

STRATEGIC PERSPECTIVES

Number 10 • 2012



Israeli Settlements, American Pressure, and Peace

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Jerusalem Center for Public Affairs
Institute for Contemporary Affairs
Founded jointly with the Wechsler Family Foundation

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Executive Summary

- President Obama apparently believed that pressuring Israel to halt construction of homes in Jewish neighborhoods in parts of Jerusalem formerly controlled by Jordan would advance peace. In reality, the opposite ensued. As a result, he was the first president since the Madrid conference in 1991 to have had no sustained high-level, direct negotiations between the parties. Never before were peace negotiations held up by putting the wish for a settlement freeze first. Mahmoud Abbas participated in 18 years of direct negotiations with seven Israeli governments, all without the settlements freeze that he now insists is an absolute precondition to begin even low-level talks.
- Obama's failure to distinguish construction in east Jerusalem from settlement activity in the West Bank put him at odds with the Israeli consensus. No major party in Israel, and no significant part of the Jewish public, is willing to count the Jewish neighborhoods that fall within the juridical boundaries of Jerusalem as "settlements" to be "frozen." Moreover, the concept of agreed settlement blocs laid the basis for a compromise between the Israeli and American governments. In his letter of April 14, 2004, President George W. Bush acknowledged that, "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."
- The Sharon government reached an understanding with the Bush administration to ban outward geographic expansion of established settlements, while reserving the right to continue expansion *inside the "construction line"* of existing houses. The *New York Times* reported on August 21, 2004, "The Bush administration...now supports construction of new apartments in areas already built up in some settlements, as long as the expansion does not extend outward." Almost all the construction that the Netanyahu administration has allowed is either in Jerusalem or in the settlement blocs, the two categories that Israel had thought were protected by understandings with the Americans. From the Israeli point of view, then, Obama violated an Executive Agreement that Sharon had negotiated with President Bush.
- Elliott Abrams, who negotiated the Bush administration's compromises on the natural growth of settlements, wrote in the *Wall Street Journal*: "There were indeed agreements between Israel and the United States regarding the growth of Israeli settlements on the West Bank. The prime minister of Israel relied on them in undertaking a wrenching political reorientation...the removal of every single Israeli citizen, settlement and military position in Gaza....There was a bargained-for exchange." Israelis were bitterly disappointed by the Obama administration's refusal to acknowledge agreements with a prior U.S. government that the Israelis considered vital and binding. Sharon aide Dov Weissglas said, "If decision-makers in Israel...discover, heaven forbid, that an American pledge is only valid as long as the president in question is in office, nobody will want such pledges."
- Stalled peace negotiations in the Obama years cannot be blamed on Netanyahu's policies of accelerating settlement construction. He has in fact slowed it down. What has undermined peace negotiations, rather, is Obama's policy on the settlements – and the unrealistic expectations that policy has nourished.

Israeli Settlement Activity – "The Third Rail"

America's steadfast support for Israel, expressed in poll after poll since 1949, stands on a solid foundation of common values and interests. The principal pillars of this unique relationship are a common Judeo-Christian heritage; a natural affinity of free-market democracies; mutual strategic interests including the struggle against terror and extremism; and a sense of shared destiny.

Like any relationship, the America-Israel alliance is sometimes beset by frictions. In recent years, principal among these is American unhappiness over Israeli settlement activity, the "third rail" of the U.S.-Israel relationship, spanning the terms of eight U.S. presidents since 1967. For those seeking to drive a wedge between the United States and Israel, the settlement issue has been the ideal pressure point. During the George H. W. Bush administration, tensions over settlements strained ties so severely that direct communication between the president of the United States and the prime minister of Israel ground to a halt.

But no president has gone as far as Barack Obama in placing the settlement issue squarely in the forefront of relations between the two countries. On May 27, 2009, just weeks after Benjamin Netanyahu's inauguration as prime minister, and before working to find common ground with Israel's new leader on areas of mutual interest, the Obama administration launched a high-profile public campaign to confront him on this most divisive and contentious issue. Standing in front of cameras with the Egyptian foreign minister, Secretary of State Hillary Clinton threw down the gauntlet to Netanyahu, announcing that President Obama "wants to see a stop to settlements – not some settlements, not outposts, not natural-growth exceptions."¹

On at least thirteen subsequent public occasions, Obama and his top officials have added ever more sharply expressed objections to the building policies of the Israeli government, often doing so in the presence of the Israeli prime minister himself. In his marquis speech to the Muslim world delivered in Cairo on June 4, 2009, Obama said, "The United States does not accept the legitimacy of continued Israeli settlements. This construction violates previous agreements and undermines efforts to achieve peace. It is time for these settlements to stop."² Vice President Joe Biden made equally sharp remarks on March 9, 2010, excoriating Netanyahu for planning-board approval of new housing units in east Jerusalem. Secretary Clinton was the most pointed of all: "The president was very clear when Prime Minister Netanyahu was here. He wants to see a stop to settlements....And we intend to press that point."

At a White House meeting on July 13, 2009, Obama was asked by American Jewish leaders if it was not a mistake to let so much "daylight" show between the United States and Israel. Obama shot back, "We had no daylight for eight years [under George W. Bush], but no progress either."³

Obama apparently believed that pressuring Israel to halt construction of homes in Jewish neighborhoods in parts of Jerusalem formerly controlled by Jordan would advance peace. In reality, the opposite ensued. Though Obama came into office determined to accelerate Israeli-Palestinian peace negotiations, he is about to complete a four-year term as the first president since the Madrid conference in 1991 to have had

no sustained high-level, direct negotiations between the parties. A largely ceremonial meeting between Netanyahu and Abbas took place in September 2010, followed by five lower-level, indirect meetings in Amman from October 2011 through January 2012. But the Palestinians came to these minor meetings grudgingly, and there has been no real bargaining between Israelis and Palestinians during the Obama years.

No president until Obama encouraged the Palestinians to believe that a "freeze on natural growth" of settlements could be made a precondition for peace talks. While the United States has never supported Israeli construction beyond the "Green Line," and many administrations have stated that such construction complicates the peace process, never before were peace negotiations held up by putting the wish for a settlement freeze first. It is a matter of record that Mahmoud Abbas participated in 18 years of direct negotiations with seven Israeli governments, all without the settlements freeze that he now insists is an absolute precondition to begin even low-level talks.

Obama's strategy of confrontation over settlements, in other words, has backfired. The Palestinian issue has now regressed to the pre-Madrid situation before 1991: Palestinians once again refuse to meet with Israelis, and speak of abandoning the two-state solution and returning to armed struggle.

By comparison, during the term of George W. Bush, who, Obama believes, did so little for Israeli-Palestinian peace, Abbas met with Israeli Prime Minister Ehud Olmert for talks that Abbas himself characterized as among the most productive ever held. Between the November 2007 Annapolis Conference convened by Bush, and the end of 2008, there were 288 negotiation sessions by 12 teams representing Olmert and Abbas, all while limited construction of Jewish homes in east Jerusalem and the settlement blocs continued.

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Madrid, Oslo I, Oslo II, the Hebron Protocol, the Wye River Memorandum, Camp David, Taba, the disengagement from Gaza, and the Olmert offer to Abbas – all these events over the course of two decades were made possible by a continuing agreement to disagree about Israeli construction of Jewish homes in Jewish neighborhoods outside the pre-1967 line in east Jerusalem.

Obama would have served his mission better had he taken the opposite approach to the relationship between settlements and peace. Getting to negotiations, and producing an agreement on borders, would eliminate the settlement issue forever. Once the border between the two states is agreed, all communities on the Israeli side will be recognized as under the sovereignty of Israel, and no Israeli communities are likely to remain inside what will be recognized as sovereign Palestine. Indeed, Mahmoud Abbas has himself acknowledged that settlements are not the main barrier to an agreement. When he negotiated with Ehud Olmert in 2008, Abbas said, "The built-up area of all the settlements was [only] 1.1 percent [of the West Bank territory], so when I offered them 1.9 [percent of the disputed territory in a 'land swap'], it was more than enough" to permit an agreement.⁴

By now, it should be obvious even to those who cheered Obama on as he confronted Netanyahu that the strategy of public confrontation over settlements has been counterproductive. Abbas himself told *Newsweek* in April 2011, "It was Obama who suggested a full settlement freeze. I said OK, I accept. We both went up the tree. After

that, he came down with a ladder and he removed the ladder and said to me, jump. Three times he did it.”⁵ Even Obama’s Special Envoy for Middle East Peace George Mitchell now concedes that it was a mistake to allow the Palestinians to think that a freeze on settlements could be a precondition.⁶

But there were other mistakes in Obama's approach, about which less has been said. The maximalist terms that Obama sought to impose made a solution less likely. Had he framed the settlement issue in terms that distinguished between vital Israeli interests and areas where compromise was possible, he might have been able to secure changes in Israeli policy. Instead, he framed the choice in all-or-nothing language, hardening past American policy on several issues of critical importance to Israel. Because these less-noticed changes compounded Obama's missteps and planted the seeds for future trouble, they merit a closer look than they have received until now.

Jerusalem

Obama's failure to distinguish construction in east Jerusalem from settlement activity in the West Bank put him at odds with the Israeli consensus from the start. Few in Israel conflate large, established Jewish neighborhoods in Israel's capital with "non-consensus" settlements on remote West Bank hilltops. "East Jerusalem" Jewish neighborhoods like Ramot, Ramat Shlomo, Neve Yaakov, Pisgat Ze'ev, East Talpiot, Har Homa and Gilo, many now forty years old, are seen as much a part of Israel as Tel Aviv. More than 40 percent of the Jews who live in Jerusalem (195,500 out of 480,000 in 2008) live beyond the pre-1967 line in what Palestinians consider "occupied territory." No major party in Israel, and no significant part of the Jewish public, is willing to count the Jewish neighborhoods that fall within the juridical boundaries of Jerusalem that were recorded in the "Basic Law–Jerusalem" in 1980, as "settlements" to be "frozen," regardless of whether they are on land that was under Jordanian rule before 1967 or not. These Jewish neighborhoods are considered an integral part of the sovereign State of Israel. Even among Israelis who are willing to relinquish Arab-populated areas of Jerusalem to achieve a comprehensive peace agreement (perhaps half of the Israeli public), there is almost no support for sacrificing or impeding the Jewish communities inside the city limits.

In Resolution 478, the UN Security Council ruled that the "Basic Law–Jerusalem" is "Null and void...a violation of international law."⁸ Yet in the decades before Obama took office, U.S. officials did not object strenuously to construction of Israeli homes in east Jerusalem. They understood that such construction was a vital Israeli interest, and one supported across the Israeli political spectrum. Although the U.S. also did not formally recognize Israel's sovereignty over the area, America did grant a degree of tacit recognition to a distinction between east Jerusalem and the West Bank. The State Department, for instance, did not lump Israeli communities within Jerusalem into its "settlements" statistics.

But Barack Obama moved the marker.

Obama would have been wise to take the advice of his own Middle East envoy, George Mitchell, who said, "For the Israelis, what they're building in is in part of Israel....The Israelis are not going to stop...construction in East Jerusalem....Our view is, let's get into negotiations...and come up with a solution...including Jerusalem....We could spend the next 14 years arguing over disputed legal issues or we can try to get a negotiation to resolve them in a manner that meets the aspirations of both societies."⁹

Settlement Blocs

Another Obama policy shift moved the settlement issue out of the realistic zone of compromise: his rejection of the Bush policy of treating the "settlement blocs" differently from the "non-consensus" settlements deeper in the West Bank interior. The special status of the blocs arose from the Camp David peace talks in July 2000, at which Yasser Arafat accepted President Clinton's proposal that certain bedroom suburbs of Tel Aviv and Jerusalem, comprising only 5 percent of the land of the West Bank but including about 80 percent of the settlers, would come under Israeli sovereignty. In exchange, Israel would "swap" land from its own pre-1967 territory. Israel would relinquish settlements outside the blocs, but retain the settlement blocs themselves.

The understandings reached at Camp David had no legal standing after the negotiations collapsed in 2001, but the concept of agreed settlement blocs laid the basis for a compromise between the succeeding Israeli and American governments. In an exchange of letters on April 14, 2004, Prime Minister Ariel Sharon acknowledged "responsibilities facing the State of Israel" under the Roadmap, including "limitations on the growth of settlements." President George W. Bush acknowledged in response that, "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....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."¹⁰

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Israel understood this Executive Agreement to mean that the U.S. would treat settlements in the blocs that would remain part of sovereign Israel in a future negotiation differently from settlements outside the blocs agreed upon at Camp David. The government of Israel believed it had a commitment from the United States to accept that a "freeze on natural growth" would *not* apply to construction inside these blocs, provided that it remained within the territorial limits set forth at Camp David. Sharon's successor, Ehud Olmert, stated this publicly in April 2008. "It was clear from day one to Abbas, Rice, and Bush that construction would continue in population concentrations – the areas mentioned in Bush's 2004 letter. I say this again today: Beitar Illit will be built, Gush Etzion will be built; there will be construction in Pisgat Ze'ev and in the Jewish neighborhoods in Jerusalem. It's clear that these areas will remain under Israeli control in any future settlement."¹¹

Here again, Obama moved the marker. Although his administration accepted the validity of Bush's position in the April 14, 2004, letter, it did not take the letter to mean that construction in the settlement blocs should be considered differently.¹² In the many statements issued by Obama administration officials condemning Israeli construction in settlements, no distinction was made between these blocs and the non-consensus settlements in the West Bank interior. In fact, most of the construction to which the Obama team objected took place either in Jerusalem or in these blocs. This is for the simple reason that almost all the construction that the Netanyahu administration has allowed is in these two categories that Israel had thought to be protected by understandings and American exceptions. From the Israeli point of view, then, Obama violated an Executive Agreement that Sharon had negotiated with President Bush.

The Bush-Sharon Settlements Compromise

This brings us to a third principle that Israel thought it had agreed on with the U.S., only to find it undone by the Obama administration. The Sharon government reached an understanding with the Bush administration to ban outward geographic expansion of established settlements, while reserving the right to continue what then-Foreign Minister Shimon Peres dubbed "*vertical growth*," meaning upward or infill expansion *inside the "construction line"* of existing houses. The purpose was to prevent outward horizontal expansion that might give the Palestinians the impression of "creeping annexation," while accommodating the needs of Israeli communities to add a room or build between existing houses.

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The Bush-Sharon understanding was recorded in a letter from Sharon's top aide, Dov Weissglas, to National Security Adviser Condoleezza Rice in June 2003. Weissglas reiterated that there were "understandings reached between Israel and the U.S. regarding settlements....No new towns will be built, and construction will be frozen in the existing towns, *except for building within the existing building lines*, as opposed to the municipal border."¹³ Prime Minister Sharon implied such an agreement in his speech at the Herzliya Conference on December 18, 2003: "Israel will meet all its obligations with regard to construction in the settlements. There will be no construction *beyond the existing construction line*, no expropriation of land for construction, no special economic incentives and no construction of new settlements."¹⁴

A few months later, on April 18, 2004, Sharon's aide Dov Weissglas asserted, in another letter to Rice, "the following understanding, which had been reached between us: 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*."¹⁵

The government of Israel acted swiftly to enforce the distinction. On August 5, 2004, a settler newspaper reported that, "The Defense Ministry has completed a large-scale

project to *mark the existing built-up borders* of all the Jewish communities and towns in Judea and Samaria – and *no further construction will be allowed beyond them*. *Yediot Ahronot* reports today that aerial photos will be sent to the United States, which will monitor every building aberration. Though the towns will be allowed to appeal the decision, every building beyond the marked borders could be subject to immediate demolition. The above program is in accordance with the commitment Prime Minister Sharon gave U.S. President George Bush three months ago."¹⁶

Despite the Bush administration's reluctance publicly to acknowledge these settlements understandings, there were several public indications that it had. The *New York Times* reported on August 21, 2004, "The Bush administration...has modified its policy and signaled approval of growth in at least some Israeli settlements in the occupied West Bank, American and Israeli officials say....The administration now supports construction of new apartments in areas already built up in some settlements, as long as the expansion does not extend outward...according to the officials."¹⁷ The next month, the *Washington Post* cited remarks Deputy Secretary of State Richard L. Armitage made in an interview with Egyptian television: "If you have settlements that already exist and you put more people into them but don't expand the physical...area – that might be one thing. But if the physical area expands and encroaches, and it takes more of Palestinian land, well, this is another." The *Post* also quoted a senior administration official who said, "It makes no difference if the Israelis add another house within a block of existing homes."¹⁸

The Bush-Sharon understandings about settlements were reported again by the *New York Times*,¹⁹ and the *Guardian*,²⁰ and were partly confirmed by former ambassador to Israel Daniel Kurtzer.²¹

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But on June 7, 2009, Secretary of State Hillary Clinton denied that the Obama administration was bound by any such understanding. "That was an understanding that was entered into, so far as we are told, orally. That was never made a part of the official record of the negotiations, as it was passed on to our administration....Nobody in a position of authority at the time that the Obama administration came into office said anything about it. And in fact, there is also a record that President Bush contradicted even that oral agreement."²² White House National Security Council spokesman Gordon Johndroe went further, and said flatly, "There is no understanding."

Sharon's representative Dov Weissglas countered that in April 2004 he had negotiated a "verbal understanding" with Deputy National Security Adviser Elliott Abrams, and that National Security Adviser Condoleezza Rice subsequently approved the deal. "I do not recall that we had any kind of written formulation," except his own letters back to Rice stating that the agreements existed.²³

Elliott Abrams, who negotiated the Bush administration's compromises on the natural growth of settlements, agreed with Weissglas in the *Wall Street Journal*. "There were indeed agreements between Israel and the United States regarding the growth of Israeli settlements on the West Bank. The prime minister of Israel relied on them in undertaking a wrenching political reorientation...the removal of every single Israeli citizen, settlement and military position in Gaza....There was a bargained-for exchange. Mr. Sharon was determined to...confront his former allies on Israel's right by abandoning the 'Greater Israel' position....He asked for our support and got it, including the agreement that we would not demand a total settlement freeze."²⁴

Israelis were bitterly disappointed by the Obama administration's refusal to acknowledge agreements with a prior U.S. government that the Israelis considered vital and binding. Sharon aide Weissglas said, "Final-status peace treaties...will require many American guarantees and obligations, especially in respect to long-term security arrangements. Without these, it is doubtful whether an agreement can be reached. Yet if decision-makers in Israel...discover, heaven forbid, that an American pledge is only valid as long as the president in question is in office, nobody will want such pledges."²⁵

Obama, however, was not persuaded by Israel's remonstrations. His administration's priority was to convince the Palestinians and the Muslim world that he was prepared to put pressure on Israel to achieve peace.

The Failure of the Settlement Freeze

Led by former Senate Majority Leader George Mitchell, the Obama peace team was seized with the idea of a settlement "freeze" as a confidence-building measure to lure the reluctant Palestinians back to the negotiating table. Mitchell had been associated with the freeze concept since the Mideast peace commission he headed in 2001 concluded that "Israel should freeze all settlement activity, including the 'natural growth' of existing settlements." The Bush administration signed on to the freeze idea in 2003, when it joined with the EU, Russia, and the Secretary General of the UN to promulgate the "Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict." The Roadmap requires, in Phase I, that, "Consistent with the Mitchell Report, the Government of Israel freezes all settlement activity (including natural growth of settlements)."²⁶ But, as explained above, the U.S. and Israel had worked out detailed understandings during the Bush administration just how the Roadmap was to be applied on the ground.

In an effort to placate Obama, in November 2009 Netanyahu announced a ten-month freeze on construction permits for new residences and the start of any new residential construction in the settlements. "We have been told by many of our friends that once Israel takes the first meaningful steps toward peace, the Palestinians and Arab states would respond....I hope that this decision will help launch meaningful negotiations to reach a historic peace agreement that would finally end the conflict between Israel and the Palestinians." George Mitchell said, "We did get a 10-month...moratorium on new housing construction starts on the West Bank, which was less than what we asked for, less than what the Palestinians wanted, but was more than any government of Israel had ever done on that subject, and it was a significant action which I believe the Palestinians should have responded to by getting into negotiations earlier."²⁷

For nine of the ten months of the freeze, Netanyahu's concession did not have the intended effect. For all but the last month, Mahmoud Abbas refused to resume negotiations even with the freeze, saying it fell short of the total freeze in Jerusalem that President Obama had promised him. "At first, President Obama stated in Cairo that Israel must stop all construction activities in the settlements. Could we demand less than that?" Mitchell later said, "The real loss was that we didn't get a full ten months. We

didn't get nine months or eight months. We got one month – less than a month, and it was not enough time to gain traction and get the parties invested in continuing the process."²⁸

The administration expressed disappointment that Abbas exploited the president's firm position on settlements and made it into a precondition. Secretary of State Clinton said that the demand for an absolute settlement freeze as a precondition for talks was unprecedented. Settlements have "always been an issue within the negotiations.... There's never been a precondition."²⁹ Mitchell later said, "It was not a precondition. The mistake was to not make that as clear as we could have. The president's position was...not stated as preconditions, although, unfortunately, they were then adopted as preconditions."³⁰ Abbas had negotiated with seven previous Israeli prime ministers – Shamir, Rabin, Peres, Netanyahu (in his first term), Barak, Sharon, and Olmert, without the precondition that he now demands of Netanyahu. As Mitchell said on September 22, 2009, "We do not believe in preconditions. We do not impose them. And we urge others not to impose preconditions."³¹ A Middle East Quartet Statement of March 19, 2010, called for "the resumption without preconditions of direct bilateral negotiations that resolve all final status issues, as previously agreed by the parties."³²

The administration was confounded by Abbas' refusal to use Netanyahu's concession as an opening to peace talks. Later, after leaving office, Mitchell observed that, "I personally negotiated with the Israeli leaders to bring about a ten-month halt in new housing construction activity. The Palestinians opposed it on the grounds, in their words, that it was worse than useless. So they refused to enter into the negotiations until nine months of the ten had elapsed. Once they entered, they then said it was indispensable. What had been worse than useless a few months before then became indispensable and they said they would not remain in the talks unless that indispensable element was extended."³³

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Still, the Obama administration declined to admonish Abbas in public for refusing to negotiate, as it had repeatedly admonished Netanyahu for construction activity in settlements. In refusing to meet with Israel, Abbas violated one of the most important commitments his predecessor Yasir Arafat made at the start of the Oslo process, which included this pledge to then-Prime Minister Yitzhak Rabin on September 9, 1993: "The PLO commits itself to the Middle East peace process, and to a peaceful resolution of the conflict between the two sides, and declares that all outstanding issues relating to permanent status will be resolved through negotiations."³⁴ Abbas also violated the pledge that he himself made at the Annapolis conference, witnessed by foreign ministers of 47 countries on November 27, 2007: "We agree to immediately launch good-faith bilateral negotiations in order to conclude a peace treaty, resolving all outstanding issues, including all core issues without exception, as specified in previous agreements. We agree to engage in vigorous, ongoing and continuous negotiations."³⁵

Yet his violation of these solemn commitments earned Abbas no reprimand from the Obama team.

Before Obama, Settlement Construction Did Not Impede Peace Negotiations

What is most remarkable about the Obama diplomacy is its apparent obliviousness to the history of the relationship between settlements and peace in previous negotiations, of which the Obama team is seemingly unaware. President Bill Clinton did *not* ask Israeli Prime Minister Yitzhak Rabin to freeze all housing construction in settlements, including Jerusalem, in order to get the Oslo process started. Had he made such a demand, *Rabin would have refused*. Rabin told the Knesset, "I explained to the president of the United States that I wouldn't forbid Jews from building privately in the area of Judea and Samaria....I am sorry that within united Jerusalem construction is not more massive."³⁶

In 1993, the same year as the famous handshake on the White House lawn, the Rabin government completed the construction of more than 6,000 units in the Pisgat Zeev neighborhood of east Jerusalem, out of a total of 13,000 units that were in various stages of completion in areas of the city that had been outside Israeli lines before 1967.

Nonetheless, Arafat sat down with Rabin, even while Israel's construction in Jerusalem continued unabated. On September 13, 1993, the Oslo peace accord was signed – by the same Mahmoud Abbas who refuses to sit down today. A year later, Rabin, who built homes for Jews in east Jerusalem, was awarded the Nobel Peace Prize.

Altogether, Rabin's government completed 30,000 dwelling units in the West Bank, Gaza, and Jerusalem in the four years prior to the prime minister's assassination. Even the January 9, 1995, announcement of a plan to build 15,000 additional apartments in east Jerusalem neighborhoods beyond the 1967 borders (especially Pisgat Zeev, Neve Yaakov, Gilo, and Har Homa) did not stop negotiations, which resulted in the Oslo II accord of September 28, 1995.

And what was the Clinton administration's reaction toward Rabin's construction of Jewish homes in east Jerusalem? Mild annoyance. On January 3, 1995, in response to the Rabin government's announcement of expanded construction, the State Department spokesman said, "The parties themselves...have to judge whether it presents any kind of a problem in their own dialogue. The important thing is to continue to meet." The spokesman added on January 10, 1995, "We admit that settlements are a problem, but we...enjoin the parties to deal with these issues in their negotiations."

Clinton's Middle East peace advisor, Martin Indyk, told the U.S. Senate the following month that Rabin's government had recently "given approval for something like 4,000 to 5,000 new housing units to go up in settlements around the Jerusalem area." Clinton, he added, had decided to stay out of it. "To take action now...would be very explosive in the negotiations, and frankly, would put us out of business as a facilitator of those negotiations." Had Clinton taken Obama's approach, it might well have exploded the negotiations and brought the Oslo process to a halt.

This is far from the only example of instances in which construction in Jerusalem did nothing to impede diplomatic progress. Two years after Oslo II, in January 1997, Abbas and Arafat sat down with another Israeli prime minister, Netanyahu, to sign the Hebron Protocol, which provided for the withdrawal of the Israeli armed forces from

80 percent of the very sensitive area of Hebron in the West Bank. Arafat and Abbas had no illusions that Netanyahu intended to freeze Israeli construction in east Jerusalem. In fact, Netanyahu had announced that he would proceed with the building of Har Homa, a controversial Israeli suburb conceived by Rabin. Nor, another 18 months later, did the Palestinians' fierce objections to Har Homa prevent them from joining the Wye Plantation negotiations in October 1998. These talks led to an agreement known as the Wye River Memorandum, in which Netanyahu, under considerable pressure from Clinton, agreed to pull the Israel Defense Forces out of an additional 13 percent of the West Bank. This move was fiercely opposed by Netanyahu's right flank, and in January 1999 it led to his downfall when the hard-liners in his coalition defected.

Had Clinton demanded that Netanyahu freeze construction in Jerusalem, and had Arafat made a freeze a precondition for negotiations, neither the Hebron nor Wye agreements would have been signed.

The Labor government that was elected in the wake of Netanyahu's ouster in 1999 continued the pattern of building in Jerusalem while moving forward in negotiations with the Palestinians. At the Camp David summit (July 11-25, 2000), then-Prime Minister Ehud Barak crossed Israel's known "red lines," offering the Palestinians most of the West Bank and a capital in Jerusalem, along with land swaps. Yet even as he was taking these unprecedented steps, Barak was accelerating the construction of Har Homa and other Jerusalem communities. While the talks accelerated, Barak also moved ahead with the Ras al-Amud neighborhood on the Mount of Olives in Jerusalem. President Clinton said he "would have preferred that this decision was not taken." But Clinton added that the United States "cannot prevent Israel from building in Har Homa." Haim Ramon, Rabin's minister for Jerusalem affairs, said: "I would like to make it clear that the government has no intention of stopping the building at Har Homa."

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Here again, had Clinton taken Obama's position and issued an ultimatum demanding that all construction in Jerusalem stop, and had Arafat made that American demand a precondition to begin negotiations, neither the Camp David summit of 2000 nor the Taba talks in January 2001 could have occurred.

The next Israeli government, headed by retired general Ariel Sharon, did not seek any breakthroughs in negotiations with the Palestinians, but did order Israel's most dramatic territorial concession since 1967: the withdrawal of all Israeli soldiers from every square inch of Gaza, along with the abandonment of 21 settlements in Gaza and four in the West Bank. In the "unilateral disengagement" of August-December 2005, Sharon pulled 8,000 Israeli settlers from their homes against fierce opposition from his right flank.

Four months after the disengagement from Gaza, Sharon fell into a coma. After his deputy, Ehud Olmert, took office, the new prime minister sought a resumption of negotiations with the Palestinians. Following the Annapolis summit in November 2007, Abbas, who had taken over as president of the Palestinian Authority and head of the PLO after Arafat's death in November 2004, agreed to begin intensive negotiations with Olmert. While Abbas expressed his unhappiness with continued Israeli construction in east Jerusalem and the settlement blocs, he did not make cancellation of these projects a precondition for talks. Nor did Abbas cut off negotiations in April 2008 when Olmert told the Israeli newspaper *Yediot Ahronot*, "It was clear from day one to Abbas...that construction would continue in population concentrations – the areas mentioned

in Bush's 2004 letter....Beitar Illit will be built, Gush Etzion will be built; there will be construction in Pisgat Zeev and in the Jewish neighborhoods in Jerusalem...areas [that] will remain under Israeli control in any future settlement."³⁷

These negotiations yielded significant results: on September 16, 2008, Olmert offered Abbas 93 percent of the West Bank, the partition of Jerusalem, and a land swap. The chief Palestinian negotiator Saeb Erekat boasted to a Jordanian newspaper that Abbas had achieved considerable progress with the Olmert government between the November 2007 Annapolis talks and the end of 2008 in 288 negotiation sessions by 12 committees – all while Israeli construction continued.

Paradoxical as it may seem to those who supported Obama's decision to confront Netanyahu about settlements, the historical record reveals that limited Israeli construction in Jerusalem and the settlement blocs can be reconciled with peace negotiations.

Netanyahu is building fewer houses at a slower pace and in fewer and less contested places than many of those who preceded him. In an April 8, 2012, interview with Fareed Zakaria, Ehud Barak said,

This government of Netanyahu is not the most aggressive in building....I was the prime minister 12 years ago. I negotiated a very generous proposal with previous Chairman Arafat, together with President Clinton....During that time, we were building four times the pace of construction that Israel executed now. I was the defense minister in Ehud Olmert's government five years ago when he proposed an extremely generous proposal to Abu Mazen [Abbas]. We were building about twice the pace that we are building now....We are listening very carefully to the needs of our citizens, on the one hand, and to the needs of the Palestinian future state, as well as the demands from the world. And we are not going over any hill or valley and establishing new settlements....Those settlements which are going to remain part of Israel, even in the final status agreement, namely the settlement blocs, should be built and developed as any other part of Israel.³⁸

Stalled peace negotiations in the Obama years cannot be blamed on Netanyahu's policies of accelerating settlement construction. He has in fact slowed it down. What has undermined peace negotiations, rather, is Obama's policy on the settlements – and the unrealistic expectations that policy has nourished.

Settlements and the UN Security Council

For those who seek to drive a wedge in the U.S.-Israel relationship over the settlement issue, the UN Security Council is the ideal venue, a place where the Palestinians have many friends and the Israelis have few. Ronald Reagan's ambassador to the UN, Jeane Kirkpatrick, described the Security Council thirty years ago in a way that makes plain how little has changed: "What takes place in the Security Council more closely resembles a mugging than either a political debate or an effort at problem-

solving....Israel is cast as villain...in [a] melodrama...that features...many attackers and a great deal of verbal violence....The goal is isolation and humiliation of the victim.... The attackers, encountering no obstacles, grow bolder, while other nations become progressively more reluctant to associate themselves with the accused, out of fear that they themselves will become a target of bloc hostility."³⁹ The Arabs have long sought to use the Security Council in order to impose their own terms on final status arbitrations between Israelis and Palestinians, to defy an American president to veto an anti-Israel resolution, and to rivet attention on a high-visibility issue where Israel has the least sympathy and American-Israeli differences are deepest.

Consider the case of a one-sided Arab draft resolution condemning Israel. If a president abstains to allow it to pass, or even votes for it, he contributes to Israel's global isolation and delegitimization. He may even create a basis for sanctions against an American ally. But if he blocks the resolution by using the American veto, he is accused of inconsistency with his own principles and capitulation to the pro-Israel lobby. Either way, by maneuvering the president into a tight spot, the Security Council tactic offers Arabs an opportunity to amplify American resentment of Israel's policies.

The proponents of these resolutions at the Security Council further sharpen the dilemma by adopting the American administration's own rhetoric. When Abbas brought the issue to the UN in January 2011, he said, "We drafted it using the same words that Secretary Clinton is using and so we don't see why the U.S. would veto it."⁴⁰

In reality, all draft resolutions condemning Israeli settlements that have been promulgated by supporters of the Palestinians in the Security Council contain language that no administration since 1980 has supported. Without exception, all such drafts assert that Israeli communities in Jerusalem and the West Bank are "illegal." This is not U.S. policy. For example, a resolution introduced in January 2011 by supporters of the Palestinians claimed that "all Israeli settlement activities in the Occupied Palestinian Territory, including East Jerusalem, are illegal" because of "the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Palestinian Territory, including East Jerusalem."⁴¹

This is not the declared policy of the United States. Successive U.S. administrations have deplored settlement activity as an obstacle to peace, but no American president – except Jimmy Carter – has taken the view that building Jewish homes in Jerusalem constitutes a violation of the Geneva conventions.⁴² If an American president were to take the position that all Israeli construction outside the former 1967 line is illegal, it would have the effect of criminalizing the Jewish communities of the eastern sector of Jerusalem, where 40 percent of the Jews in that city live, as well as the settlement blocs proposed by President Clinton and acknowledged by President Bush to be part of Israel. In other words, such a move would amount to an act of legal aggression against Israel by its foremost ally.

President Jimmy Carter was the exception. Referring to Israeli settlements in April 1980, Carter said: "We do not think they are legal." As his secretary of state explained, "Article 49, paragraph 6, of the Fourth Geneva Convention applies to the territories," including Jerusalem. The relevant article states: "The Occupying Power shall not...transfer parts of its own civilian population into the territory it occupies."⁴³ But many American experts doubt that this can be applied properly to the Israeli case.⁴⁴ Obligations under the

Geneva Convention apply to territory occupied by one state but *legally recognized as the property of another state*. The West Bank and east Jerusalem were under Jordanian control before 1967, but they were not legally recognized (even by Jordan) as the sovereign territory of Jordan prior to coming under Israeli control in 1967. They are, therefore, properly understood as "disputed" rather than "occupied" territories, so the Convention does not apply.

President Ronald Reagan rejected Carter's position and maintained that the settlements were "ill-advised" and "unnecessarily provocative," but they were "not illegal."⁴⁵ All American presidents since have followed Reagan's approach, and none has repeated Carter's formulation that settlements are "illegal." President Obama, for example, has said that settlements "undermine efforts to achieve peace," but he, too, has avoided calling them "illegal."⁴⁶ So the drafts branding Israeli settlements as illegal do not reflect established U.S. policy.

Congressional Democrats and Republicans alike have consistently and resolutely urged presidents to exercise the veto to defend Israel from one-sided resolutions at the Security Council – even in the controversial matter of settlements. For example, on June 21, 2010, 87 senators sent a bipartisan letter to Obama: "We ask you to stand firm in the future at the United Nations Security Council and to use your veto power, if necessary, to prevent any...biased or one-sided resolutions from passing." As a presidential candidate, Barack Obama called on the Bush administration to veto resolutions that singled out Israel for blame.⁴⁷

In the forty years since Richard Nixon's first veto in Israel's defense on September 10, 1972, every American president has used the veto to block anti-Israel resolutions. Richard Nixon vetoed two; Gerald Ford four; Ronald Reagan eighteen (!); George H.W. Bush four; Bill Clinton three; George W. Bush nine; and Barack Obama one. In April 1980, even Jimmy Carter mustered the courage to veto such a resolution, on the grounds that it was inimical to the Camp David Accords he had brokered.

In all, eight American presidents have recorded 42 vetoes in Israel's defense at the UN Security Council. Most often, the stated or implied reason to explain the need for a veto was lack of balance. In about half of the 42 veto statements, the American representative acknowledged that the United States shared concerns about a given Israeli action but objected either to the wording of the resolution or to the appropriateness of bringing the issue before the Security Council.

The actual number of anti-Israel resolutions and Presidential Statements that have been prevented from coming to a vote at all due to the credible threat of an American veto is probably far higher than these 42 recorded votes. Céline Nahory, an expert on the Security Council, says such instances "must add up to many hundreds...in closed-door informal consultations [where] the Council largely conducts its business."⁴⁸

The record is similar on the subset of draft resolutions that have dealt specifically with the settlements question. No president since Carter has permitted anti-Israel UN Security Council resolutions on settlements to pass. Ronald Reagan vetoed two: on August 2, 1983 (while Menachem Begin was Israeli prime minister) and on January 30, 1986 (during Shimon Peres' term). Bill Clinton vetoed three draft resolutions condemning Israeli settlements, one while Yitzhak Rabin was prime minister (draft Resolution

S/1995/394 vetoed on May 17, 1995),⁴⁹ and two during Benjamin Netanyahu's first term (draft Resolution S/1997/199, sponsored by the United Kingdom and France, vetoed on March 7, 1997,⁵⁰ and draft Resolution S/1997/241, vetoed on March 21, 1997).⁵¹

Most recently, on February 18, 2011, President Obama vetoed draft resolution S/2011/24 condemning Israeli settlements.⁵² U.S. Ambassador Susan Rice presented the U.S. reasoning:

Our opposition to the resolution before this Council today should...not be misunderstood to mean we support settlement activity. On the contrary, we reject in the strongest terms the legitimacy of continued Israeli settlement activity... [But] every potential action must be measured against one overriding standard: will it move the parties closer to negotiations and an agreement? Unfortunately, this draft resolution risks hardening the positions of both sides. It could encourage the parties to stay out of negotiations and, if and when they did resume, to return to the Security Council whenever they reach an impasse...While we agree with our fellow Council members...about the folly and illegitimacy of continued Israeli settlement activity, we think it unwise for this Council to attempt to resolve the core issues that divide Israelis and Palestinians.⁵³

In addition to these six vetoes, successive U.S. administrations since Carter have defeated by "silent veto" many other anti-settlement initiatives at the Security Council that did not reach the voting stage because fervent American opposition dissuaded their proponents from pressing the issue.

The Carter administration was the only U.S. government to vote in favor of a UN Security Council Resolution declaring Israeli settlements to be "illegal": Resolution 465 on March 1, 1980.⁵⁴ Carter subsequently disavowed his ambassador's vote for this resolution, saying that his instruction had not been properly communicated and that the U.S. should have abstained. An abstention still would have permitted the resolution to pass. In addition to voting for Resolution 465, Carter did abstain on (and thereby permitted to pass) two other resolutions against Israeli settlements containing similar language: Resolutions 446 on March 22, 1979,⁵⁵ and 452 on July 20, 1979.⁵⁶

Resolution 465 said that "the Fourth Geneva Convention...is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem." It added that "all measures taken by Israel to change the...demographic composition...or status of the... territories occupied since 1967, including Jerusalem...have no legal validity and that Israel's policy and practices of settling parts of its population...in those territories constitute a flagrant violation of the Fourth Geneva Convention." New York Senator Daniel P. Moynihan, who had served as UN ambassador five years earlier, said, "As a direct result of [Carter Administration] policy, the Security Council was allowed to degenerate to the condition of the General Assembly."

Presidents since Carter have had greater clarity about the hazards of moving Israeli-Palestinian peacemaking into a venue that is profoundly hostile to Israel. But each incoming American president must grapple anew with this Hobson's choice: settlements, on the one hand, and abandoning an ally, on the other. It is a problem certain to arise again.

Goading the President to Confront Israel

The background chorus calling on the president to put more pressure on Israel serves as another enduring feature of American diplomacy in the Middle East. Books, newspapers, magazines, and lecture halls are filled with experts reciting a familiar catechism: Israel is the obstacle to peace in the Middle East, and only a president determined to defy the fearsome Israel lobby can bring Israel to heel. Europeans, Arab governments, State Department Arabists, and even some Jewish pro-pressure organizations reinforce this message.

Some presidents, like George W. Bush and Ronald Reagan, instinctively resist these entreaties (though even they succumbed to the pressure at times). Other presidents, like Barack Obama, are receptive to the pressure argument from the beginning. And of all the items on the menu of Mideast diplomacy, the issue of settlements is the one most loudly invoked by the pressure chorus.

The pressure theory met its first full-scale test in the first two years of Obama's term. In the end, the president obtained a result opposite to the one that he was promised. Contrary to what was confidently predicted, we are now further from substantive peace negotiations than at any time since 1991. A scientist observing such dismal results in a test tube would conclude that his hypothesis was faulty. But political science being what it is, most of the Mideast pressurists cling to the opposite conclusion. They continue to insist that settlements are the main obstacle to peace negotiations, and that to accelerate peacemaking a president should begin by confronting Israel on the issue.

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There is an alternative that might yield far better results: First, before a prime minister of Israel and a president of the United States turn to the vexing issue of settlements, they should establish a relationship of cooperation and trust on a wider set of issues. Later, during the inevitable dialogue about settlements, they can draw on this reservoir of goodwill. Second, this dialogue should be conducted in private, protected from the fierce winds of public controversy, while the two sides explore the boundaries of the attainable.

Each side, moreover, must take into account the vital interests of the other. The president must acknowledge that the maximalist demand for a total freeze on construction inside the capital of Israel in neighborhoods where 40 percent of Jewish residents of Jerusalem make their homes is asking too much. Such a demand is bound to lead to an impasse.

The prime minister, meanwhile, must understand that unrestricted expansion of West Bank settlements will put a severe strain on relations with the United States and Europe and ignite a diplomatic firestorm. It is in Israel's vital interest to find a sustainable set of limitations that Israeli society can accept, that make it possible at the same time to meet Israel's international needs.

The art of diplomacy on settlements involves a two-fold task: to craft a sophisticated set of limitations on which both sides can agree, and to reconcile what the United States needs to manage the international diplomatic environment, with the boundaries that Israelis can accept.

For eighteen years, from the Madrid conference to 2008, presidents and prime ministers found workable solutions to the settlements issue that allowed peace negotiations to progress. If there is to be renewed diplomatic progress between Israelis and Palestinians, the United States will have to find collaborative solutions with Israel instead of relying on confrontation. The diplomacy of pressure leads only to a dead end.

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