety of sources and evolving interpretations, spanning the pre-state and post-state periods. Religious Zionists articulate their primary goals as protecting the sanctity of the Land of Israel by advancing the Jewish people’s rule over the territory, in alignment with Jewish Law, so as to not leave it in the hands of another. Settling the land serves as the foundational pillar, thereby actively fulfilling the commandment of “living in the land of Israel” (Yishuv HaAretz) as an integral part of the redemption process. In practice and rhetoric, this rationale underpins the approach that translates into a rejection of the uprooting of Jews from the territory, and a reclaiming of the biblical borders of historic greater Israel, including towns with Jewish theological, ideological, and heritage significance such as Hebron, Jericho, Nablus (biblical Shechem), Shilo, and Bethlehem.35

The dominant agenda is motivated by two primary goals. The first is to prevent territorial compromise, viewed as detrimental to the messianic process, by undermining the territorial contiguity of Palestinian presence in the West Bank and the feasibility of a viable political process that would culminate in Palestinian statehood. The second is to entrench and secure Jewish presence in its ancestral homeland. To achieve these goals, the settlement agenda actively promotes construction across the West Bank and in East Jerusalem near and in between Palestinian areas; seeks to strengthen present-day settlements through increased budgetary support; aims for the application of full de facto and de jure sovereignty/annexation of the land; and seeks to enhance its national and international legitimacy. Ultimately, this ideology firmly opposes the dismantling of West Bank settlements and the creation of a Palestinian state by establishing irreversible facts on the ground.

Those advocating such national-religious beliefs generally opt to settle in locations deep

34 Arieli, Deceptive Appearances, 2022, p.20.
35 Rabbi Tzvi Yehuda Kook in an address delivered in May 1967. “Nineteen years ago, on the night when news of the U.N. decision in favor of the resurrection of the State of Israel reached us, when the people streamed into the streets to celebrate and rejoice, I could not go out and join in the jubilation. I sat alone and silent; a burden lay upon me. During those first hours I could not resign myself to what had been done. I could not accept the fact that indeed ‘they have... divided My land.’ (Joel 4:2) Yes, where is our Hebron—have we forgotten her?! Where is our Shechem? Our Jericho? Where? Have we forgotten them? And what about all the land beyond the Jordan—each and every clod of earth, every region, hill, valley, every plot of land, that is part of the Land of Israel? Have we the right to give up even one grain of the Land of God?” online at https://tikvahfund.org/tikvah-online/kook-redemption-and-state/
in the West Bank and near to key Palestinian cities, especially those that are imbued with biblical significance such as Nablus or Hebron. Despite comprising a minority among the entire settlement populace, which has grown at a comparatively slower rate in comparison to the non-ideological settlers, ideological settlers project their presence through their territorial expansion. For what this group lacks in numbers, it makes up for in its spatial pervasiveness (see graphs below).

Key tenets of Religious Zionism have come to serve as the ideological heartbeat and the driving force behind the settlement enterprise, despite the group only comprising just over one-third of all settlers. Much of the settlement enterprise, although not exclusively, is rooted in the ideology of Rabbi Abraham Isaac HaCohen Kook and further developed by his son, Rabbi Zvi Yehuda Kook. Powerful sectors of Religious Zionist ideology espouse the Jewish biblical right to the whole land of Israel (Eretz Yisrael) and see settlement as a religious value toward achieving redemption, promoting an activist element. Israel's acquisition of the West Bank in 1967 was seen as a major breakthrough in fulfilling this messianic vision, with the re-establishment of Israeli sovereignty viewed as part of the divine process. Gush Emunim (Bloc of the Faithful), a national religious movement that emerged in the 1970s, embodied Kook's teachings, combining religious commandment with national duty adopting mostly confrontational, and sometimes violent, tactics to achieve its aims. This later evolved into the Amana movement of 1979, which was the precursor to the Yesha Council established in 1980, which distanced itself from messianism and adopted a more secular-friendly agenda by working within the realm of Israeli law to achieve broader appeal.

Several political, societal, and cultural dynamics, including the traumas of Israeli territorial withdrawal, divisions over the primacy of religious education, and a backlash against the incorporation of more secularist values into Religious Zionism bodies and groups (such as by Naftali Bennett and the Jewish Home Party) contributed to the emergence of a subgroup known as the Hardal (Haredim Leumim). Born in the 1980s and 1990s, it also arose from the growing involvement of ultra-Orthodox in political life together with a softening of the separatist attitude that led to a stream of stronger convergence between national-religious thought with ultra-Orthodox Jewry. Hardalism is characterized by a negative approach to modernity, strict religious observance, and an extreme right-wing version of religious nationalism, whereas those who define themselves as national-religious tend to hold more moderate right-wing political positions.

This phenomenon also spawned the hardline Hilltop Youth, a radical fringe group of disaffected mostly young men who actively establish outposts and some of which commit acts of violence and vandalism, namely “price-tag” attacks against Palestinians. The Shin Bet estimates the group to number roughly 1,000 individuals, while other assessments put their number much lower at a few hundred. Ideologically, some take their cues from

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37 Hirsch-Hoefler & Mudde, The Israeli Settler Movement, p. 73.
the teachings of Rabbi Meir Kahane and his Kach party and seek the annexation of the whole of Israel and the removal of all Arabs from it. Others draw on the teachings of the Chabad Hasidic Rabbi Yitzchak Ginsburgh, whose ideology is based on the acceptability of Jewish violence against non-Jews. Ginsburgh advocates for proactive revenge and supports disengagement from the Israeli state apparatus, which he views as an aggressor towards the land of Israel. Many of the Hilltop Youth have grown alienated from the notion of ‘mamlachtuti’—which can be defined as acceptance and loyalty to Israel’s state apparatus—upheld by their parents’ generation. Notably, mainstream Religious Zionist rabbis have spoken out against such fundamentalist views and actions.

Unlike the Hilltop Youth movement, ‘mamlachtuti’ is adhered to by the vast majority of Religious Zionist settlers. Despite strong ideological opposition to territorial withdrawal and evacuation as outlined above, commitment to this principle—which deems the state, and therefore its institutions such as the IDF and the police, as sacred—is the principal constraint on fundamentalist political conduct and a barrier to inflicting harm. Instead, dissent is often expressed through lawful protests against policies they find objectionable rather than through violence or the justification thereof against the state and its institutions. Evacuations to date, with the exception of a few extreme individuals, faced resistance and required forcible removal but on the whole were relatively peaceful. The Jewish Power/Otzma Yehudit party is a descendant of the Kahanist ideology, the latter of which is aligned more with the anti-mamlachtiut camp. While the makeup of the current Israeli government grounds elements of Kahanist ideology in its policy-making agenda, affiliated political parties have adapted their strategies to structures in order to achieve their goals, and are also seeking to use institutional machinery to redesign them (see section on “Major Threats in the Coming Months”).

Although later manifestations of Labor Zionism attached their ideology to a two-state outcome and separation from the Palestinians through the establishment of a borderline, early Labor Zionism was connected to the nationalist aspect of the settlement enterprise and notions of security seen through control of the land. During the days of the fledgling state, settlements were perceived as a necessary goal for securing the state and as a fundamental condition for national independence. With the changing nature of warfare, along with geopolitical shifts as Israel’s military prowess increased, this logic became redundant. Along with the settlements in the Greater Jerusalem triangle, remnants of the

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38 Ayelett Shani, Interview with Professor Motti Inbari, “The Influential Rabbi who wants to turn Israel into an Iran-style Fundamentalist State,” Haaretz, 24 March 2023, online at https://www.haaretz.com/israel-news/2023-03-24/ty-article-magazine/highlight/the-influential-rabbi-who-wants-to-turn-israel-into-an-iran-style-fundamentalist-state/00000187-0fe2-d4ca-afff-1efa051b0000
40 Post-mamlachi settlers deem that government institutions bear the responsibility to guide Israel exclusively towards a religious-ideological direction, adhering strictly to the Torah. They reject the authority of any form of leadership, whether representing the state or mainstream religious settlers, if viewed as contradicting religious commandments. Some advocate for assertive and aggressive resistance to the implementation of territorial withdrawals. Some aspire to secede from Israel and establish an entity in line with a “Torah State,” independent from the secularism. See The Israeli Settler Movement, Hirsch-Hoefler & Mudde, p. 73.
Labor Zionist ideology within the settlement movement survive mostly in a few small settlements dotted along the Jordan Valley.

Settler voting patterns and political affiliations reveal their growing prevalence and influence in determining the outcome of Israeli politics. In terms of settler voting patterns, the November 2022 elections revealed that 81.6% of settlers voted for the right-wing, pro-Netanyahu bloc, namely parties expected to form a coalition with Netanyahu; while 17.1% voted for parties opposing Netanyahu. Across all five elections spanning April 2019 to November 2022, support for Jewish Power/Otzma Yehudit or the RZP ranged from 17.9% to 27% west of the barrier and between 46.2% to 63.7% east of the barrier.\(^{41}\) This underscores the pervasiveness of support for Religious Zionism across the West Bank, but especially outside of the blocs.

**Economically Motivated**

The majority of settlers are motivated more by economics than by ideology, although their political influence is more muted. In search of more affordable living arrangements, quality-of-life settlers are incentivized by low-cost housing, governmental subsidies for education and health, geographically central locations, and proximity to metropolitan centers that cater to employment needs rather than any overwhelming ideological or religious motivation. To offer a solution to overcrowding and congestion expected by a surge in the Israeli population rate over the next few decades, settler organizations have embarked on public marketing campaigns that propose "moving eastwards" to address the supply and demand housing crisis.\(^{42}\)

Faced with unaffordable and still-rising housing prices, secular Israelis—primarily young couples—seek more affordable solutions in peripheral towns, which for some now include

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\(^{42}\) The "Moving Eastward" Initiative is a campaign launched by Israeli settler organization 'Ribonut' ('sovereignty'), see online at [https://www.ribonut.co.il/index.aspx](https://www.ribonut.co.il/index.aspx)
certain West Bank settlements. Non-ideological settlers, usually apolitical or more aligned with the political right, opt for settlements like Ariel, Ma’ale Adumim, and suburban Tel Aviv towns like Alfei Menashe and Beit Aryeh. The allure of large yards, freshwater sources, and natural landscapes creates an image of an oasis-like haven, and has been used as a pull by real estate companies and government authorities, offering an escape from the concrete jungles of Israel’s utilitarian purpose-built metropolitan cities. Russian-speaking immigrants, generally non-religious, form a sizable portion of this group. Surveys have consistently shown that a considerable proportion of non-ideological settlers would be willing to vacate their homes and relocate west of the 1967 lines, given the right compensation.

Fitting into the same category, Haredim, who comprise about 38% of the settler population, also gravitate toward particular settlement cities and towns, owing to the ultra-Orthodox’s low socio-economic status, large families, along with a desire to purchase large homes at an affordable price and reside within tightly knit homogeneous communities. Historically, early Haredi leaders were theologically opposed to the expansion of settlements based on the propensity to ignite violence and supported the principles of territorial compromise. Generally, their ideology is detached from the core principles of Religious Zionism, with many viewing efforts to expand Jewish sovereignty or quicken redemption as heretical, and others embracing the Talmudic principle of “not provoking the nations of the world.” Nonetheless, the collective needs of the Haredi community and religious directives that support settlement in specific locations have served as major drivers for large-scale migration (together with natural growth), making Haredi settlements the fastest-growing demographic in the West Bank.

Yet, in recent years ideological lines have blurred as Haredi society has shifted more to the nationalist right. This has been particularly stark among the younger Haredi generation, where disillusionment with their own rabbinical leaders, coupled with a growing trend of Israeli Jewish ethnocentrism, has propelled them towards religious right-wing ideologies. The voting patterns within the Haredi community from 2019 to 2021, with a slight dip in 2022, revealed a shift towards Religious Zionist parties from traditional parties of Shas and United Torah Judaism (UTJ). Consequently, ultra-Orthodox parties have been pushed to the right on the Palestinian issue. A majority of the ultra-Orthodox public (84%) expressed support for annexation of the settlements, according to a poll conducted by the Israeli Democracy Institute in 2020, and the United Torah Judaism party has endorsed

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44 According to data from the Israeli Central Elections Committee (source: Israeli Central Elections Committee, “Why Are We Abandoning the Haredi Parties?” https://iyun.org.il/en/sedersheni/why-are-we-abandoning-the-charedi-parties/), in the election for the 24th Knesset held in March 2021, 2% of the residents in Modiin Illit voted for the religious Zionist party, compared to 0.4% in the previous election. In Beitar Illit, 10% voted for the religious Zionist party, up from 1.5% in the previous election. Furthermore, a study conducted by the Haredi Institute for Public Affairs (source: Haredi Institute for Public Affairs, “Elections: Haredi Voting Patterns from 2013 to 2022” https://machon.org.il/en/publication/12028/) examines the voting patterns of Haredi populations from 2013 to 2022. The study revealed a decrease in votes for the religious Zionist party in Beitar Illit, Modi’in Illit, and El’ad in 2022, with only 5.5% of the Haredi population voting for the religious Zionist party, compared to 6.2% in previous elections.
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With the growth rate of this community at 4.2% per year, compared to the national average of 1.9%, a more right-wing, nationalistic Haredi population may have direct implications for the future of the settlement enterprise.46

The Legal Framework

To date, Israel has been reasonably adept at justifying and balancing its national policies relating to the settlement enterprise with the principles of international law governing the laws of occupation, despite the inherent incompatibilities. Mainly, this stems from its ability to maintain a legal and institutional distinction, albeit artificial, between the official application of sovereignty over the Palestinian territories it administers (that would amount to de jure annexation) and upholding a system in which the Ministry of Defense operates as the ultimate authority in the West Bank. Up until now, and in accordance with international law, the sovereign body in the territory is the military commander with all civilian actions carried out under the mandate of the IDF’s Head of Central Command, mainly executed through the Civil Administration.47 In theory, this is supposed to bar the application to the West Bank of any legislation adopted by the Israeli parliament. In practice, Israel has undertaken incremental steps with regard to the West Bank that blur the distinction between the sovereign state and the territory it occupies, including passing bills in the Knesset, issuing official legal opinions and state positions, and promoting cultural and economic measures that emphasize the Israeliness of the territory.48

The current Israeli government is embarking upon an accelerated process of reshaping the administrative framework through a series of major structural changes to the military


46 Israeli Central Bureau of Statistics (CBS) data as cited in Judah Ari Gross, “Haredim are the fastest-growing population, will be 16% of Israelis by decade’s end,” The Times of Israel, 2 January 2023, online at https://www.timesofisrael.com/haredim-are-fastest-growing-population-will-be-16-of-israelis-by-decades-end/

47 The Civil Administration (CA) is the executive arm of the IDF in the West Bank deriving its authority from the head of the IDF’s Central Command (which oversees the West Bank) and is responsible for the implementation of the civil and security policy. The director is entrusted with improving the fabric of life—including the development of transportation infrastructure, water, agriculture, electricity, economy, and more—for the benefit of all populations in the region and is composed of officers, civilians and soldiers who work to implement the policy in coordination with the Israeli government ministries. The CA has eight regional representations (“Directorates of Coordination and Liaison”) in the West Bank, and works with the PA, the Palestinian population, the settlers, and representatives of international organizations. The CA is responsible for security and civil coordination with the PA and for work permits and approvals for the entry of Palestinians into Israel. In practice, the legal framework for most of the elements of the fabric of settlement life is parallel to that applied in Israel. The main exception, for which the interface is with the CA, is the control over real estate, planning, construction and infrastructure, which are not subject to government ministries, but to the High Planning Council of the CA, and the processes of planning, construction and infrastructure development are conducted differently than in Israel proper. The CA has all the powers related to infrastructure in Area C—including the regulation of land issues, planning and construction, as well as enforcement in these areas; the construction plans in Area C—both settlement and Palestinian construction—go through it and are subject to its priorities. Some settlers claim that the CA is a body that hinders and makes construction in the settlements difficult and does not act resolutely against illegal Palestinian construction.

48 For further details see Over the Border—The institutionalized Israelization of Area C and the violation of Palestinians’ human rights, Yesh Din Position Paper, October 2022, online at https://s3.eu-west-1.amazonaws.com/files.yesh-din.org/over+the+border+2022/Meever+Lagvul_ENG.pdf
government’s operation. This can be characterized best as creeping de jure annexation (see section on “Major Threats in the Coming Months and Years”). Below we present the legal framework that has prevailed until now.

Israeli settlement of the West Bank is considered to be illegal and illegitimate by the United States and the international community, deriving primarily from Article 49(6) of the Fourth Geneva Convention (1949), which states that “the occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies.” The international laws of belligerent occupation recognize that occupation may be undertaken as a provisional arrangement but subject to a set of limitations and regulations as delineated in Article 43 and Article 55 of the Hague Relations (1907). Within this framework, occupation is contingent upon its temporary nature, in which the military authority—in this case the IDF—operates as an interim duty-bound trustee for the occupied people, preserving the security, well-being, and property of the “protected persons” it administers, balancing this with its own security interests. As occupation is not sovereignty, the territory cannot be used for the benefit of the occupying power, meaning that private land cannot be expropriated in the service of its own needs and state land is held in trusteeship. Foundationally, occupation is predicated on its transitional and exceptional nature, and is administered without intent of permanency. As such, annexation of the territory by any means is prohibited under international law, which makes no distinction between the de jure and de facto categorization. Principled U.S. opposition to all settlement activity stems from these core doctrines.

For its part, Israel’s reading of the legal status of the West Bank is at odds with international consensus. Israel defines the land as disputed territory, rather than as occupied. According to this view, the West Bank was not legally recognized as part of any sovereign state before the 1967 Six-Day War and was acquired in a war of self-defense. Jewish settlement in the area is interpreted as the voluntary return of individuals to the areas from which they or their ancestors were forcibly expelled. Israeli settlements are justified on the basis that, under the supervision of the Israeli High Court of Justice, no communities are established illegally or on privately-owned land. Given that the status of the West Bank is regarded as a territory over which there are competing claims, Israel continually claims its resolution should be determined through negotiations between the parties. An enduring and deepening 56-year-long occupation, however, puts such obligations and claims to the test.


50 Article 43 of the Hague Relations (1907) provides the framework for balancing the relationship between the occupying regime and the occupied territory, based on the prevailing understanding that local population is the beneficiary of the occupying regime, and the occupying power must administer the territory as a trustee, balancing security interests against the civilian life of the local population. Article 55 prohibits the occupier from making long-term changes to the public assets it holds. See “Under the Radar,” Yesh Din, March 2019, online at https://www.yesh-din.org/en/under-the-radar-israels-silent-policy-of-transforming-illegal-outposts-into-official-settlements-2/

Under international law, all Israeli settlements in the West Bank are deemed illegal. Israel, however, draws its own distinction between those that comply with building and planning laws and obtain government approval, and those that are constructed without any authorization, namely outposts. These outposts are isolated, small, erected in an ad hoc, unregulated fashion, are denied “legal” status under Israeli law, and are often built either mostly or partially on privately-owned Palestinian land. Aside from lacking official recognition under the law, there is little-to-no distinction between the service provision afforded to settlements and those received by outposts. The vast majority of the outposts established in the initial surge in the 1990s and early 2000s are connected to electricity and water grids and receive IDF protection. However, agricultural outposts tend to be less developed, with more limited infrastructure and less utility access.

Over the years, right-wing Israeli governments have sought avenues to circumvent Israeli law in order to formalize dozens of outposts, transforming them into legitimate settlements in the eyes of Israel. Authorization includes a government-led decision to determine how the formalization will take place; an outpost is regulated either by being declared as a new, independent settlement or by determining it a “neighborhood” of existing settlements. This process of retroactively approving outposts was applied mainly to outposts on state land, while those located on privately-owned Palestinian land were not retroactively approved due to legal complications. To this end, the Regularization Law passed by the Knesset in 2017 retroactively granted legal status to previously unauthorized settlements built on private Palestinian land. However, in 2020 the High Court of Justice revoked the law, and ordered the government to cancel its implementation.52

Several legal mechanisms have been and continue to be employed in order to assume control of land and allocate it for Israeli settlement use. The seizure of land for military and security purposes, a tool at the disposal of the military commander, is used to take possession of large swathes of Palestinian land, including privately-owned land, for a temporary period later to be relinquished. Rather than expropriation, which transfers ownership to the state, seizure leaves land under the name of its original owner.

Between 1967-2014, approximately 1,150 orders were signed and 100,000 dunams of land were seized with almost half (47%) of the territory under military seizure serving the needs of the settler population, rather than the army.53 Once this method became invalid following the milestone Elon Moreh Case (1979), it did not cease in its entirety.

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52 The Regularization Law of February 2017 intended to regulate building in the West Bank in two types of instances. One is construction on privately owned land by means of the appropriation of rights of usage and possession, and their allocation to the settlements that were built on them, with compensation for the landowners. The second is construction on land that was not declared state land through registration as government property—with the provision of a period of one year to allow claims to the land with proof of rights. The law applied to all construction that was undertaken in good faith or with the consent of the state, whether implied or explicit.

but new methods were fashioned.\textsuperscript{54}

The \textit{declaration of state land} is based on an interpretation of the Ottoman Land Law (1858), which determines that all lands are state land unless proven otherwise. Israel's freezing of the land registration process in 1968 meant that the status of two-thirds of West Bank land that had not been registered in the land registry prior to June 1967 remained unclear and ambiguous. In the absence of registration in the land registry, Israel claimed much of this as government property and declared it as state land.\textsuperscript{55} Other methods include \textit{declaration of absentee land}, which grants the state the power to manage properties of individuals who fled the West Bank in 1967 and authorizing the Israeli government to sell the land.\textsuperscript{56} \textit{Expropriation for public needs} is a mechanism used to confiscate private land for building infrastructure such as roads, however this must be for the benefit of Palestinians too. Lastly, and the most infrequently employed, is the mechanism of \textit{initial registration}, a lengthy process in which the state registers land in the land registry, which provides a facade of standard administrative practice rather than confiscation.

A collection of customized legislation and administrative military orders renders the settlers equal in legal status to citizens residing within Israel. To this end, Israel employs a "pipelining" technique.\textsuperscript{57} Military orders, which constitute the main means of governance, define that Israeli legislation, mostly of an administrative nature, should apply in the settlements. This allows Israeli government ministries to exercise powers in the settlements without annexing them de jure, and also to apply laws exclusively to settlers only.\textsuperscript{58} In addition, extraterritorial legislation enacted by the Knesset directly applies to Israeli residents of the area, subjecting them to Israeli law despite not physically residing in Israel. As such, "enclaves" of Israeli laws are created, where legislation is applied on a personal basis rather than a territorial one. Settlers, therefore, experience taxation, criminal law, military services, professional licensing, national insurance, health insurance, and services that replicate the experience of living within Israel proper. The Law to Extend the Emergency Regulations (Judea and Samaria—Jurisdiction and Legal Aid 5727-1967) was passed in 1967 and requires renewal by the Knesset at five-year intervals.

In maintaining a parallel, separate system for Palestinian residents under the mandate

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\item \textsuperscript{54} The October 1979 ruling by the High Court of Justice in the Elon Moreh case restricted the authority of the Israeli military commander in the West Bank to seize land for settlement construction. Its achievement was that settlements could only be built on privately-owned Palestinian land if a real security need was proven, see "Land Grab: Israel's Settlement Policy in the West Bank," B'Tselem, May 2002, online at \url{https://www.btselem.org/publications/summaries/200205_land_grab}
\item \textsuperscript{55} See \textit{Under the Guise of Legality: Israel's Declarations of State Land in the West Bank} B’Tselem, February 2012, online at \url{https://www.btselem.org/sites/default/files/sites/default/files2/201203_under_the_guise_of_legality_eng.pdf}
\item \textsuperscript{56} “Methods of Confiscation—How does Israel justify and legalize confiscation of lands?” Peace Now, 1 January 2009, online at \url{https://peacenow.org.il/en/methods-of-confiscation-how-does-israel-justify-and-legalize-confiscation-of-lands}
\item \textsuperscript{58} Ibid, p. 126
\end{itemize}
\end{footnotesize}
of the military commander, Israel has in effect created two, unequal legal systems in which settlers have an elevated and privileged status. In essence, Israelis benefit from civil laws, whereas Palestinians are subject to military rule with no say in formulating it. Some aspects of this dual system see Palestinians subject to longer arrest periods, are far more likely to be held in administrative detention, are tried in military courts, and face different labor laws.

Although the ultimate objective of the settler movement is to extend Israeli law to the entirety of the West Bank, the state has yet to annex this territory and its laws still do not apply there in a blanket and comprehensive fashion despite the existence of previous opportunities to end the current status quo, most notably during the confluence of the Netanyahu government and Trump administration.
The State of Play: Implications

Historically, the vast majority of plans or initiatives aimed at resolving the conflict, from the 1937 Peel Commission to Trump’s 2020 Peace to Prosperity Plan, have proposed various formulas for partitioning the land into two states or political entities. While the precise territorial and governance arrangements have varied, the fundamental rationale has remained the same: two peoples and two national movements who do not wish to share the same political and geographical space, each vying for control over the land between the Jordan River and the Mediterranean Sea.

Although the level of support—both its desirability and perceived feasibility—for a two-state outcome has diminished significantly among the Israeli and Palestinian publics over the last decade due to the current impasse and harmful changes on-the-ground, it continues to be the primary anchor for the official positions of key actors.

Since the late 1990s, a two-state outcome has been endorsed by all but one of Israel’s prime ministers, the PLO, all U.S. presidents, all Arab leaderships, as well as the European Union and the United Nations, as the ultimate objective of an Israeli-Palestinian peace process. However, achievement of this objective has been hindered by a lack of domestic legitimacy, owing to the disproportionate influence of veto-wielding constituencies, mainly national-religious actors on both sides. In tandem, the absence of a viable political process, cyclical rounds of violence, the split within Palestinian politics and territory, and the institutionalization of the occupation all interact and obstruct potential progress. Together, these dynamics are ushering Israel toward a reality of interminable control over Palestinian lives, contrary to the aspirations of both peoples. Pivotal to this increasing interminable control is the preservation and expansion of the settlement enterprise.

Identifying the very tipping point in which Israel has entered a post-separation reality where the costs of untangling itself from the West Bank are insurmountable, or precisely when it has crossed the threshold into an unequal one-state reality, is hard to pinpoint. Based on several indicators, and the known ideological mandate of the powerful actors dictating Israel’s political landscape and decision-making circles, the line is being dangerously skirted in new and unsettling ways. There is no escaping the fact that both reaching and securing domestic consensus over an Israeli-Palestinian agreement are harder today than previously, and that as time passes, one-state may inevitably eclipse the peaceful prospects for two. We present below some of the implications related to both the tangible durability and the perception of the settlement enterprise.
Political and Diplomatic

Over the last decade and a half, Israeli leadership has gradually abandoned rhetorical support for a classic two-state outcome, aside from a brief re-emergence under former Prime Minister Yair Lapid. Notably, in 2020 Netanyahu attempted to redefine the parameters of a two-state outcome in the context of Trump’s Peace to Prosperity plan, in which all settlements would have remained in place alongside the creation of a discontiguous and functionally non-independent Palestinian state subject to Israeli geographical, military, and national dominance.

The present Israeli government’s agenda leaves little breathing space for a two-state agenda. It can be best defined by its pursuit of de facto and de jure annexation, with attitudes spanning full sovereignty to partial application. Regarding the Palestinian Authority, stances range from seeking its complete elimination (in order to set back the Palestinian national movement and unfold Jewish sovereignty over the entirety of the land) as embraced by the Religious Zionist faction, to a more moderate approach mostly upheld by Likud and ultra-Orthodox members that supports its continued existence, albeit in a weakened form. Both approaches, however, envision an expansion and normalization of Israeli settlements.

On the ground, and as an offshoot of the sheer political influence of the settlement enterprise over the years, Israel has employed practical and legal steps that have steadily entrenched its grip over the West Bank. While the success of the settlement enterprise is a source of ongoing debate, it is harder to dispute its outsized political clout given its once-fringe status. Even absent the support of consistent government policies it continues to establish facts on the ground in Area C while obtaining a disproportionate allocation of budgetary resources and enjoying almost unfettered access to government decision-makers. By openly adopting a strategy of state penetration and employing its robust machinery, settlement leaders and settlement supporters have gained a robust presence in all manner of state institutions, including various ministries, political parties, the military, the media, and even nominally apolitical bureaucracies such as the Israel Lands Authority, the Nature and Parks Authority, and the Jewish National Fund. Up until now, the Israeli government’s unwillingness to adopt the full agenda of the settlement enterprise has curbed its influence. Today, the dynamic is different.

The significant political influence of the settler movement, however, has not translated into equivalent support among the Israeli public. Some even assert a failure to “settle in the hearts.” The majority of Jewish Israelis (60%) are opposed to annexation of the occupied territories. In his address, Lapid declared: “An agreement with the Palestinians, based on two states for two peoples, is the right thing for Israel’s security, for Israel’s economy, and for the future of our children. Peace is not a compromise. It is the most courageous decision we can make. Peace is not weakness. It embodies within it the entire might of human spirit. War is surrender to all that is bad within us. Peace is the victory of all that is good. Despite all the obstacles, still today a large majority of Israelis support the vision of this two-state solution. I am one of them.” Yair Lapid, “Address to the United Nations General Assembly,” September 22, 2022 as cited in “Full text of Lapid’s 2022 speech to the UN General Assembly,” The Times of Israel, online at https://www.timesofisrael.com/full-text-of-lapids-2022-speech-to-the-un-general-assembly/
territories and the creation of a single state under Israeli control with limited rights for Palestinians. Broken down further, almost half of Israeli Jews (45%) oppose unilateral annexation of the West Bank in its entirety, with around a quarter (26%) supporting annexation only in existing settlement blocs. The remaining minority (29%) back a more comprehensive annexation to varying degrees, with 14% in favor of annexation of all areas surrounding settlements, 8% in favor of annexing Area C, and 7% preferring annexation of the entire West Bank. Oftentimes there has been a distinction between how the public perceives the settlements versus the settlers themselves, with a greater level of sympathy towards the latter. The March 2023 Peace Index Poll also revealed that a majority of Israeli Jews (64%) support the prosecution of settlers who perpetrate violent action against Palestinians, while at the same time, a majority (70%) want to increase security for settlers to protect them from Palestinians. More than anything, this underscores the true complexity of the Israeli public’s relationship with the settlement enterprise: sympathy but an intuitive awareness of its cost.

Israel’s burgeoning settlement enterprise has inflicted damage on its Jewish and democratic identity as the Jewish component has been gradually superseding the democratic aspect. Now faced with a drive by the Israeli government to implement a sweeping overhaul of the judicial system, which will remove a major obstacle to Israel’s annexationist ambitions if implemented, the question of how settlements impact Israel’s democratic status is coming closer to the forefront. While the High Court of Justice has in many ways aided and abetted the growth of the settlement enterprise, it has been a key institutional check on an overextended West Bank policy, as a potential route to redress Palestinian grievances, and one of Israel’s most potent defenses from international scrutiny over its enduring occupation. Its striking down of the Regularization Law 2017 is one example.

Until now, Israel’s commitment to preserving both its Jewish and democratic identity has served as a helpful veneer and bulwark against overwhelming international criticism. With seismic changes underway, both in the nature of governance in the West Bank and the potential deterioration of its independent court, the international community is set to be confronted by a new set of challenges regarding its diplomatic engagement with Israel. This is also occurring against the backdrop of a series of reports from Amnesty, Human Rights

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60 “Public Opinion Poll,” Tel Aviv University Peace Index, March 2023, online at https://social-sciences.tau.ac.il/peace-index-general


62 Ibid., “Tel Aviv University Peace Index.”

63 Chief Justice Esher Hayut wrote in the ruling of 9 June, 2022 that: “The Regularization Law seeks to validate retroactively illegal actions carried out by a specific population in the area, while infringing on the rights of another population in an area under belligerent occupation. The regulation is not “blind” in terms of the group that will be injured by its implementation; rather, the regulation knowingly and unequally infringes upon the property rights of Palestinian residents of the area alone and gives precedence to the property interests of the Israeli settlers, without any individual examination and without giving sufficient weight to the special status of the Palestinian residents of the area as “protected persons.” See “The Supreme Court Ruling on the Regularization Law”, INSS, 18 June 2020, online at https://www.inss.org.il/publication/settlement-law/
Watch, and local Israeli NGOs labeling Israel and/or Israeli policies in the occupied territories as apartheid. Accordingly, Israel’s accelerated move toward a binational state with unequal rights will come under even greater scrutiny in the coming months and years.

Key international actors, especially the United States, have traditionally refrained from exercising the full range of political and economic tools at their disposal to hold Israeli governments accountable for actions that run contrary to international law and the spirit of a two-state outcome. These governments and institutions are fatigued, disillusioned, and preoccupied with more pressing foreign policy challenges. In this current climate, diplomatic statements condemning the announcement of settlement plans—usually ranging between expressions of “concern” and “grave concern”—or declarations in support of a two-state outcome are relied upon to reaffirm principled positions. Periodically, behind-the-scenes efforts seek to mitigate the most detrimental developments.

As Israel’s settlement enterprise moves in a clearer direction toward eliminating the functional implementation of a viable two-state outcome, the tension between U.S. support of Israel as a critical strategic partner and defense of Israeli security on the one hand, and U.S. concern over the closing of a two-state window and the related erosion of Israeli democracy on the other, will become more acute. Absent restoring a political horizon and arresting the unfettered expansion of settlements across the West Bank, American diplomacy will become more of a reactive exercise in frustration, while American politics will be further split between one pole that seeks to ignore what is taking place on the ground and another pole that seeks greater punitive measures against Israel.

The Palestinian Authority’s eroding credibility and legitimacy among its public cannot be divorced from the proliferation of settlements. Palestinians see their land—which was supposed to increasingly come under their control in the interim period, with final boundaries subject to negotiations—being swallowed, seized, and rendered inaccessible. They face daily restrictions on their freedom of movement and encounter incidents of settler violence. All the while, recurring diplomatic efforts to resolve the conflict have failed to yield substantial results, and the inability of the PA leadership to deliver strategic and material dividends to its people has undermined public faith in the efficacy of diplomacy. Belief in the establishment of a Palestinian state has grown increasingly remote, especially in light of an Israeli government that has abandoned any pretense of supporting a two-state vision.

The deteriorating reality on the ground and the protracted absence, and future elusiveness, of a political process, has alienated much of the Palestinian public from its leadership. Faced with attacks from its rival Hamas, which advocates for the path of armed resistance, the Palestinian Authority is seen less and less as the most effective avenue for achieving national liberation. Rather, it is deemed by some as a subcontractor of the occupation, or, at best, a municipal body that contributes to the maintenance of the status

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64 The approval by the U.N. General Assembly on December 31, 2022 to submit a request for an advisory opinion from the International Court of Justice (ICJ) in the Hague on the temporary nature of Israel’s occupation, as well as the International Criminal Court’s (ICC) investigation regarding allegations of war crimes committed during Operation Protective Edge in 2014.
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quo. Adding to this dynamic is the persistent inability to establish a unified Palestinian political entity, as well as the PA's governance deficit marked by corrupt and unaccountable institutions owing to an absence of elections since 2005.

Despite the unfavorable backdrop and a gradual decline in support over the years, a two-state outcome remains the most preferred option for resolving the conflict among the Palestinian public. A recent Arab News-YouGov poll conducted in May 2023 revealed that 51% of Palestinians support two states, although the choice of a single state with equal rights for both parties was not listed.65 It is worth noting that in other recent polling, where one state with equal rights is offered, a decrease in support for two states did not translate into greater support for a single state. Instead, more respondents expressed uncertainty opting for “don’t know” or “other.”66 This is more indicative of a sense of hopelessness, despair, and lack of belief in the viability of a two-state outcome rather than a genuine preference for an alternative solution. Nevertheless, emerging trends indicate that the conflict’s current trajectory has amplified the discourse of full equality and civil rights, which is gaining traction among the Palestinian youth of today, together with a growing disillusionment and detachment from traditional Palestinian political movements. While polling indicates that self-determination remains a priority and that the denationalization of the Palestinian movement is unlikely, new strategies and tactics may be adopted to confront a calcified political reality resistant to change.


66 “The Palestine/Israel Pulse, a Joint Poll Summary Report,” Palestinian Centre for Policy and Survey Research and Tel Aviv University, conducted 24 January 2023, showed a decline in support for the two-state solution among Palestinians, from 42% in 2020 to 33% in 2023. However, support for the ‘other’ option, which encompasses none of the three options (two-states, one democratic state, and an unequal non-democratic state), increased from 27% to 47% over the three-year period, online at https://www.pcpsr.org/en/node/928
Security

The notion that Israeli civilian settlements east of the 1967 lines ensure the security of the state has been repeatedly debunked by events following Israel’s withdrawal from territories over the years. There are virtually no voices in Israel’s national security apparatus that argue for the re-occupation of any area that Israel previously withdrew from, whether through agreement, such as the Sinai Peninsula in 1982 and small portions of the Arava in 1994; or unilaterally, including South Lebanon in 1999 and the Gaza Strip in 2005. With just a few exceptions, the overwhelming majority of Israel’s highest-ranking security officials, past and present, point to the security toll, rather than the added value, exacted by the presence of Israeli civilians (settlers) deep inside the West Bank among a hostile Palestinian population.

For at least 15 years, the fundamental principles that guided Israel’s security doctrine as delineated in the 1967 Allon Plan have been rendered strategically obsolete. Following the 1967 Six-Day War, the plan suggested creating Israeli settlements around Jerusalem in order to widen the narrow corridor surrounding the city and along the Jordan Valley as a means of bolstering its eastern front and strategic depth. While the security rationale regarding defensible borders held relevance in the 1960 and 1970s, it has lost its applicability in today’s security landscape. The once credible threat of conventional military invasion by armored or infantry units from Jordan or Iraq has receded significantly; ground maneuvers have been replaced by projectiles and infiltrations by terrorists that rely on deception rather than overwhelming presence. The signing of the Israel-Jordan peace treaty in 1994 provided Israel with a much greater strategic depth than the West Bank ever could, essentially moving Israel’s strategic security frontier to the Jordan-Israel border. Coupled with Iraq’s military defeat following the U.S. invasion in 2003, the prospects of a conventional attack from Israel’s east have effectively vanished. Notably, Israeli presence in the Jordan Valley allows it to monitor and neutralize tactical threats associated with the armaments of the West Bank—mainly the smuggling of small arms and entrance of hostile actors. In the context of Israeli withdrawal associated with a two-state outcome, Israeli and U.S. officials identified a multi-layered approach to address Israeli security needs. This approach focused on building up Palestinian capacity to provide law and order and counter-terrorism, while minimizing Israeli interference in Palestinian sovereignty. To provide Israel with greater strategic depth, it proposed joint intelligence cooperation mechanisms with moderate Arab states, the establishment of a comprehensive border security system with Jordan, a small U.S. presence participating in mobile patrols and a well-trained Palestinian security force.67

Today, Israel’s most pressing threat on the eastern front emanates from Iranian missiles, which its control over the West Bank and the existence of settlements does little to

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protect against. On the other hand, Israel's U.S.-guaranteed Qualitative Military Edge, and the regional ties realized by the Abraham Accords provide an added safeguard. But the Allon Plan created a link between settlements and security in Israeli political discourse, and this connection has proven stubbornly resistant to change, with successive Israeli governments adopting parts of the rationale to solidify their presence in the territories.

Rather than advancing national security, the presence of Israeli settlements in the West Bank poses a security burden. A 2017 study by Molad, based on consultations with former high-ranking members of the security and defense establishment, exposed the steep cost that Israel incurs by maintaining its presence in settlements across the occupied territories. IDF forces are deployed to protect an elongated defense line that is five times longer than it would be without the settlements, consisting of the separation/security barrier, patrol routes and roads. This results in a disproportionate allocation of personnel and resources. The dozens of potential friction points scattered across the West Bank are located mostly in isolated areas, home to the most ideologically driven settlers numbering around 104,000 who inhabit approximately 70 settlements situated to the east of the separation barrier, as well as around 90 outposts.

Between a half and two-thirds of the military’s active forces are devoted to the West Bank at the expense of focusing on other vulnerable borders such as Lebanon, Syria, and Gaza. The Molad study further observed that forces stationed in the West Bank are primarily focused on guarding settlements, rather than preventing terrorist activities aimed at civilians within Israel. Take the settlement of Kiryat Arba in Hebron, for example, where roughly 800 settlers and 250 yeshiva students are protected by an entire infantry battalion and three border police companies, meaning that every two settlers are assigned either one Israeli soldier or police officer.

The erection of the West Bank separation/security barrier between 2000 and 2005 helped reduce the frequency of Palestinian terror attacks into Israel, but the barrier’s uncompleted status reduces its overall effectiveness. Around 40% of its route, which is 250 kilometers out of 790 kilometers, is unbuilt. Three large gaps remain around Gush Etzion, Ma’ale Adumim, and to the southeast of Mount Hebron. Settler leaders and some right-wing Israeli politicians fear that closing the gaps in the barrier could create a de facto boundary between Israel and the West Bank and leave dozens of settlements outside its planned route. To compensate for potential security breaches, the IDF increases its offensive strategy to preempt terrorism within Palestinian population centers, which creates friction with Palestinians. Subsequently, the extended presence of the IDF in Palestinian areas requires a larger, more visible deployment of forces that results in more friction. The vast majority of former high-ranking security officials repeatedly claim that completing the

barrier would upgrade the level of security for Israeli citizens, which runs contrary to the settler movement’s claims that settlements themselves serve as a vital national security measure.\textsuperscript{71}

Settler violence, a trend that has seen an uptick in recent years, poses a security threat primarily to Palestinians, but also inadvertently to the Israeli public, and national security at-large. Perpetrated by the more extreme individuals, several methods are employed including shootings, knife attacks, burning of crops, vandalism of property, spraying graffiti and theft of land and livestock with heightened tensions also recorded during the olive harvest season. Through arson, vandalism, harassment and incitement, the “price tag” strategy seeks to exact a cost for Israeli policies contrary to the interest of the settlement enterprise, or commit revenge for Palestinian attacks on Jewish settlers. The first of its kind took place in 2006, in response to Israel’s withdrawal from the Gaza Strip and evacuations from the West Bank, and its instances have grown. In addition to revenge, the goal of some attacks is to disrupt Palestinians’ daily lives and drive them from their homes, making it easier to acquire more land by establishing outposts on territory vacated by Palestinians. The majority of attacks occur in Areas B and C, particularly in the vicinity of illegal outposts. Out of the 1,256 violent incidents recorded between 2012-2021, 63% occurred in these outposts, which are home to less than 5% of the settler population.\textsuperscript{72} Given that this land falls under Israeli security jurisdiction, it is not accessible to Palestinian security forces, rendering them unable to prevent such assaults.

According to the United Nations, settler violence reached a peak in 2011 and decreased until around 2017, when it then began to rise again. Jewish attacks on Palestinians and their property doubled in 2022 from the previous year, with 838 attacks recorded compared to 426 attacks in 2021.\textsuperscript{73} The quantitative rise in the number of incidents, and new signals of a qualitative shift in the nature of settler violence as witnessed by recent incidents, indicates the growing potential for major wide-scale unrest, Palestinian backlash, and, if left unattended to, an escalated security crisis in the West Bank. While voices in the Israeli security establishment have periodically raised the alarm, in reality, ineffective efforts over the years to proactively thwart settler violence, to enforce the rule of law, or to impose deterrence and accountability on those responsible for attacks have contributed to this dynamic. Partially, this can be attributed to a shortage of manpower, intelligence deficiencies and subpar coordination between agencies, linked to a lack of governmental prioritization.\textsuperscript{74}


\textsuperscript{73} “West Bank: Humanitarian Impact of Israeli Settlement Activities,” UN Office for Coordination of Humanitarian Affairs (OCHA), online at \url{https://www.ochaopt.org/content/west-bank-humanitarian-impact-israeli-settlement-activities}

The implications ripple beyond the local arena too, undermining the stability in the West Bank, limiting the ability to respond to pressing security threats, and disrupting the security forces’ activity. “Regarding security, which is the main factor, we must ensure that an uncompromising law enforcement system is operating in the West Bank... Grassroots Jewish violence impairs security personnel’s ability to do their main duty—battling Palestinian terror and preventing the area from becoming another front. Untrammeled violence by extremist settlers erodes the IDF’s deterrence, forces soldiers to police at the expense of their missions, and puts soldiers and officers in situations where they don’t belong.” Nitzan Alon, Avi Mizrahi and Gadi Shamni—reserve major generals and former heads of IDF Central Command—co-wrote in 2022.75

Two of the most extreme manifestations of settler violence to date were witnessed in the early months of 2023, both of which demonstrate the destabilizing threats of unbridled mass popular violence and lawlessness. The first, in the Palestinian town of Huwara in February 2023, occurred in response to a Palestinian terror attack that killed two Jewish Israeli brothers.76 The subsequent settler raid was universally condemned, with criticism aimed at the Israeli government and security establishment for failing to prevent it and for being slow to intervene. Just a few months later in June, following the killing of four Israelis by Palestinian gunmen near the settlement of Eli, a series of unprecedented large-scale settler raids targeted the village of Turmus Ayya, and several other localities such as Urif, and Umm Safa in which homes and vehicles were torched. It produced an unequivocal tripartite condemnation from the heads of the IDF, Shin Bet, and the Police labeling it as “nationalist terror,” expressing harsh criticism while signaling their intent to implement a more stringent approach.77

For its part, the Office of U.S. Security Coordinator (USSC) has been actively monitoring what has been described by one leading U.S. official as an “alarming” rise in settler violence.78 Moreover, following the Huwara incident, a State Department report stressed that in 2021, regardless of some efforts by the Israeli Defense Ministry and the police, Israeli security personnel often did not prevent settler attacks and rarely detained or charged perpetrators of settler violence. The report also noted that according to some NGOs, the IDF enabled a permissive environment by its lack of enforcement.79


76 On Sunday 26 February, two residents of the West Bank settlement of Har Bracha, Hallel Yaniv and Yagel Yaniv were shot dead in a terror attack in the northern West Bank town of Huwara while driving along the Route 60 Highway. See “Two Israeli Brothers Shot Dead in West Bank Terror Attack,” The Times of Israel, 26 February 2023, online at https://www.timesofisrael.com/two-israelis-shot-dead-in-west-bank-suspected-terror-attack/


In terms of security repercussions, settler violence has ramifications not only for Palestinians’ security, but for the stability of Palestinian governance, sending a message to Palestinian society that their own leadership is unable to protect them and undermines an already discredited Palestinian Authority. An endless loop endures, as both sides’ ability to justify security coordination, essential to PA survival and a pillar of Israeli security strategy in the West Bank, is harmed and compromised. As the legitimacy of the Palestinian Authority weakens, support for extremist groups such as Hamas and Palestinian Islamic Jihad increases, and creates conditions for the emergence of new armed groups seen as operating in opposition to the Palestinian Authority, such as the Lion’s Den.80

80 An overwhelming 72% of the Palestinian public are in favor of forming armed groups such as the Lion’s Den—which do not receive orders from the PA and are not part of the security services—as per a December 2022 PCPSR poll. See “Public Opinion Poll No (86),” Palestinian Centre for Policy and Survey Research, 13 December 2022, online at https://www.pcpsr.org/en/node/924
Economic

The settlement enterprise acts as a drain on Israel's national resources. To varying degrees, Israeli governments have matched political investment with generous budgetary support and, oftentimes, inflated subsidies accompanied by sizable military expenditures. Designated as areas of "national priority," Israeli communities and towns east of the 1967 line benefit from disproportionate government assistance that both incentivizes settlers seeking quality of life improvement and sustains those driven by ideological national-religious motivations. Governmental economic support is not only critical to settlements' viability, but strengthens the political power of the settlement enterprise.

Calculating the total annual amount Israel invests in settlements is notoriously hard to quantify, owing to both a lack of transparency and a blurring between the military and civilian spheres. There is no single, isolated budget that can be earmarked as going to settlements, and their costs are dispersed across a range of ministries and items. The Ministry of Finance’s periodic calculation of the government’s specific expenditures on settlements, which determines the amount the U.S. government should deduct from its loan guarantees, serves as a helpful indicator. Some estimates put the figure at approximately NIS 1 billion (about $274 million) a year in surplus funding, excluding ongoing maintenance for the settlements and security expenditure (the most costly outlay) with an increase of 50% recorded between 2017-2019. Under the current Israeli government, and as per the budgetary allocations in the 2023-24 budget, this level of investment will surge.

Infrastructure, including transportation, water and sewage systems, electricity transmission lines, cellular service, and residential and recreational buildings, requires a substantial infusion of funds. However, the building of roads has not kept pace with a growing settler population since the last major wave of transportation construction occurred in the late 1990s. To entrench their presence and suburbanize isolated settlements, settlers prioritize the construction of roads. In recent years, the Israeli government has committed to investing more heavily in the settlement road grid, with the West Bank Road and Transportation Master Plan for 2045 launched as a roadmap vision. The five-year plan announced by the current Netanyahu government allocates a quarter (25.69%) of Israel’s road development budget for roads serving settlements, the largest

81 According to the Israeli Central Bureau of Statistics document “Government Expenditures on the Israeli settlements in Judea and Samaria, and the Golan Heights,” expenses include: the construction of the settlements as such, including public investment in dwellings; internal roads; buildings for educational, social and religious purposes; commercial centers, industrial parks and other facilities created for the establishment of producing units and/or to serve the residents of the Israeli settlements. Subsidies and capital grants to local authorities and enterprises located in the settlements. Benefits through tax rebates given to producers and residents in settlements. The subsidy element contained mortgages given on special conditions to the settlers. Grants to residents for housing, transportation and other consumption items. Government transfers to the Settlement Division of the World Zionist Organization intended to be spent in the settlements. The government expenses related to settlements do not include services provided to the entire population of Israel, and not all expenses related to security measures and infrastructure are factored into the calculation, online at http://peacenow.org.il/wp-content/uploads/2019/12/methodology-of-data-CBS2.pdf

82 “Surplus Spending on Settlements Tops NIS 1 Billion,” Peace Now, December 3, 2019, online at https://peacenow.org.il/en/surplus-spending-on-settlements-tops-nis-1-billion
proportion to date. This includes the development and expansion of several strategic roads and access routes.

Fortifying and defending Israeli communities, dozens of which are remotely situated deep in the heart of the West Bank and act as isolated potential friction points in the heart of hostile Palestinian areas, requires an inflated and round-the-clock deployment of IDF brigades and a costly allocation of the national budget to match. Alongside the physical presence of soldiers and border police, high-priced protective technology and infrastructure such as armored buses (1.3 to 1.5 times more expensive than regular buses), electric fences, guard towers, observation equipment, and panic buttons are all provided to shield against and deter Palestinian acts of violence.

Benefiting from a favorable welfare arrangement, settlers receive a package of attractive social perks. Enlarged subsidies for public transport aim to discourage youth from hitchhiking, subsidized loans are offered to businesses in settlements, tax rebates and preferential tax arrangements are granted to producers and residents, and mortgage subsidies and development grants are provided. Budgets are also weighted in favor of settlements; for example Education Ministry data from 2020 showed that Kiryat Arba received NIS 52,200 and Kedumim NIS 44,200 per high school student, in comparison to Rehovot and Tel Aviv that received NIS 32,000 and NIS 30,300 respectively. Moreover, with increased normalization of some major settlements, a perceived permanence and stability has made it easier to obtain mortgages from banks for purchasing properties in the West Bank. Governmental support, through the Mechir Lemishtaken program, the lottery-based scheme that also operates in the settlements, serves as an additional guarantor further mitigating the risks for banks and as such the buyer.

Israel’s neoliberal economic agenda has increasingly converged with its settlement policy. Central to this is the deprioritization of government investment in peripheral towns, where budget-slaicing within Israel proper is redirected toward settlement communities.

84 NIS 2 billion ($538 million) will go to upgrading Route 60 that runs the entire length of the West Bank; NIS 500 million ($134 million) will go toward expanding a road between the Ariel settlement and Tapuach Junction in the northern West Bank; NIS 366 million ($98 million) will go to upgrading the access road to the Beit El Regional Council area; NIS 300 million ($81 million) will pay for a new road between the Miron settlement and Qalandia north of Jerusalem; NIS 200 million ($54 million) for a road circumventing the Palestinian village of Al-Funduq in the northern West Bank west of Nablus; and NIS 150 million ($40 million) for a road in the Alfei Menashe settlement, as well as hundreds of millions more for roads in and around East Jerusalem. See Jeremy Sharon, “Budget Dedicates Billions for West Bank Roads, Settlements and Illegal Outposts,” Times of Israel, 25 May 2023, online at https://www.timesofisrael.com/budget-dedicates-billions-for-west-bank-roads-settlements-and-illegal-outposts/
that benefit from more resources and more robust welfare support.\textsuperscript{87} Peripheral towns in the Galilee and the Negev are often used as benchmarks for measuring the amount of government support given to settlements through the form of two channels: balancing grants as well as designated grants.\textsuperscript{88} In comparison to similarly less affluent municipalities and regional councils within the 1967 lines, an analysis of governmental budgetary support for local authorities from 1997 to 2017 revealed that settlements, especially those located to the east of the separation/security barrier, receive a greater proportion of central government budgetary help. In 2017, they were granted balancing grants of NIS 1,071 per capita, compared to NIS 1,049 for Arab localities, NIS 756 for Haredi settlements, and NIS 715 for development towns.\textsuperscript{89} The formula used by the government to determine spending levels prioritizes settlements due to their more expensive security needs.\textsuperscript{90}

Despite heavy investment and government incentives, settlements have failed to achieve economic independence and to attract Israelis in high numbers. Termed bedroom communities and remaining mostly residential in nature, approximately 60\% of employed settlers commute daily into Israel proper for work.\textsuperscript{91} The state has so far failed to create attractive job centers or industrial zones, perpetuating economic reliance on the central government.

\begin{thebibliography}{99}

\bibitem{88} Israel's central government through the Ministry of Interior provides contributions to municipal budgets, balancing grants are special grants made to low–income local authorities to enable them to provide regular municipal services, such as infrastructure and street cleaning.

\bibitem{89} Shlomo Swirski and Etti Konor Attias, Government Participation in the Funding of the Budgets of Local Authorities, 1997–2017: Government Participation Earmarked for the Funding Social Services, Adva Center, August 2019 (Hebrew) as cited in Molad Report, Non-Violent Civil Evacuation, 3 May, 2022.

\bibitem{90} Shlomo Swirski and Noga Dagan-Buzaglo, "The Occupation: Who Pays the Price?," Adva Center, June 2017, online at https://il.boell.org/sites/default/files/adva_-_price_of_occupation_en.pdf

\bibitem{91} Israeli Bureau of Statistics data as cited in Highway to Annexation, op cited.
\end{thebibliography}
An Unsettled Question: Recalibrating U.S. Policy on Israeli Settlements

Humanitarian

The most acute and striking manifestation of the settlement enterprise is exhibited through its pervasive impact on Palestinian livelihoods. The “Battle for Area C,” as described by settler leaders and among an increasingly influential cohort in the Israeli political establishment, is premised on the belief that such territory belongs to Israel and any efforts by Palestinians to establish a foothold should be fended off at all costs. A restrictive and discriminatory policy that is tied to settlement expansion has come to typify Israeli policy, with major implications for Palestinian land use, freedom of movement, provision of services, human security, and sustainable socioeconomic development.

Area C, comprising 60% of the West Bank, is richly endowed with natural resources and is key to the future urban, economic, and human development of a viable Palestinian state, and by extension a two-state outcome. Given its contiguous nature, it is the only link between dozens of islands of disconnected small Palestinian urban hubs and villages, and thus serves as the essential land reserve required for the expansion of public infrastructure—transportation, water systems, electricity networks, telecommunications, landfills—as well as private sector growth, agriculture, and the development needs of Palestinian population centers concentrated in Areas A and B. Yet owing to a frozen-in-time Oslo framework, Israel has used its retention of full civil and military control over Area C to facilitate extensive settlement growth.

The zoning, planning, and building process in the West Bank and East Jerusalem reveals a systemic barrier for Palestinians to obtain the necessary Israeli building permits to construct homes, schools, and erect basic infrastructure. Execution of policy in Area C is undertaken by the Coordinator of Government Activities in the Territories (COGAT) and the Civil Administration, which until the institutional remodeling under the new government was subject to the direct authority of the Ministry of Defense. Approximately 300,000 Palestinians residing in Area C face a heightened risk of demolitions, displacement, and land expropriation deriving from Israel’s asymmetrical planning procedure that favors the 460,000 settlers. The convoluted land classification leaves less than 1% of land authorized for planning by the Civil Administration, with 29% heavily restricted and 70% off-limits for Palestinian development. COGAT-published data between 2018 to 2022 revealed the extent of such imposed limitations. During this five-year period, Israel issued only 33 building permits to Palestinians living in Area C, compared to 16,500 permits issued to settlers.

92 Under the Oslo Accords 1993, Israel agreed to transfer control of Area C to Palestinian Authority jurisdiction by 1999, except for aspects reserved for the intended final agreement. It was agreed that the outcome of the permanent status negotiations should not be prejudiced or pre-empted by Israel or the Palestinians. Until these matters are agreed, development in Area C requires permission from Israel. The transfer of control over Area C never fully occurred and the final-status of these areas remains unresolved.

93 See “Under Threat: Demolition Orders in Area C of the West Bank,” UNOCHA, September 2015, online at https://www.ochaopt.org/content/under-threat-demolition-orders-area-c-west-bank

In the absence of master plans for Palestinian areas and the high rate of Israeli permit denials premised on the grounds that the relevant area has not been zoned for construction, Palestinians are forced to build illegally, risking administrative demolitions. In 2022, across the West Bank and East Jerusalem, a total of 953 Palestinian structures were demolished or seized and 1031 people were displaced, with the majority of demolitions occurring in Area C. This was the highest number recorded since 2016. The first quarter of 2023 witnessed a 46% increase in the number of structures targeted compared to the same period the year before.

Alongside administrative demolitions, which occur due to a lack of Israeli-issued building permits, there are land-clearing operations/military demolitions based on Military Order 1797—as is the case with Masafer Yatta—and punitive demolitions of houses connected to perpetrators of terrorism and violent attacks against Israelis. Demolitions affect not only residential structures but also relate to income generation and the provision of necessary services for Palestinian communities. Socio-economic vulnerabilities are exacerbated by the pressure on finite land and resources available in Areas A and B. An open-ended cycle of donor-reliance and poverty is perpetuated in which stopgap humanitarian aid responses inadequately address the long-term humanitarian and economic vulnerabilities impacting Palestinians.

Following the outbreak of the Second Intifada in 2000, for well over a decade Israel deployed a collection of physical barriers, checkpoints, and supporting policies and practices that heavily restricted Palestinian movement throughout the West Bank. These measures, some of which have lasted to this day, are both administrative, in the form of permit requirements, and physical, embodied by the separation barrier, roadblocks, and dozens of checkpoints (fixed and temporary), which splinter Palestinian communities and impede movement that heavily relies on Israeli-authorized passage through Area C. These measures direct Palestinians toward distinct segments of the West Bank. The route of the separation barrier, skirting the location of settlement blocs, has obstructed East Jerusalem’s connection to the West Bank, created several enclaves trapped between the barrier and the 1967 line, and prevented Palestinians east of the barrier from accessing fertile land in the seam zone.

What occurs in Area C has ramifications for the entire Palestinian population in the West

95 Of the 953 structures demolished or seized in 2022, 781 were located in Area C, 29 in Area A and B, and 143 in East Jerusalem, see “West Bank demolitions and displacement,” OCHA, December 2022, online at https://www.ochaopt.org/content/west-bank-demolitions-and-displacement-december-2022

96 “West Bank Demolitions and Displacement - January - March 2023,” OCHA, online at https://ochaopt.org/content/west-bank-demolitions-and-displacement-january-march-2023#text=Overview,West%20Bank%20including%20East%20Jerusalem

97 Masafer Yatta is a collection of Palestinian hamlets in Area C of the south Hebron Hills home to 2,800 residents, mostly residing in herding communities. The Israeli government designated the area Firing Zone 918 in the early 1980s. On May 4, 2022, the Israeli High Court issued a final decision rejecting the residents’ petition and greenlighting the army to forcibly evict the communities.

98 See “Palestinian Life Restrictions in Areas C and B,” Machsom Watch, online at https://machsomwatch.org/en/content/area-c
Bank. According to a UNCTAD report, between 2000 and 2020, Israeli restrictions imposed on Palestinian development in Area C of the West Bank cost the Palestinian economy an estimated $50 billion; this comes to approximately $2.5 billion per year, which is more than two-and-a-half times the total Palestinian GDP in 2020. Simultaneously, the estimated contribution of Israeli control over Area C is estimated at $41 billion to the Israeli economy. The World Bank estimates that granting Palestinian businesses access to Area C would boost the Palestinian economy by about a third and increase the PA’s revenues by 6 percentage points of GDP.\footnote{99} More freedom of movement for Palestinians is crucial to improving humanitarian conditions and reviving economic life, particularly in areas outside of the blocs and east of the barrier.

Widespread violence across the West Bank—involving both settlers targeting Palestinians and Palestinian attacks on Israeli civilians and soldiers—has a highly destabilizing effect, producing near-daily frictions and humanitarian ramifications. Palestinian popular violence and increasingly unaffiliated lone-wolf terror attacks—a trend that has risen in recent years—encompass shootings, stabbings, bombings, car-rammings, the more sporadic suicide attacks, as well as the use of less lethal means like stone-throwing. According to Shin Bet statistics, in 2022, a total of 678 attempted attacks (excluding stone-throwing incidents) across Jerusalem and the West Bank were undertaken, of which 472 were foiled and 204 were carried out.\footnote{100} Notably, over the past year, there has been a significant surge in shooting attacks in the West Bank, surpassing figures from the preceding two years, likely owing to the increase in the illicit smuggling of firearms. When factoring in attacks within pre-1967 Israel as well as the West Bank, the total tally reached 2,613 attempted attacks.\footnote{101} The data appears to exclude reactionary (not premeditated) attacks by Palestinians against Israeli security forces during the latter’s incursions into Palestinian cities.

Since March 2022, Israeli counterterrorism operations have focused on northern West Bank cities, particularly Jenin and Nablus, in an effort to thwart impending attacks—particularly from the more established Hamas and PIJ-affiliated breed of terrorism, but increasingly to contain the new phenomena of emerging grassroots militias like the Lion’s Den or the Balata Brigade—as well as arrest suspects, halt weapons smuggling, seize munitions, demolish homes, and dismantle networks and cells. Near-daily and often deadly IDF raids into densely-populated Palestinian cities in Area A, which according to the Oslo Accords should fall under full PA security and civil control, have produced violent clashes between Israeli security forces and Palestinian militants, frequently resulting in wider confrontations with Palestinian residents and rioting. Palestinian civilians and bystanders, including minors and journalists, are caught in the crossfire, and left exposed, and without adequate protection amid exchanges of fire. This is also partnered with greater restrictions on freedom of movement, marked by lockdowns and closures.

A steep rise in Israeli settler attacks in the West Bank has been recorded in recent years,


\footnote{100} Shin Bet Annual Summary 2022, online at \url{https://www.shabak.gov.il/en/reports/}

\footnote{101} Ibid.
further eroding Palestinian public safety and security. According to OCHA, the number of settler-related incidents targeting Palestinians has reached its highest level since data collection began in 2005. Compared to 2021, there has been a 58% increase in settler-related incidents resulting in Palestinian casualties, property damage, or both. Moreover, when contrasted with 2020, the surge amounts to 123%. In the first five months of 2023, according to the UN Humanitarian Coordinator, there were 475 incidents of settler violence that resulted in property damage or injured Palestinians; a 34% increase over the same period last year.

According to the ongoing tracking and analysis of settler violence flashpoints over the years by OCHA, the majority of incidents are recorded in the northern West Bank around the Nablus area, which is home to some of the most nationalistic settler communities, including Yitzhar and its adjacent outposts; in the area of the Homesh outpost near to the Palestinian villages of Burqa and Sebastia; as well as around the settlements of Shilo and Eli. In the southern West Bank, flashpoints are also recorded in the cluster of settlements in and around Hebron and in the South Hebron Hills near Maon, Carmel, and Masafer Yatta.

102 OCHA Humanitarian Needs Overview 2023, online at https://www.ochaopt.org/content/humanitarian-needs-overview-2023

Why Settlements Should Be Countered

Israeli settlements have been a contentious issue for decades, with their impact on Palestinians and the broader peace process being a major concern. As noted above, settlements have legal, humanitarian, economic, security, and political effects. Settlements fundamentally infringe on Palestinian well-being, they are a burden on Israeli security, and they undermine the prospects of a viable political process and a two-state outcome. These three elements all contravene U.S. interests, and have consequently led to decades of American presidents and Congress seeking to limit Israel’s settlement enterprise.

Inside Israel, settlements carry significant political implications. In addition to arguments against the wisdom and desirability of creating a Palestinian state, which many opponents of a two-state outcome perceive as a strategic threat to Israel on security and ideological grounds, the expansion of settlements has been used by opponents of two states to argue that the establishment of a Palestinian state is no longer viable. According to this view, the sheer number of settlers and the varied location of settlements—spanning from adjacent to the 1967 lines to deep inside the West Bank—render their evacuation impossible, in turn obstructing the space for a contiguous and viable Palestinian state. This has empowered hard-line elements within the Israeli government and society who oppose the creation of a Palestinian state, and has disempowered those who support the idea of a two-state outcome.

The impact of settlements on Palestinians and their support for a two-state outcome is also significant. While the PLO, the Palestinian Authority, and Fatah have long supported a resolution based on two states, the expansion of settlements and diminishing possibility of their evacuation leaves many Palestinians disillusioned with the peace process and losing faith in the ability of the PLO to bring about a just and lasting solution.

Settlements and the security-administrative regime that supports them have also upended the character of the West Bank’s geography. In the past, Israeli settlements were isolated and surrounded by areas accessed with relative ease by Palestinians. Today, the situation has reversed—settlements have grown and expanded, becoming the dominant presence in many areas as Israeli policies enhance their territorial control (which stretches far and wide beyond their more modest built-up footprint). Palestinians have been increasingly limited into their Oslo-era areas; their presence in Area C (even natural “spillover” from Areas A or B) is deemed illegal by Israel and countered to various degrees.

Notably, Area C was supposed to be a temporary arrangement, with the intention of eventually transferring control of the area to the Palestinians. According to the 1995 Israeli-Palestinian Interim Agreement (Oslo B):

"Area C" means areas of the West Bank outside Areas A and B, which, except for the issues that will be negotiated in the permanent status negotiations, will be gradually
transferred to Palestinian jurisdiction in accordance with this Agreement.104

Further redeployments from Area C and transfer of internal security responsibility to the Palestinian Police in Areas B and C will be carried out in three phases, each to take place after an interval of six months, to be completed 18 months after the inauguration of the Council, except for the issues of permanent status negotiations and of Israel's overall responsibility for Israelis and borders.105

Oslo clearly indicated that arrangements in Area C were meant to be temporary, with the intention of gradually transferring control to the Palestinians. The Israeli-Palestinian Interim Agreement of 1995 laid out a framework for the gradual transfer of authority to the Palestinians, but this process has not been fully realized, and Area C remains under Israeli control to this day.

Decades of Israeli government policies designed to create more space and security for settlements at Palestinians’ expense have effectively engineered a consciousness among Palestinians that they are living in a state of permanent displacement and exclusion. Although Palestinian attitudes are a complex matter driven by many factors, including internal issues such as the West Bank-Gaza split, lack of Palestinian democratic governance, and PA corruption, Israel’s settlement policies are a factor that contributes to declining Palestinian public support for a two-state outcome, rising support for armed resistance, and the delegitimization of the PA/PLO leadership to the benefit of more militant and hardline factions.

Diplomatically, the inability of the international community at large and the United States in specific to freeze or roll back the settlement enterprise has discredited them in Palestinian eyes as effective mediators. In addition, U.S. passive and selective effort to counter Israel’s occupation of the West Bank and the settlement enterprise leads to charges of U.S. hypocrisy, undermining its ability to most effectively counter similar behavior by geopolitical foes such as Russia and China.

Notably, the United States has its own national interests in countering settlements and their growth. Israel is a critical American partner in the Middle East on a host of security and intelligence issues. A strong Israel that is able to focus on regional security and devote resources to countering regional actors who threaten American and Israeli interests—primarily Iran, its militias, and its proxy groups such as Hezbollah—is a core U.S. priority. As detailed above, settlements are a security drain for Israel in a variety of ways, from the resources devoted to safeguarding settlements and their residents to the IDF manpower required to secure Israeli population centers in the West Bank to the friction they cause with Palestinians living in the territory. In a country of Israel’s size and population, the enormous enterprise that makes up the settlement project and its related offshoots is a security burden that detracts from other priorities, which in turn imposes a greater burden on the United States.


There is also a political cost to the United States, both in terms of maintaining a unique bond with Israel and in terms of its own reputation. The strength of the U.S.-Israel relationship lies in the widespread sense of shared values between the two countries that transcend shared interests or mutually beneficial transactional arrangements. Nothing erodes the shared values component of the U.S.-Israel relationship more than settlements, as the evident inequity between Jews and Palestinians residing in the West Bank is at odds with many Americans’ democratic and liberal principles. As Israel's civilian presence in the West Bank has grown and hardened, the political challenges within the American context have grown as well, from charges of Israeli apartheid from human rights groups to Congressional calls to reduce or condition security assistance to Israel tied to its settlement activities. Reputationally, the United States is increasingly seen as an outlier among Western democracies with regard to its treatment of Israeli settlements, often using its U.N. Security Council veto on Israel’s behalf when resolutions dealing with settlements are introduced.

The United States also has an interest in pursuing a fair resolution to the Israeli-Palestinian conflict that results in an independent and viable Palestinian state, an outcome that is made far more difficult as Israeli settlements expand in number and in size. Successive American administrations have viewed settlements as an obstacle to peace and as a barrier to Palestinian well-being, which not only challenge the United States as the historical mediator of the conflict between the two sides but challenge American policy on promoting democratic outcomes and human rights. Much as the welfare of Israelis is a U.S. foreign policy interest, the welfare of Palestinians is as well, and the reality of West Bank settlements makes pursuing Palestinian welfare and eventually statehood challenging.

The new regional alignment cemented by the Abraham Accords and normalization agreements between Israel and other American security partners in the region adds an additional component to the U.S. interest in countering settlements. Despite the initial claim by some U.S. and Israeli officials that the Abraham Accords were evidence that the Palestinian issue was no longer relevant and could be bypassed, subsequent events—including but not limited to the failure to expand the Abraham Accords further in the three years since their announcement—have demonstrated that Israel's moves expanding its presence in the West Bank rather than limiting it have detrimental effects on the normalization process. One of the keys that made the initial normalization agreement between Israel and the United Arab Emirates possible was an Israeli pledge to suspend its plans to annex portions of the West Bank, yet the Israeli government that was sworn in January 2023 is moving ahead with various initiatives amounting to both de facto and de jure annexation, as detailed further in this report. To the extent that cooperation between Israel and other regional states under the CENTCOM banner is disrupted or made harder by Israeli settlement policies, it weakens U.S. security in the region and its efforts to build a more robust multilateral security architecture. It also thwarts a U.S. goal of greater burden-sharing among regional partners.

Settlements and the impacts of settlement expansion on a future resolution to the Israeli-Palestinian conflict implicate U.S. interests. While Israeli settlement policy is sometimes portrayed as an internal Israeli issue, there is little question that the United States has genuine
An Unsettled Question: Recalibrating U.S. Policy on Israeli Settlements

commits related to its own regional priorities that require a set of strategies and tactics intended to shape Israeli settlement policy in a way that protects U.S. interests while taking into account the constraints of Israeli domestic politics and the desire to maintain a robust U.S.-Israel relationship. U.S. efforts to counter an unfettered settlement agenda are squarely in line with longstanding American policy in support of two states, in support of stability in the Middle East, and in support of greater cooperation between American partners in the region. The pursuit of these interests makes developing a new and more successful U.S. approach—one that does not risk the robust relationship with Israel while simultaneously being more effective at arresting settlement growth that puts a two-state outcome dangerously out of reach—a policy imperative for current and future administrations.
U.S. Policy on Settlements: Historical Overview

The U.S. approach to the question of Israeli settlements has varied over time and across different administrations. Generally speaking, the United States has opposed the building and expansion of Israeli settlements, for the large part viewing them as illegal/illegitimate and an obstacle to a peaceful resolution to the conflict. With few exceptions, U.S. opposition has remained rather direct in rhetoric. But American willingness to go beyond statements and diplomatic engagements has waned significantly over the past two decades, mainly because of a changing global and national order of strategic priorities, innate pro-Israel tendencies, fear of domestic political implications, and an aspiration that a resolution to the conflict would end the need to butt heads over this most contentious issue.

As noted above, American diplomats have hoped that a resolution to the question of borders in the context of final-status negotiations would also resolve the question of settlements. Therefore, the survey below deals with how settlements fit into the larger U.S. view of the territories captured by Israel in 1967 and within the context of American-led peace process efforts.

Early Years—Presidents Johnson, Nixon, Ford, Carter, and Reagan

Throughout the second half of the 20th century, the United States regarded the Arab-Israeli peace process as an anchor of its global and regional policy. U.S. involvement in the Middle East was driven by strategic interests—mainly securing energy resources and regional allies in the context of the Cold War. In response to regional conflicts in the 1950s and 1960s, the United States established relations with pragmatic regimes, mostly Arab governments, aiming to prevent instability caused by external intervention or internal developments.

During the 1970s and 1980s, the United States strengthened its relationship with Israel, leading to increased American involvement in the peace process. This was because the United States saw Arab-Israeli political and security arrangements as a critical factor in establishing regional stability, and it attempted, with some success, to broker Arab-Israeli agreements.

106 For example, see recollections by U.S. Presidential Envoy George Mitchell on his deployment during President Obama’s first term: “In vain I argued with [PA President Mahmoud] Abbas that if he wanted to end settlement construction, he should negotiate as soon as possible and try to reach an agreement on borders; once that was settled the dispute over settlements would be resolved: Israelis could build whatever they wanted in areas designated as part of Israel, and Palestinians could build whatever they wanted within their borders. I thought my argument was persuasive, but Abbas did not. He continued to insist that there had to be a full settlement freeze before he could enter negotiations with Netanyahu.” Mitchell, George J.; Sachar, Alon. A Path to Peace: A Brief History of Israeli-Palestinian Negotiations and a Way Forward in the Middle East. Simon & Schuster, 2016. Kindle Edition.
Until the 1980s, multiple U.S. administrations either stated or implied that settlements contravened international law.

In the late 1960s and 1970s, under Labor Party leaderships, Israel’s settlement activity targeted the Jordan Valley as a buffer between Israel and the Palestinians on one side and the Arab states on the other. In the late 1970s and through the 1980s, under Likud’s Menachem Begin, Israel approved and fast-tracked the construction of numerous settlements deep in the West Bank, adjacent to and surrounding Palestinian population centers.

Following the 1967 War, President Lyndon Johnson thought that the territories Israel occupied should be used as leverage to secure a comprehensive peace agreement between Israel and the Arab states, based on land for peace, as reflected in the 1967 U.N. Security Council Resolution 242, which called for the withdrawal of Israeli troops from lands occupied in the 1967 war and acknowledged sovereignty claims, territorial integrity, and independence of all states. The Johnson administration cautioned Israel that establishing civilian or quasi-civilian outposts in the occupied areas would complicate the eventual process of negotiating a peace settlement.

The Nixon and Ford administrations both criticized settlement activities as detrimental to the peace process and illegal. William Scranton, the Ford administration’s representative to the United Nations, called Israeli civilian “resettlement” in the territories illegal, citing the Fourth Geneva Convention.

In 1978, President Jimmy Carter referred to the settlements as illegal, anchoring a landmark State Department legal advisory letter—which became known as the Hansell Memorandum—characterizing settlements as “inconsistent with international law.” Begin and Carter repeatedly clashed on the issue of Israeli settlements.

In a June 1980 interview, when Carter was asked, “why do you call these settlements illegal, and what court or international body made this ruling on which you base your statement?” the president responded:

\[\text{We consider these settlements to be contrary to the Geneva Convention, that occupied}\]

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108 “Next I turn to the question of Israeli settlements in the occupied territories. Again, my Government believes that international law sets the appropriate standards. An occupier must maintain the occupied areas as intact and unaltered as possible, without interfering with the customary life of the area, and any charges must be necessitated by the immediate needs of the occupation and be consistent with international law. The Fourth Geneva Convention speaks directly to the issue of population transfer in Article 49: ‘The occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies.’ Clearly then substantial resettlement of the Israeli civilian population in occupied territories, including in East Jerusalem, is illegal under the Convention and cannot be considered to have prejudged the outcome of future negotiations between the parties on the location of the borders of states of the Middle East. Indeed, the presence of these settlements is seen by my Government as an obstacle to the success of the negotiations for a just and final peace between Israel and its neighbors” in “Excerpts From Scranton’s U.N. Speech,” New York Times, March 25, 1976, online at https://www.nytimes.com/1976/03/25/archives/excerpts-from-scrantons-un-speech.html.

In addition, Carter’s Chief of Staff Hamilton Jordan repeatedly—16 times—used the term “illegal” in relation to settlements in internal memos to the president. Thus, although the president himself did not use the term “illegal” verbatim, that description clearly reflected the policy of the Carter administration.\footnote{Ibid.}


The Carter administration supported UNSCR 465\footnote{See UN Security Council Resolution 465, 1 March 1980, online at http://unscr.com/en/resolutions/465} (March 1980), which also delivered a firm condemnation of Israel’s settlement practices and referred to Jerusalem as “occupied territory.” Specifically, the resolution declared that Israel’s attempts to alter the physical and demographic composition of Palestinian and Arab territories occupied since 1967 were illegal and a violation of the Geneva Convention, urged Israel to dismantle existing settlements and cease the construction and planning of new ones. The resolution also called on all states to withhold any assistance to Israel that could be used to support settlements.

The entire episode of the Carter administration’s support for the resolution appeared to be a policy blunder more than intent. Disavowing the passage of the resolution, Carter noted that the United States approved the vote with the understanding that all references to Jerusalem had been removed.\footnote{When informed of the outrage of Jewish organizations, Carter told his staff that the Jerusalem references had been deleted from the resolution’s text. “They showed me a copy of the resolution as it was passed, with ‘Jerusalem’ being mentioned six times. I couldn’t believe it. I called [Secretary of State Cy Vance] in Chicago. He said he thought ‘Jerusalem’ had been deleted.” Carter continued, “My understanding with [Israeli Prime Minister Menachem] Begin was that we would let the issue of Jerusalem and the issue of dismantling existing settlements be resolved in the peace negotiations. That’s why the error was serious.” Carter, White House Diary, page 406, as appears in section 345 Editorial Note of Foreign Relations of the United States, 1977–1980, Volume IX, Arab-Israeli Dispute, August 1978–December 1980, Second, Revised Edition, online at https://history.state.gov/historicaldocuments/frus1977-80v09Ed2/d345} Carter clarified that the United States did not support dismantling existing settlements and that Jerusalem should be undivided with free access to holy places for all faiths, with its status determined in negotiations. Carter assured Israel that the U.S. commitment to its security remained unshakable and sent a personal letter to
Begin explaining the misunderstanding. Begin accepted the explanation.

The Carter administration subsequently returned to its abstaining posture, allowing UNSCR 471\(^{116}\) (June 1980) to pass.

In a notable policy shift, President Ronald Reagan stated in a 1981 interview to the New York Times that settlements were "not illegal," but "ill-advised" and "unnecessarily provocative." Reagan expressed concern about the change in Israel’s attitude toward settlements and urged Israel to adopt a settlement freeze, as a confidence building act for wider participation in peace talks. Reagan added that further settlement activity was unnecessary for the security of Israel and only undermined the confidence of the Arabs in the possibility of negotiating a fair and final outcome.\(^{117}\)

While the interview has been used to color Reagan as more favorable toward settlements than preceding U.S. administrations, the Reagan administration allowed UNSCR 592\(^{118}\) (December 1986) and UNSCR 605\(^{119}\) (December 1987) to pass by abstaining, both of which reaffirmed the applicability of the Fourth Geneva Convention to territories occupied by Israel after 1967. Further, in 1988, the Reagan administration voted in favor of UNSCR 607\(^{120}\), which again reaffirmed that "the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, is applicable to Palestinian and other Arab territories occupied by Israel since 1967."\(^{121}\)

**President George H.W. Bush**

The presidency of George H.W. Bush focused on the challenges of the Soviet Union’s collapse and the Persian Gulf War. The Bush administration’s pragmatism manifested itself by the interchangeable and complementary use of diplomacy and military force to establish the United States as the sole, unmatched leader of the immediate post-Cold War international landscape. As such, it has also pursued arms control agreements with Russia, China, and other countries, and worked to promote economic cooperation and free trade around the world.

On the Israeli-Palestinian front, Bush’s policy focused on opposing settlements and promoting an Arab-Israeli peace process that would mitigate the First Intifada and bring about a diplomatic breakthrough.

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Bush opposed settlement expansion and clashed with the Israeli leadership over it. Secretary of State James Baker said bluntly, “Now is the time to lay aside, once and for all, the unrealistic vision of greater Israel. Israeli interests in the West Bank and Gaza—security and otherwise—can be accommodated in a settlement based on [UN Security Council] Resolution 242. Forswear annexation. Stop settlement activity. Allow schools to be reopened. Reach out to the Palestinians as neighbors who deserve political rights.”

In March 1990 Bush said, “the foreign policy of the United States says we do not believe there should be new settlements in the West Bank or in East Jerusalem.” In June that year, in his appearance before the House Foreign Affairs Committee, Baker said the United States will stop its efforts to advance peace talks unless Israel—led by the hawkish Likud leader Yitzhak Shamir—agrees to proceed without delay. “The phone number [for the White House switchboard] is 202-456-1414. When you’re serious about peace, call us,” Baker famously quipped.

The Bush-Shamir tensions ultimately stopped early peace process activity, particularly as the situation in the Persian Gulf culminated in Iraq’s August 1990 invasion of Kuwait. Bush’s strategy turned to mobilizing the international community behind the U.S.-effort to remove Saddam Hussein from Kuwait. In particular, the Bush administration focused on maintaining its military coalition by ensuring Israel stayed out of the fight and did not retaliate against Iraqi missile strikes.

On the Arab-Israeli front, once the fighting was over and Iraqi forces were defeated, Bush and Baker turned to leveraging the Gulf War into a diplomatic initiative, ultimately culminating in the 1991 Madrid Peace Conference, co-sponsored by the United States and the Soviet Union. The conference aimed to bring together Israel and its Arab neighbors, including Egypt (who had signed a peace agreement with Israel a decade earlier), Jordan, Lebanon, Syria, and the Palestinians (represented as part of the Jordanian delegation) for peace negotiations.

The conference was a diplomatic landmark as it staged direct talks between Israel and its Arab neighbors in two tracks: a bilateral track, in which Israel met separately with each of the Arab actors, and a multilateral track, in which all parties discussed issues such as water resources, refugees, and regional security. While the conference did not produce any immediate breakthroughs, it established a framework for future negotiations.

In the run-up to Madrid, the issue of U.S. loan guarantees to Israel became a source of tension. Starting in 1972, the United States began providing loan guarantees to Israel for

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various reasons. These loan guarantees are a form of indirect assistance and allow Israel to borrow from commercial lenders at more favorable rates. In the event of a default, funds are set aside in a U.S. Treasury account as subsidies, which are a percentage of the total loan and are sourced from either the U.S. or Israeli government. To date, Israel has never defaulted on a loan guarantee backed by the United States.

Israel is bound by legal agreements to use the funds obtained through guaranteed loans solely for the purpose of refinancing its government debt. Additionally, Israel has agreed that these funds will not be used for military purposes or to support actions in areas outside of its control prior to June 5, 1967, which today includes the West Bank, Gaza Strip, and Golan Heights. However, U.S. officials are aware that due to the fungibility of Israel’s national budget, proceeds from the issuance of U.S.-guaranteed debt that is used to refinance government debt may free up domestic funds for other uses. Deductions of funds from loan guarantees due to settlement activities occur (only) when Israel actually uses loan guarantees, the last year of which was FY 2003. This policy stands to this day.

In 1991, Israel pushed for roughly $10 billion in loan guarantees, while the Bush administration continued to be concerned with settlement growth, especially given what it deemed Israeli violations of commitments regarding settlements it had made in the context of an earlier $400 million loan guarantees package.

Baker preferred to postpone the issue so that peace diplomacy could continue apace, but Shamir persisted. Ultimately Congress backed the administration’s request for a delay. The deteriorating relationship between the Bush administration and Israel played a role in Shamir’s defeat in the 1992 Knesset election.

Reflecting on his tenure, Baker said, “every time I have gone to Israel in connection with the peace process ... on each of my trips I have been met with the announcement of new settlement activity ... I don’t think there is any greater obstacle to peace than settlement activity that continues not only unabated but at an advanced pace.” Under criticism for Baker’s stance against settlements, Bush noted: “Secretary Baker was speaking for this administration, and I strongly support what he said ... It would make a big contribution to peace if these settlements would stop. That’s what the secretary was trying to say ... and I’m one hundred percent for him.”

125 These include addressing housing shortages, supporting the absorption of immigrants, and aid in the country’s economic recovery following the 2000-2003 recession caused by the second intifada. See Jeremy Sharp, “U.S. Foreign Aid to Israel,” Congressional Research Service (CRS) report RL33222, February 18, 2022, online at https://crsreports.congress.gov/product/pdf/RL/RL33222.

126 Ibid.

127 Ibid.


During Bush's term, the United States abstained from UNSCR 641 (August 1989) condemning Israeli actions and reaffirming the applicability of the Geneva Convention, allowing its passage. Further, the Bush administration supported UNSCR 681 (December 1990), which urged the Israeli government "to accept the de jure applicability of [the Fourth Geneva Convention] to all the territories occupied by Israel since 1967," which also made reference to Jerusalem. The year after, UNSCR 694 (May 1991), also approved unanimously, declared that Israel's deportation of four Palestinians violated the Fourth Geneva Convention. The United States also voted in favor of UNSCR 726 (January 1992) and 799 (December 1992), both of which condemned Israel for violating the Fourth Geneva Convention, and reaffirmed that that convention applies "to all the Palestinian territories occupied by Israel since 1967, including Jerusalem." 

President Bill Clinton

During the 1990s, the United States faced numerous geopolitical challenges in the post-Cold War era. To continue managing the aftermath of the Soviet Union's collapse, the Clinton administration attempted to promote democratic values and economic reform in the former Soviet bloc countries. The United States also had to deal with local flashpoints in Africa and the Balkans, such as the genocide in Rwanda and the ethnic conflicts in Bosnia and Kosovo. In response, the U.S. pursued a policy of humanitarian intervention with mixed results. Additionally, the Clinton administration oversaw the dawn of the popular internet and modern economy, which brought about new opportunities and challenges for American businesses and global trade.

On the Israeli-Palestinian landscape, the Clinton administration inherited defunct Arab-Israeli negotiations in Washington that excluded the PLO, which, for its part, did not allow a local Palestinian team to make progress. The alternative—the bilateral Israel-PLO backchannel that produced the 1993 Oslo Declaration of Principles—surprised America. Israel and the PLO granted each other mutual recognition, outlined an interim period of five years by which a temporary self-governing Palestinian Authority would be established, and agreed on a set of issues (territory and settlements, Jerusalem, refugees, water and security) that would make up a final-status agreement at the end of the period.

The subsequent agreements (the 1994 Gaza-Jericho Agreement and the Protocol on Economic Relations, better known as the Paris Protocol, as well as Oslo II, known as the Interim Agreement) outlined partial Israeli withdrawal from most of the Gaza Strip and from major Palestinian towns in the West Bank, the transfer to the Palestinian Authority

136 See Sher and Cohen, op cited.
of most civilian and some security responsibilities over Palestinians, the regulation of the economic relations between Israel and the Palestinian Authority (in effect integrated the Palestinian economy into the Israeli one), elections of the Palestinian legislature, and a safe passage between West Bank and Gaza. Most importantly, the 1994 agreement marked the start of the five-year interim period to see negotiations on a final-status agreement regarding the remaining issues, to be concluded no later than May 4, 1999.

By the time hospital workers pulled the blood-stained lyrics to "Shir LaShalom" ("Song for Peace") from Yitzhak Rabin's pocket in 1995, Oslo's shortcomings were on full display. The Palestinians expected fewer settlements and settlers, but got more; expected more freedom, but got less; and expected better governance than the Israel Defense Forces' Civil Administration, but witnessed a feeble, at times corrupt, Palestinian self-rule emerge under tight Israeli control. Israelis wanted more security and more legitimacy from Palestinians but in reality experienced terrorism by Palestinian factions that, in their minds, exemplified festering popular anti-Zionist sentiment. Worse still, there was no third party to monitor the faltering process.137

As a new prime minister—Likud's Benjamin Netanyahu—took power in Israel, the Clinton administration leaned into the peace process with all its might. Netanyahu's hostile posture toward the Oslo Accords threatened the continuation of the interim process and the planned launch of final-status negotiations. Yet in the mid-1990s the United States was optimally positioned to mediate between the sides, having granted economic and political support to both.

Under U.S. mediation, Netanyahu's Israel and the PLO managed to reach two agreements. The 1997 Protocol Concerning the Redeployment in Hebron138 established a framework for the Israeli withdrawal from most of Hebron while retaining control over the Jewish settlement in the city. The 1998 The Wye River Memorandum attempted to further implement the interim process and establish a framework for the final-status negotiations. It called for Israel to make further withdrawals from the West Bank and for the Palestinian Authority to take measures to combat terrorism.

Ehud Barak's election in 1999 breathed new life into the Israeli-Palestinian process. Although the Labor Party leader's initial focus was on negotiations with Syria, by the spring of 2000 the U.S.-sponsored Barak-Assad track failed, forcing Barak to fulfill his campaign promise of withdrawing IDF forces from south Lebanon unilaterally and not as part of an agreement with Syria. By the time the last IDF soldier closed the gate separating Israel from Lebanon, the United States and Barak turned to salvage the Israeli-Palestinian process which was finalizing its fifth and ostensibly final year of the interim period. They did so by focusing on final-status negotiations. Under U.S sponsorship, a dramatic July 2000 summit at Camp David collapsed without agreement, the second intifada erupted, and...
the introduction of Clinton’s bridging proposals in December 2000 failed to bring about a breakthrough, and a last ditch effort to produce an agreement in Taba in January 2001 met a similar fate and marked the end of the Oslo process in its manifestation as a conflict-ending exercise, leaving in place an open-ended governing structure of the West Bank and Gaza made of the Palestinian Authority and the Israel defense establishment.

For their part, the Oslo Accords defined settlements as a final-status issue, and the Israeli-Palestinian Interim Agreement did not address settlement dynamics beyond placing them in Area C under Israeli control. The United States has tried to balance its opposition to settlement construction with its fundamental pro-Israeli stance and its support of a two-state outcome.

Early in the Clinton administration, the updated U.S. posture was less hostile to Israeli settlement construction and replaced language referring to Israeli settlements as “obstacles to peace” with that of a “complicating factor.” But all in all, the Clinton administration struggled to address settlement construction at large—Israel was encouraged to stop constructing settlements, but exceptions were made for East Jerusalem, large settlement blocs, and cases of ‘natural growth.’ In effect, the administration focused its opposition on ‘strategic’ settlements such as E-1 and Har Homa.

Former Clinton advisor Aaron David Miller reflected: “I don’t recall a single tough, honest conversation in which we said to the Israelis, ‘Look, settlements may not violate the letter of Oslo, but they’re wreaking havoc with its spirit and compromising the logic of a gradual process of building trust and confidence.’”

In February 1997, the Netanyahu government announced plans to build a new settlement neighborhood called Har Homa on the southeastern outskirts of Jerusalem. Har Homa’s location was detrimental to Palestinian contiguity and for hopes of establishing a capital in East Jerusalem. While the Clinton administration expressed its objection to the settlement, it did not take any action to pressure the Israeli government to halt the project due to concerns about Netanyahu’s coalition. Clinton also vetoed a Security Council resolution calling on Israel to abandon the Har Homa plans. Har Homa construction started later in 1997, and by 2020 (the most updated data) it housed over 25,000 Israelis.

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141 Elgindy, op cited.

142 Miller, The Much Too Promised Land, pp. 252, 263.

143 Ross, Missing Peace, p. 329. See also Dennis Ross, Doomed to Succeed: The U.S.-Israel Relationship from Truman to Obama (New York: Farrar, Straus & Giroux, 2015), pp. 280–81, as quoted by Elgindy, op cited.
As the peace process entered its dramatic phase of final-status negotiations in 2000-1—the United States preferred to focus on the possibility of reaching a comprehensive agreement on all core issues, including borders, which would have inevitably resolved the settlement issue as well. The negotiations failed. The sides failed to reach agreement on any of the core issues, including the territorial dimension. Israel went to elections, in which Ariel Sharon, a key promoter of the settlement enterprise, won the premiership, replacing Barak.

President George W. Bush

The George W. Bush presidency was defined by geopolitical fallout stemming from the September 11, 2001 attacks. The Global War on Terror, the wars in Afghanistan and Iraq, tensions with North Korea and Iran, and the acceleration of other global challenges highlighted a U.S. posture that centered on national security and use of military force to protect U.S. interests. Bush's diplomatic approach, which failed to galvanize international support, forced him to act mainly unilaterally. More than any other action, the ill-advised Iraq War and mismanaged occupation of the country thrust America into two decades of strategic blunder in the Middle East and discredited its international stature.

On Israeli-Palestinian affairs, the Bush administration inherited a failed political process and a raging second intifada. Despite the dramatically altered global and national security priorities, it faced the Israeli-Palestinian landscape with dynamism and attentiveness unseen since.

Initially, Bush refused to continue what it perceived as a failed Clinton policy. In parallel to its post-9/11 efforts, the Bush administration managed the violent years of the Second intifada by focusing on de-escalation missions. Once these proved unsuitable and relations with the Sharon government tightened, Bush's objective became the removal of Arafat and the ushering in of an alternative Palestinian leadership, ostensibly en route to Palestinian statehood, which was codified as official U.S. policy within 18 months of the Bush presidency.

Former Senator George Mitchell was sent in the spring of 2001 to evaluate the nature of the Second Intifada and to draw up recommendations for bringing it to an end. The Mitchell Report published in April 2001, surveyed the eruption of violence, determined its cause was rooted in the deterioration of trust between the sides and in the process itself throughout the 1990s, and gave a list of operative recommendations: a “package deal” involving the cessation of violence and renewal of security cooperation; confidence-building measures between the sides; and renewal of diplomatic negotiations with the goal of brokering a permanent peace agreement between the sides. Mitchell pinpointed Palestinian terror and Israeli settlement activity as the main causes for the collapse of the process. As preconditions for resuming negotiations, the report recommended a full Israeli settlement freeze coupled with a Palestinian clampdown on violence.144

The Mitchell Report recommendations were not implemented, and violence soared. Bush then sent CIA Director George Tenet to the region, with the goal of brokering a ceasefire between the sides. In June 2001, the Tenet Ceasefire Plan was unveiled, aiming to operationalize the Mitchell report. But this program also failed to slow the raging violence on the ground.

Tenet’s mission, as well as that of General Anthony Zinni, who followed him, focused on managing the conflict on the tactical operational level, lacking any strategic vision. Bush’s national-security team, composed mainly of neoconservatives such as Vice President Dick Cheney and Secretary of Defense Donald Rumsfeld, bickered with other officials, such as Secretary of State Colin Powell and U.S. Ambassador to Israel Dan Kurtzer. The neocons had intimate ties to the Israeli ideological right wing, and exploited the post-9/11 atmosphere and the relative weakness of Powell, who attempted to provide high-level political backing for the ceasefire attempts. But as Powell shuttled between Tel Aviv, Jerusalem, and Ramallah, his political rivals in Washington took control of the president’s decision-making process regarding the conflict. The pursuit of a final-status agreement ended; the time had come for a new paradigm.

In a landmark June 2002 speech, Bush presented an updated U.S. policy: The Palestinians must replace their leadership, renounce violence, fight terror and corruption, and overall reform the PA into a legitimate democratic institution. In exchange, and in the context of ending the occupation that began in 1967, a Palestinian state would be established with provisional borders. Operationally, Israel was expected to withdraw to the pre-Intifada lines, cease settlement construction, ease freedom of movement for Palestinians within the West Bank and release the tax revenues that Israel collects on behalf of the Palestinians.

The Roadmap for Peace was presented to the sides by the newly-formed international Quartet (the United States, United Nations, European Union, and Russia) as a plan of action leading from conflict to negotiations on a final-status agreement. The Roadmap refers to U.N. Security Council resolutions 242, 338 and 1397; previous agreements between the sides; and the Arab Peace Initiative as the basis for a diplomatic process. It outlined a three-stage plan:

- Phase I (a few months) focused on cessation of violence, supportive measures taken by Israel to normalize Palestinian life, the beginning of the process of establishing Palestinian institutions with an emphasis on security and governmental reforms. Israel, for its part, is expected to withdraw to pre-September 2000 lines as well as to take measures


to improve Palestinian lives. In addition, Israel was expected to re-open Palestinian institutions in East Jerusalem; dismantle all outposts established since March 2001; and freeze all settlement activity, including ‘natural growth’ of settlements.

• Phase II of the Roadmap (June-December 2003) focused on the feasibility of establishing a Palestinian state with provisional borders. This state will rely on reformed civil institutions and security structures, a new constitution and new elections, and will constitute a transition phase to a final-status agreement.

• Phase III (until 2005), was a more amorphous stage, and included a second international conference to discuss core issues leading to a final-status agreement.

While the Bush administration generally supported Israel, it did take action against settlement activity and other Israeli policies early on in line with historical U.S. practices. In the context of the Second Intifada, Bush imposed an arms embargo on spare parts for U.S.-made helicopters used by Israel in the killing of Palestinian leaders suspected of involvement in terrorist attacks. At the time, Israeli Prime Minister Sharon accused Bush of betraying Israel to appease the Palestinians and other Arabs, leading to a strong rebuke from the White House.148

On the question of settlements, Bush’s April 2002 landmark speech mentioned above, which focused primarily on the need to bring about a new Palestinian leadership, stated, “consistent with the recommendations of the Mitchell Commission, Israeli settlement activity in the occupied territories must stop.” The Roadmap called for a freeze on settlement expansion, including natural growth, and the eventual removal of all unauthorized outposts.

In a June 2003 trilateral summit in Aqaba aimed to operationalize the Roadmap, Bush informed Sharon and Abbas that the Roadmap file was now entrusted with his National Security Advisor Condoleezza Rice. “Condi will be my personal representative,” Bush said, adding that Ambassador John Wolf, a senior career diplomat, would move to Jerusalem to monitor Roadmap progress and would report to Powell and Rice.149 “All sides have made important commitments, and the United States will strive to see these commitments fulfilled. My government will provide training and support for a new, restructured Palestinian security service. And we’ll place a mission on the ground … charged with helping the parties to move towards peace, monitoring their progress and stating clearly who was fulfilling their responsibilities. And we expect both parties to keep their promises,” Bush said.150


Notably, the position of Roadmap monitor—which included the monitoring of construction that violated the settlement freeze clause of the Roadmap—was later transferred to U.S. generals, usually those holding positions under the Joint Chiefs of Staff in Washington. Despite various obstacles—including infrequent presence in the region as well as operations and areas of responsibility that straddled the 1967 lines and required coordinating between the U.S. Embassy to Israel (located in Tel Aviv at the time) and the U.S. Consulate General (the de facto U.S. diplomatic mission to the Palestinians, located in Jerusalem).

In November 2003, the U.S. State Department revealed that $289.5 million was subtracted from the $3 billion in loan guarantees for FY2003 due to Israel’s ongoing construction of settlements and the security barrier. In addition to this, in FY2005 an additional $795.8 million was reduced from the amount available for Israel to borrow. Israel has not borrowed any such funds since.\footnote{Sharp, op cited.}

Somewhat surprisingly, the most sincere diplomatic effort by Israel and the United States to systematically address their differences over the settlement issue began in 2003, as each side suffered from the escalatory dynamic on the ground. The United States needed stability on the Israeli-Palestinian front to support its pursuit of international backing for the military intervention in Iraq. For its part, Israel struggled to direct the attention of the international community to the security threats it faced and the legitimacy of its response because key states pointed at the lack of political progress to deal with the occupation at large, and with settlement activity specifically. Thus, U.S. Deputy National Security Advisor Stephen Hadley led the discrete effort to outline four principles for settlement activities: construction would be allowed only within already built-up areas (no construction “outside the construction lines”); no new settlements; no additional confiscation of Palestinian lands; and no further subsidies to settlers. The idea, according to Hadley, was that Israel could “build up, not out.”\footnote{Daniel C. Kurtzer, Scott Lasensky et al, The Peace Puzzle: America’s Quest for Arab-Israeli Peace, 1989–2011 (Published in Collaboration with the United States Institute of Peace), Cornell University Press, 2016, Kindle Edition, p.183; and Daniel Kurtzer, “Behind the Settlements: Israel’s West Bank settlements now sit on the wrong side of Zionist history,” the American Interest, online at http://www.jmcc.org/documents/Behind_the_Settlements.pdf.}

The settlement issue continued to fester as the Roadmap process struggled to unfold, and as Israel, with support of the Bush administration, pivoted to its 2005 Disengagement Plan that outlined the withdrawal of all Israeli settlements from Gaza and four from the northern West Bank. Facing domestic opposition, which framed Israeli withdrawal as folding in the face of terror, Sharon—who refused to negotiate with the PLO over the withdrawal—turned to the Bush administration for strategic deliverables.

Thus, in 2004 Sharon and Bush exchanged letters\footnote{See “Exchange of letters between PM Sharon and President Bush,” 14 April, 2004, online at https://www.gov.il/en/Departments/General/exchange-of-letters-sharon-bush-14-apr-2004.} outlining their synchronized understandings. In his letter, Sharon noted he was “fully aware of the responsibilities facing the State of Israel. These include limitations on the growth of settlements [and] removal of...
Unauthorized outposts...” For his part, Bush adopted Israel’s longstanding position that the solution of Palestinian refugees will be in the future Palestinian state, rather than in Israel. On territory, Bush noted, “In light of new realities on the ground, including already existing major Israeli populations centers, it is unrealistic to expect that the outcome of final-status negotiations will be a full and complete return to the armistice lines of 1949, and all previous efforts to negotiate a two-state solution have reached the same conclusion. It is realistic to expect that any final-status agreement will only be achieved on the basis of mutually agreed changes that reflect these realities.” Essentially, Bush formally endorsed Israel’s position that the major settlement blocs alongside the 1967 lines would become part of Israel in the context of a final-status agreement’s land swaps.

To operationalize Hadley’s principles and the Bush-Sharon understanding, Dov Weissglas, Sharon’s point person on U.S.-Israeli relations, offered a written commitment to the U.S. National Security Advisor Condoleezza Rice. The letter outlined Israel’s adherence to a two-state outcome and to the Roadmap, and included concrete commitments regarding settlement activities and additional territorial matters, among them:

Restrictions on settlement growth: within the agreed principles of settlement activities, an effort will be made in the next few days to have a better definition of the construction line of settlements in Judea and Samaria. An Israeli team, in conjunction with Ambassador Kurtzer, will review aerial photos of settlements and will jointly define the construction line of each of the settlements.

Removal of unauthorized outposts: the Prime Minister and the Minister of Defense, jointly, will prepare a list of unauthorized outposts with indicative dates of their removal; the Israeli Defense forces and/or the Israeli Police will take continuous action to remove those outposts in the targeted dates. The said list will be presented to Ambassador Kurtzer within 30 days...

As the Government of Israel has stated, the barrier being erected by Israel should be a security rather than a political barrier, should be temporary rather than permanent, and therefore not prejudice any final-status issues including final borders, and its route should take into account, consistent with security needs, its impact on Palestinians not engaged in terrorist activities.

The sides—represented by U.S. Ambassador Kurtzer and his Israeli counterparts, mainly Weissglas and Brig. Gen. (ret) Baruch Spiegel—attempted to operationalize the understandings, including by defining the built-up areas of settlements. The Israeli side struggled to produce relevant data needed to evaluate the situation. But more on principle, the sides couldn’t agree on whether to focus on all Israeli settlements or the ones in the big blocs, and—more critically—to the nature of the approved construction area. Kurtzer insisted it be defined to the residential part of the settlements, whereas Israel wanted to maintain as much space as possible for the settlement to expand: including recreational areas, public buildings, agricultural lands, and additional open space up to the perimeter fence, if such even existed.

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As the operational talks faltered, and as the Disengagement Plan gathered momentum, the word came from Washington not to push the matter further, and the settlement track faded away having failed to codify agreements beyond the generalities reflected in the Weisglass-Rice letter.

Israel became increasingly uncomfortable with implementing meaningful restraints on settlement construction; for its part, the administration lost interest. As Kurtzer notes, significant disagreements within the administration materialized, with some believing that monitoring settlement activity would involve a complex and time-consuming process that could be perceived as legitimizing settlements, which the United States had historically opposed. These individuals preferred a settlement freeze, including natural growth, as outlined in the Mitchell report and the Road Map.

Despite Israeli commitments on settlement restrictions, Israel was never held accountable by the Bush administration. According to Kurtzer, the outcome of the exchange between the United States and Israel solidified the message to Israel that they could make promises to the United States without worrying about implementing them.

In accordance with Sharon’s Disengagement Plan, in the summer of 2005 Israel withdrew its civilian and permanent military installations from the Gaza Strip and the northern West Bank, marking the most dramatic setback to the settlement enterprise since its inception. U.S. diplomatic support via the Bush-Sharon letters continued into the implementation phase, with Rice shuttling between Israel and the Palestinian Authority to secure operational understandings regarding movement and access issues involving Gaza.

With the execution of the Disengagement Plan and Sharon’s subsequent incapacitation in early 2006, the Roadmap process came to an end. Acting Prime Minister Ehud Olmert headed the newly-formed Kadima party in the March 2006 elections, running on a platform that included the Convergence Plan—effectively, a continuation of the unilateral Gaza Disengagement Plan in the West Bank, based on Israel’s barrier (rather than the 1967 lines).

The Convergence Plan called for the completion of the barrier and the evacuation of all Israeli settlements from the area east of it, while retaining the large settlement blocs

155 Ibid.
156 Ibid.
157 On November 15, 2005, Israel and the Palestinian Authority reached an agreement (signed by PA Minister of Civil Affairs Muhammad Dahlan and Israeli Defense Minister Shaul Mofaz) over specific arrangements for travel to and from the Gaza Strip after Israel’s withdrawal. The agreement encompassed several key elements, such as the operation of the Rafah Crossing under Palestinian control with international supervision, the movement of goods through the Karni Crossing, the creation of a “Safe Passage” between the Gaza Strip and the West Bank, and discussions regarding the construction of a seaport and airport for the Gaza Strip. However, the agreement quickly unraveled, especially following the 2007 Hamas takeover of the Strip and the subsequent blockade imposed by Israel. “Agreement on Movement and Access (AMA, 2005),” The Israeli-Palestinian Conflict: An Interactive Database, The Economic Cooperation Foundation (ECF), online at https://ecf.org.il/issues/issue/224. For the full text of the agreement, see “Agreed Documents on Movement and Access from and to Gaza: Agreement on Movement and Access; Agreed Principles for Rafah Crossing,” 15 November 2005, online at https://peacemaker.un.org/sites/peacemaker.un.org/files/IsraelOPl_AgreedDocumentsOnMovementAccessGaza2005.pdf
west of it, with the Jordan Valley constituting Israel’s “security boundary.” The plan was never adopted officially, and was ultimately abandoned following the 2006 Lebanon War, which was deemed at the time a strategic blunder and delivered Olmert a political and operational blow.

In November 2007, the Bush administration oversaw the launch of the final-status negotiations, named the Annapolis process after the location of the conference that launched it. The Annapolis process unfolded over various tracks—two Israeli-Palestinian (Olmert-Abbas, and Livni-Abu Ala) and a U.S.-led involvement in supplemental tracks, led by diplomatic mediation by Rice (now secretary of state). Three U.S. generals were also involved: General Keith Dayton focused on building the PA security forces, in the hope that in addition to the built-in merit of improved Palestinian security performance, a stable security landscape would provide a favorable context for political negotiations; General James Jones was named special envoy for regional security and was tasked with developing a security plan for the final-status agreement; and General William Fraser became Roadmap monitor, charged with supervising the 2003 plan’s various elements, including its settlement freeze clause and the related commitment embodied in codified and verbal U.S.-Israeli exchanges since.

General Paul Selva recalled his assignment as Roadmap monitor:

"When I joined the Joint Staff, I was given a duty as the Roadmap monitor for what was then the roadmap for peace between the Israelis and the Palestinians, a product of the Bush administration. Ambassador [Luis] Moreno was the deputy chief of mission in Tel Aviv and by an administrative miracle, was also the deputy Roadmap monitor. So think of a situation where the monitor of this complex roadmap is stationed in Washington, DC and spends a week every month in Israel and on the West Bank. And his deputy is the person in residence in Tel Aviv that sort of manages the day to day work of a handful of members of the Econ bureau and the political bureau, both in Tel Aviv and at our consulate in Jerusalem,"

158 "The idea is that most of the settlements that would have to be removed ... will be converged into the blocs of settlements that will remain under Israeli control. The blocs of settlements, which include Maale Adumim, the Etzion bloc and Ariel, will be augmented by more settlements. The rest of the territories will not have any Israeli presence and will allow territorial contiguity for a future Palestinian state. I will keep all the military options to be able to combat terrorism effectively everywhere. The fence will have to be adjusted to the makeup of these blocs of settlements. No Israeli will live outside the fence--firstly for the sake of security, and secondly for providing territorial congruity for the Palestinians. The time has come for a change, and I am absolutely determined to accomplish it. It’s been discussed and debated and argued in Israel for decades. I think that there is an opportunity now which never existed before. This is a combination of the position of the public opinion of Israel, my commitment and the understanding and, hopefully, future support of President George W. Bush ... I understand that if this move will be accepted as a contribution to a Middle East with less violence and terror, we will be able to reach an understanding with the American government about some measures of support that can be essential for the success of this move. Everything that could be of assistance to the completion of such a huge challenge will be on the agenda ... I’m not expressing any ultimatum. If we reach the conclusion that the Palestinians are not prepared to meet the requirements that lead to negotiations, we will then move forward without a negotiating process. We are ready to change. We are not prepared to wait forever." See excerpts from interview with Olmert, "We Are Ready to Change," Newsweek, April 16, 2006, online at [https://www.newsweek.com/we-are-ready-change-108117](https://www.newsweek.com/we-are-ready-change-108117).

to observe and report on the conduct of both parties with respect to the roadmap and then once a month, this three star from Washington DC would parachute in and go visit and assess the performance of both parties, the Israelis and the Palestinians, with respect to the roughly 26 mutual agreements that they made as a part of the roadmap...

I recall about 26 things that the parties agreed to do together and independently the role of the Roadmap monitor ... was assessing the performance of the parties against that specific set of agreements. They spanned economic accommodation, settlements. They did not address [final-status issues] But they went a long way to establishing a more safe and secure environment for the Palestinians to flourish in and to address the security needs of Israeli citizens residing in settlements on the West Bank and in settlements in Jerusalem without judgment on whether or not those citizens would at some point ultimately have to move back to Green Line Israel or remain on the West Bank.

That whole set of tensions existed through the balance of the Bush administration, with Secretary Rice making a real attempt to move the Roadmap forward, to get to some resolution and the Palestinians being hopeful of a two-state solution. There are some reasonably insoluble problems embedded in all of those agreements. The fact that they didn't address settlements, the fact that they didn't address the final-status of East Jerusalem, the fact that they did not address in some way the argument the Palestinians make for right of return, put these impediments in front of the roadmap that prevented it from being successful in the background. The reason the Roadmap monitor came to be is when the agreement was finalized and the guarantees were made by both sides. I think there was a bit of buyer's remorse. This is really hard. Somebody's going to have to do something to compel us to be successful. And so the solution that was arrived at was, well, then we'll have a monitor. Well, who will that monitor be? Well, it must be someone that the secretary of state trusts and knows well. It must be someone that she is willing to recommend to the president for the delegation of that duty. It was reasoned at the time that it should be a person in uniform because the bulk of the guarantees, while there were economic, political and settlement guarantees, they were security guarantees, how the security services would work with one another.

So as a consequence, what happened was the assistant to the chairman, who happens to be the military advisor to the secretary of state, was the most recognizable uniformed officer who could be brought to this particular duty. So my predecessor was appointed without ceremony as the Roadmap monitor, and then about ten months later he moved on to another job. I moved into the position and the very first discussion I had with Secretary Rice was not about being her military adviser and her liaison to the Joint Staff. It was about the duties of the Roadmap...
monitor that I would be assuming as I moved into that new position. To
your point, Ambassador, there was an agreement, but the agreement
wasn’t a final definition of a two state solution. It was a process by
which that might be made possible and it still exists on paper.160

The Annapolis process failed.161 No agreement was reached on the core issues, and
whatever opportunity was embodied in Olmert’s transformation—from a rightist ideologue,
to a forceful unilateralist, to a peace negotiator—was closed with his resignation from office
and Netanyahu’s second rise to power in 2009.

On its way out of office, the Bush administration supported UNSCR 1850162 (December
2008), which reiterated the U.N. commitment to a two-state outcome and called on
the parties to “fulfill their obligations under the Performance-Based Roadmap … and
refrain from any steps that could undermine confidence or prejudice the outcome of
negotiations,” a phrase which has long been a euphemism for ending settlement-related
activity. Secretary Rice noted, “the United States has a national interest in the conclusion of
a final treaty … it is in the long-term interest of Israel to provide a more hopeful society for
Palestinians. The establishment of the state of Palestine is long overdue, and there should
be an end to the occupation that began in 1967.”163

160 See “Episode 53. The US & Israel: From the Road Map to Today with General Paul Selva and Ambassador Luis
org/053. IPF failed to attain a sample of the Roadmap monitor reports.

161 “Olmert shared with us his desire to achieve a ‘big bang,’ namely a joint document of principles for an overall
peace agreement with Mahmoud Abbas (Abu Mazen) … Unfortunately, the process ended before this task had been
completed … Olmert referred to the map that he himself had presented to Abbas, according to which Israel would
annex 6.5% of the territory and in exchange, Israel would transfer 5.8% of its sovereign territory to the Palestinians as
part of a swap, with a corridor between the Gaza Strip and [the West Bank] calculated as another 0.7%, thus arriving
at a 1:1 swap of territory, which was rejected by the Palestinian side. Olmert said that maps constitute a psychological
barrier and that a more far-reaching compromise could have been offered. With respect to the Palestinian refugees,
Olmert mentioned the pretext for refusing the offer that Abbas had presented, namely that Israel refused to recognize
the right of the Palestinian refugees to return to the State of Israel and would admit no more than 5,000 refugees
over a period of five years as part of a humanitarian gesture. He claimed that from Israel’s perspective, this was the
maximum number that could be offered in the talks and was based on the Arab Peace Initiative (a “just and agreed
upon settlement”)—which had been included in the reference sources of the Annapolis Summit that launched the
negotiations—and that Israel did not accept the Palestinian interpretation of U.N. Resolution 194, on which they
based the idea of the ‘right of return.’ Olmert summed up the [internal Israeli] meeting by saying that all the foreign
leaders to whom he had presented the plan expressed their support for it and viewed it as going a long way toward
accommodating the Palestinians … In conclusion, Olmert conveyed the message that hope should not be abandoned
and that efforts should continue to reach a settlement with the Palestinians, which the State of Israel should view as
its most important strategic goal.” See Udi Dekel and Lia Moran-Gilad, The Annapolis Process: A Missed Opportunity
for a Two-State Solution?, The Institute for National Security Studies (INSS), Memorandum No. 212, June 2021, online


state.gov/secretary/rm/2008/12/113242.htm.
President Barack Obama

Upon assuming office in January 2009, Barack Obama confronted his predecessor’s legacy, including the worst economic crisis since the Great Depression and an overextended foreign policy under the banner of the war on terrorism. Seeking to terminate the war in Iraq, Obama heralded a shift in the direction of American foreign policy by refocusing military action to narrowly-defined counter-terrorism, maximizing global cooperation.

Over the course of his two terms, global geopolitics underwent a realignment from a unipolar system dominated by the United States to a multipolar system featuring an assertive China, energy-rich Russia, and other rising regional powers. Consequently, the Obama administration sought to pivot U.S. focus and assets toward the more economically-dynamic Asia-Pacific region, considered a future-looking strategic arena where China’s rise could be countered and where the focus of future great power competition would lie. In the realm of non-proliferation, Obama seized on Medvedev’s presidency in Russia to sign the New Strategic Arms Reduction Treaty (New START) and separately concluded the 2015 multilateral Iran nuclear deal, known by its formal name as the Joint Comprehensive Plan of Action (JCPOA). The Arab revolts that swept across the Middle East and North Africa in 2011 posed a challenge to the administration’s foreign policy agenda, which sought to deemphasize the Middle East, and required a delicate balancing act between promoting democracy and maintaining stability in the region. Meanwhile, the administration spearheaded the international community’s global struggle to combat climate change and global health challenges (Ebola) through expanded international cooperation and domestic regulation.

On the Israeli-Palestinian file, Obama inherited a context marked by the failure of the Annapolis Process, the three-week Israeli incursion into the Gaza Strip (Operation Cast Lead), and the return of Benjamin Netanyahu to the prime-ministership. Raising expectations from the inception, and tagging this a priority issue, on his second day in office, Obama vowed to, “actively and aggressively seek a lasting peace between Israel and the Palestinians,” and appointed former senator George Mitchell as his special envoy for the Middle East.164 Faced with a reluctant Israeli prime minister and seeing no meaningful openings for any final-status negotiations, the Obama administration returned to a more traditional position, calling for a complete freeze on settlement construction.

During their first meeting, in May 2009, Obama discussed with Netanyahu a confidence-building approach, believing that only a significant gesture by Israel on settlements (i.e., a settlement freeze) would bring about normalization steps by Arab states or convince the Palestinians to resume negotiations. Moreover, if Israel wished for the United States to act firmly against Iran—an enduring source of tension between the two—a more flexible approach to settlements would be required. The American pressure for a total freeze triggered a storm of backlash in Israel, with open defiance from cabinet ministers. Testing the stability of his coalition, upon returning to the Knesset several days after the meeting,

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Netanyahu sought to draw red lines stating that any settlement suspension would not apply to Jerusalem.\footnote{165}{Zaki Shalom, Israel, The United States, and the Struggle Over the Settlement Construction Freeze, 2009-2010, Institute for National Security Studies (INSS), June 2017, p.62, online at https://www.inss.org.il/publication/israel-united-states-struggle-settlement-construction-freeze-2009-2010/}

Still, Obama maintained a tough stance on the issue. Stopping short of declaring settlements illegal, Obama insisted that the United States would “not accept the legitimacy of continued Israeli settlements [and that it expected] to see a stop to settlements—not some settlements, not outposts, not natural growth exceptions.”\footnote{166}{See “Press Availability with Egyptian Foreign Minister Ahmed Ali Aboul Gheit,” U.S. Department of State, May 27, 2009 as quoted in Elgindy, op cited.} Obama directed Mitchell to convey to the Israelis that he did not see himself bound by whatever assurances on settlements were given by the Bush administration regarding delimiting areas in which Israeli construction would be permitted.\footnote{167}{Elgindy, op cited.}

Amid friction between the two leaders, Obama’s landmark June 2009 speech in Cairo saw the president double down even further on the administration’s call for a settlement freeze. “Construction violates previous agreements and undermines efforts to achieve peace. It is time for these settlements to stop,” Obama declared once more.\footnote{168}{See “The President’s Speech in Cairo: A New Beginning,” The White House, June 4, 2009, online at https://obamawhitehouse.archives.gov/the-press-office/remarks-president-cairo-university-6-04-09}

Under pressure from the administration, Netanyahu delivered a seminal speech in Bar-Ilan University in which he endorsed the notion of a demilitarized Palestinian state. While interpreted by some as a commitment to a two-state outcome and as a basis for resuming negotiations, Netanyahu’s precondition—Palestinian recognition of Israel as a Jewish state—meant the approach was a non-starter as a basis for negotiations. On settlements, Netanyahu expressed “no intention of building new settlements or of expropriating additional land for existing settlements.” Given Israel’s policy of not building new localities without a (very rare) governmental decision, these words carried little weight. Natanyahu’s insistence on allowing construction for natural growth, “to enable the residents to live normal lives, to allow mothers and fathers to raise their children like families elsewhere” and exclusion of Jerusalem from any freeze conversation, meant Netayahu fell short of agreeing to any settlement freeze formula sought by the administration.\footnote{169}{See “Address by PM Netanyahu at Bar-Ilan University,” Israel Ministry of Foreign Affairs, 14 June 2009, online at https://www.gov.il/en/departments/news/address-by-pm-netanyahu-at-bar-ilan-university-14-jun-2009}

Dennis Ross’s hop from Foggy Bottom to the White House in July 2009—reportedly, Obama told Ross he would “quarterback” all Middle East policy—marked a change of power dynamics in policy making regarding the Israeli-Palestinian file. Ross considered the freeze policy politically unfeasible. “We had adopted a hard and firm position on this by then,” Ross reflected on his brief to Obama. “The problem was that it put the emphasis on...
one issue when it wasn’t the only, or even most important, issue and, in any case, needed to be put in context.”

With Ross and Mitchell arguing over the best course forward, Obama started leaning away from the freeze policy. “What’s the strategy here?” Obama would ask. “I see you want the moratorium, but how does it get us where we want to be? Tell me the relationship between what we are doing and our objective.”

For his part, PA President Mahmoud Abbas refused to enter direct negotiations with Netanyahu absent a full settlement freeze. After all, with the media framing a full freeze as Obama’s demand of Israel, how could Abbas settle for any less? Of the ensuing breakdown, Mitchell wrote:

“To this day I regret that I and others in the Obama administration did not do a good job of clarifying that our request for Israeli action on settlements was not intended to be a precondition for negotiations. That clarification might have helped us move past or at least mitigate the impasse exacerbated by the media firestorm. In all likelihood, though, if settlements had not become the dominant issue, something else would have. The controversy over settlements was the result, not the cause, of the deep distrust, low expectations, and wide policy differences that foreclosed early negotiations.”

In an attempt to placate the administration, Netanyahu undertook to closely monitor all settlement activity in East Jerusalem, which he did, in essence imposing an unofficial unilateral freeze on East Jerusalem construction for several months.

Ultimately, after months of painstaking shuttling between Netanyahu and Abbas, the request for a comprehensive settlement freeze was rejected. On November 25, 2009, Mitchell was able to secure a flawed nine-months “moratorium” on settlement construction. As he announced the moratorium, Mitchell noted three goals he had in mind. First, to credit Israel for meaningful and precedential action, despite falling short of a full freeze; notably, the moratorium excluded buildings already under construction and any construction in East Jerusalem. Second, Mitchell attempted to address Palestinian and other Arab grievances by noting that “The United States also disagrees with some Israeli actions in Jerusalem affecting Palestinians in areas such as housing, including the continuing pattern of evictions and demolitions of Palestinian homes.” Third, Mitchell hoped that the moratorium could jumpstart negotiations, quoting Secretary of State Hillary Clinton:

Today’s announcement by the Government of Israel [regarding its limited settlement moratorium] helps move forward toward resolving the Israeli-Palestinian conflict. We believe that through good-faith negotiations, the parties can mutually agree on an outcome which ends the conflict and reconciles the Palestinian goal of an

171 ibid.
172 ibid.
173 Mitchell, op cited.
174 Mitchell, op cited.
independent and viable state, based on the 1967 lines, with agreed swaps, and the Israeli goal of a Jewish state with secure and recognized borders that reflect subsequent developments and meet Israeli security requirements. Let me say to all the people of the region and world: Our commitment to achieving a solution with two states living side by side in peace and security is unwavering.  

One of the most consequential developments on the settlement front came only after a diplomatic incident involving then-Vice President Joe Biden’s visit to Jerusalem in March 2010. Just as Biden began meetings with Israeli officials, the Israeli Ministry of Interior’s Planning Committee announced plans to build 1,600 residential units in the East Jerusalem neighborhood of Ramat Shlomo. The announcement threatened to bring Biden’s visit to an abrupt end. The vice president intended to release a statement while in Jerusalem, but in a manifestation of international policy focused on statements—between “troubled,” “concern” and “grave concern,”—Biden’s advisers and White House personnel debated about the statement’s wording. Over an hour late to dinner with Netanyahu, Biden’s final statement used the word “condemn.” Reportedly, Ross thought the term was too harsh, and should only be used for terrorism-related events.

The settlement “moratorium” lasted from March to October 2010. The initiative failed on all fronts. Settlement construction barely registered a halt, and indirect shuttle diplomacy—termed “proximity talks”—failed to produce viable peace negotiations.

Mitchell’s strategy—perceived to focus exclusively around a settlement freeze—was becoming costly for an administration in the heat of battle over its flagship domestic agenda: healthcare reform. Together with immense foreign policy challenges, including Iran’s nuclear ambitions, Arab revolts, and later Syria’s descent into a civil war, Obama’s political capacity to sustain a fight with Netanyahu diminished rapidly.

In another manifestation of changing attitudes, in February 2011 the United States exercised its veto power for the first time by blocking a U.N. Security Council resolution condemning Israeli settlements as illegal. In pursuit of a compromise measure and favoring direct talks, the administration shielded Israel from the resolution in the hope that it would encourage the Netanyahu government to engage more constructively in peace efforts.

In another sign of a pivot away from a freeze-based policy, Obama discussed principles for a two-state outcome in a May 2011 landmark address on Middle East affairs:

> Now, ultimately, it is up to the Israelis and Palestinians to take action. No peace can be imposed upon them -- not by the United States; not by anybody else. But endless delay won't make the problem go away. What America and the international community can do is to state frankly what everyone knows -- a lasting peace will involve two states for two peoples: Israel as a Jewish state and the homeland for the Jewish people, and the state of Palestine as the homeland for the Palestinian people, each state enjoying self-determination, mutual recognition, and peace.


176 See Wilson, “Obama searches for Middle East peace,” op cited.
So while the core issues of the conflict must be negotiated, the basis of those negotiations is clear: a viable Palestine, a secure Israel. The United States believes that negotiations should result in two states, with permanent Palestinian borders with Israel, Jordan, and Egypt, and permanent Israeli borders with Palestine. We believe the borders of Israel and Palestine should be based on the 1967 lines with mutually agreed swaps, so that secure and recognized borders are established for both states. The Palestinian people must have the right to govern themselves, and reach their full potential, in a sovereign and contiguous state.177

Netanyahu was livid. In a meeting with Obama the following day, in front of the media, the Israeli prime minister launched into an educational undressing of the president, saying:

I think for there to be peace, the Palestinians will have to accept some basic realities. The first is that while Israel is prepared to make generous compromises for peace, it cannot go back to the 1967 lines—because these lines are indefensible; because they don’t take into account certain changes that have taken place on the ground, demographic changes that have taken place over the last 44 years.

Remember that, before 1967, Israel was all of nine miles wide. It was half the width of the Washington Beltway. And these were not the boundaries of peace; they were the boundaries of repeated wars, because the attack on Israel was so attractive.

So we can’t go back to those indefensible lines, and we’re going to have to have a long-term military presence along the Jordan. I discussed this with the president and I think that we understand that Israel has certain security requirements that will have to come into place in any deal that we make.178

Netanyahu’s overall posture and his misrepresenting of Obama’s remarks as a call for full withdrawal to the 1967 lines astonished the president, who clarified his position in an address to AIPAC two days later:

There was nothing particularly original in my proposal; this basic framework for negotiations has long been the basis for discussions among the parties, including previous U.S. administrations. Since questions have been raised, let me repeat what I actually said on Thursday—not what I was reported to have said.

I said that the United States believes that negotiations should result in two states, with permanent Palestinian borders with Israel, Jordan, and Egypt, and permanent Israeli borders with Palestine. The borders of Israel and Palestine should be based on the 1967 lines with mutually agreed swaps so that secure and recognized borders are established for both states. The Palestinian people must have the right to govern themselves, and reach their potential, in a sovereign and contiguous state.

As for security, every state has the right to self-defense, and Israel must be able to defend itself—by itself—against any threat ...


Now, that is what I said. And it was my reference to the 1967 lines—with mutually agreed swaps—that received the lion’s share of the attention, including just now. And since my position has been misrepresented several times, let me reaffirm what ‘1967 lines with mutually agreed swaps’ means.

By definition, it means that the parties themselves—Israelis and Palestinians—will negotiate a border that is different than the one that existed on June 4, 1967. That’s what mutually agreed-upon swaps means. It is a well-known formula to all who have worked on this issue for a generation. It allows the parties themselves to account for the changes that have taken place over the last 44 years. It allows the parties themselves to take account of those changes, including the new demographic realities on the ground, and the needs of both sides. The ultimate goal is two states for two people: Israel as a Jewish state and the homeland for the Jewish people and the State of Palestine as the homeland for the Palestinian people—each state in joined self-determination, mutual recognition, and peace.

If there is a controversy, then it’s not based in substance. What I did on Thursday was to say publicly what has long been acknowledged privately. I’ve done so because we can’t afford to wait another decade, or another two decades, or another three decades to achieve peace. The world is moving too fast. The world is moving too fast. The extraordinary challenges facing Israel will only grow. Delay will undermine Israel’s security and the peace that the Israeli people deserve.  

The substantive controversy faded along with any prospects for meaningful negotiations. Both sides drew some blood, and the animosity over the issue gave way to American electoral considerations with an approaching presidential election.

For its part, in an effort to appease the right-wing flank in his coalition, and amid pressure from settlement leaders, in early 2012 Netanyahu commissioned the Levy Report. Its purpose was to deliver an opinion determining the legal status of West Bank outposts and whether the presence of Israelis in the West Bank constituted an occupation. The three-member committee, headed by former Israeli Supreme Court Justice Edmond Levy, former Tel Aviv District Court Judge Tehiya Shapira and international lawyer Alan Baker, was politically right-wing.

Expectedly, the report concluded that "Israelis have the lawful right to settle in Judea and Samaria, and the establishment of settlements cannot, in and of itself, be considered illegal." Dispelling the classical laws of belligerent occupation as set out in international law, and particularly the Fourth Geneva Convention, it claimed such status was inapplicable owing to Israel’s unique historic and legal presence. While the report was not adopted by the Israeli government, its recommendations, such as to examine "steps to be taken to regularize construction" and identify "an appropriate process to clarify land issues in the area," foreshadowed an increase in retroactive authorization of outposts.
Obama’s 2012 reelection surprised Netanyahu, but the American president did not set out to resume the failed settlement freeze policy of his first term. Rather, the new secretary of state, former Senator John Kerry, initiated another round of talks, intent upon reaching a final-status agreement.

Peace process diplomacy was left—and largely confined to—the State Department, in an attempt to isolate the president from any additional pain. In a public address during a visit to Israel in March 2013, Obama dedicated a whole of one sentence to the issue that consumed much of his approach to Israel and the conflict during his first term: “Israelis must recognize that continued settlement activity is counterproductive to the cause of peace, and that an independent Palestine must be viable—that real borders will have to be drawn. I’ve suggested principles on territory and security that I believe can be the basis for talks.”

During the first few months of 2013 Netanyahu implemented a short settlement freeze to accommodate the administration and Kerry’s attempt to launch negotiations.

To launch the talks, Kerry asked Netanyahu to meet one of three Palestinian demands: accepting the 1967 lines as the basis for border negotiations, a prolonged settlement freeze, or the release of Palestinian prisoners arrested prior to the signing of the Oslo agreement. Facing opposition from Minister Naftali Bennett and perceiving it to be the least domestically costly (as well as most reversible), Netanyahu opted for prisoner release, scheduled to unfold in four tranches. In exchange, the Palestinians were to stall their application for membership of multilateral bodies.

When the Kerry initiative ultimately launched in August 2013, the floodgates opened. With each successive tranche of Palestinian prisoners released, a torrent of new settlement-related announcements transpired in both the West Bank and in Jerusalem. “Everytime Abbas would receive a gift in the form of the prisoner release, reactive settlement announcements undermined the process. He would look out of the window and see cranes,” said a former senior State Department official. Such announcements made it difficult for Abbas to pursue negotiations in earnest.

Like in 2000 and 2008—under much more favorable conditions—the parties were unable to reach understandings over a framework agreement. Israel focused on robust security demands and avoided presenting border maps, limiting itself to rather ambiguous statements of intent. For their part, the Palestinians continued to emphasize the 1967 lines as the basis for borders. Even the measures designed to supplement negotiations over core issues, such as the prisoner release and an economic pledge quoted at $4 billion for

181 See “Remarks of President Barack Obama To the People of Israel,” 21 March, 2013, online at https://obamawhitehouse.archives.gov/the-press-office/2013/03/21/remarks-president-barack-obama-people-israel
184 IPF Interview with former official in the Obama administration
investments in the West Bank, failed to increase trust.

The talks ground to a halt. The surge of new construction in the settlement blocs and the issuance of tenders outside of them provided one major obstacle to success. In tandem, the negotiations lacked emphasis placed on borders and few assurances that such discussions would be based on the 1967 lines.¹⁸⁵

Ineffective American diplomacy, Netanyahu's reluctance, and Abbas's detachment proved too destructive, and by the spring of 2014 the negotiations ground to a halt, despite a last effort by the administration to present bridging proposals, presented to Abbas by Kerry in February and by Obama himself in March. Abbas rejected the proposals. To him, they were blatantly biased in Israel’s favor. By any measure, the U.S. proposals represented a significant regression of final-status proposals offered to the Palestinians when compared to those that had been submitted by Israel in the past.¹⁸⁶

Reflecting on the talks in a speech delivered in the final days of 2016, Kerry criticized Israeli settlement policy as counterproductive to international law and to the cause of peace. Kerry reasserted that in the context of a comprehensive agreement, settlement blocs would remain in Israel's hands. At the same time, he recognized the right of the Palestinians to participate in the process of defining these blocs, and stated that swaps would be “equivalent” in size:

... Let me emphasize, this is not to say that the settlements are the whole or even the primary cause of this conflict. Of course they are not. Nor can you say that if the settlements were suddenly removed, you’d have peace. Without a broader agreement, you would not. And we understand that in a final-status agreement, certain settlements would become part of Israel to account for the changes that have taken place over the last 49 years—we understand that—including the new demographic realities that exist on the ground. They would have to be factored in. But if more and more settlers are moving into the middle of Palestinian areas, it’s going to be just that much harder to separate, that much harder to imagine transferring sovereignty, and that is exactly the outcome that some are purposefully accelerating. Let’s be clear: Settlement expansion has nothing to do with Israel’s security. Many settlements actually increase the security burden on the Israeli Defense Forces. And leaders of the settler movement are motivated by ideological imperatives that entirely ignore legitimate Palestinian aspirations. Among the most troubling illustrations of this point has been the proliferation of settler outposts that are illegal under Israel’s own laws. They’re often located on private Palestinian land and strategically placed in locations that make two states impossible. There are over 100 of these outposts. And since 2011, nearly one-third of them have been or are being legalized, despite pledges by past Israeli governments to dismantle many of them ...

You may hear that these remote settlements aren’t a problem because they only take up a very small percentage of the land. Well, again and again we have made it clear, it’s not just a question of the overall amount of land available in the West Bank. It’s whether the land can be connected or it’s broken up into small parcels, like a Swiss cheese, that could never constitute a real state. The more outposts that are built, the more the settlements expand, the less possible it is to create a contiguous state. So in the end, a settlement is not just the land that it’s on, it’s also what the location does to the movement of people, what it does to the ability of a road to connect people, one community to another, what it does to the sense of statehood that is chipped away with each new construction. No one thinking seriously about peace can ignore the reality of what the settlements pose to that peace …

But the problem, obviously, goes well beyond settlements. Trends indicate a comprehensive effort to take the West Bank land for Israel and prevent any Palestinian development there. Today, the 60% of the West Bank known as Area C—much of which was supposed to be transferred to Palestinian control long ago under the Oslo Accords—much of it is effectively off limits to Palestinian development. Most today has essentially been taken for exclusive use by Israel simply by unilaterally designating it as ‘state land’ or including it within the jurisdiction of regional settlement councils. Israeli farms flourish in the Jordan River Valley, and Israeli resorts line the shores of the Dead Sea—a lot of people don’t realize this—they line the shore of the Dead Sea, where Palestinian development is not allowed. In fact, almost no private Palestinian building is approved in Area C at all. Only one permit was issued by Israel in all of 2014 and 2015, while approvals for hundreds of settlement units were advanced during that same period …

We’ve made countless public and private exhortations to the Israelis to stop the march of settlements. In literally hundreds of conversations with Prime Minister Netanyahu, I have made clear that continued settlement activity would only increase pressure for an international response. We have all known for some time that the Palestinians were intent on moving forward in the U.N. with a settlements resolution, and I advised the prime minister repeatedly that further settlement activity only invited U.N. action. Yet the settlement activity just increased, including advancing the unprecedented legislation to legalize settler outposts that the prime minister himself reportedly warned could expose Israel to action at the Security Council and even international prosecution before deciding to support it …

But remember it’s important to note that every United States administration, Republican and Democratic, has opposed settlements as contrary to the prospects for peace, and action at the U.N. Security Council is far from unprecedented. In fact, previous administrations of both political parties have allowed resolutions that were critical of Israel to pass, including on settlements. On dozens of occasions under George W. Bush alone, the council passed six resolutions that Israel opposed, including one that endorsed a plan calling for a complete freeze on settlements, including natural growth …

So we reject the criticism that this vote abandons Israel. On the contrary, it is not this resolution that is isolating Israel; it is the permanent policy of settlement construction that risks making peace impossible. And virtually every country in the world other than Israel opposes settlements. That includes many of the
friends of Israel, including the United Kingdom, France, Russia—all of whom voted in favor of the settlements resolution in 2011 that we vetoed, and again this year along with every other member of the council. In fact, this resolution simply reaffirms statements made by the Security Council on the legality of settlements over several decades. It does not break new ground. In 1978, the State Department Legal Adviser advised the Congress on his conclusion that Israel’s government, the Israeli Government’s program of establishing civilian settlements in the occupied territory is inconsistent with international law, and we see no change since then to affect that fundamental conclusion.187

Days prior to Kerry’s speech, in a last effort to leave a more impactful legacy on the issue, the Obama administration abstained from U.N. Security Council Resolution 2334.188 The resolution stated that settlements in the West Bank and East Jerusalem constitute “a flagrant violation under international law” and a “major obstacle” to a two-state solution and a “just, lasting and comprehensive peace.”

President Donald Trump

Donald Trump’s presidency was marked by his “America First” approach to foreign policy and a pointed disruption of Washington’s more traditional approach to international affairs. Trump’s administration prioritized trade deals that benefited American companies and the economy, a need for stronger border control, and stricter immigration policies.

Trump’s confrontational style and transactional approach challenged traditional alliances and agreements. He criticized NATO and its members for their conduct and investments, while also withdrawing the United States from the Paris climate agreement and the Iran nuclear deal. The Trump administration also pursued a more adversarial relationship with China, imposing tariffs and engaging in a trade war that caused tension and uncertainty in the global economy.

On the Israeli-Palestinian front, Trump took office emphasizing his desire to broker “the ultimate deal” between the two sides, but eventually moved to enabling large shifts in U.S. policy in favor of Israel’s claims in the West Bank, ultimately creating momentum for large-scale annexation, the threat of which inadvertently led to the signing of a normalization agreement between Israel and the United Arab Emirates. This culminated in the Trump-brokered Abraham Accords, fulfilling a longstanding U.S. goal of greater Israeli integration into the region while also fulfilling a Trump administration objective of sidelining and isolating the Palestinians.

In the early days of the Trump administration, U.S. officials approached the settlement issue with restraint, mainly due to Trump’s desire to negotiate a peace deal, and their belief that a moderately permissive approach to settlements would improve his chances of success. Shortly after taking office, Trump voiced moderate concern over the settlement

issue. Settlements “don’t help the process. I can say that,” Trump said. “Every time you take land for settlements, there is less land left,” he added. “I am not somebody that believes that going forward with these settlements is a good thing for peace.”

Still, his administration—driven by personnel whose views stretched between pro-Israel Republicans and outright supporters of the Greater Israel agenda—adopted a lax attitude toward Israeli settlements. The White House noted it does not “believe the existence of settlements is an impediment to peace.” U.S. Ambassador David Friedman, driven in part by national-religious beliefs, pursued a very proactive and permissive policy toward settlements.

On December 6, 2017, Trump announced his decision to formally recognize Jerusalem as the capital of Israel and to initiate the process of relocating the U.S. Embassy from Tel Aviv to Jerusalem. This announcement marked a significant departure from longstanding U.S. policy, which had refrained from recognizing Jerusalem as Israel’s capital pending a negotiated resolution of the Israeli-Palestinian conflict.

The move was highly controversial, as the majority of the world considered Jerusalem’s status a matter to be determined in negotiations, with no government maintaining an embassy in the city. Supporters of the decision cited the Jerusalem Embassy Act of 1995, which had called for the relocation of the U.S. Embassy to Jerusalem; previous presidents had consistently waived its implementation to avoid harming the peace process. They also argued that the move merely recognized the reality of Jerusalem’s status as Israel’s capital, as well as demonstrated strong U.S. support for Israel.

Critics of the decision expressed concerns that it could undermine the prospects for a two-state outcome and ignite tensions in the region. They argued that the status of Jerusalem should be determined through negotiations, per international law and bilateral Israeli-Palestinian agreements, and viewed Trump’s move as prejudging the outcome of those negotiations.

In reaction to the recognition of Jerusalem as Israel’s capital and the relocation of the embassy, the Palestinians stopped all formal talks with the administration.

In March 2019, the U.S. Consulate General in Jerusalem, which had previously served as an independent diplomatic mission to the Palestinians, was subsumed under the authority of the U.S. Embassy to Israel. This move was seen by many as a further sign of the Trump...
administration’s alignment with the Israeli government and its policies.

 Shortly thereafter, Trump recognized Israeli sovereignty claims in the Golan Heights, an occupied territory that had been captured from Syria in 1967 and subsequently annexed. The recognition of Israeli sovereignty over land occupied in war was a stark blow to the traditional U.S. approach and to international law, which negated the acquisition of territory by force. If Israel received a green light to annex territory belonging to another country, Israeli rightist thinking went, surely it could pursue annexation of territory that was conquered from an unlawful occupier—i.e. the pre-1967 Jordanian control of the West Bank. “There is a very important principle in international life … When you start wars of aggression, you lose territory, do not come and claim it afterwards. It belongs to us.”  

 Later, he added: “Everyone says you can’t hold an occupied territory, but this proves you can. If occupied in a defensive war, then it’s ours.”

 Later that year, Friedman successfully lobbied Secretary of State Mike Pompeo to reverse the longstanding U.S. position on the legality of settlements. In November 2019, Pompeo announced that the administration disagreed with the 1978 State Department legal opinion stating that Israeli settlements in the West Bank were inconsistent with international law: “After carefully studying all sides of the legal debate, this administration agrees [that the] establishment of Israeli civilian settlements in the West Bank is not per se inconsistent with international law.”

 In November 2020, Pompeo made another announcement, stating that products imported to the United States from Area C of the West Bank would be marked as coming from Israel (rather than the West Bank). The Trump administration also removed geographic restrictions that had prevented three joint U.S.-Israel research foundations from operating beyond the 1967 lines.

 Friedman was known to be a strong supporter of settlements and promoted settlement building behind the scenes, working with other U.S. officials to review lists of settlement


194 Ibid.

195 "Full Text of Pompeo’s Statement on Settlements,” The Times of Israel, 19 November 2019, online at https://www.timesofisrael.com/full-text-of-pompeos-statement-on-settlements/

196 U.S. policy from 1995 labeled all goods produced in the territory as ‘Made in West Bank.’ Under the new policy, products from PA-controlled areas of the West Bank were labeled as products of the West Bank, and those from the Gaza Strip were marked as such. Producers within areas where Israel exercises the relevant authorities—most notably Area C under the Oslo Accords—will be marked as "Israel", “Product of Israel”, or “Made in Israel” when exporting to the United States. See https://il.usembassy.gov/marking-of-country-of-origin/ and U.S. Customs and Border Protection, “Country of Origin Marking of Products from the West Bank and Gaza,” 85 FR 83984, December 23, 2020.

projects and give approvals, and ultimately issued public and explicit endorsement of the settlement enterprise and Israeli annexation of areas in the West Bank. “The position of the United States is that Jewish communities in Judea and Samaria will never be evacuated. We will never ask any community in Judea and Samaria to ever disband … We believe [that] in [the] long run, it is in Israel’s interest and America’s interest to extend [Israeli] sovereignty over these communities.”198

The pre-2015 Netanyahu had been risk averse in both his diplomatic and military postures. But once his coalition strategy changed from straddling political camps to one based on mobilizing an ideological rightist base, he became ever more attentive to their demands. The settlers and their allies managed to establish a presence within Likud, and Naftali Bennett’s Jewish Home party, deeply committed to annexation, consistently exerted pressure on him from the right.199 In 2018 Netanyahu blocked a settlements annexation bill presented by Likud’s Yoav Kish and Jewish Home’s Bezalel Smotrich. But in the final stretch before the 2019 elections (the first of three rounds of essentially deadlocked results), and days after Trump’s Golan recognition, Netanyahu promised that he would begin to apply sovereignty (annexation) to parts of the West Bank.200

Before the second elections, Netanyahu, standing in front of a map of the Jordan Valley, declared again that if he won, he would coordinate with the Trump administration the annexation of the Jordan Valley (equalling 22% of the West Bank) and all the settlements in the West Bank.201

Although Israel’s national-security heads thought annexation statements would risk security escalation, perhaps strategically so given anticipated effects on Jordan, Trump administration officials were annoyed, but not alarmed:

> Trump’s advisors accepted the move as a pre-election political maneuver and didn’t seek to block it. “Netanyahu would often go too far in his statements regarding annexation, and then he would call us and say, ‘I’m sorry, please don’t condemn me,’” a former senior White House official told [Barak Ravid]. “We approached this as domestic political maneuvering and didn’t take these statements too seriously, because we knew that nothing would happen without our approval, so let him play his politics. These were frustrating moments, but we didn’t start fights.”202

The arrival of Netanyahu and Gantz in Washington for the public unveiling of Trump’s peace plan brought the issue of annexation back into the limelight. Netanyahu’s election campaign (Israel’s third in about a year) featured the question of annexation prominently,

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200 Ibid. p. 101


202 Ravid, Trump’s Peace, op cited. P. 102
hoping the move would unfold soon after Trump presented the plan. “Soon we will apply Israeli sovereignty to the Jordan Valley and northern Dead Sea, without delays. We will apply Israeli law to every settlement, without distinction,” Netanyahu said. 203

In a confidential gathering days before the unveiling of the plan, IDF Chief of the General Staff Aviv Kochavi, Shin Bet head Nadav Argaman and Mossad head Yossi Cohen warned of the consequences of annexation. Netanyahu dismissed their warnings, instructing them to make necessary arrangements to fend off a possible escalation. 204

Meanwhile, in a blow to Netanyahu’s intentions, the Trump team agreed with Gantz during their pre-unveiling Washington meeting that the peace plan would not be implemented before Israel’s third elections which were scheduled to take place weeks later. 205 For his part, Netanyahu heightened expectations among settler leaders, hoping immediate unilateral annexation would mitigate potential opposition to the plan’s conceptual territorial concessions to the Palestinians. But the Kushner team, despite differing opinions from Friedman, remained reluctant to endorse annexation in the period after the plan’s release, hoping to enlist the support of Arab states, and leave open the door for negotiations with the Palestinians. 206

On Jan. 28, 2020, Trump unveiled his long-awaited peace plan under its formal name: “Peace to Prosperity.” 207 The plan, written by a trusted group of aides headed by Jared Kushner and with heavy input from former and serving Israeli officials, 208 declared its aim of resolving the Israeli-Palestinian conflict and promoting peace and prosperity in the region.

The plan proposed the creation of a Palestinian state alongside and contained within Israel. To achieve statehood, the Palestinians would need to meet specific criteria, including the establishment of governing institutions, ensuring the rule of law, and combating terrorism.

Territorially, the non-contiguous Palestinian state would consist of four large cantons in the West Bank and adjacent areas from pre-1967 Israel that house Palestinian citizens of Israel, as well as three cantons made of Gaza and two areas adjacent to Israel’s border in Gaza. Notably, according to the plan Israel would retain sovereignty over the Jordan Valley and the narrow areas that separate Gaza from Egypt, so that the Palestinian state would

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203 Ibid. p. 110-111.
204 Ibid. p. 111
205 Ibid. p. 113
206 Ibid.
208 According to Netanyahu’s former national security advisor, Meir Ben-Shabbat, ‘The ‘deal of the century’ was known only to the prime minister, to Ambassador Dermer and to myself … There were others who came on board at various stages, such as [Likud Minister Yiri] Levin. But Dermer was the go-to man and the coordinator with the Americans.” Ravid, Barak. Trump’s Peace: The Abraham Accords And The Reshaping Of The Middle East (p. 112). Barak Ravid—Independent Publishing. Kindle Edition.
not have borders with Jordan and Egypt and would effectively be enveloped by Israeli sovereign territory. All in all, 70% of the West Bank would become Palestinian territory along with 15% swaps from pre-1967 Israel.

The plan effectively recognized Israel’s sovereignty over all existing settlements in the West Bank, about 15 of which would exist as settlement enclaves surrounded by Palestinian sovereign territory and connected to Israeli territory by roads.

The plan doubled down on the recognition of Jerusalem as the undivided capital of Israel and proposed that a future Palestinian capital would be located in the northern and eastern suburbs of East Jerusalem. In addition, the plan emphasized the importance of Israel’s security and proposed a demilitarized Palestinian state, calling for the Palestinians to meet certain security benchmarks and for Israel to maintain overall security control west of the Jordan river.

To develop the Palestinian economy, the plan proposed a $50 billion investment fund to support infrastructure, education, healthcare, and other sectors.

Netanyahu expressed enthusiastic support for the plan, while the PLO outright rejected it, arguing that it heavily favored Israeli interests and did not adequately address Palestinian aspirations for statehood and sovereignty. Notably, the plan was rejected by some parts of Israel’s ideological right, with powerful national-religious constituencies—including key leaders of the settlement movement—rejecting it on both ideological and operational grounds. Ideologically, the creation of a Palestinian state on any part of the Land of Israel violates religious jurisprudence as interpreted by some powerful currents of religious Zionists. Operationally, the plan left some settlements effectively surrounded by sovereign Palestinian areas.209

In effect, the Trump plan aimed to redefine the terms of reference for a two-state outcome. The territorial tenets of the Clinton parameters—borders based on the 1967 lines with modest swaps and the derived objection to settlement activity east of them—has haunted Netanyahu as he confronted one U.S. president after another. But under a supportive U.S. administration, Netanyahu seized the opportunity to try and move international positions to accepting Israeli territorial dominance of the West Bank, and with it a tolerating policy to

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209 Jacob Magid, “Settler leaders call on PM to oppose Trump plan, even at the cost of annexation,” The Times of Israel, 28 January, 2020, online at https://www.timesofisrael.com/settler-leaders-call-on-pm-to-oppose-trump-plan-even-at-the-cost-of-annexation/.
the settlement enterprise.\textsuperscript{210}

In his remarks during the ceremony, Trump endorsed some pillars of annexation, albeit without a timeline:

\textit{We will form a joint committee with Israel to convert the conceptual map into a more detailed and calibrated rendering so that recognition can be immediately achieved. We will also work to create a contiguous territory within the future Palestinian State for when the conditions for statehood are met... Under this vision, Jerusalem will remain Israel's undivided—very important—undivided capital. But that's no big deal, because I've already done that for you, right? We've already done that, but that's okay. It's going to remain that way. And the United States will recognize Israeli sovereignty over the territory that my vision provides to be part of the State of Israel. Very important.}\textsuperscript{211}

Netanyahu added:

\textit{Regardless of the Palestinian decision, Israel will preserve the path of peace in the coming years. For at least four years, Israel will maintain the status quo in areas that your plan does not designate as being part of Israel in the future. At the same time, Israel will apply its laws to the Jordan Valley, to all the Jewish communities in Judea and Samaria, and to other areas that your plan designates as part of Israel and which the United States has agreed to recognize as part of Israel. I like that.}\textsuperscript{212}

Despite the seeming like-mindedness of the two, Trump perceived the event, which

\textsuperscript{210} In the White House ceremony unveiling the plan, Netanyahu said: “Mr. President, I believe that down the decades—and perhaps down the centuries—we will also remember January 28th, 2020, because on this day, you became the first world leader to recognize Israel’s sovereignty over areas in Judea and Samaria that are vital to our security and central to our heritage. And on this day, you too have charted a brilliant future—a brilliant future for Israelis, Palestinians, and the region—by presenting a realistic path to a durable peace. Since the moment of its birth, Israel has yearned for peace with our Palestinian neighbors and peace with the broader Arab world. For decades, that peace has proved elusive, despite so many well-intentioned plans. One after the other, they failed. Why did they fail? They failed because they did not strike the right balance between Israel’s vital security and national interests, and the Palestinians’ aspirations for self-determination. Too many plans tried to pressure Israel to withdraw from vital territory like the Jordan Valley. But you, Mr. President, you recognized that Israel must have sovereignty in the Jordan Valley and the other—and other strategic areas of Judea and Samaria. Rather than pay easy lip service to Israel’s security and simply shut your eyes, hope for the best, you recognized that Israel must have sovereignty in places that enable Israel to defend itself, by itself. For too long—far too long—the very heart of the Land of Israel where our patriarchs prayed, our prophets preached, and our kings ruled, has been outrageously branded as illegally occupied territory. Well, today, Mr. President, you are puncturing this big lie. You are recognizing Israel’s sovereignty over all the Jewish communities in Judea and Samaria, large and small alike.” See “Full text of Netanyahu’s speech: Today recalls historic day of Israel’s founding,” The Times of Israel, Jan. 28. 2020, online at \url{https://www.timesofisrael.com/full-text-of-netanyahus-speech-today-recalls-historic-day-of-israels-founding/#:~:text=I%20know%20what%20it%20will%20do,Mr.\textsuperscript{211}

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included a lengthy Netanyahu speech, negatively.213

With that, the battle lines were drawn. Some in the Trump administration—mainly Friedman and Pompeo—supported Israel’s annexation efforts. But Kushner and other U.S. officials vetoed any such move, and made Friedman walk back his support for immediate annexation.

Before any annexation steps, the sides agreed to establish an Israeli-U.S. committee that would demarcate the precise annexation map.214 “President Trump could not have been any clearer—a committee must be set up to discuss annexation, and this is a process that will take time,” a senior U.S. official told Barak Ravid.215 Netanyahu released a statement saying that annexation was a complex process that would require time and work. Eventually, Kushner put the final nail in the coffin of Netanyahu’s and Friedman’s hopes: “I think we’d need an Israeli government in place in order to move forward.”216

“We had very difficult conversations with Netanyahu and his people,” Kushner told Ravid later. “We told them that we released a detailed plan that showed that Israel was flexible and the Palestinians were rejectionists. Arab and European countries released positive statements. But then Netanyahu’s annexation statements made it all look like a land grab.”217

Interestingly, the settler leadership was divided in its reaction to the Trump plan and to Netanyahu’s endorsement of it. Main opponents mobilized against the plan’s notion of Palestinian statehood, territorial concessions, negotiations, the ultimate creation of settlement enclaves surrounded by Palestinian sovereign territory, and freeze on settlement construction in the areas slated for Palestinian statehood.218 In May, roughly four months after the unveiling of the Trump plan, and in an attempt to break the inconclusive election cycle, Netanyahu formed an emergency government with Gantz, who became minister of defense. In an attempt to capitalize on the Trump plan, Netanyahu set out to annex up to 30% of the West Bank, which the plan had marked for Israeli sovereignty, with an annexation target date of July 2020.

But Kushner did not treat the July 2020 timeline as a U.S. obligation. He conditioned U.S. support for annexation on buy-in from Gantz and Foreign Minister Gabi Ashkenazi. But such

214 The mapping committee commenced its preparatory work later that spring. It included U.S. and Israeli officials, but encountered criticism from both sides of the spectrum. See Jacob Magid, Mapping Netanyahu’s annexation plan: Experts explain a charged, complex process,” The Times of Israel, 11 June 2020, online at https://www.timesofisrael.com/so-you-want-to-annex-the-west-bank-map-experts-weigh-in-on-netanyahus-plan/.
buy-in never came. In addition, opposition from Arab leaders and internal mobilization of national-security elites in Israel stalled the annexation plan, enough for other dynamics to kick in. Ultimately, the annexation plan was shelved in the context of the normalization agreement between Israel and the United Arab Emirates, known as the Abraham Accords. The joint statement issued by the United States, Israel, and the UAE stated: "As a result of this diplomatic breakthrough and at the request of President Trump with the support of the United Arab Emirates, Israel will suspend declaring sovereignty over areas outlined in the President’s Vision for Peace and focus its efforts now on expanding ties with other countries in the Arab and Muslim world."  

Before leaving office, in November 2020 Pompeo visited the Psagot winery in the West Bank, and announced a policy shift in which goods made in settlements be labeled as "Made in Israel." This new policy marked a notable departure from the longstanding customs guidance followed by past administrations, which prohibited labeling products from any part of the West Bank, including both settlements and PA areas, as being made in Israel. The 1995 guidance had been put in effect in the context of the reality created by the Oslo Accords. It stated: "...goods which are produced in the West Bank and Gaza Strip shall be properly marked as ‘West Bank,’ ‘Gaza’ or ‘Gaza Strip’ and shall not contain the words ‘Israel,’ ‘Made in Israel,’ ‘Occupied Territories-Israel,’ or words of similar meaning." In 1997, the guidance was revised to permit products manufactured in the occupied territories to be labeled as “West Bank/Gaza,” “West Bank/Gaza Strip,” “West Bank and Gaza,” or “West Bank and Gaza Strip.” This labeling aimed to emphasize that the United States considered the West Bank and Gaza a unified territorial entity. The Obama administration reaffirmed this guidance in 2016.  

Pompeo’s statement noted:

_In accordance with this announcement, all producers within areas where Israel exercises the relevant authorities — most notably Area C under the Oslo Accords — will be required to mark goods as "Israel," "Product of Israel," or "Made in Israel" when exporting to the United States. This approach recognizes that Area C producers operate within the economic and administrative framework of Israel and their goods should be treated accordingly. This_
update will also eliminate confusion by recognizing that producers in other parts of the West Bank are for all practical purposes administratively separate and that their goods should be marked accordingly.

We remain committed to an enduring and sustainable peace as outlined in President Trump’s Vision for Peace. We will continue to oppose those countries and international institutions which delegitimize or penalize Israel and Israeli producers in the West Bank through malicious measures that fail to recognize the reality on the ground.225

The labeling policy went into effect the following month.226

President Joe Biden

Joe Biden entered office with a formidable task of stabilizing a domestic U.S. scene ravaged by the COVID-19 pandemic and the socio-political havoc left by the Trump years, including Trump’s refusal to adhere to traditional American norms of transfer of power. The Biden administration attempted to balance international and domestic interests by focusing on global challenges, such as the rise of China and climate change, in a way that benefits U.S. constituencies and economic interests. Together with Russia’s 2022 invasion of Ukraine, Washington’s national security bandwidth was consumed, leaving little room for meaningful sustained engagements on other issues.

Biden’s Middle East approach focuses on minimizing U.S. investment and regional exposure. It has done so by limiting its initiative after an early attempt to reconstruct the JCPOA and manage unsettled regional affairs, including confrontations between Iran and an array of Arab regimes.

After some deliberations representing various factions within the administration, Biden decided against any proactive initiative on the Israeli-Palestinian front. By the time U.S. officials helped secure a ceasefire to end the May 2021 flareup between Hamas and Israel, the administration felt vindicated, seeing no value in investing any political capital in a seemingly-deadlocked Israeli-Palestinian landscape. Moreover, the administration’s affinity for the new Israeli government led by Naftali Bennett and Yair Lapid, which came to power in June of that year, guided a passive, hands-off approach to the Palestinian file. The Biden team feared that any meaningful demand regarding Israeli policy in the West Bank would destabilize a narrow coalition that straddled the left-center-right divide. Biden administration officials focused mainly on consolidating the Abraham Accords, which consistently bypassed the Palestinian question.


Accordingly, the Biden administration took no specific action to reverse the Trump administration’s policies regarding the legal definition of settlements (or the recognition of Jerusalem as Israel’s capital). In practice, however, administration officials have regularly criticized settlement activity.

In its first months in office, some within the administration argued for a strict policy on settlements, including a complete freeze on settlement construction outside of the blocs. But they were ultimately overruled, and the administration settled on a policy that included the following items:

- No legalization of outposts (unauthorized settlements built without official Israeli government approval)
- No settlement building outside of the blocs, with a particular focus on avoiding disruption of Palestinian contiguity (the ability of Palestinians to move freely within the West Bank)
- A general approach of "up, not out," meaning that settlements should not expand outward into new areas, but rather should be developed within their existing footprints
- No official annexation of the West Bank

The administration’s main motivation for this policy framework was a desire to return to the traditional Democratic Party stance of opposition to settlements and support for a two-state outcome. It was also seen as a framework designed to operate in an environment without a peace process, geared not at generating broad understandings but to preserve the possibility of successful negotiations in the future.

Administration officials refused to meet with their Israeli counterparts to review lists of settlement projects, despite Israeli requests to this effect, since such a pick-and-choose posture would undermine the administration’s principled opposition to settlements. Still, the Israeli Embassy was involved in highlighting particularly problematic projects.²²⁷

The policy on construction in Jerusalem remained somewhat unclear, and there did not appear to be a comprehensive approach. Notably, the United States worked hard to stop the development of a planned new Jewish neighborhood in Atarot on the site of the now-defunct Jerusalem airport north of the city center,²²⁸ but was less concerned about the Givat Hamatos development northwest of Har Homa.

²²⁷ IPF interview with two informed observers.
Biden visited the Middle East, including Israel and the Palestinian Authority, in July 2022. The motivations for the visit were multifaceted. What initially began as a friendly political gesture aiming to consolidate a domestic posture as a pro-Israel administration and to galvanize Israeli public support for a favorable Israeli government quickly turned into a visit with geopolitical objectives, including the upgrading of regional security, promotion of Arab-Israeli (mainly Israeli-Saudi) normalization, as well as adjustments to global energy policy.

But by the time the visit unfolded, the Israeli government had dissolved and a caretaker government headed by Yair Lapid was in place. Lapid—who favored a two-state outcome, much like the president and unlike Lapid’s predecessor, Bennett—preferred to minimize, and to the extent possible avoid, the Palestinian issue as elections loomed.

Attentive to Lapid’s electoral concerns, the administration focused on the U.S.-Israel relationship, codifying it in a festive joint declaration of the Jerusalem U.S.-Israel Strategic Partnership, an agreement aimed at strengthening the diplomatic and strategic relationship between the sides, including security, technology, trade, and regional stability. In a joint press conference with Lapid, Biden noted that he does not intend to change U.S. recognition of Jerusalem as Israel’s capital.

Symbolically, however, during his visit to East Jerusalem—a first by an acting U.S. president—Biden’s convoy removed the Israeli flag from their cars, adding another symbolic element to the administration’s refusal to allow an Israeli official to accompany the visit to Augusta Victoria Hospital.

In preparation for the visit, seeing no opening to push forward even a limited initiative on the Israeli-Palestinian track, the administration focused its effort on bilateral U.S.-Palestinian relations. U.S. officials were able to announce economic and humanitarian measures, including a multi-year donation for the East Jerusalem Hospital Network, an upgrade of U.S. contribution to UNRWA, as well as additional U.S. humanitarian support for food security.

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232 Israeli officials feared the visit would be a de facto recognition of Palestinian ties to East Jerusalem. See Jacob Magid, “How Israel nearly turned Biden’s East Jerusalem visit into a diplomatic incident,” The Times of Israel, July 22, 2022, online at https://www.timesofisrael.com/how-israel-nearly-turned-bidens-east-jerusalem-visit-into-a-diplomatic-incident/.

233 On Israeli-Palestinian relations, the United States was able to secure...
Israeli commitments to allow the deployment of a 4G cellular network in the West Bank by the end of 2023 (and ultimately in Gaza), improvement to the operations of the Allenby international crossing, and a convening of the Joint Economic Committee.\textsuperscript{234}

In public remarks in Bethlehem following their bilateral meeting, Biden left mentioning of the settlement issue to Abbas, choosing to focus on the bigger picture.\textsuperscript{235} Biden noted:

\begin{quote}
As I stand with you today, now as president of the United States, my commitment to [the] goal of a two-state solution has not changed in all these years. Two states along the 1967 lines, where mutually agreed-to swaps, remain the best way to achieve equal measure of security, prosperity, freedom, and democracy for the Palestinians as well as Israelis. The Palestinian people deserve a state of their own that’s independent, sovereign, viable, and contiguous. Two states for two peoples, both of whom have deep and ancient roots in this land, living side by side in peace and security. Both states fully respecting the equal rights of the other’s citizens. Both peoples enjoying equal measure of freedom and dignity. That’s what this is fundamentally all about. Every person has a right to be treated with dignity. It’s simply basic. I know that the goal of the two states seems so far away while indignities like restrictions on movement and travel or the daily worry of your children’s safety are real and they are immediate. But we’ve never give [sic] up on the work of peace. You know, there must be a political horizon that the Palestinian people can actually see or at least feel...

So even if the ground is not ripe at this moment to restart negotiations, the United States and my administration will not give up on trying to bring the Palestinians and Israelis and both sides closer together...

I do believe that in this moment when Israel is improving relations with its neighbors throughout the region, we can harness that same momentum to reinvigorate the peace process between the Palestinian people and the Israelis. I recognize how hard all these challenges must be and will be to work through. Above all, there must be an end to the violence that has devastated too many families...

Muslim [sic] and Jews also have an intense and deep connection to this land, particularly in Jerusalem. Jerusalem is central to the national visions of both Palestinians and Israelis—to your histories, to your faiths, to your futures. Jerusalem must be a city for all its people—its holy sites preserving the status quo, with the Hashemite Kingdom of Jordan continuing to serve as custodian. And throughout this Holy Land, which is filled with so many places of meaning and significance to Muslims, Christians, and Jews, we must all be free to practice our faiths in peace, in safety, and in dignity.\textsuperscript{236}
\end{quote}

Against a backdrop of a security escalation, Biden’s visit coincided with a wave of attacks

\textsuperscript{234} Ibid
\textsuperscript{236} Ibid.
that began in March 2022, orchestrated by Palestinian lone wolf terrorists targeting cities within Israel proper in yet another manifestation of PA dysfunction and a breakdown in Israeli-Palestinian trust. As part of a continuation of Operation Breaking Dawn and to confront the emergence of newly mobilized Palestinian groups such as the Lion’s Den, an uptick of IDF incursions into Palestinian cities in Area A fed into a security escalation that resulted in tens of casualties.

On December 29, 2022, Netanyahu returned to the prime minister’s office, heading Israel’s most right-wing coalition ever. The coalition guidelines and inter-party agreements outlined the most ambitious pro-settlements agenda in decades. Weeks later, an onslaught of settlement activity commenced, including the appointment of key settlement champions to senior governmental and administrative posts, as well as the redesigning of the administrative landscape that guides and executes settlement policy. (These matters are analyzed in detail in a section below titled Israeli Settlements: Major Threats in the Coming Months and Years.)

In February, Israel’s cabinet approved advancing thousands of settlement units as well as the legalization of nine outposts. Secretary of State Antony Blinken blasted the move:

> We are deeply troubled by Israel’s decision yesterday to advance reportedly nearly 10,000 settlement units and to begin a process to retroactively legalize nine outposts in the West Bank that were previously illegal under Israeli law. Like previous administrations, Democratic and Republican, we strongly oppose such unilateral measures, which exacerbate tensions and undermine the prospects for a negotiated two-state solution. As I have previously stated, anything that takes us away from the vision of two states for two peoples is detrimental to Israel’s long-term security, its identity as a Jewish and democratic state, and to our vision of equal measures of security, freedom, prosperity, and dignity for Israelis and Palestinians alike. We call on all parties to avoid additional actions that can further escalate tensions in the region and to take practical steps that can improve the well-being of the Palestinian people.\(^{237}\)

Tzachi Hanegbi, Israel’s national security advisor, recalled the affair. “It’s a rather amusing story,” Hanegbi said.\(^{238}\) According to the national security advisor, in late January Netanyahu informed Blinken that Israel planned to gradually legalize outposts in accordance with the coalition agreements signed with the Religious Zionism party and out of humanitarian considerations to the residents of the outposts.

> Blinken asked to do it to the minimum extent possible, and the prime minister promised to comply. I don’t remember if it was his initiative or Blinken’s, but there was talk of the first [legalization] to include a ‘single-digit number’ of outposts. We then consulted the world’s greatest mathematicians, and we concluded that


\(^{238}\) Hodaya Krish Hazoni, “‘Our Enemies Looked Cheerfully at the Demonstrations. The Operation in Gaza Made Them Disillusioned,’” (Translated from Hebrew by the authors), Makor Rishon, 25 May, 2023, online at https://www.makorrishon.co.il/magazine/duyukan/621945/
the largest single-digit number in existence is nine. Therefore, the legalization applied to nine outposts. At the same time, we informed the Americans that we are renewing the work of [the Civil Administration’s] Higher Planning Committee...

The coalition agreement, by the way, stated that all the outposts must be settled within 60 days. The agreement did not specify the number of outposts, but our estimate is that it is about 77. [By the way], we wanted to [legalize outposts] during the [short tenure in 2020 of the Netanyahu-Gantz] unity government, and as minister of settlements I reached an agreement with then-Defense Minister Benny Gantz on [the legalization of] 46 outposts, but at the last minute he backed down and vetoed the proposed resolution that was already ready for approval by the government.239

According to Hanegbi, the U.S. restriction on the legalization of additional outposts is valid for a period of six months, from February 12 to August 12, “and then we will again enter into discussions about the next phase.”240

In an effort to strengthen the Palestinian Authority and de-escalate tensions before the confluence of Ramadan, Passover, and Easter in the spring of 2023, Israel and the Palestinians arrived at a set of understandings in a handful of bilateral meetings and two summits under the framework of a newly-forged quintet (the Palestinian Authority, Israel, the United States, Jordan and Egypt)—in Aqaba on February 26 and in Sharm el-Sheikh on March 19. In addition to steps aimed at boosting the PA finances and its security performance, and steps that aimed to calm tension at the Haram al-Sharif/Temple Mount Plaza, the understanding included “an Israeli commitment to stop discussion of any new settlement units for four months.”241

As the Aqaba summit unfolded, two Israelis were killed in the Palestinian town of Huwara by gunmen, leading to hundreds of settlers attacking the town in response.242 The juxtaposition between the Aqaba understandings and the reality of Huwara was stark.

Adding fuel to the fire, Betzalel Smotrich, head of the Religious Zionism party who served as Israel’s new finance minister as well as the minister in charge of settlement affairs in the defense ministry, was asked why he had liked a tweet by Samaria Regional Council Deputy Mayor Davidi Ben Zion that called “to wipe out the village of Huwara today.” “Because I think the village of Huwara needs to be wiped out. I think the State of Israel should do it,” Smotrich replied. The minister added the caveat that “God forbid,” the act should not be carried out by private citizens; “We shouldn’t be dragged into anarchy in

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239 Ibid.
240 Ibid.
which civilians take the law into their own hands," he said.\textsuperscript{243} International uproar arose, and the Biden administration considered rejecting Smotrich’s entry visa request for the Israel Bonds conference later that weekend.

State Department Spokesperson Ned Price was “extremely concerned by the events of this weekend and the continuing violence in Israel and the West Bank.” He condemned the horrific killing of three Israelis (one of which was an American citizen) and “the widespread, indiscriminate violence by settlers against Palestinian civilians following the killing... these actions are completely unacceptable.” Price added:

\textit{We expect the Israeli Government to ensure full accountability and legal prosecution of those responsible for these attacks, in addition to compensation for the lost homes and property. Accountability and justice should be pursued with equal rigor in all cases of extremist violence, and equal resources dedicated to prevent such attacks and bring those responsible to justice.}

\textit{These events underscore the fragility of the situation in the West Bank and the urgent need for increased cooperation to prevent further violence. That is exactly why the United States joined Israel, the Palestinians, Jordan, and Egypt in Aqaba. It is imperative that Israel and the Palestinians work together to de-escalate tensions and to restore calm. The United States and our regional partners will continue to work with the parties to advance the commitments made in Aqaba, and in the meantime we call on everyone to refrain from actions and rhetoric that further inflame tensions. As we've said repeatedly, Israelis and Palestinians equally deserve to live in safety and security.}\textsuperscript{244}

Smotrich apologized, claiming he did not realize that the remarks, which sparked a severe criticism, including by dozens of Israeli Air Force pilots, would be interpreted as a military order. In a lengthy Facebook post, Smotrich included an apology to the Israel Defense Forces along with a recognition that “soul-searching” was required on his part.\textsuperscript{245}

Israel’s commitment to the Aqaba understanding immediately came under question. “I have no idea what they spoke about or not in Jordan,” Smotrich tweeted. “But one thing I do know: there will not be a freeze on the building and development in settlements, not even for one day (it is under my authority).”\textsuperscript{246}

Cynical views of Israel’s commitments in Aqaba also circulated in Israel’s more moderate

\textsuperscript{243} Michael Bachner, “Israel should ‘wipe out’ Palestinian town of Huwara, says senior minister Smotrich,” The Times of Israel, March 1, 2023, online at https://www.timesofisrael.com/israel-should-wipe-out-palestinian-town-of-huwara-says-senior-minister-smotrich/


\textsuperscript{245} Jacob Magid, “Smotrich says he didn’t realize his ‘wipe out’ Huwara call would be seen as IDF order,” The Times of Israel, March 9, 2023, online at https://www.timesofisrael.com/smotrich-didnt-realize-wipe-out-huwara-call-would-be-seen-as-idf-order-apologizes/#:~:text=%E2%80%9CBecause%20I%20think%20the%20village%20be%20done%20by%20private%20citizens.

policymaking circles. Hanegbi, the national security advisor and one of three Israeli representatives to the quintet forum, explained the Netanyahu government’s approach to the issue of the Aqaba understandings regarding settlements, and how Israel succeeded in marketing the natural pace of approvals—the months in between the quarterly meetings of the Civil Administration’s Higher Planning Committee—as a settlement freeze in. Habegbi explained:

At the first meeting in Aqaba, we informed the participants of our decision to settle nine outposts, and we also wrote down the names of the outposts...

In Aqaba they were constantly talking about settlements. In order to create a more comfortable atmosphere, I told them what was planned. I told them that the [Civil Administration’s] Higher Planning Committee would meet once a quarter, but in the following quarters the volume of construction permits would not be the same as in February, when 9,000 permits were given... [The other members of the quintet] asked for [this arrangement] to appear in the summary notice. I consulted with our friends from all the ministries and they said there was no problem if they felt it served some diplomatic purpose. It was published countless times before. That’s how this topic found its way into the notice. In Sharm el-Sheikh the ordeal repeated itself: [the other members of the quintet] asked this arrangement to be included in the summary notice, and we agreed. We have no problem selling the same goods five times... I even told them that I felt uncomfortable, as if I was once again selling them something that in any case had nothing to do with the conferences we gathered at. But it is important to them. In the end, they can always inform, whomever they want to inform, that Israel has made such and such a commitment... The Higher Planning Committee can meet at any time, if necessary, but it can promote construction plans in [the West Bank] once every four months.”

Adding to the ordeal, following the summit Israel has significantly expedited the approvals of settlement plans in the West Bank and in East Jerusalem.248

In March 2023, the Knesset repealed articles of the 2005 Gaza Disengagement Law, which banned Israelis from entering and residing in four evacuated settlements in the northern West Bank, as well as amended the original law’s cancelation of rights regarding real estate

247 Hazoni, “‘Our Enemies Looked Cheerfully at the Demonstrations. The Operation in Gaza Made Them Disillusioned,’” op cited.


The announcement of 4,089 new residential units in East Jerusalem was promoted in its statutory planning committees. For the sake of context: in the two months following the Aqaba summit, Israel has increased construction by 6.8% in the total number of all the units built by Israel in East Jerusalem since 1967. That figure is also 6.8 times larger than all the residential units built for Palestinians with any kind of Israeli government support since 1967. In addition, Israel has taken, including budgetary allocations, toward completion of the ‘Sovereignty’/Fabric of Life/Apartheid’ Road in the area of E-1. “The completion of this road will be a major, if not decisive factor, in the de facto annexation of Area C in the Ma’aleh Adumin salient.” See report by Terrestrial Jerusalem, “The Aqaba Understandings: Taking Stock of the Jerusalem Dimension,” Insiders’ Jerusalem, May 1, 2023, online at https://t-j.us2.list-manage.com/track/click?u=1399fe1f9659e3862d0626386&id=d65108aa82&e=57422d541d
in the vacated territory.\textsuperscript{249}

U.S. officials criticized the vote. In a meeting with Michael Herzog, the Israeli ambassador to Washington (as well as a former IDF brigadier general and an Israeli negotiator to various peace efforts), Deputy Secretary of State Wendy Sherman "conveyed U.S. concern"\textsuperscript{250} regarding the legislation. For his part, Netanyahu clarified that "the government has no plans to re-establish settlements there."\textsuperscript{251}

In early June, with the knowledge of the political echelon and against the advice of the relevant legal advisors, settlers relocated the illegal yeshiva in Homesh, established on private Palestinian land,\textsuperscript{252} to land designated as "state-owned" without following the necessary legal procedures and against Netanyahu's clarification.\textsuperscript{253} The move was criticized immediately by many former high-ranking Israeli national security officials, and its implications were stark: undermining the rule of law, disregarding commitments to the United States, and increasing friction on the ground.\textsuperscript{254}

Smotrich's thrust for a quantum leap in settlement activity continued, as he instructed Israeli ministries to prepare for the addition of 500,000 settlers in the West Bank, including an improvement of infrastructure in the settlements and illegal outposts.\textsuperscript{255} U.S. Ambassador to Israel Tom Nides mobilized, communicating the administration's opposition to such policies as well as to the recent legalization of the Homesh outpost. In response, Israel clarified that Smotrich's statements do not represent the Netanyahu government's policies, that no new settlement will be established in the northern West Bank.


\textsuperscript{251} "Amid US rebuke, PM says Disengagement Law repeal won't result in new settlements," Israel Hayom, 22 March, 2023, online at https://www.israelhayom.com/2023/03/21/us-issues-strong-rebuke-over-israels-provocative-legislation-on-settlements/.


\textsuperscript{253} Jacob Magid, "Ministers sign off on construction work en route to authorizing Homesh yeshiva," The Times of Israel, 25 May, 2023, online at https://www.timesofisrael.com/ministers-sign-off-on-construction-work-to-authorize-homesh-yeshiva/.


Bank, and that the government’s goal is to designate the outpost as state land.  

In the midst of Israel’s 37th government’s unprecedented settlement policy, Blinken addressed the AIPAC conference. The secretary noted:

Settlement expansion clearly presents an obstacle to the horizon of hope that we seek. Likewise, any move toward annexation of the West Bank, de facto or de jure, disruption of the historic status quo at the holy sites, the continuing demolitions of homes and the evictions of families that have lived in those homes for generations damage prospects for two states. They also undermine the basic daily dignity to which all people are entitled.

Days later, Netanyahu reportedly told Blinken that to compensate for the cancellation of a planned hearing on E-1, he intended to greenlight the promotion of over 4,500 settlement units, including controversial plans in the West Bank and East Jerusalem.

Employing a new tactic in an effort to get a different result from the Israeli government, the Biden administration then reversed its predecessor’s policy, and reimposed a ban that prohibits U.S. taxpayer funding from being used in scientific cooperation projects in Israeli settlements.

After a mid-June terrorist attack that left four Israelis dead, the Israeli government announced it would promote an additional 1,000 units in Eli on top of the 4,800 units that the Higher Planning Committee ultimately declared it intended to promote. On the outposts front, military authorities allowed, under directive of the government, the return of settlers to the Evyatar outpost, and the establishment of a handful of new outposts.


259 A U.S. spokesperson noted: “This guidance is simply reflective of the longstanding U.S. position ... that the ultimate disposition of the geographic areas which came under the administration of Israel after June 5, 1967 is a final-status matter and that we are working towards a negotiated two-state solution in which Israel lives in peace and security alongside a viable Palestinian state.” See Barak Ravid, “Biden admin reverses Trump policy that allowed funding to research in Israeli settlements,” Axios, 25 June 2023, online at https://www.axios.com/2023/06/25/israel-settlements-research-funds-us-taxpayers-ban-biden-trump.

Not less concerning, hundreds of settlers attacked the Palestinian village of Turmus Aiya, marking the start of days-worth of settler rampages inside Palestinian towns and villages, setting fire to homes, cars, and even shooting in some cases. This brought to the fore yet again the devastating potential of uncontrolled popular violence.

Settler leaders leaned in. “Run for the hilltops,” said National Security Minister Itamar Ben Gvir in Evyatar, urging settlers to break the law and his own government to launch a fierce military campaign. “There needs to be a full settlement here [in Evyatar]. Not just here but on all the hilltops around us,” he said. “We have to settle the land of Israel and at the same time need to launch a military campaign, blow up buildings, assassinate terrorists. Not one, or two, but dozens, hundreds, or if needed, thousands.”

Attentive to mounting international pressure and fearing total loss of control, Netanyahu attempted to soften the impression left by the hardliners and by events on the ground. “Statements calling to seize territory illegally, and the action of seizing territory illegally are not acceptable to me … They undermine the rule of law in Judea and Samaria and they must stop immediately,” Netanyahu said. Calls to build outposts “harm Israel’s vital interests and they must stop immediately… these statements and actions do not strengthen the settlement enterprise; rather, they harm it.”

The administration—already alert to settler violence which it had been tracking through the work of the U.S. Security Coordinator, Lieutenant General Michael Fenzel—mobilized. Assistant Secretary of State Barabara Leaf was en route to Israel as the government approved the easing of settlement planning and approval procedures—a dramatic, seemingly-administrative move that could unleash an exponential growth in settlement activity. On the ground, Leaf was met yet again by the terror attacks and settler violence she was set to prevent as the U.S. point person to the Quintet forum that produced the Aqaba and Sharm understandings.

In a call with Hanegbi, National Security Advisor Sullivan centered the issue, expressing “deep concern over the recent extremist settler attacks against Palestinian civilians and the destruction of their property in the West Bank,” and “reiterated the importance of holding accountable those responsible for such acts of violence.” He further called “on all parties to refrain from unilateral actions, including settlement activity, that further inflame tensions,” and to adhere to commitments made in the Quintet forum.

261 See “One Palestinian killed as Israeli settlers set fire to cars, homes in West Bank,” The Jerusalem Post, 21 June, online at https://www.jpost.com/israel-news/article-747063
In response, Israel’s security chiefs—IDF Chief of Staff Herzi Halevi, Shin Bet director Ronen Bar, and Israel Police chief Kobi Shabtai—issued a joint statement against settler violence:

> These attacks contradict every moral and Jewish value and constitute nationalist terrorism in the full sense of the term, and we are obliged to fight them.

> The security forces are working against these rioters, risking the lives of IDF soldiers, Israel Police officers and Shin Bet officers. This violence increases Palestinian terror, harms the State of Israel and the international legitimacy of the security forces to fight Palestinian terror, and diverts the security forces from their main mission against Palestinian terror.

> The IDF, the Shin Bet and Israel Police are committed to continuing to act with determination and with all the means at our disposal to maintain security and the law in Judea and Samaria. The IDF will divert and increase forces to prevent such incidents in Judea and Samaria, and the Shin Bet will expand arrests, including administrative detentions against the rioters who act in a violent and extreme manner inside the Palestinian villages.

> We also call on the leaders in the settlements, educators and public leaders, to publicly denounce these acts of violence, and to join the fight against them.\(^{265}\)

On June 26, 2023, as this report was nearing conclusion, the Civil Administration’s Higher Planning Committee met to approve the advancement of 5,700 settlement units promised by the government throughout June. Together with the early spring approval of 7,349 housing units, it brought the total of Israel’s 37th government to over 13,000 units in only its first six months. According to settlement watchers, this number marks an annual high in over a decade of settlement monitoring, and probably the highest since 1967.\(^{266}\)


\(^{266}\) For comparison, 4,427 housing units advanced through the planning process in the entirety of 2022. See “Record-breaking year: more than 13000 Housing Units promoted in the West Bank in 6 months,” Peace Now, 26 June 2023, online at https://peacenow.org.il/en/record-breaking-year-more-then-13000-housing-units-promoted-in-the-west-bank-in-6-months
U.S. Policies on Combating Settlements: A Typology

Notably, U.S. views of settlements have been largely consistent over time, and policies adopted to restrict Israeli settlement construction have varied based on the political climate, the priorities of the administration, and the prospects of a viable political process. While some U.S. presidents have taken a hardline stance against settlements publicly and actively sought to limit or halt them, others have been more passive and have chosen to soften actions to oppose them. As the various approaches adopted by administrations demonstrate, the United States has a toolkit in its disposal for countering settlements.

A typology of U.S. policy on settlements includes the following categories:

**Bilateral diplomatic pressure:** This category includes direct diplomatic efforts by the U.S. administration to exert pressure on the Israeli government to limit or halt settlement activity. This can take the form of public statements and actions by U.S. officials, as well as private diplomatic efforts, such as meetings between U.S. and Israeli officials to discuss the issue. Exemplifying the diminished effectiveness of U.S. diplomacy over time, as of 2023 for any such effort to have any probability of success, the engagement needs to come at, or at least be clearly backed by, the level of the U.S. ambassador to Israel or above.

**Multilateral diplomatic pressure:** This category includes efforts by the administration to exert pressure, or allow pressure by other parties to be exerted, on Israel through international organizations such as the United Nations, or through joint action outside of the U.N. context. This can include voting in favor of resolutions condemning settlements, supporting (or not opposing) investigations into settlement activity, and using its influence to bring other countries on board with efforts to pressure Israel to halt settlements.

- Despite the variance in rhetoric of each U.S. administration as expressed in presidential statements and an effort to avoid affirming their ultimate legality or illegality, the United States has adopted a somewhat consistent pattern of voting behavior in the U.N. Security Council when it comes to resolutions on settlements. It has a continuous track record from Presidents Johnson to Biden, excluding Trump, of (alongside using its veto) supporting or abstaining from Security Council resolutions or Security Council presidential statements inclusive of language critical of settlements or referring to violations of the Fourth Geneva Convention. Since 1978, all U.S. administrations excluding

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Trump’s have tacitly adhered to a policy that settlements are illegal.\textsuperscript{268}

**Cultural diplomacy:** This category includes the use of soft power to influence public opinion in both Israel and its allies in the international community. This could include showcasing the negative impacts of settlements and the need for a two-state outcome through cultural events, exchange programs, and educational programs, as well as the use of cultural diplomacy to de-legitimize settlements by labeling them, when appropriate, as undermining Israeli credibility, illegal under international law and/or harmful to a viable resolution of the conflict.

**Economic measures:** This category includes the use of economic disincentives to exert pressure on Israel to reverse, halt, or limit settlement activity. Economic means can include withholding loan guarantees or other forms of aid, including direct financing or military aid, by imposing various degrees—end-use restrictions, conditioning, and/or and cutting—of economic sanctions directly tied to Israeli settlement construction or annexation measures. For an array of reasons, U.S. administrations have largely avoided the deployment of such measures.

**Domestic U.S. economic components:** This category includes efforts by the U.S. administration or legislature to limit or halt American support for settlements through domestic economic measures. For example, implementing labeling requirements for products from settlements.\textsuperscript{269}

\textsuperscript{268} Gilad Shear and Daniel Cohen, The Trump Administration’s Statement on Israeli Settlements: Legal Status and Political Reality, Baker Institute, January 23 2020, online at https://www.bakerinstitute.org/research/israeli-settlements-legal-status-political-reality

\textsuperscript{269} At the very least, the United States should return to its pre-Trump labeling policy as analyzed above in the historical overview.
An Unsettled Question: Recalibrating U.S. Policy on Israeli Settlements

Israeli Settlements: Major Threats in the Coming Months and Years

The Settlers’ Strategic Agenda

Pro-settler leaders have long outlined their priorities with the overall aim of propelling forward the settlement enterprise and redefining the geopolitical context in which it unfolds. The primary goal is to reshape the terms of reference of the territorial dimension of the conflict on two fronts: Internationally, from adherence to the 1967 lines and objecting to Israeli presence east of them to positions that are more tolerating—or even supportive—of the settlement enterprise. Domestically, from a focus on settlement blocs (adjacent to the 1967 lines) to a war of attrition over Area C that centers settlement expansion and Palestinian displacement.

Specifically, the settler agenda over the past few years focuses on the following:

Applying Israeli sovereignty to parts of the West Bank: For example, annexation of the Jordan Valley is believed by pro-settler thinkers to help define the eastern border of Israel, send a message to the Palestinians that Israel will remain the permanent dominant presence there, and contribute to Israeli settlement growth in the region. The proposal also includes offering Palestinians living in the Jordan Valley the opportunity to obtain Israeli residency or citizenship. The plan calls for building an airport under Israeli control and maintaining the Allenby Crossing and entrance corridor. The current circumstances in the region and the historical circumstances are considered to be favorable for the annexation of the Jordan Valley, and it is believed that such a move will be accepted in the international arena, as was

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considered in the context of the Trump plan to apply sovereignty to 30% of the territory.

**Upgrading national infrastructures:** In order to improve the standard of living in the West Bank, upgrades must be made to the national infrastructures in the area, such as the water, electricity, and gas supply. The roads in the West Bank have long been targeted as a strategic component in settlement development and in dire need of upgrading and connecting to the national road system. Public transportation, waste disposal, and sewage treatment also need attention. Pro-settler thinkers argue that these improvements will benefit both Israelis and Palestinians and will prevent a deterioration of the standard of living that could lead to negative consequences (i.e. humanitarian and security deterioration). In addition, the West Bank should be designated important for the deployment of national infrastructures and alternative energy facilities. Finally, settlers suggest the expansion of industrial areas in the West Bank to reduce the number of Palestinians seeking work permits in Israel.

**Legalization of settlements, settlement outposts, and agricultural farms/outposts:** In order for Israel to consolidate and expand its control over Area C, it needs to legalize outstanding issues relating to the settlements, outposts, and farms. This includes eliminating the problems in approved settlements, such as homes built on private land, and legalizing roughly 70-80 outposts, which house around an estimated 10,000 settlers in total. Settlers cite the 2012 report by Judge Edmond Levy, which argues that according to international law Israel has a legitimate right to settle in the West Bank and the establishment of the settlements is not illegal. In addition, settlers cite a 2018 report by Judge Haya Zandberg, which presented solutions for legalizing settlements and outposts, including legalizing houses that were within state lands but were removed, houses built on private land, and outposts that require a governmental decision for establishment. Additionally, about 40 grazing farms, which occupy a large area compared to the size of the buildings located on them, should be legalized in order to prevent the supposed unilateral Palestinian takeover of state lands.

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272 See The Wild West – Grazing, seizing and looting by Israeli settlers in the West Bank, Kerem Navot, May 2022, online at https://www.keremnavot.org/_files/ugd/a76eb4_9d3dee006d0e4decac505bf432bd56e.pdf.

Renewal of land registration: Currently, the status of state lands can be easily altered, leading to policy changes regarding blue lines, redesignation of lands from their state land status, and even demolitions of (settler) houses on approved state lands. According to the settler perspective, Palestinians are engaging in unilateral land takeovers in Area C, which the international community supports and easily recognizes and makes it difficult for Israel to reverse. To solve these problems, settlers suggest renewing the land registration process that was frozen after the IDF took over the West Bank in 1967 and actively working to register the lands in the Israeli-managed land registry. This will determine (undoubtedly, with a dramatic pro-settler bias) the status of both state and Palestinian-owned lands. Additionally, settlers argue that renewing the status of the land reserves in the West Bank could help alleviate the housing crisis by increasing the availability of land close to employment centers in Israel.

Enhance enforcement (i.e. demolitions) of illegal Palestinian construction in Area C and align the limited construction permits for Palestinians with Israeli (i.e. pro-settler) geographical interests: Settlers want the approval of construction plans for Palestinians in Area C to align with Israeli interests. This includes examining the implications of the plans, adjusting the construction density based on Israeli plans, examining alternatives for Palestinian Area C planning and building in Area B, and better implementing the government’s own decision for regulation of Area C Palestinian construction. On this last point, settlers argue that effective enforcement against illegal (Palestinian) construction should be carried out and the manpower in the Civil Administration should be increased accordingly. Settlers also mention the need for a dedicated decree to prevent the agricultural takeover by Palestinians of open areas.

274 Starting 1999, the Civil Administration has operated a unit for demarcating state lands, commonly known as the “Blue Line Team.” Its main objective is to examine the announcements on state lands, which were made until 1998, in order to ensure that the planning procedures and contracts (permissions and real estate allocations carried out by the Commissioner of Government and Abandoned Property) will be carried out only after a thorough examination of boundaries of the declared state lands, in order to prevent the taking of Palestinian privately owned land. See “Team for the Demarcation of State Lands in Judea and Samaria (‘Blue Line’ Team) – Work Procedure,” (Hebrew), Coordinator of the Governmental Activities in the Territories (COGAT), Civil Administration, June 2016, online at [https://www.gov.il/BlobFolder/policy/statelanddemarcationteam staffingbluelineteam workprocedure/he.pdf](https://www.gov.il/BlobFolder/policy/statelanddemarcationteam staffingbluelineteamworkprocedure/he.pdf). Settlement watchers describe the Blue Line team as a crucial element of settlement expansion and the retrospective legalization of numerous outposts. According to the procedures of the Civil Administration, any new plan presented for approval, particularly on state lands declared before 1998 (which encompass the majority of declared lands) necessitates a reassessment of the land’s status by the Blue Line team. From its inception until the end of 2015, the Blue Line team has surveyed and mapped territories covering approximately 320,000 dunams (79,000 acres), the vast majority of which had previously been designated as state lands. See Blue and White make Black – The Blue Line Team in the West Bank, Kerem Navot, December 2016, online at [https://www.keremnavot.org/files/ugd/cdb1a7_04c9fe5f2c954d17953d9c5114041962.pdf](https://www.keremnavot.org/files/ugd/cdb1a7_04c9fe5f2c954d17953d9c5114041962.pdf). A minority of settlers have come to criticize the work of the Blue Line team as a barrier on settlement expansion. See Yehuda Yifrach, “Territorial closures: this is how the team that prevents Israeli construction in the West works,” (Hebrew), Makor Rishon, 13 September 2020, online at [https://www.makorrishon.co.il/magazine/263945/](https://www.makorrishon.co.il/magazine/263945/).
Undermine the Palestinian Authority and reverse the withdrawal trends of 1993 to 2005. More strategically, settlers argue that Israel should take advantage of opportunities to undermine the Palestinian Authority and divide the West Bank into separate locally-controlled areas. This, in their perspective, would reduce the Palestinian people’s experience of corruption at the hands of the Palestinian Authority, and serve the Israeli interest of challenging such a strategic rival. Additionally, repealing the 2005 Disengagement Law from northern Samaria/ West Bank would contribute to Israeli governance and security and send a statement of intent to other players in the region that Israel changes its geopolitical objectives from withdrawals to applying increasing control to the West Bank.

The 37th Israeli Government’s Agenda

The first item of Israel’s 37th government non-binding basic policy guidelines states: “The Jewish people have an exclusive and inalienable right to all parts of the Land of Israel. The government will promote and develop the settlement of all parts of the Land of Israel—in the Galilee, the Negev, the Golan, and Judea and Samaria.”275

Further, Likud’s coalition agreement with the Religious Zionism party states, “The people of Israel have a natural right to the Land of Israel. In light of the belief in the aforementioned right, the prime minister will lead the formulation and promotion of policy within the framework of the sovereignty of the Jewish people, while choosing the timing and weighing all the national and international interests of the State of Israel.”276

Among its many clauses, the coalition agreement between Likud and Religious Zionism outlines the strategic redrawing of the methods by which Israel controls the West Bank. It does so by rearranging the chain of command, transferring some of the authorities currently invested in the military commander to civilian bodies overseen by the Ministry of Defense. In addition, the agreement outlines changes to executive and judiciary operations, giving the pro-settler party enhanced control over Area C and power to advance annexation efforts, including retroactively legalizing settlement outposts, seizing Palestinian lands, and intensifying evictions and demolitions of Palestinian structures. Finally, the agreement intensifies settlement and settler-related projects, mainly by easing approval processes and increasing budgets for future development, both quantitatively and qualitatively.

Beyond the specific agreements and policy objectives, and beyond his ability to bring down the government should his agenda not be pursued, it should be noted that Religious Zionism head Betzalel Smotrich—in addition to being appointed minister in the defense ministry overseeing settlement and demolition enforcement in Area C—was appointed


finance minister, and as such oversees a portfolio that includes authority over key financial dealings with the Palestinian Authority. Smotrich could also exert influence across the coalition spectrum by creating bureaucratic and budgetary complications for other ministers and ministries that counter his agenda. Given the makeup of the current government, the majority of ministers will likely search deep inside their own ministries to find angles that promote settlers’ agenda.

Consequently, Israel’s 37th government’s emerging policy in regard to control of the West Bank presents three major threats to a two-state outcome, to what remains of the Oslo framework (mainly the Palestinian Authority self-governing operations), and to relative stability on the ground:

1. **Accelerated de facto annexation**, in which Israeli settlements and infrastructure projects in the West Bank effectively extend Israeli control over those areas without any official recognition or new legal change.

2. **Creeping de jure annexation**, which involves the redesigning of the Israeli administrative landscape in order to effectively annex Palestinian land, without formally declaring it as such, all while unfolding a regime by which Israeli settlers are subjected to Israeli civilian laws, regulation, and administration with as little military oversight as possible.

3. **Big/formal de jure annexation**, which refers to formal annexation of large areas of West Bank territory by Israel, possibly as the ultimate result of the first two threats.

All three of these threats pose significant challenges to the viability of two states, counter longstanding U.S. interests and positions, and should consequently be met with consistent American opposition.

**THREAT 1: ACCELERATED DE FACTO ANNEXATION OF PARTS OF THE WEST BANK**

In the context of the Israeli-Palestinian conflict, de facto annexation refers to the gradual consolidation of Israeli control over the West Bank, mainly via expansion of Israeli settlements, without a formal declaration or legal process to make it official Israeli territory.

Over the past several years, there has been an increase in the extent and severity of de facto annexation in the West Bank, including extensive expansion of Israeli settlements and related infrastructure, the eviction and demolition of Palestinian homes, the takeover of West Bank land through settlement agricultural outposts, and the legalization of some outposts hitherto illegal under Israeli law. All of these actions contribute to ongoing de facto annexation and demonstrate a clear effort to consolidate control over the West Bank, prevent Palestinian self-determination, and risk turning the current reality of Israel’s overriding control of the land with unequal rights for Palestinians under the rubric of a temporary military occupation into a permanent situation.

The continued de facto annexation of the West Bank can largely be divided into two categories: quantitative and qualitative.
The expected **quantitative** changes in the coming years would amount to a significant thrust in settlement growth and the setting back of Palestinian presence in Area C.\(^{277}\) The following trends are expected:

- **Increase in funding for and approvals for construction of settlements.** In 2020, the last full year under Netanyahu’s pro-settler rule before his return with the current government, 12,159 units were planned for the West Bank and 4,310 units were planned for East Jerusalem. This marked the highest number of settlement housing units planned for the West Bank since at least 2012. For comparison, the unit numbers for 2021 and 2022 were 3,645 and 4,427, respectively.\(^{278}\) Coupled with various measures that would support settlement expansion, including pro-settler oversight and the easing of the relevant approval processes, numbers already point to unprecedented levels of settlement expansion. In February 2023, the Settlement Subcommittee of the Higher Planning Committee of the Civil Administration promoted 7,157 housing units in settlements, surpassing the 2021 and 2022 totals.\(^{279}\) As this report nears publication, Israel is expected to promote over 4,000 additional units.\(^{280}\)

- **A surge in the demolition and forcible transfer of Palestinian communities.** Together with settlement construction, expulsions and demolitions of Palestinians aim to consolidate Israeli control over Area C, in what pro-settlers actors term “the battle” or “war of attrition” over Area C.\(^{281}\) In 2022, there was a significant increase in the number of demolitions, amounting to 953 with 1031 people displaced, the majority of which occurred in Area C and the highest number recorded by the UN Office for the Coordination

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277 Coupled with the qualitative trends listed below as well as changes to the legal administrative mechanisms outlined in Threat 3, this thrust may well be unprecedented in scope and magnitude.


279 “The government announced the promotion of 6,000 housing units in settlements: in practice, 7,157 units were promoted, including five additional outposts,” Peace Now, 23 February, 2023, online at https://peacenow.org.il/en/the-government-will-advance-over-6000-housing-units-in-settlements-including-the-authorization-of-five-additional-outposts.


281 For example, Regavim reports that as of 2022, there are over 80,000 structures built by Palestinians in Area C. These buildings are deemed illegal by Regavim and other anti-PA actors since they had not cleared the authorization process of the IDF’s Civil Administration (according to IPF interviews with three former high ranking officials in the Civil Administration, it does not facilitate Palestinian construction in area C nearly as much as it does Israeli settlements for a variety of reasons, including and mainly political considerations). In addition to this large-scale construction, Regavim claims there are also illegal agricultural projects on state lands, as well as international funding for legal action to block IDF enforcement (meaning, evacuation or demolitions of illegal/unauthorized construction or other activity), the creation of an illegal land registry, and traditional international pressure. “These are all elements of a calculated strategy, carried out under the auspices of the Palestinian Authority with the stated goal of creating facts on the ground in support of a unilateral declaration of Palestinian statehood, dealing a severe blow to Israel’s national interests and security.” See The War of Attrition, op cited.
of Humanitarian Affairs (OCHA) since 2016.\textsuperscript{282} Moreover, the first quarter of 2023 witnessed a 46% increase in the number of structures targeted compared to the same period the year before.\textsuperscript{283}

There may also be an increase in the displacement of Palestinians in East Jerusalem, although this may not be as imminent due to a recent Israeli High Court of Justice ruling on the issue.\textsuperscript{284}

Another aspect of de facto annexation is the ongoing and expected qualitative changes—game-changing developments—that occur in the West Bank as a result of the settlement enterprise. These include:

- The strategic placement of settlements designed to control key areas and disrupt the contiguity of a future Palestinian state. For example, over the past few years, several plans for settlement construction in strategic locations have been announced and promoted, including the construction of nearly 1,300 housing units in Givat HaMatos and plans for around 3,500 housing units in E-1. These settlements will physically divide East Jerusalem from the rest of the West Bank and undermine Palestinian territorial contiguity in the hopes this will prevent the prospects for a Palestinian state with its capital in East Jerusalem.

- Legalization of outposts that are deemed illegal even under Israeli law. In recent years, more than 20 outposts have been retroactively legalized by the Israeli government, with some recognized as new settlements and others incorporated as new neighborhoods into existing settlements. Work has begun to legalize dozens more outposts. In February 2023, Israel’s security cabinet decided to effectively establish nine new settlements in the occupied territories by authorizing 10 illegal outposts.\textsuperscript{285} The main obstacle to the legalization of additional outposts is the fact that they are built on private Palestinian land. Both Israeli law and international law prohibit the seizure of private land for the purpose of establishing settlements. Specifically, Likud and the Religious Zionism Party agreed that the illegal Evyatar settlement

\textsuperscript{282} Of the 953 structures demolished or seized in 2022, 781 were located in Area C, 29 in Area A and B, and 143 in East Jerusalem, see “West Bank demolitions and displacement,” UN Office for the Coordination of Humanitarian Affairs (OCHA), December 2022, online at https://www.ochaopt.org/content/west-bank-demolitions-and-displacement-december-2022

\textsuperscript{283} “West Bank Demolitions and Displacement - January - March 2023,” UN Office for the Coordination of Humanitarian Affairs (OCHA), online at https://ochaopt.org/content/west-bank-demolitions-and-displacement-january-march-2023.

\textsuperscript{284} See Aaron Boxerman, “High Court says 4 Palestinian families can stay in Sheikh Jarrah homes, for now,” The Times of Israel, 1 March 2022, online at https://www.timesofisrael.com/high-court-says-4-palestinian-families-can-stay-in-sheikh-jarrah-homes-for-now.

An Unsettled Question: Recalibrating U.S. Policy on Israeli Settlements

• Increase in funding for and legalization of the relatively new phenomenon of agricultural outposts, ultimately resulting in intensified land takeover. The construction of agricultural outposts has become a tool for Israeli takeover of West Bank lands. Since 2017, more than 50 agricultural outposts have been built, often inhabited by one or two families. These outposts are given control over thousands of dunams (including land previously used by Palestinian shepherds) for agricultural crops and shepherding, allowing a small number of settlers to control a large amount of land, often in strategic locations. Nearly half of the new agricultural outposts built since 2017 are located in the Jordan Valley to the east of Allon Road, helping to establish de facto annexation of land in that area. In addition to taking over private, registered Palestinian land, some settlers in these outposts use violence to drive Palestinian communities from the land, especially in the Jordan Valley and South Hebron Hills, where communities rely on shepherding for their livelihoods. According to reports, agricultural outposts prevent Palestinian herders from accessing some 238,000 dunams of land, mainly in the Jordan Valley and the Dead Sea area, which are rich in natural resources and have been identified as key areas for the economic development of a future Palestinian state.

• Increase in funding for and approvals for settlement-related infrastructure, mainly roads. The development of infrastructure such as roads, water, and electricity is a pillar of settlement expansion, as the growth of the settler population has not been matched by corresponding growth in infrastructure. Leaders of the settler movement prioritize improvements to roads and transportation infrastructure in the West Bank. In the past five years, there has been significant progress in the development of settlement infrastructure in the West Bank. Dozens of new West Bank roads are already in planning or under construction. A new master plan for road and transportation development in the West Bank for the year 2045 has been released, outlining a work plan for significant settlement road construction in the coming decades. These roads will help suburbanize settlements further in the West Bank, facilitating their growth, while also fragmenting Palestinian territory and hindering Palestinian urban growth. These factors, along with the plan’s goal of integrating the Israeli and West Bank highway.

286 The Wild West, Kerem Navot, op cited.
287 Highway to Annexation, op cited.
systems, will strengthen Israel’s control over the West Bank. The Likud-Religious Zionism agreement earmarks an unprecedented NIS 1.6 billion ($450 million) per year—totaling NIS 6.4 billion ($1.8 billion) over four years—for road development in the West Bank.

- **Easing planning, approval, and construction processes.** For over 25 years, construction in settlements has required the approval of the political level, primarily the minister of defense (and effectively the prime minister himself), at least four times and sometimes more. In December 2022, Likud and the Religious Zionism party agreed to change the mechanism for approving construction in settlements in the West Bank, easing (and therefore ultimately accelerating) the process for expanding settlements and legalizing some outposts. On June 18, 2023, the Israeli government passed new regulations codifying the agreement as amendments to Government Decision 150, which had been in place for over 25 years. According to the decision, Smotrich, serving as the additional minister in the ministry of defense, gained control over the planning approval for settlement construction. Notably, the decision dramatically eases the process for expanding existing settlements. It does so by reducing the number of interventions by the political echelon: the defense minister (and by extension the prime minister) will only approve the first phase of the planning process, known as “planning permission,” which outlines the location and number of housing units. In only 13, mainly urban, settlements such as Ariel, Modi’in Illit, Beitar Illit, and Ma’ale Adumim, the prime minister will also approve the final phase, called “marketing approval.” The change aims to normalize construction approvals in settlements and bring them closer to the process within Israel proper. The State Department issued a statement, noting it was “deeply troubled” by this most dramatic development.

By mid-2023, a new master plan for water in the West Bank for 2040 has also been approved. The plan allows for the provision of water to an estimated 1 million settlers. As part of the plan’s implementation, 100 new West Bank water projects are planned or underway in the next three years (2020-2022), with a projected budget of about NIS 640 million. This includes plans for two major new pipelines that will provide approximately 20 million cubic meters of water to the Jordan Valley each year for settler agricultural use. Similar development is also underway for electricity lines to support the growth of the settler population, and there are plans for a natural gas pipeline to support the development of manufacturing in settlement industrial zones. Other infrastructure, including cellular and internet coverage, is also being developed.

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290 Hanan Greenwood, “As Part of the Coalition Agreement: NIS 8 Billion to be Invested in Judea and Samaria Roads,” Israel Hayom, 9 April 2023, online at https://www.israelhayom.co.il/news/politics/article/13483495

291 See Carmel Dangor, “Kan News Disclosure: the settlement approval mechanism was transferred to Smotrich,” (Hebrew), Kan News, 24 December 2022, online at https://www.kan.org.il/content/kan-news/politic/244841/


293 See Mathew Miller, “The United States is Deeply Troubled with Israeli Settlement Announcement,” U.S. Department of State, 18 June 2023, online at https://www.state.gov/the-united-states-is-deeply-troubled-with-israeli-settlement-announcement/
changes in the defense ministry, COGAT, and the civil administration have taken place with little public attention.

- **Israeli Takeover of Areas A and B.** The Oslo Accords stated that the fate of Area C of the West Bank, which makes up about 60% of the West Bank, would be subject to future negotiations. However, Israel has worked to consolidate its control over Area C through settlement expansion and demolition of Palestinian homes. Although not codified in the recent coalition agreements, over the past few years the settler movement has also called for increased Israeli control over Areas A and B, which are under Palestinian control according to the Interim Agreement. This has been accompanied by increased action from the Israeli government and military in these areas. Examples of this include the demolition of Palestinian homes in Areas A and B, the takeover of agricultural land and expansion of unauthorized outposts, attempts to block Palestinian development, and increased settler visits to religious sites in these areas in a manner that is uncoordinated with the Palestinian Authority and therefore under heavily armored IDF supervision.294

294 See "Israel Violations of the Sovereignty of the Palestinian Authority," Kerem Navot, online at https://www.keremnavot.org/oslo-25-yers
An Unsettled Question: Recalibrating U.S. Policy on Israeli Settlements

Phase 1: Planning

Civil Administration’s Planning Bureau

The Settlement Subcommittee of the Higher Planning Committee (HCP) in the CA discusses the plan and decides whether to deposit it for public review.

MoD* approves the discussion for depositing the plan.

Deposit of the Plan
Publication of ads in 3 newspapers (2 Hebrew, 1 Arabic), 60 days for public to submit objections.

MoD approves to deposit the plan.

If objections filed

Objections Hearing
HCP’s Objectives Subcommittee can recommend to reject objections, make changes to the plan or reject the plan outright.

If no objections filed

Validation: Discussion of Final Approval
Settlement Subcommittee discusses recommendations of Objections Subcommittee, decides on the final approval.

MoD approves the discussion of the final approval of the plan (validation).

Publications of the Plan
Validity of plan published in 3 newspapers (as above), 15 days after the publication the plan becomes valid.

MoD approves the publication of the plan as valid.

Phase 2: Implementation of the Plan

Valid Plan

Settlements that don’t require a tender
Includes 90% of settlements in the West Bank

Settlements that require a tender*

Approval of Marketing of the Land
To allow an initiator to build, MoD must approve marketing of the land any time before or after the plan becomes valid.

Publication of Tender
Ministry of Housing publishes a call for bids, inviting contractors to submit offers to buy the rights to build and market construction projects.

Award of Bid
Months after the tender publication, the winners are announced and contracts signed.

Applying for Construction Permit
The winning contractor prepares detailed implementation plans for the construction and applies to the local settlement authority for a construction permit.

Issuing a Construction Permit
After examining and approving the permit request, the settlement local authority grants a construction permit and the construction commences.

*Settlements, usually larger ones, that require tenders include Afula Menashe, Ariel, Beitar Illit, Efrat, Elkana, Geva Binyamin, Givat Ze’ev, Har Adar, Immanuel, Karmei Shomron, Kfar Atta, Ma’ale Adumim, Ma’ale Efrat

Source: Peace Now
THREAT 2:
CREeping De Jure Annexion of Parts of the West Bank

A rather new category of expected actions in the settlement realm is termed here creeping de jure annexation. It involves the redesigning of the Israeli legal and administrative landscape in order to effectively change the nature of Israeli control of the West Bank, without formally declaring it as such. Israeli settlers will increasingly come under a military regime in name only (or as little as possible), characterized by increasing civilian control—either by civilian ministries or under a newly appointed minister situated in the Ministry of Defense. The goal of seemingly administrative changes is to further blur the lines between an allegedly temporary military control, pending a final-status agreement, to that of a permanent civilian nature—ultimately amounting to de jure annexation.

To be sure, Israel has been implementing long-term changes in its administration of the West Bank—including passing bills in the Knesset, issuing official legal opinions and state positions, and promoting cultural and economic measures that emphasize the Israeliness of the territory—blurring the distinction between the sovereign state of Israel and the territories it occupies.\(^\text{295}\) However, a sustained pace of developments has been replaced with a strategic thrust in this direction by the new Israeli government.

In simple terms, the Religious Zionism party has set to significantly reduce the legal and administrative difficulties that Israel’s military control over the West Bank has inflicted on the settlement enterprise and on the effort to roll back Palestinian presence in Area C. Israeli settlers living in the West Bank will increasingly come under Israeli civil laws (deployed via military ordinances issued by the military commander to avoid the pretense of formal annexation). These changes, if implemented, go beyond game-changing in terms of magnitude of actions; they literally change the rules by which the settlement enterprise has operated for decades in Israel.

The coalition agreements and their initial implementation included the following elements:

- A minister from Religious Zionism now holds a position within the Ministry of Defense, effectively heading a newly created settlement administration, with transferred powers to control civilian issues in the West Bank that no longer require the approval of the minister of defense. Specifically the minister has sweeping powers over the approval of settlements and settlement-related infrastructure. He is also involved in the administration of important issues that impact the daily lives of Palestinians, such as approving master plans, issuing permits, allocating resources such as land, water, and infrastructure, and approving the demolition of Palestinian homes and construction permits for Israeli settlements.

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\(^{295}\) For further details see Over the Border—The institutionalized Israelization of Area C and the violation of Palestinians’ human rights, Yesh Din Position Paper, October 2022, online at https://s3.eu-west-1.amazonaws.com/files.yesh-din.org/over+the+border+2022/Meever+Laavyul_ENG.pdf
• Repeal of the 2005 Disengagement Law that made the settling of the northern West Bank illegal. In March 2023, the Knesset passed a law that allows settlers to enter the areas of the four settlements in the northern West Bank that Israel evacuated as part of the 2005 Disengagement Plan. In the short term, the law is intended to legalize the illegal outpost of Homesh, located on private Palestinian lands. The law sets a precedent for Israel reversing its policies as to areas it had previously evacuated and essentially violates core Israeli-U.S. agreements reached in the context of the 2005 Disengagement Plan and the 2004 Bush-Sharon letters.296

• According to the coalition agreement, the additional minister in the Ministry of Defense was to have the authority to appoint the head of the Civil Administration and the Coordinator of Government Activities in the Territories (COGAT),297 the two military bodies most responsible for formulating and executing Israeli policy in the West Bank, which until now were subject to a mainly military chain of command and under the ultimate authority of the minister of defense. After a prolonged political battle between Smotrich and Minister of Defense Yoav Gallant, Netanyahu brokered an agreement on the matter.298 Under the agreement, Smotrich was handed authority over numerous—but not all—responsibilities of COGAT and the Civil Administration. As part of the new agreement, a settlements administration was established within the Ministry of Defense under Smotrich's authority to manage and direct settlement activities in the Civil Administration and COGAT. In addition, the Civil Administration features a new position akin to a director-general, named as Yehuda Eliyahu, one of the co-founders of Regavim,299 alongside a civilian deputy head,300 selected by Smotrich, which is "professionally subordinate" to the head of a settlements administration, who is in turn subordinate to Smotrich. However, it was noted that in order


297 The Civil Administration is the Israeli government agency responsible for the administration and coordination of civilian affairs in the West Bank. COGAT is a rather unique and independent Israeli military-government agency that is responsible for implementing Israeli government policies in the territories (both the West Bank and the Gaza Strip). The head of COGAT reports directly to the Israeli Minister of Defense, and is in charge of coordinating civilian (and, to a slightly lesser extent, also security) issues between the Israeli government, the Palestinian Authority, and the international community. Although COGAT aspires to improve the living conditions of Palestinians, promote economic development, and maintain security and stability in the area—in effect its record is much more mixed. As the body tasked with coordinating Israel’s strategy vis-a-vis the territories at large and the handling of Palestinian lives and livelihood specifically, it deploys various strategies that limit and sometimes prohibit humanitarian measures, economic projects, and general civilian matters that aim to improve Palestinian lives.


300 The civilian deputy will oversee the enforcement unit of the Civil Administration for illegal construction. The agreement notes that enforcement policy will ultimately be determined by Netanyahu, along with Gallant and Smotrich.
to abide by the military chain of command, the civilian deputy will ultimately answer to the head of the Civil Administration, an IDF officer. Along with the day-to-day management of the civilian apparatus in the settlements, the settlement administration is also responsible for improving service provision to the settlers, promoting the regulation of outposts, approving settlement construction at every phase of the planning process (see diagram), enforcing and supervising construction, making decisions over expropriation of land, and setting policy for settlement agricultural farms.  

Powers remaining in the hands of the military apparatus of the civil administration include management of holy places, policy over and management of the permit regime, policymaking relating to the Palestinian economy, security coordination, the management of checkpoints and crossings (although this was defined in the agreement as “subject for a separate discussion”), decisions relating to the international community in the territories, and security legislation such as seizure warrants.

- In the legislative branch, a member of Religious Zionism—currently Simcha Rothman—will lead the parliamentary Constitution, Law and Justice Committee. This committee reviews and discusses most proposed legislation and also heads the Subcommittee for Judea and Samaria and the Seam Zone within the Ministry of Defense. This appointment will greatly enhance the influence of the right, particularly in the realm of West Bank policy and the effort to harden and expand Israel’s presence in the territory with the aim of making a future two-state separation impossible.

- Legalization of outposts and buildings in authorized settlements built on private Palestinian land by means of Knesset legislation. The main effort to retroactively legalize outposts or make it easier to do was the 2017 Regularization Law, which sought to retroactively legalize Israeli settlement outposts built on privately-owned Palestinian land in the West Bank. The law applied to approximately 4,000 homes and was widely criticized by the international community and human rights organizations. The law was challenged in the Israeli High Court of Justice, which struck it down in June 2018. The legalization of outposts—including those built on private Palestinian land—is a key goal for settlers and is expected to be a priority if the relationship between the legislature and the courts is upended.

- Changes to the West Bank-related legal advisory and representation

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302 Ibid.

303 Notably, in December 2020, a new bill was introduced in the Knesset that would retroactively legalize 65 additional outposts, many of which are located deep in the West Bank. If passed, the legislation would require the Israeli government to complete the legalization process for these outposts within two years.
mechanisms. The legal advisor to the IDF’s West Bank division was to move from the military’s authority to a new body within the Ministry of Defense. This means that the laws and rules, written by a newly-empowered legal department, that govern the operation of the West Bank will no longer be written under the auspices of the military commander but rather under the guidance of the civilian minister. Relatedly, the legal officers’ responsibility to the needs of Israeli civilians will be enhanced, and their responsibility to those of the local population in the occupied territory reduced, in contradiction to Israel’s obligations under international law as the occupying power.  

- Continuing the installation of Israeli law via military orders. In order to decrease the gap between the lives of Israeli citizens living in settlements and Israeli citizens within pre-1967 Israel, military orders will be issued to adapt the security legislation in the West Bank to Israeli law. The project will be under the responsibility of the new minister in the Ministry of Defense, with enhanced capacity to the legal advisory unit (which, as noted, will be moved from the West Bank division to the new department in the Ministry of Defense), placing the entire project under actors actively seeking to promote and enhance the settlement enterprise. In all likelihood, the standardization of applying civil law through military law will not include Palestinian rights—even those who work in Israeli settlements. Thus, two legal systems will be further entrenched in the West Bank.

- The state’s responses to petitions filed with the High Court of Justice concerning these areas of responsibility will be placed under the additional minister in the Ministry of Defense, which will likely restrict the ability of government lawyers to express views that differ from those of the minister. This will allow pre-settler elements to codify and expedite the legal arguments underpinning its policy shift toward consolidating Israeli hold over Area C.

- Expanding the powers of the Ministry of Public Security and turning it into the Ministry of National Security.

According to the coalition agreements, the autonomy of the Israel Police was to be limited as they would be subordinated to the minister of national security, currently Jewish Power’s (Otzma

304  “It is necessary to address the existing operating model of the legal advisors to the Judea and Samaria districts, in which a handful of young uniformed officers influence almost every civil action in the Civil Administration. These officers come from the military prosecutor’s office without civilian experience, and find themselves in a position similar to that of legal advisors of government ministries. They make decisions at critical intersections of legislation, planning and construction, environmental quality, and more. All this in the absence of the required knowledge, and without an experienced understanding of the complex reality and the demands of the political level... In summary, I call on the new government to nationalize the positions of COGAT and the head of the civil administration, as well as to nationalize and adapt the mechanism of the legal advisory of the Judea and Samaria district, until the application of Israeli sovereignty over the Israeli settlements...” (Translated by the authors) See Kobi Eliraz, “Another solution is needed: the closure of the Civil Administration could harm the settlement in Judea and Samaria,” (Hebrew) Makor Rishon, 28 November 2022, online at https://www.makorrishon.co.il/opinion/546951/
Yehudit) Itamar Ben Gvir, who will determine law enforcement policy. This could lead to political interference and other extraneous considerations in the work of the police, making their actions highly dependent on the political views of the minister rather than dependent on the police commissioner, who is not a political appointee. The Israel Police are responsible for maintaining law and order for all citizens and residents of Israel and East Jerusalem, as well as for Israeli settlers in the West Bank, including addressing incidents of settler violence against Palestinians.

- **Increasing capacity—authority and administration—of civilian (non-defense) ministries to become directly involved in promoting a settlement agenda.**

  - The Israel Antiquities Authority and the Council for the Preservation of Israel Heritage Sites was to be placed under the authority of the minister of heritage from Jewish Power, and will likely be used to promote an exclusionary Jewish identity agenda.

  - Ministers from Jewish Power were to gain control over the Planning and Agricultural and Settlement Development Authority, the Green Patrol, and the National Unit for Enforcing Planning and Construction Laws, which play a significant role in settlement and outpost expansion and limit Palestinian construction in the West Bank.

- **Land Registration in Area C of the West Bank.** The process of land registration in the West Bank began during the British Mandate and continued during Jordanian rule. By the time Israel occupied the West Bank in 1967, about one-third of West Bank land had been registered. However, in 1968, the IDF Advocate General froze the process. The registration of land in Area C in the name of the state effectively places land under Israeli hands, and it is often subsequently used for settlement expansion or other purposes. Because land registration is irreversible once the process is completed and the default assumption in the land survey process is that all land is public (which Israel designates as ‘state’) land unless proven otherwise, with a very high burden of proof resting on Palestinians to demonstrate land ownership, it is likely that a significant amount, if not most, of non-registered Palestinian land in Area C will be lost if such a survey process is completed. A push

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305 The process was stopped due to several reasons: land registration has permanent, irreversible status and international law assumes that all occupations are temporary; hundreds of thousands of Palestinians fled the West Bank during the 1967 War and were not allowed to return, leaving behind what Israel called “absentee property” whose owners were not allowed to be present to register it, and necessary information for the surveying process was in Jordan and therefore inaccessible to Israeli authorities.
for the renewal of the land registration process is expected.  

**THREAT 3:**  
**SIGNIFICANT/FORMAL DE JURE ANNEXATION OF PARTS OF THE WEST BANK**

The intention to apply Israeli sovereignty to the West Bank is a pillar of many Religious Zionist theological and political leaders. Bezalel Smotrich's 2017 "Israel Decisive Plan" notes: (emphasis added)

> [Israeli victory] will be achieved ... with an unequivocal Israeli statement to the Arabs and the entire world that a Palestinian state will not emerge—but primarily with deeds. It requires the application of full Israeli sovereignty to the heartland regions of Judea and Samaria, and end of conflict by settlement in the form of establishing new cities and settlements deep inside the territory and bringing hundreds of thousands of additional settlers to live therein. This process will make it clear to all that the reality in Judea and Samaria is irreversible, that the State of Israel is here to stay, and that the Arab dream of a state in Judea and Samaria is no longer viable. Victory by settlement will imprint the understanding upon the consciousness of the Arabs and the world that an Arab state will never arise in this land.

As noted above, Likud's coalition agreement with Smotrich's Religious Zionism party states, "The people of Israel have a natural right to the Land of Israel. In light of the belief in the aforementioned right, the prime minister will lead the formulation and promotion of policy within the framework of the sovereignty of the Jewish people, while choosing the timing and weighing all the national and international interests of the State of Israel."

In 2020, the possibility of significant de jure annexation became a major point of contention in Israel when Netanyahu announced plans to annex up to 30% of the West Bank under the auspices of Trump's Peace to Prosperity plan. Both Trump's plan and the plan to take first steps toward its implementation by annexing West Bank areas to Israel were fiercely objected to by the Palestinians, the international community, and many in Israel's national-security apparatus, including their representatives in the coalition and cabinet, mainly Minister of Defense Benny Gantz and Minister of Foreign Affairs Gabi Ashkanzi. Annexation was perceived as a major threat to the viability of a two-state outcome, to stability in the Palestinian territories (to the point of threatening the existence of the PA), to regional alliances (and specifically to the Hashemite rule in Jordan), and to

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306 In November 2020, a hearing was held in the Knesset as part of a campaign by settlers to resume the land registration survey in Area C of the West Bank. At the hearing, representatives from relevant government ministries did not voice objection and representatives from the Israeli Civil Administration recommended starting a pilot land registration program in several villages.

307 See Bezalel Smotrich, Israel's Decisive Plan, 2017, Hashiloach, online at https://hashiloach.org.il/israels-decisive-plan/

Israel’s international standing (directly contradicting Israel’s claim that its control of the West Bank was a temporary, belligerent occupation).

The possibility of major de jure annexation remains unlikely, but is still more than a theoretical concern. Although international and regional geopolitics remain a meaningful barrier to its execution, powerful factions within the new Israeli government support such a move.

The annexation of large areas of Area C of the West Bank would have serious international, regional, and bilateral consequences for all parties. Strategically, formal annexation would likely trigger a chain reaction that could ultimately bring down the Palestinian Authority, and place on Israel the burden of providing services and infrastructure to a large and likely hostile population. Formal annexation would thus fundamentally undermine the viability of a two-state outcome by altering the territorial balance between the two sides and effectively eliminating a Palestinian partner for a two-state agreement. In this context, annexation would also risk immediate security deterioration—certainly in the territories and perhaps in the wider region.

In addition to harming the prospects for peace, annexation would also set back regional normalization processes, including the 2020 Abraham Accords, which have helped to improve relations between Israel and several Arab states. These agreements have generally been predicated on the understanding that Israel would halt its plans to annex West Bank lands. Annexation would call this understanding into question and could potentially lead to a backlash from Arab states that have normalized relations with Israel. Even if it does not result in the formal suspension of the Abraham Accords, it will put serious strain on these relationships and make their long-term growth far more difficult while hampering their success.

Certainly, annexation would have serious consequences for Palestinians at large—both those who live in the annexed areas (and would be subjected to direct Israeli civilian rule) as well as the majority of Palestinians in Areas A and B who would lose hope to ever gain a contiguous state on the remaining West Bank.

The closing of a window for two states would also harm Israel’s relations with America, and provide a tailwind to calls for the United States to condition or reduce its military assistance to Israel, along with providing fodder for voices that increasingly call the U.S.-Israel partnership into question over Israeli policies in the West Bank.

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In summary, formal annexation, creeping de facto annexation, and creeping de jure annexation constitute different types of challenges, though they ultimately share the same purpose. They are related challenges, representing a tactical chain. Creeping de facto annexation of the West Bank has been taking place for years and under successive Israeli governments, and the United States has confronted this dynamic with different tactics, mostly unsuccessfully in light of the results on the ground. Creeping de jure annexation is a new element, and it follows from the success that the settlement enterprise has had with de facto annexation. Parts of the current
Netanyahu government are working to extend their success at establishing facts on the ground into the realm of tangible legal and administrative changes, which are designed to make de facto annexation measures harder to stop or reverse and to pave the way for the eventual next, and final, step of formal de jure annexation.

De facto annexation is meant to lead to creeping de jure annexation, which is meant to lead to formal de jure annexation/application of sovereignty over large parts—or even the entirety—of the West Bank. While the United States, in conjunction with other global actors, has successfully warded off formal de jure annexation up until now, the risk is that focusing the bulk of its efforts on this overwhelming threat will allow the two more proximate threats to proceed, ultimately making formal de jure annexation inevitable.

U.S. policy needs to both be more nimble, and take into account its past failures. History demonstrates that as the United States continues to pivot to other areas of the world and other foreign policy priorities, taking a one-size-fits-all approach to the West Bank is doomed to be even less effective. Any successful policy going forward should take as a starting point the ultimate goal of reaching a two-state outcome and structure its focus around what types of Israeli settlement and settlement-related activities in the West Bank present the greatest danger to two states. A more targeted approach also means a multi-faceted approach that accounts for the territorial, security, economic, and psychological dimensions of Israel’s presence in the West Bank, and the differing motivations behind and consequences of settlement activity.
Policy Proposals

Despite the widespread opposition to settlement activity from successive U.S. administrations, efforts to counter their expansion have been largely futile. This ineffectiveness can be attributed to the prevailing domestic political climate in the United States regarding Israel and a strong bipartisan desire not to risk an effective intelligence and security relationship over West Bank settlement policies. Consequently, a striking consensus of current and former U.S. officials struggle to see effective U.S. mobilization to counter settlement expansion, not to mention the rollback of existing settlements.

A major shift in the U.S. domestic political climate or U.S. regional strategic priorities, which would lead to a strategic change regarding Israel’s West Bank policies, including settlements, is not forthcoming. In the meantime, there is a need to re-evaluate and adjust current policies, as well as consider new approaches that may help to mitigate the effects of settlement expansion.

There are two elements to a U.S. policy adjustment on settlements. One is the adoption of a set of policies in different buckets that will reorient the U.S. position firmly and unambiguously in support of two states by highlighting the ways in which Israeli settlements make that outcome increasingly difficult, if not impossible.

The second is a shift in how the United States approaches the settlement issue with Israel bilaterally. This shift focuses on the functional impact of settlements on a future diplomatic resolution, rather than treating all settlements as functionally equivalent. While such an approach—one that differentiates between settlements based on their location, size, and nature—would represent a significant departure from previous U.S. policy and would appear to some as acquiescence to Israeli claims while undercutting the Palestinian position, the intent behind it is entirely different. It is aimed at recognizing that the current political, diplomatic, and territorial realities and trends do not favor a two-state outcome, and that something must be done to halt the momentum that is inexorably building toward Israeli annexation of West Bank territory. As a result, the only realistic chance of success at building towards two states is to train American policy on the types of Israeli activities that are the most damaging to the two-state endgame in order to preserve a semblance of territorial contiguity and viability for a future Palestinian state.
Proposal 1: Reorienting U.S. Policy in Support of Two States

Bucket 1: Adjust and Clarify U.S. Positions

**CLARIFY THE U.S. POSITION REGARDING ITS SUPPORT FOR A TWO-STATE REALITY (AND ULTIMATELY A PERMANENT OUTCOME) AND THE CONDITIONS FOR ITS EMERGENCE.**

In the face of growing calls to abandon the two-state paradigm, the United States should make clear that, beyond its adherence with international law and diplomatic consensus, the two-state formula remains by far the best outcome for two peoples—Israelis and Palestinians—who hold strong national identities, who aspire to and deserve national self-determination, and who do not want to share the same geographical and political space.

In tandem, the United States should lay out its vision for improved conditions so that a two-state reality can emerge—either as a product of negotiations between the sides or via coordinated unilateral steps each side can take that would increase measures of separation, security, freedom, prosperity, and national self-determination.

**ADJUST THE U.S. POSITION IN SUPPORT OF A TWO-STATE OUTCOME BY RECOGNIZING THE ATTACHMENT OF BOTH PEOPLES TO THE LAND**

Beyond the reaffirmation of its position on a two-state outcome, the United States should consistently adopt more inclusive language and framing that recognizes the attachment of both peoples to the land, enduring religious connections, and their respective historical ties, including references to notions of Jewish and Palestinian peoplehood and national homelands. The explicit adoption of a more holistic U.S. position on a two-state outcome that encompasses both the material elements (security, borders, and demographics) as well as the symbolic elements (heritage, history, and religion) would

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310 Among Jews the biblical centrality of Judea and Samaria is such that it is unthinkable for rabbinic leaders to excise them from the homeland. And among Palestinians the notion of forgetting 78% of their homeland is unthinkable not only to refugees and their descendants whose families originate from these areas, but virtually to all Palestinians who see the entire land as their national genesis. Furthermore, Palestinian citizens of Israel have strong historic attachments to these areas on which they continue to live. Such positions also apply to the religious sanctity of the land. Whereas the concept of a homeland is a national one, of mostly secular origins, language regarding the sanctity of the entire land in all three monotheistic faiths opens the door to the United States as an interlocutor in the vital conversation regarding the challenges and opportunities which stem from the notions of sanctity in the three faiths.
deliver a stronger message demonstrating U.S. awareness of the complex national identities, core values, and religious beliefs that go often unacknowledged in diplomatic talk. President’s Biden July 2022 remarks in Bethlehem, cited above, are an encouraging first step. Such framing could contribute to increasing the buy-in and support of societal groups who feel that the traditional articulation of a two-state outcome has invalidated their legitimate religious claims and ties.

For example, the United States could use recognition of the distinct attachments to the entirety of the land, including Jerusalem, of the two peoples—Jewish-Israelis and Arab-Palestinians—and the three religions—Judaism, Islam, and Christianity—to demonstrate American attentiveness to both national and religious worldviews, as well as inclusiveness toward all relevant constituencies. It would send a signal that the United States is cognizant that should a two-state outcome materialize, areas of the homeland of each nation will ultimately fall under the other state’s sovereignty.

**INTRODUCE AND CODIFY UPDATED PARAMETERS FOR A TWO-STATE OUTCOME, INCLUDING THE INTEGRITY OF THE 1967 LINES WITH MUTUALLY AGREED AND EQUAL SWAPS**

Together with other final-status issues, the United States should reaffirm its pre- and post-Trump position that a two-state outcome would include borders that are based on the 1967 lines with mutually agreed land swaps and two capitals in Jerusalem, and reinforce the notion that enhanced settlement activity is inconsistent with this vision.

In addition to making clear that settlements are and will remain violations of international law until a final-status agreement is concluded, the United States could adjust its own position regarding final borders in ways that make clear settlement and annexation activity contradicts the U.S. vision:

- Endorse equal land swaps, as “mutually agreed” swaps do not by definition commit Israel to compensate the Palestinians with the exact size (if not quality, which is a less exact parameter) of the territory Israel would annex in the context of an agreement over land swaps. The principle of equal swaps would disincentivize the expansion of settlement blocs to areas that would then require Israel to compensate the Palestinians with more lands from pre-1967 Israel.

- Endorse an upper limit on land swaps of no more than 3%-4% of the West Bank and Gaza in light of the infeasibility of equal land swaps once that number grows larger.\(^{311}\)

An additional layer to this concept would be for the United States to present its own final-status map after consulting both sides, making it the foundation of its policy, and mainly superseding the map associated with Trump’s Peace to Prosperity map, which

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accommodated all settlements. This map should feature limited land swaps on an equal (1:1) basis.  

**REASSERT U.S. OPPOSITION TO SETTLEMENTS AS LONGSTANDING BIPARTISAN POLICY**

Framing U.S. policy opposing Israeli settlements as a longstanding, historical bipartisan foreign policy is an important step in ensuring that this policy is understood and supported by the public and by policymakers. This should be done by highlighting the history of U.S. opposition to settlements—notwithstanding current Republican positions that downplay the problems arising from the settlement enterprise—and the fact that this position has been supported by both Democratic and Republican administrations. The administration should also emphasize that the Trump administration’s approach was an exception to this longstanding policy. By highlighting the factual history of U.S. opposition to settlements, the administration can create more room to increase pressure on the issue.  

**REITERATE U.S. POSITION ON THE ILLEGALITY AND PROBLEMATIC NATURE OF SETTLEMENTS AND OUTPOSTS AND NON-RECOGNITION OF ANNEXATION BASED ON INTERNATIONAL LAW**

The United States should express unambiguous opposition to both settlement expansion and annexation and effectively reverse Trump administration policies, including legal opinions, and return to clear distinguishing between Israel and the territories it occupied in 1967. The administration should revoke the Pompeo Doctrine and restore the longstanding U.S. view that settlements are inconsistent with international law and an obstacle to peace. Partially a corrective measure, a renewed U.S. affirmation together with a reiteration of opposition to unilateral annexation (spanning de facto to de jure), would send a signal that the United States upholds the key pillars of international law, and will interpret Israeli actions and measures through this prism. Special focus should be placed on the new phenomenon of legalization (under Israeli law) of outposts.  

**Bucket 2: Improve U.S. Multilateral Approach**

**CONTINUE TO CODIFY OPPOSITION TO ISRAELI ANNEXATION OF THE WEST BANK IN THE CONTEXT OF FURTHER REGIONAL NORMALIZATION**

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312 In the context of final-status negotiations, land swaps have materialized as a model for reconciling the conflicting demands of Israelis and Palestinians. The Israeli desire to include the majority of the settlers living east of the 1967 lines and the Palestinian aspiration for a sovereign and contiguous state based on the 1967 lines can be achieved through this method. By annexing settlements close to the 1967 lines, Israel can incorporate the majority of its citizens residing in the West Bank and East Jerusalem into its new borders. However, this would reduce the land available for the future state of Palestine, which is not acceptable to the Palestinians. A solution to this issue could be for each piece of land annexed by Israel, an equivalent piece of land would be given to the Palestinians. This would ensure the creation of a Palestinian state with a size equal to the West Bank and Gaza Strip. See “Borders and Territory” in Progress is Possible, the S. Daniel Abraham Center for Middle East Peace, online at [https://www.progressispossible.org/issues/borders-territory/](https://www.progressispossible.org/issues/borders-territory/).  

AGREEMENTS, AND IDEALLY ATTACH PALESTINIAN DELIVERABLES TO FUTURE AGREEMENTS

Following the example set by the Abraham Accords, opposition to Israeli annexation of West Bank areas should be a permanent feature in the expansion of existing and the emergence of new regional normalization agreements. This policy should aim to address all tones of annexation including the formal and creeping versions of de facto and de jure toward developing greater literacy in its various iterations. Such codification would send a clear message that the international community does not recognize Israeli sovereignty in any areas of the West Bank short of a final-status agreement.

Additionally, future normalization agreements could be made contingent on specific Palestinian deliverables, such as progress on political issues as well as security, governance, and economic development. Codifying opposition to annexation and tying it to Palestinian deliverables would provide a roadmap for future progress and a clear way to measure success.314

MAKE CLEAR TO ISRAEL THAT THE UNITED STATES WILL NOT EXERCISE AN AUTOMATIC DEFENSE OF SETTLEMENT POLICIES IN INTERNATIONAL FORA

Consistent with most past administrations, and based on the political context, the United States could allow condemnations of Israeli settlement activity and displacement of Palestinians even in fora where it has veto power. Consistent with this report, some Israeli actions should trigger a particularly strong U.S. posture: (1) changes to the legal status of the West Bank and systemic nature of Israel's control over them; (2) legalization of outposts or otherwise illegally-built settlements; (3) building or advancing plans to build in areas particularly relevant to the viability of a two-state outcome, like E-1, Givat HaMatos, E-2, and Atarot;315 (4) major displacement of Palestinian communities; or (5) challenging and changing the historic Status Quo on the Haram al-Sharif/Temple Mount (reaffirmed by Israel in 2015).316

Bucket 3: Bilateral U.S.-Israel Engagement

MOBILIZE A SUSTAINED PUBLIC DIPLOMACY EFFORT THAT MAKES THE CASE AGAINST SETTLEMENT ACTIVITY ON ISRAELI TERMS

Changing strategic priorities, the political landscape, and diplomatic fatigue have thrown U.S. policy makers into a passive mode, effectively accepting settlement activity as a democratic manifestation of the will of the Israeli public. But not unlike in other


315 The United States would be wise to expand this criteria to include the constructing of major new infrastructure that are meant to dramatically expand settlements and their connection to Israel, such as major bypass roads in the heart of the West Bank.

complex democratic contexts, governmental policy in Israel can diverge dramatically from the actual preference of the majority of Israelis, instead reflecting the interests of a committed mobilized minority. The Palestinian question may feature prominently in Israel’s international relations, but it is a marginal, neglected issue in the priorities of most mainstream Israelis, who are disconnected from Gaza, the West Bank, and the Palestinian parts of East Jerusalem by material and psychological walls. When asked (and as noted above this is not an organic concern), the majority of Israelis consistently prefer options of separation from the Palestinians—by agreement if possible, unilaterally if not.317

With that in mind, the United States should make the case publicly that the settlement enterprise harms Israel when measured by core Israeli interests held by many of its elected officials, the majority of its professional security leadership, and the population at large. In addition to noting key U.S. principles of international law and human rights, U.S. officials should highlight core Israeli interests of Jewish identity and security. Based on these, U.S. officials should make the case that the demographic reality west of the Jordan River, with or without Gaza in the calculation, will not allow Israel to remain a clear Jewish-majority state absent separation from the Palestinians, and that such separation becomes increasingly harder as settlements proliferate deep in the West Bank. The emerging reality of mixed populations at high levels of hostility and friction already makes tactical security difficult to maintain, and ultimately could prove destructive to trends of regional normalization and the countering of strategic security threats.318

Finally, relevant U.S. officials—and possibly soft power personalities such as celebrities and other elites—should help make the case that the continued, decades-long occupation of Palestinians is the defining challenge for the Jewish people in the modern era, and that the United States stands ready to help Israel change course toward separation from the Palestinians, ultimately into two states.

**CONTINUE TO EXERCISE PRESSURE ON THE SETTLEMENT ISSUE EVEN IN PARALLEL TO NEGOTIATIONS**

In the past, the Israeli leadership has asked for a cessation of pressure on settlements, arguing that they are focusing on the big questions of borders and a two-state outcome.

317 A series of discreet polls conducted between 2017-22 and made available to Israel Policy Forum shows that despite a steady decline in support for a two-state outcome among Jewish Israelis, a plurality (roughly a third) prefers this option to the conceptual alternatives: unilateral separation (roughly 30%), status quo (roughly 15%-20%), and annexation of West Bank territories (roughly 20%). A late 2022 poll by the Institute for National Security Studies (INSS) identified similar preferences. “When the public was given the possibility of choosing between several different options, the preferred option was separation and striving for a comprehensive arrangement, meaning two states for two peoples: 56% supported this (arrangements for separating from the Palestinians—31%, striving for a comprehensive arrangement, meaning two states for two peoples—25%). In addition, 12% of respondents supported the continuation of the existing situation; 10% supported a binational state without giving full and equal rights to Palestinians; 5% supported the option of a single binational state with full and equal rights for Palestinians; and the rest responded that they don’t know.” See Ruth Pines Feldman, “National Security Index: Public Opinion, 2022-2023,” Strategic Analysis for Israel 2023, Institute for National Security Studies (INSS), online at https://www.inss.org.il/publication/national-security-index-2023/

318 In making this case, the United States can rely on the absolute vast majority of former high-ranking Israeli security officials.
However, the continued expansion of settlements has delegitimized these same negotiations and has contributed to their collapse. The U.S. government should remain cognizant of the high likelihood that a conflict-ending agreement may not materialize out of negotiations and make sure the negotiations period is not used for accelerated settlement expansion.

**SUPPORT PALESTINIAN DEVELOPMENT IN AREA C, INCLUDING ZONING, PLANNING, AND CONSTRUCTION PERMITS**

In parallel to its policy on Israeli settlements, the United States should support the approval of Palestinian masterplans, construction, and development in Area C, while at the same time pressing Israel to halt the demolitions or seizures of Palestinian structures and evictions. This should include working with the Israeli government, COGAT and the Civil Administration, and in parallel with the Palestinian Authority or other Palestinian representatives at the local, academic, or NGO levels, to facilitate the approval of masterplans, construction permits, and other necessary regulations for Palestinian development in Area C. This could include providing financial support for Palestinian development projects, technical assistance to help Palestinians navigate the approval process, and other forms of support.

**CONTINUE THE SYSTEMATIC MONITORING AND REPORTING OF SETTLER VIOLENCE**

To effectively address the notable rise of settler violence in the West Bank, the United States should continue, and where possible strengthen, its efforts to systematically monitor and report on incidents and trends. Through bilateral engagement the United States should press Israel to bolster its law enforcement procedures, deterrence practices and accountability mechanisms to tackle the full range of Jewish nationalist-motivated crimes targeting both Palestinian people and property, prioritizing highly volatile flashpoint areas with potential for further escalation. Furthermore, the United States should emphasize to Israel that settler violence not only raises human rights concerns but also undermines Israeli security and compromises the IDF's ability to confront other critical security challenges, directly conflicting with the U.S. and Israel's national interests.  

**CONTINUE TO CODIFY NON-RECOGNITION OF ISRAELI SOVEREIGNTY IN THE WEST BANK VIA BILATERAL AGREEMENTS AND REGULATIONS**

The United States (and European governments) have implemented policies that limit cooperation and agreements with Israel to its recognized territory, excluding Israeli settlements in the territories occupied since 1967. In effect, such a differentiation policy means clear cooperation with Israel stops at the 1967 lines, which separate the West Bank and Gaza from Israel. This policy had been in place for several decades until the Trump administration ended it in November 2020, and is based on domestic law, not boycott or sanctions. As the settlements have grown and Israel's foreign ties have intensified, the

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320 Based on policy recommendations developed by the Economic Cooperation Foundation (ECF) on ‘Enhancing Law Enforcement Against Jewish Nationalist-Motivated Crimes in the West Bank,’ March 2023, on file with ECF and made available to IPF. For more data and analyses, see [https://ecf.org.il/](https://ecf.org.il/)
An Unsettled Question: Recalibrating U.S. Policy on Israeli Settlements

The issue has become more prominent, especially in relation to the European Union. While Israel typically opposes external differentiation between its territory and the settlements, it often complies with such limitations in order to benefit from cooperation and agreements with its international partners.

DEVELOP A SET OF ECONOMIC INCENTIVES THAT COUNTER SETTLEMENTS

The U.S. government could provide Israel with additional economic incentives such as preferential trade conditions or investment opportunities in exchange for reversing and/or halting settlement activity.

For example, a U.S. administration could offer Israel access to special economic programs if they agree to freeze or reduce settlement construction. In the context of future trade agreements, the United States could provide preferential treatment in terms of tariffs, quotas, or other trade-related measures, in exchange for curbing settlements.

SUPPORT A VOLUNTARY COMPENSATION AND ABSORPTION LAW FOR THOSE SETTLERS LIVING EAST OF NARROWLY DEFINED SETTLEMENT BLOCS

The United States could lend its political and material support to reversing the trend of settlement expansion and initiate a voluntary compensation and absorption mechanism—legislated in Israeli law and executed via both governmental and non-governmental entities—for settlers who reside east of the barrier and are interested in relocating to Israel-proper or to the very few settlements deemed consistent with a viable two-state outcome.

Studies of a representative sample of settlers outside major blocs (the roughly 140,000 who fall outside the scope of relatively modest land swaps and are therefore most detrimental to a two-state outcome) show that about half of non-ideological settlers (specifically in the settlement of Ariel and other quality-of-life settlements) are willing to positively consider an evacuation-compensation package even before an agreement, as compared with less than a quarter of the ideological settlers. If enhanced, the number of settlers who would consider relocating westward could reach thousands, if not more.321

Bucket 4: Improve U.S. Societal and Situational Understanding

IMPLEMENT ACCESSIBLE, SHORT GEOGRAPHICAL EDUCATION FOR U.S. OFFICIALS

U.S. officials, the majority of whom are not on the ground and have wide portfolios, do not always have a complete knowledge of the territorial dimension of the conflict, and many of those who do operate below policymaking levels. This lack of knowledge can

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lead to suboptimal decision-making that centers exclusively around principled opposition ("all or nothing") and struggles to outline a strategy of mitigation beyond anecdotal, intuitive whack-a-mole policies against the most disruptive settlement plans. Ultimately, U.S. policymakers find themselves at a systemic disadvantage vis-à-vis their Israeli counterparts when it comes to discussion over settlements, at times unable to articulate complex opposition and deflect specious arguments by Israelis.

The U.S. should create a training module focused on geographical dimensions of the conflict that should be accessible and relatively short. Its key objective would be to ensure that officials are able to learn the information in a timely manner without feeling overwhelmed. The program should also address any fears that officials may have about maps or geography, and provide a supportive and encouraging learning environment. Implementing such a program will increase knowledge, confidence, and improve decision making.

**DEVELOP LITERACY IN SETTLER AND SETTLEMENT-RELATED WORLDVIEWS AND MOTIVATIONS, INCLUDING RELIGIOUS AND SECULAR IDEOLOGICAL DRIVERS**

The United States has approached the Israeli-Palestinian conflict through a secular, liberal, realist paradigm that almost exclusively emphasizes power dynamics and material considerations and largely leaves non-liberal and especially religious worldviews unengaged. Understanding religious motivations and key values of the pro-settlement movement may prove to be valuable in developing more effective policies regarding the conflict at large and its territorial dynamics in specific.

More concretely to the settlement issue, U.S. officials could frame their policies in terms that are less contradictory to Jewish national religious pillars of redemption of Eretz Yisrael. The United States would be much more effective in slowing down or halting harmful settlement activity if it were able to frame its position against it (and against the dispossession of Palestinians) in terms that relate to core values of pro-settler religious Zionists.

**INCREASE U.S. INVESTMENT IN MONITORING ISRAELI SETTLEMENTS IN THE WEST BANK**

To enhance the monitoring and reporting of Israeli settlements in the West Bank, the United States should increase its investment in the monitoring of Israeli settlements in the West Bank. This should include increasing the number and capacity of settlement monitors, and making their findings available to the public in a periodical report. The United States could also engage with third parties, including state actors, international organizations, and civil society experts, to enhance the monitoring and reporting of settlements. Existing or past systemic platforms could be enhanced or operationalized, such as the reporting of settlement activities in the context of the loan guarantees deductions or the Roadmap monitor.
Proposal 2: Developing a U.S.-Israeli Agreement Over a Partial Settlement Freeze in the Context of a Differentiated Approach to Settlement Construction

While maintaining strong opposition to settlement activity, the United States should engage Israel and reach an agreement over a partial—as opposed to a complete and comprehensive—but strict settlement freeze, with clearly defined terms. This agreement would implement a policy of differentiating between different settlement construction in an attempt to identify spots where construction harms a future two-state outcome versus spots where new construction will not meaningfully impact the possibility of territorial separation. If such an agreement is not possible, the United States should orient its own internal policy around its determination of how such construction is differentiated, and U.S. responses to Israeli settlement construction should take this differentiation into account, with more strident measures adopted for Israeli construction in territory that the U.S. deems problematic for its impact on a two-state resolution.

WHAT ARE SETTLEMENT BLOCS?

The majority of settlers reside in blocs, predominantly thickly populated, concentrated clusters of settlements that abut the 1967 lines. Loosely termed, with no official or legal definition, the precise definition of settlement blocs vacillates depending upon political intent and has evolved over the years. Although the blocs include a minority of the settlements, most definitions of settlement blocs ultimately include the majority of Israelis currently residing in the West Bank and East Jerusalem. One extremely helpful reality is that 75% of the Israelis living east of the 1967 lines reside in relative proximity to them, mainly in East Jerusalem, in two ultra-Orthodox cities (Modi’in Illit and Beitar Illit), in the Etzion bloc and Efrat, in Ma’ale Adumim, in Giva’ot Ze’ev, and in a handful relatively smaller settlements within a couple of kilometers of the 1967 line, comprising approximately 3%-4% of the West Bank’s territory.

In the context of final-status, this reality means that minor modifications to the 1967 lines could incorporate the vast majority of Israelis living east of it within Israel’s new borders while allowing for the emergence of a viable Palestinian state.
DELINEATING SETTLEMENT BLOCS

Since the mid-1990s, various definitions of settlement blocs have been proposed, mainly in the context of border negotiations as part of a final-status agreement. The various bloc iterations vary in the size of area they include, their intrusiveness into the West Bank, the related number of settlements and settlers that are included within them, and the exact delineation of the line that defines them.

Unlike outlying settlements scattered throughout the West Bank to fulfill religious objectives and to disrupt Palestinian contiguity, settlements in blocs are grouped together and seen by Israel as a cohesive unit from a security and administrative perspective. When Israel decided to build a barrier as part of its defensive posture during the Second Intifada, it included what it defined as large settlement blocs and surrounding areas within the planned perimeter. In previous negotiations, Israel has consistently included similar settlement blocs and most of their surrounding areas in its territorial proposals and maps.  

For their part, the Palestinians perceive the settlement blocs in the same way as the rest of the West Bank settlements: illegal. However, political reality has forced Palestinian negotiators to reluctantly accept land swaps by which Israel would annex some settlements, under the condition that the new state of Palestine receive in return lands that are equal in size and quality. Palestinians have consistently insisted that land swaps be kept to a minimum. In previous bilateral negotiations, the Palestinians have presented maps that envisioned equal land swaps of at most 2%-3% of the territories.

As noted earlier in this report, distinguishing between variations of settlement blocs and their implications on a two-state outcome remains a subject of contention. Some large settlement blocs that are adjacent to the 1967 lines are expected to fall under Israeli sovereignty in a future peace agreement (even according to past Palestinian border proposals); other iterations of blocs extend deeper into the West Bank and are more harmful to a two-state outcome, both by fragmenting the territory of the West Bank as well as retaining sensitive areas, mainly in and around Jerusalem, under Israeli control.

In the context of the final-status negotiations of 2000 (Barak-Arafat) and 2008 (Olmert-Abbas), the major disagreements were about the intrusiveness of land swaps into the West Bank—mainly Israel’s position to annex Ariel (and the settlements leading up to it) and settlements in the greater Jerusalem area, mainly Giv’at Ze’ev and Ma’ale Adumim alongside their satellite settlements. Palestinian claim that if annexed to Israel, both areas would fatally impede Palestinian territorial contiguity and development options.

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MAP: SETTLEMENT BLOC ANNEXATION UNDER VARIOUS TERRITORIAL PROPOSALS

Palestinian Map (Abbas, 2008)


Shaul Arieli (2020)

Israeli Map (Olmert, 2008)

Israeli Barrier (Full Trajectory)

Trump Plan (2020)
A DIFFERENTIATED SETTLEMENT POLICY

In developing a differentiated approach, the United States should follow a strategy based on three principles. This strategy should only be implemented as a bilateral agreement between the U.S. and Israel, under which differentiating between how the U.S. treats settlements results in clear Israeli commitments in return.

**Principle 1: In the context of a bilateral U.S.-Israel agreement, recognizing areas that will be part of Israel under any future permanent-status resolution and limiting settlement construction to those areas only**

Rationale: Areas that will become part of Israel under any future agreement are those to which the Palestinian leadership has already agreed, provided an equal territorial swap. It therefore refers to the Palestinian “1.9%” map,” presented by the PLO in the 2008 Annapolis negotiations.

Practically, this principle will be applied as follows:

- Incentivizing Israel to build only inside the 1.9% areas:
  - Roughly 60% of the Israelis east of the 1967 lines reside in these areas, which include most of the Jewish neighborhoods in East Jerusalem (except the controversial Har Homa neighborhood and additional destructive plans such as Atarot, see below), as well as Beitar Illit, the Etzion bloc, Modiin Illit bloc, Alfei Menashe, Oranit, Sha’are Tikva, and Elkana.
  - It should be made clear that this line does not include the large empty areas defined by Israel as the municipal areas of these settlements. Still, it is 98 square kilometers in size, of which 73 square kilometers (roughly 75%) are not part of built-up areas of these settlements, and where Israel could therefore build freely.

- Granting formal recognition, in the form of a statement/letter, that the “1.9%” areas are expected to become part of Israel in the context of equal land swaps to be mutually agreed in a final-status agreement, and grant approval for construction within these areas.

- While not objecting to construction inside these areas, the United States will still consider these areas to be occupied and will deem settlements there to be “inconsistent with international law.” This will maintain the principle that only a negotiated agreement between the two sides can definitively change the territory’s status, and also guard against Israeli governments pocketing a U.S. concession and later violating any bilateral understandings without the United States being...

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This section is based on an early proposal developed by Celine Touboul, co-director general of the Economic Cooperation Foundation (ECF) and Dan Rothem. Original non-paper on file with Israel Policy Forum.
able to impose any consequences from its menu of policy options.

**Principle 2: In the context of a bilateral U.S.-Israel agreement, preserving a reasonable negotiating space between the 1.9% line and the line of the barrier without prejudging the outcomes of negotiations**

Rationale: A realistic zone of possible agreement between the positions of the two sides should:

- Exclude from the freeze (beyond the 1.9% area) areas that include a large number of settlers and are not overly intrusive into the West Bank;
- Include in the freeze areas that are highly detrimental to the viability of a two-state outcome.

The Geneva Initiative’s 2.2% map, with slight modifications that fit the above criteria, is a relevant reference for this purpose, as it was agreed upon, albeit informally, between former senior Israeli and Palestinian officials.324

Practically, this principle will be translated as follows:

- Approving construction only within the existing, narrowly-defined built-up areas of Etz Efraim, Givat Ze’ev, Ma’ale Adumim, Efrat, Migdal Oz, and Har Homa.
  - These settlements are not included in the 1.9% areas but most Israelis will view the inclusion of these settlements in the freeze as unacceptable. Israeli negotiators, as well as an array of track II efforts, slated these settlements for Israeli annexation as well.
  - The 1.9% area together with these settlements will account for 500,000, or 71.8% of all Israelis that reside east of the 1967 lines.
  - Notably, it does not include the finger of Ariel stretching 21 kilometers, or 13 miles, east of the 1967 line, or the Karnei-Shomron finger, both of which impede Palestinian livelihood and north-south contiguity.
- Unreservedly and harshly objecting to construction in areas highly detrimental to the viability of a two-state outcome, and using appropriate tools to end constructions in these areas:
  - Jewish construction or expropriation located within the Arab neighborhoods of East Jerusalem: Ma’ale Zeitim, Kidmat Zion, Beit Orot, Shimon Hazadik, Silwan, and any future ones
  - The area between Ma’ale Adumim and Jerusalem (E-1)
  - Givat HaMatos, the Lower Aqueduct, and the eastern

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324 For more on the Geneva Initiative, see https://geneva-accord.org/
development of Har Homa: construction of these areas would surround the Palestinian neighborhood of Beit Safafa from its West Bank and East Jerusalem surroundings, and would further consolidate the decoupling of Bethlehem from East Jerusalem.

- Atarot: its construction would obstruct the Palestinian neighborhoods of Beit Hanina and Shuafat from their West Bank surroundings, and would decouple Ramallah from East Jerusalem.

- E-2: the plan to expand the Etzion bloc/Efrat area northeast would encircle Bethlehem from the west and south and disrupt its connection toward the southern West Bank.

- Other settlement plans, including future ones, that would be deemed as destructive to a potential two-state outcome.

**Principle 3: In the context of a bilateral U.S.-Israel agreement, clarifying commitment to a two-state outcome**

Rationale: Translating a differentiated approach in the form of a partial freeze into a reaffirmed commitment to a two-state outcome by clarifying that negotiations over the final border between Israel and Palestine will be limited to the space between the 1967 lines and the barrier.

Practically, it entails:

- Enforcing a total freeze of settlement and settlement-related infrastructure in all areas east of the barrier, without exception.

- Asserting Israel's renunciation of sovereignty claims east of the barrier.

- Enacting a voluntary compensation and absorption law for settlers living east of the barrier interested in relocating to Israel-proper or to the areas defined within the partial freeze criteria.

To reiterate, these three principles operating in tandem are to be applied as an agreement between the U.S. and Israel, in which the United States does not object to settlement construction inside of predetermined and specifically-delineated blocs/areas and in return Israel implements a complete freeze outside of those predetermined areas. Doing so maintains the principle behind the Bush-Sharon letters and the settlement freeze clause embedded in the Roadmap for Peace, while eliminating any ambiguity over the terms. Without an agreement to which both sides adhere, dropping American objections to settlement construction—irrespective of where it takes place—will result in an even sharper slide into a one-state reality and an increased Israeli civilian presence in the West Bank that will be more difficult to arrest or reverse.

If such an agreement cannot be reached, the United States would be wise to adjust its position on settlement activity to accord with the same approach laid out in these three principles. This would involve a different strategy than a bilateral agreement as it would
not grant formal approval to any type of settlement activity, but it would employ the same geographic criteria in order to assess the relative harm to a two-state outcome of Israel government settlement plans, and deploy varying levels of opposition to align with the severity of the plans rather than allow any settlement construction to take place unopposed. For example, plans within the 1.9% would elicit more of a symbolic opposition, but would still be deemed illegal and illegitimate, noted in monitoring reporting, and subjected to U.S. regulations that differentiate territories beyond the Green Line from pre-1967 Israel. In contrast, plans that threaten Palestinian contiguity and prospects for two states would receive increasing levels of opposition, which could take the form of direct engagement by the U.S. ambassador on the ground all the way to the cabinet levels of the administration and ultimately the president, as well as other tools that the United States has at its disposal.

Whether through a bilateral agreement or through a unilateral policy shift, the United States should pursue a differentiated approach to Israeli settlements. Doing so will clearly place a two-state outcome at the center of U.S. policy, allow administrations to focus their energies on the Israeli moves that are the most damaging to U.S. interests, and shift away from a dynamic that has developed over five decades in which Israeli governments have a clear advantage over the United States despite nearly unbroken American objections.
Differentiated Settlement Policy

- 1967 Lines
- Israeli Security Barrier
- Israeli Security Barrier (Planned)
- Sensitive settlement plans west of barrier
- 1.9% area exempt from freeze
- Settlements in the 1.9% area - authorized construction
- Settlements west of barrier - exempt from freeze (within narrowly-defined build-up areas)
- Settlements west of barrier - freeze
- Settlements east of barrier - freeze and voluntary evacuation
Conclusion

Israel’s settlement enterprise has existed in earnest for over half a century. During that time, it has grown to encompass hundreds of thousands of Israeli citizens; assumed increasingly larger budgets in order to sustain; placed a burden on Israel’s security and its diplomatic relations; disrupted Palestinian quality of life and Palestinians’ hopes for statehood; and presented a consistently vexing problem for U.S. policies in relation to Israel and the wider Middle East. American policymakers from both parties and across administrations have employed a variety of tactics in an attempt to limit Israeli settlement activity, from rhetorical condemnations to more punitive measures. By any objective standard, U.S. efforts have largely failed, due to a combination of Israeli governmental resistance, lack of American governmental focus and bandwidth, American electoral politics, and the absence of accounting for the fact that Israelis do not view all settlements as monolithic despite an American and international insistence on treating them as such.

Pursuing a two-state outcome to the Israeli-Palestinian conflict is a clear U.S. interest, and while American policy has reflected this, it must be reoriented in a way that is more targeted to the desired outcome. The United States should continue to oppose settlement construction and expansion, but with a more holistic toolbox and with a greater acknowledgment of existing political and ideological realities, both in the United States and on the ground in the West Bank. The American pivot away from the Middle East that began over a decade ago, fatigue with the Israeli-Palestinian conflict, no significant political appetite to take a harsher approach that would entail cutting or conditioning security assistance to Israel, and the tradeoffs involved for U.S. interests in the region that would result from a prolonged battle with the Israeli government over settlements all point to attacking the problem with a scalpel rather than an ax.

While settlements are indeed inconsistent with international law, the United States should focus its response on the consequences of the settlement enterprise, many of which are deleterious to both Israeli and Palestinian lives as outlined above, rather than on the strict legal principles that it activates. Taking a bifurcated view of Israeli settlements and targeting the ones that are beyond a reasonable border in the context of an Israeli-Palestinian peace agreement, whether in the context of a bilateral U.S.-Israel agreement or in the context of unilateral U.S. measures, can be successful in arresting Israeli momentum toward West Bank annexation. Providing Israeli governments political and diplomatic space to build in narrowly-defined blocs (housing mainly ‘quality-of-life’ settlements) adjacent to the 1967 lines while taking effective measures to prevent construction outside of these narrowly-defined blocs acknowledges Israeli connection to the land, alleviates the cost of living issues that have made bloc settlements popular, and restores a horizon for a two-state outcome. It will also create pressure on the more radical national-religious elements of the settler movement to justify their increasing zeal for the types of settlement activity that place burdens on Israeli security, create maximum friction with the local Palestinian population, and serve as a drain on Israel’s budget. By painting all settlements with the same broad brush, U.S. efforts to restrain the settlement enterprise have been easily
caricatured by Israeli governments. Taking a differentiated approach puts the burden on the settlement enterprise to justify its defense of the most extreme settlements instead.

The window for a two-state outcome has been steadily narrowing for years, and the expansion of Israeli settlements deep in the West Bank represents the greatest current threat to that window closing entirely. U.S. policy on settlements must identify the elements of the settlement enterprise that put two states, Israel’s security and future as a democracy, and Palestinian quality of life and national aspirations most at risk, and work to halt and then reverse those elements. Absent such a shift, U.S. settlement policy is no likelier to be successful in achieving its goals moving forward than it has been over the past five decades.