

Saving the Two-State Solution Implementing a Settlement Freeze November 2007

The on-going creation and expansion of Israeli settlements in occupied Palestinian territory (OPT) poses the *single* greatest threat to the establishment of an independent, viable and contiguous Palestinian state and, by extension, to a just and lasting peace between Israelis and Palestinians. A *freeze* on Israeli settlement activity (as distinct from a *reversal*) would end any further settlement activity (though it would not undo existing settlement construction or damage therefrom). Yet despite the Roadmap's clear call for a freeze on "all settlement activity," Israel continues to intensify its colonization of the West Bank, particularly in and around occupied East Jerusalem, threatening the Quartet's vision of two states living side by side in peace.

I. Reasons for a Settlement Freeze

In addition to putting an end to a fundamentally illegal activity, an immediate settlement freeze is needed for the following reasons:

- ***Israeli settlement activity is incompatible with the "land for peace formula" and erodes Palestinian trust and confidence in Israel's desire for peace and in the peace process, making it difficult for the parties to resume negotiations.***

As virtually all efforts at Israeli-Palestinian peacemaking have recognized – from Madrid in 1991, through the Oslo years, to the 2003 Roadmap – no meaningful negotiations between the parties can proceed whilst Israel continues building and expanding its settlements in the OPT. Such activity is incompatible with the "land for peace" formula, contained in UNSC Resolutions 242 and 338 and on which the peace process is based, which requires Israel to withdraw from the territories it occupied in 1967 in exchange for full peace with its neighbours.

- ***Israeli settlement activity erodes the Palestinians' fabric of life and, by extension, the viability of the two-state solution, by controlling Palestinian land and water resources, restricting Palestinian access and movement, impeding social and economic development, and stifling regional and national trade.***

The aim and effect of Israel's settlement enterprise is to artificially alter the status of the OPT, both physically and demographically, to prevent its return to Palestinians.

Israel's settlement enterprise has fragmented Palestinian territory and society, and denied Palestinians access to vital land and water resources, commercial markets and essential social, educational and health services. In addition to controlling more than 40% of West Bank territory and its resources, Israel's settlement enterprise has led to increasingly severe restrictions on Palestinian movement. As the World Bank has noted, "it is often difficult to reconcile the use of movement and access restrictions for security purposes from their use to expand and protect settlement activity and the relatively unhindered movement of settlers and other Israelis in and out of the West Bank."

Thus, a settlement freeze remains the only way to ensure that no further harm is done to Palestinian needs and interests and, by extension, the viability of the two-state solution *prior to* (or in the absence of) negotiations.

- ***The presence of Israeli settlements and settlers foments instability and violence.***

In addition to Israeli land confiscations, home demolitions, movement restrictions and other harsh measures aimed at reinforcing Israeli settlements, Palestinians routinely are subjected to attacks and humiliation by armed Israeli settlers, as well as by the soldiers charged with guarding

them. Noting the connection between settlements and violence, the 2002 Mitchell Report observed that “a cessation of Palestinian-Israeli violence will be particularly hard to sustain unless the GOI freezes all settlement construction activity. The GOI should also give careful consideration to whether settlements that are focal points for substantial friction are valuable bargaining chips for future negotiations or provocations likely to preclude the onset of productive talks.”

II. Lessons Learned from Past Partial-Freeze Arrangements

During the Oslo years, various partial-freeze arrangements were made between Israel and the United States. Not only did these arrangements fail to stop settlement activity, they actually led to unprecedented rates of settlement growth. Between 1993 and 2000, for example, Israel’s settler population grew by nearly 40%, while the number of settler housing units in the West Bank (excluding East Jerusalem) increased by 52%.¹ The reason for the failure of these formulas is that they featured numerous loopholes, effectively negating the impact and intent of the freeze:

- *Allowing “natural growth”* – “Natural growth” refers to growth of the settler population resulting from births and migration. However, there is nothing “natural” about Israeli settlement growth: Due in large part to Israeli government financing and incentives, the growth rate of Israel’s settler population in the OPT is several times higher than that of Israel itself. In addition to unrestrained settler population growth, this formula also allows for the kind of territorial and infrastructural expansion ostensibly needed to accommodate that growth. This is precisely why “natural growth” is explicitly excluded by the Roadmap.
- *“No new settlements”* – While prohibiting the formal establishment of new settlements, this formula allows for the continued creation of new settlements under the guise of building settlement “neighborhoods” or “outposts”, as well as for on-going territorial, physical and demographic expansion of existing settlements. In Israel’s view, this is true even when these “neighborhoods” or “outposts” are clearly not contiguous with the “parent” settlements, which are sometimes located several kilometers away.
- *“No construction beyond the construction line”* – This formula involves limiting settlement growth to within a particular area around a settlement(s). It allows for practically unlimited growth in settler population by permitting increases in the density of settlements. Moreover, given the inherent subjectivity in drawing the construction line, the formula allows Israel to expand settlements territorially by incorporating non-contiguous settlement areas and the vacant land between them within a single, expanded construction line.
- *“No land expropriation for construction”* – This formula is completely ineffective for slowing settlement activity because, as noted above, Israel has already expropriated much of the land it seeks for settlements and their future expansion, leaving Israeli settlements with an expansion reserve amounting to more than 40% of the West Bank. Furthermore, the strict language of the formula applies to only one means of land confiscation – expropriation – and excludes the many other ways Israel confiscates Palestinian land, such as requisitions and declarations of state land. It also allows Israel to seize Palestinian land for “non-construction” purposes, such as agriculture, by-pass roads, fences and unspecified “security” reasons, as well as to execute outstanding expropriation orders.
- *“No new tenders or building permits”* – This formula allows Israel (or other parties) to act upon tenders or building permits already issued by Israeli authorities on the pretext that such activities are pursued by private parties and, therefore, “out of the hands” of the Israeli government. In fact, under Israeli administrative and contract laws, the executive branch has the power to

¹ Peace Now.

release itself from such contractual agreements when their fulfillment is inconsistent with the public interest.

- *Exempting East Jerusalem* – Exempting East Jerusalem (or any other part of occupied Palestinian territory) from a freeze obviously allows for unlimited settlement growth within the exempted area. In addition to effectively negating the very purpose of a freeze, which is to prevent further prejudice to the negotiations and harm to Palestinians, the exclusion of East Jerusalem in particular undermines the viability of a Palestinian state by jeopardizing prospects for establishing a Palestinian capital there.

III. Elements of a Comprehensive Settlement Freeze

The basic requirements of a settlement freeze are clearly spelled out in Phase I of the Roadmap:

- *“Consistent with the Mitchell Report, GOI freezes all settlement activity (including natural growth of settlements).”*
- *“GOI immediately dismantles settlement outposts erected since March 2001.”*
- *“GOI takes no actions undermining trust, including deportations, attacks on civilians; confiscation and/or demolition of Palestinian homes and property, as a punitive measure or to facilitate Israeli construction...”*

These requirements are consistent with UN Security Council resolutions and international law, both of which prohibit establishing or expanding settlements in occupied territory.

To comply with the Roadmap, a settlement freeze must apply to **all Palestinian territory** occupied by Israel in 1967, including East Jerusalem, remain in effect **until the implementation of a permanent status agreement**, and include the following elements:

1. Ending all settlement and settlement-related construction

It is not enough to freeze construction of housing units alone. A freeze must also include an end to the construction of: settlement commercial, industrial, agricultural, archeological and tourist facilities; by-pass and other roads that reinforce settlements (including so-called “fabric of life” roads and tunnels for Palestinians); perimeter fences or walls around settlements; and the separation Wall and its associated infrastructure (including crossing terminals, “back-to-back” stations and other permanent infrastructure). A freeze on construction must include projects already under construction.

2. Ending all financing and financial incentives for settlements and settlers

As important as ending construction is eliminating financial incentives for settlements and settlers. Israel spends hundreds of millions of dollars every year to maintain the settlements and to incentivize Israelis to move into them. Some 77% of settlers (excluding those in East Jerusalem) choose to live in settlements because of the economic incentives they get from both the Israeli government and from private donors. Thousands of housing units in the settlements are vacant, so an end to financing is also necessary to disincentivize Israelis from moving into those vacant units.

3. Ending all land confiscations, home demolitions and other property destruction

Settlement activity would not be possible without the thousands of dunums of land that Israel confiscates from Palestinians each year under various pretexts. Israel also demolishes hundreds of Palestinian homes annually and causes considerable property damage in the course of expanding its settlement enterprise. Thus, a freeze must include ending: the requisition of Palestinian land for settlement activity, the declaration of land as “state land”, the expropriation of land for settlement activity, the use of “absentee property” for settlement activity, the “private” purchase of land by Israelis, and the demolition, destruction and damage of Palestinian property.

4. Ending all planning and authorizations for settlements

A comprehensive freeze must include an end to: government authorizations for the establishment of new settlements and the expansion of existing ones; land allocations for settlement purposes; the preparation, review, approval and validation of any development plans for settlements; and the issuance of building tenders and permits. It must also include the revocation of outstanding development plans, and building tenders and permits.

5. Ending the migration of settlers

Like construction, an end to the migration of Israeli settlers into the OPT is an obvious element of any settlement freeze. This would involve prohibiting additional Israeli nationals (or those eligible for Israeli nationality) from relocating to or working in the OPT, and taking suitable measures to enforce the prohibition.

In all cases, “freezing” does not just mean that the Israeli government stops certain conduct. It also means that it stops others, whether public or private entities, from doing the same conduct.

IV. Enforcing a Freeze: Monitoring and Verification Mechanism

Ensuring Israeli compliance with its Roadmap obligations will require the establishment of an effective mechanism to monitor, verify and ensure the proper implementation of a comprehensive settlement freeze. Some of the key aspects of such a mechanism are:

- *Mandate and functions:* The mandate of a monitoring and verification mechanism should include:
 1. Investigating, monitoring and verifying effectively the current status of settlements and Israeli settlement activity;
 2. Investigating, monitoring and verifying all aspects of the implementation of the freeze;
 3. Establishing benchmarks and timelines for operationalizing, and verifying compliance with, the freeze;
 4. Providing regular, objective assessments of measures taken to comply with (or that violate) these terms to the political leaderships of both parties, Quartet members and other relevant/interested parties;
 5. Recommending a suitable course of action regarding specific violations in accordance with the Roadmap and/or other agreed upon guidelines; and
 6. Resolving disputes between the parties that may arise from differing interpretations of the terms of a freeze, and provide recommended courses of action, etc.
- *Composition and structure:* There are different ways to structure a monitoring and verification mechanism for Israeli settlements. For instance, it may be multilateral (*i.e.*, involving Israelis and Palestinians, as well as other stakeholders), or it may be an exclusively (or primarily) third-party mechanism that would, for example, serve as an arbitrator between the parties. The mechanism should include a *technical committee* of appropriate size and with the necessary skills and knowledge to effectively perform its monitoring and verification functions (*e.g.*, to conduct on-the-ground site checks, to access/read satellite imagery, etc.), which would report its findings to the political leadership. It might also include a *political committee* to whom the technical committee reports and who has the authority to facilitate the technical committee’s work and ensure implementation of the freeze.
- *Powers and procedures:* The mechanism should have guaranteed access to all relevant sources of information, and both parties should provide it with all necessary facilities for the effective performance of its functions. This includes access to base-line data by which to measure Israeli compliance, to aerial photos and/or satellite imagery, to proof of governmental decisions, and to provisions and means to conduct on-site visits to gather information in areas of reported settlement activity.