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Addendum to AJC Background Memorandum on
Israeli Policy Toward the West Bank and Jewish Settlements

Gush Emunim-Government Controversy

Further efforts by Gush Emunim to establish settlements on the West Bank occurred at the end of September when members of the organization attempted to start two unauthorized settlements at Sanur in Samaria and in the Jericho area. This time, however, the Israeli government blocked the efforts of the settlers but worked out an arrangement that would allow them to move into army camps near the areas. In a compromise worked out in a series of meetings between Prime Minister Begin and Gush Emunim leaders and designed to placate Begin's pro-settlement supporters without provoking more criticism from the United States, it was proposed that the men among the prospective settlers be called up for duty as military reservists for an indefinite period with arrangements made to accommodate their wives and children. Under the proposed agreement, six military camps in the West Bank were to be opened within the next three months to settlement groups. The Gush Emunim had originally planned a dozen.

The opposition Labor Alignment and the Democratic Movement for Change expressed their objections to the proposed agreement, particularly against the reported plan to involve the army in the settlement plans of Gush Emunim as politicization of the military.

On October 3, residents of the Gush Emunim settlement of Ofra attempted to expand their settlement. The mayor of the

nearby Arab town of Silwad and other Arab residents of the area protested. The following week, Defense Minister Ezer Weizman ordered security forces to dismantle four tents and a water tower that had been erected outside the confines of the Ofra settlement.

Compromise on New Settlements

The same week, on October 10, the Israel government approved six new Jewish settlements in Israeli military and border police bases on the West Bank to be established by the end of 1977. Mordechai Zippori, Deputy Defense Minister and a member of the Cabinet committee that authorizes new settlements, who made the announcement, said that the settlers would be offered jobs at the army sites and that all heads of families who did not work for the defense establishment would be required to sign papers according them the status of "persons employed in a mission on behalf of the army." Zippori implied that the army might eventually move its soldiers from the camps, turning them over to the civilian settlers.

The earlier proposal that the men among the settlers be called up for reserve duty was dropped. Aside from opposition party objections to the plan, reports suggest that Defense Ministry officials were also unhappy about using the army as a cover for the settlement activity of Gush Emunim. Some observers believe that placing of the Gush settlers in army camps will make them subject to army discipline and they will thus not be able to pursue further unauthorized settlement ventures.

The precedent of allowing Gush Emunim settlers to use military installations had already been established under the previous Labor Government when Defense Minister Shimon Peres allowed a group to move into the military camp at Kadum. The settlers were not, however, offered employment in the army.

From the government's actions in the past few weeks, particularly in its attempts to limit the settlement plans of Gush Emunim, it appears that Prime Minister Begin has come to realize the dangers of allowing a vocal minority group to dictate national policy to an elected authority which has to deal with both internal and external pressures in its decision-making process.

Position of DMC

A new factor that has significant bearing on the Israeli government's policies on the West Bank is the decision of the Democratic Movement for Change to join the Begin government's coalition. Yigal Yadin, the head of the DMC, who was given the post of Deputy Prime Minister, has stated that his party was willing to make territorial concessions on the West Bank and was in the past opposed to the government's policy of establishing Jewish settlements in heavily populated Arab areas. As part of the agreement to join the coalition, the DMC is to retain "freedom of expression and freedom to abstain in the Knesset on political matters relating to Judea and Samaria." In addition, the Knesset Foreign Affairs and Defense will have the final say on settlements if a DMC Cabinet member demands a debate on the issues in that committee.

UN Action

The issue of the Israeli settlements was taken up in the UN General Assembly at the end of October and ended with the Assembly adopting, by 131 votes to 1, an Egyptian-sponsored resolution which "strongly deplores" in particular the establishment by Israel of settlements in the occupied territories and termed such measures and actions as having "no legal validity" and constituting "a serious obstruction of efforts aimed at achieving a just and lasting peace in the Middle East."

It called on Israel "to desist forthwith from taking any action which would result in changing the legal status, geographical nature or demographic composition of the Arab territories occupied since 1967, including Jerusalem."

Israel was the only country to vote against the resolution while the United States and six other states abstained. All Western European countries voted in favor of the resolution. Prior to the vote on the resolution, Israel's UN Ambassador Chaim Herzog strongly denied the contention that Israel's settlements were designed to adversely change the "demographic composition" of the territories. Castigating the UN's adoption of "Arab racist anti-Jewish policy," Herzog said:

If 50,000 Arabs have returned to the territories since 1967 under the family reunion scheme and the total population of the territories has increased by 17.4% in the past ten years, that is not considered a "demographic change." If the Arab population of Israel has grown from 150,000 in 1949 to 550,000 today that is not considered a "demographic change." But if a total of approximately 6,000 Jews... settle in Judea, Samaria, Sinai, Gaza and Golan, 6,000 Jews in an area populated by 1½ million Arabs, this Assembly is convened to face this threat of what is now called a "demographic change"! If approximately

2,500 Jews settle...amongst over 700,000 Arabs [in the West Bank] and not one life is lost thereby or one person dispossessed, the General Assembly has time to ignore all the tragedies besetting this world in order to express its concern about what it calls demographic changes.

U.S. Ambassador to the United Nations Andrew Young said the resolution on the whole was consistent with the position of the U.S. government and recalled that the U.S. had repeatedly opposed the Israeli settlements because they could be seen as prejudging the territorial aspects of a final peace agreement and complicating the negotiating process. He reiterated the U.S. Administration's position that the settlements violated the 1949 Geneva Convention prohibiting population transfers in occupied areas, but noted the U.S. neutral role as co-chairman of the Geneva Middle East peace conference as the chief reason for its abstention in the vote. The U.S. also objected to a reference in the resolution to the "Palestinian and other Arab territories occupied..." because the U.S. considered this as prejudging the Geneva Conference negotiations on the disposition of the West Bank. [Emphasis added.]

Nov. 1, 1977

FAD:GEG/MB

AJC POSITIONS ON SETTLEMENTS

"We do not agree with the Carter Administration's interpretation that Israeli settlements in the West Bank are inherently illegal under the Fourth Geneva Convention. Nevertheless, we are of the view that a pause in further new settlement activity while peace talks are underway or in the offing would improve the atmosphere of negotiations and be conducive to progress in the peace process."

--Adopted at the 72nd Annual Meeting, May 21, 1978

"As regards settlement, we believe that they are not contrary to international law where required for security purposes. We further believe that Jews have a right to live on the West Bank. While recognizing this right, however, we note that there has been much criticism in Israel and abroad in recent months as to the political wisdom of the establishment of additional Israeli settlements on the West Bank. Only Israel can decide through its democratic process what its settlement policies should be. Nonetheless, to prevent erosion of support, we urge Israel, its rights notwithstanding, to show restraint in the creation of new settlements at this time. In the meantime, continued emphasis by the U. S. on the alleged illegality of Israeli settlements in administered territories serves no useful purpose. The principal obstacle to Arab-Israel peace is not Israeli settlement policy which is peripheral but, rather, the continuing refusal of Arab states other than Egypt to recognize Israel and to negotiate with her within the Camp David framework or on any other terms."

--Adopted at the 74th Annual Meeting, May 18, 1980

**AN UPDATE ON ISRAEL'S ECONOMIC RECOVERY MEASURES
AND U.S. AID TO ISRAEL**

By Kenneth Bandler

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During the past few months Israel's Government of National Unity has begun to take significant and difficult steps to resolve its serious economic problems. These measures include a wage-price freeze and a decision to cut the annual budget by \$1.4 billion.

At the same time Israel is seeking \$1.9 billion in economic aid from the U.S. for fiscal year 1986, compared with the \$1.2 billion it is currently receiving. The Administration has already publicly rejected Israel's request for \$750 million in supplemental aid for the current fiscal year, which began on October 1, 1984. The general perception in the U.S., particularly within the Reagan Administration, persists that Israel is not doing enough to deal effectively with its economic problems. Given this perception combined with the likelihood of a freeze on the U.S. budget, including defense and social security, Israel will find Congress extremely reluctant to increase American economic aid above the current level.

By early November 1984, Israel's national unity government had decided to cut a total of \$1.4 billion from next year's budget. Since Israel's fiscal year begins on April 1, the budget cuts that have been made thus far will be reflected in the 1985-86 budget. As of January 1, the government had only reached agreement on specific budget cuts totalling some \$400-600 million.

The Defense Ministry alone will absorb a cut of about \$300 million. The Israel government expects to reduce the defense budget by another \$200 million after the Israel Defense Forces completes its planned withdrawal from Lebanon later this year. These figures, however, do not take into account the economic costs of redeployment.

In the coming weeks, the government will be making decisions regarding subsidies for social services and basic commodities. Such subsidies are much easier to introduce than to reduce or remove, especially since they have long been an integral part of the social welfare commitment that is rooted in the State's ideological foundation. The government, nevertheless, is considering a cut in the education budget of more than \$100 million. As a result, Israeli high school students would begin paying fees for their education, and university tuition would be increased. Reductions in the subsidies on medical care, electricity, fuel, and some basic foodstuffs are also being considered. One area which is unlikely to be cut is the heavily subsidized transportation system.

Protracted negotiations between the government, the Histadrut (General Federation of Labor), and the Israeli Manufacturers' Association, resulted in an agreement last November, commonly referred to as the "package deal," to freeze all wages and prices for three months, to reduce the workers' monthly cost of living adjustment (indexation) by one-third, and to place a temporary freeze on

new taxes. In addition, the government imposed a six month ban on the import of 50 luxury items, reduced by half the foreign currency allowance for travel abroad and banned the use of credit cards abroad.

While wage-price freezes have not worked well in the U.S., economic observers believe that the actual achievement of this kind of formula within the context of Israel's fragmented and politically charged society constituted a major development.

Gad Ya'acobi, Israel's Minister of Economics and Planning, declared in New York on January 9, that the "package deal" has, in fact, produced some positive results. During the past few months the real standard of living of Israelis has reportedly dropped by 10 percent. Minister Ya'acobi noted that private consumption declined by 40-50 percent in November, and that in December the inflation rate was about seven percent.

The measures included in the "package deal", however, are only interim steps, and the three parties to the agreement recognize that additional measures are needed. They are currently negotiating a second agreement to take effect when the "package deal" expires on February 2. Such a longer term agreement would not only continue the economic recovery, but would also be looked upon favorably by the Administration and Congress in evaluating Israel's aid request.

While the Israeli government intends to make the full \$1.4 billion cut in its budget by April, it faces a number of economic and political constraints which inhibit the budget-cutting process:

Foreign Debt: About half of Israel's \$22 billion budget is allocated to debt repayment and servicing. Nearly half of Israel's \$24 billion foreign debt is owed to the United States government. Minister Ya'acobi stated that Israel has never missed a debt payment, and has not asked the U.S. for a moratorium on such repayments. This is one area of the budget, therefore, which cannot be cut.

Defense: More than 25 percent of Israel's budget is spent on defense. About half of these expenditures go to importing weapons. In order to maintain its qualitative edge over hostile Arab neighbors, who have amassed large arsenals while refusing to engage in direct peace negotiations with Israel, defense has become a heavy burden on the Israeli economy. In 1982 alone Saudi Arabia's military expenditures exceeded Israel's entire GNP. Israel currently spends about one-third of its GNP on defense, compared with seven percent before the Yom Kippur War in 1973.

In addition, the need to maintain a domestic arms industry has been costly to the Israeli economy. About half of the country's industrial work force reportedly is employed in defense related concerns. The largest of these is Israel Aircraft Industries. Like other government-owned enterprises, such as the national airline EL AL, Israel Aircraft Industries is not profitable, but is nevertheless considered vital to the nation's security.

American military aid helps alleviate some of the burden that defense places on the economy. Because a militarily secure Israel is viewed by the U.S. as important to American national interests, military assistance is not being questioned, and the current level of \$1.4 billion in annual grants will not be affected by U.S. budgetary cuts. However, due to the economic problems in the U.S., Israel may not get the \$500-\$600 million increase in military aid it is

seeking for FY 1986. (For an analysis of the difficulties Israel faces in cutting its defense budget, see the enclosed article, "Future in the Balance," by Hirsh Goodman, The Jerusalem Post, November 30, 1984).

Raw Materials: the cost of importing essential raw materials has placed an increasing burden on the economy. While Israel spent only two percent of its GNP on imported oil in 1973, today it spends 12 percent. Deficient in raw materials and natural resources, Israel currently spends more than \$6 billion a year to import oil, raw materials and some foodstuffs.

Unemployment: the spectre of unemployment underlies the thinking of all government ministers as they debate which areas of the budget to cut. At the end of 1984, unemployment had reached seven percent and was continuing to rise. An immediate concern is that high unemployment will cause thousands of Israelis to emigrate, as was the case in 1966, when an economic recession led to an unemployment rate of 13 percent.

Rising unemployment may also aggravate tensions between Ashkenazim and Sephardim, and between Israel's Arab and Jewish communities. Unemployment in some Sephardi-dominated development towns has already reached levels of 20-30 percent. (As a consequence, some development town officials have expressed their reluctance to absorb any more of the newly arrived Ethiopian Jews unless additional job opportunities are created.)

Thus, given the delicate social fabric of Israeli society, the government must move cautiously as it takes the hard decisions to stabilize its economy and promote economic growth.

The key to economic growth is to increase exports. This will be a long-term process, involving the redirecting of workers from the government and service sector of the economy into more productive, export-oriented industries. In addition, Israel is planning reforms in its tax laws and in the bureaucracy in order to create incentives for foreign investment. Such incentives are needed to take full advantage of the opportunities made possible by the Free Trade Area which the U.S. and Israel have agreed to establish.

In the meantime, Israel will continue to require American economic assistance. Israel urgently needs to increase its foreign currency (dollar) reserves to at least \$3 billion dollars. One of the reasons the U.S. gave the FY 1985 economic aid in one lump sum last October was that the reserves had dropped below \$2 billion. Unless the country's foreign currency reserves are significantly increased, individuals, institutions and companies may be less inclined to deposit and invest in Israel. In addition, Israel now pays \$1.1 billion a year to the U.S. government in debt servicing alone, which equals nearly all the American economic assistance it is now receiving.

Because Israel's economic recovery is essential to maintaining its own security, and an economically strong and militarily secure Israel is vital to American national interests, there is general understanding within Congress and the Administration on Israel's need for American assistance. This understanding will be maintained and strengthened by additional evidence that Israel's national unity government is steadfast in its determination to implement the painful measures necessary to stabilize the economy, reduce inflation, and increase productivity. Together, Israel's economic policies and U.S.-Israel economic cooperation could lay the groundwork for an era of renewed economic growth and prosperity for Israel.

ISRAELI POLICY TOWARD THE WEST BANK AND JEWISH SETTLEMENTS

A Background Memorandum

By George E. Gruen and Marc Brandriss

The Basic Issues

Recent actions by the Israel Government in the area known as the West Bank of the Jordan River have raised questions in many minds as to its ultimate intentions with respect to the disposition of the territory and the effect on prospects for peace in the Middle East. Is the legitimization of existing Jewish settlements and plans for new settlements simply an expression of the view that Jews have a natural and historic right to live anywhere—and particularly in their historic homeland, without prejudice to the final terms of a negotiated Arab-Israel peace agreement? Or are these actions meant to tell the Arabs and the world that Israel intends to exercise its political sovereignty and not relinquish any of the territory of the West Bank even to an ostensibly moderate Arab ruler, such as King Hussein of Jordan?

Do the Begin Government's actions represent a fundamental change in the Israeli position with regard to the West Bank? All the settlements approved by the previous Labor Governments could be justified in terms of security. They were consistent with the lines of the Allon Plan, which although not formally adopted, had been applied in practice. The plan, first proposed by Yigal Allon shortly after the 1967 war, envisioned an 8 to 12 mile "security belt" of settlements along the Jordan River and settlements in other sparsely populated areas of strategic significance elsewhere on the West Bank. It would leave open for eventual return to Arab control in a peace settlement the densely-populated areas of the West Bank.

However, the legalization by the Begin Government of three civilian settlements in the heart of the West Bank is interpreted by some as signifying a major departure from the previous security rationale of the Labor government. Are these actions intended to implement the public reaffirmation by Prime Minister Begin that he considers historic Judea and Samaria—the Biblical names for the West Bank area—to be "liberated" and not occupied territories; or do they constitute a strong opening bargaining position that may be modified during the course of negotiations?

At present, no clear long term policy for the West Bank and no formal annexation has been announced by the Begin Government. This is in accordance with the self-restraint on this issue incorporated into the new Government's Basic Policy Guidelines in June 1977, reportedly at the insistence of Foreign Minister Moshe Dayan. Paragraph 10 of the Guidelines notes that the Knesset had empowered the Cabinet to apply by administrative order "the law, judiciary and administration of the state to all territory of the Land of Israel" /presumably including the West Bank/, but then adds that the Government will not invoke this authority "so long as negotiations are being conducted on a peace treaty between Israel and its neighbors. The matter will be determined by the choice of proper timing, the political judgment of the Government and the approval of the Knesset after a special debate."

On August 14 the Israeli government announced that it was extending government economic and social services to the inhabitants of the West Bank and the Gaza Strip in order to grant them "equal rights, the same as those enjoyed by residents of the State of Israel." A government spokesman denied that the legal status of the territories or citizenship of the inhabitants was in any way affected by the decision and that they would remain under military administration, with Jordanian law continuing to apply to Judea and Samaria. The following day, Mr. Begin explicitly stated that the move was "by no means the beginning of annexation but was motivated solely by a desire to improve the lot of the Arabs under Israeli rule." On August 17, the Israeli government approved the establishment of three new settlements on the West Bank.

The U.S. State Department, on August 18, issued a strongly worded statement, reportedly approved by President Carter, reaffirming the American position that these "unilateral illegal acts in territories presently under Israeli occupation create obstacles to constructive negotiations." A second statement issued at the same time, while noting that Israel had emphasized the "humanitarian aims" of its decision to extend government economic and social services to the Arabs on the West Bank and Gaza, pointed out that "the action creates an impression of permanence of Israeli occupation...that is not helpful."

Israel, on the other hand, claims that the three new settlements were all in close proximity to the 1949 Armistice Demarcation Lines (the so-called "green line") and thus fell within the category of "minor modifications" that the United States had agreed could be made in establishing the final boundaries. The three settlements could be justified by the need for "secure and recognized boundaries" and would thus fit into the "Allon Plan" formula. In fact, they had been approved in principle by the previous Labor Government earlier in the year.

Current Extent of Israeli Settlement

Whatever the ultimate Israeli intentions, the current number of Israeli civilian settlers on the West Bank has been, as President Carter himself has conceded, relatively insignificant "and quite small" when compared to the Arab population of 680,000. While the Israel Government has not provided current official figures on the extent of settlement, Israeli sources have mentioned the existence of 36 settlements on the West Bank with an Israeli civilian population variously estimated at 2,200 to 3,000. They also acknowledge the existence of less than 80 settlements in all the occupied territories with a combined population of approximately 5,000 Israeli settlers.

Other sources, such as Newsweek (August 8, 1977) estimate that 12,000 Israeli settlers are presently living in all the occupied territories, including the Golan Heights, the Gaza Strip and Sinai, with up to half of the total on the West Bank. Similarly, Bill Moyers in a CBS television report on the West Bank, on August 16, 1977, cited a total of 6,000 Jewish settlers.

However, Time magazine (August 8) alleges a total of 90 Jewish settlements throughout the occupied territories, containing an Israeli population of 60,000. Inquiries to Time as to the basis for their figure, resulted in the response by a Time researcher that their figure includes the Israelis living in nine communities in formerly Jordanian-held Jerusalem and its outskirts, which Israel since 1967 has incorporated within the enlarged Jerusalem municipality.

Development of Israel's Settlement Policy

The political basis for Israeli settlement in the occupied territories is complex. Some have referred to it as "creeping annexation"; others as "establishing facts"; and still others as legitimate security measures adopted by an occupying power concerned for its defense.

In reality, Israeli settlement policy on the West Bank from its initial phase has been somewhat haphazard, partially due to the pressures and counter-pressures of domestic politics. In the early months after the 1967 war, it was assumed that most of the West Bank was to be returned to Jordan in exchange for a peace treaty, with the exception of East Jerusalem, which was to have a distinct status from the rest of the occupied territory. But by September 1967, the government came to the conclusion (after the Arabs had decided on "no peace, no recognition, no negotiations" at their Khartoum summit) that peace was not forthcoming. Many Israelis desired the total annexation of the West Bank. Some considered the West Bank as historically and religiously part of Israel. To them, Hebron or Nablus (Shechem) was just as much rightfully Israel's as was Tel Aviv. Others believed that from a strategic point of view, Israel's possession of the West Bank was vital to its defense.

The Herut Party historically favored Israeli expansion beyond the 1948 lines. This position was not confined to Herut. The Liberal Party, Herut's partner in Gahal (and now its major partner in Likud), had called for the retention of Judea and Samaria, as had the National Religious Party, a member of the governing Labor Party coalition. The Labor Party membership itself was sharply divided. When the Movement for the Whole Land of Israel was founded in 1967, it included some members of the Labor Party.

The Labor Government was initially able to overcome these pressures and on the whole prevented Jewish settlement of the West Bank. Many others in the Labor-led coalition, such as the late Finance Minister Pinhas Sapir were fearful of the demographic problem involved in annexing an area with such a large population of Arabs, known to have the highest birth rate in the region.

But in November 1967, the Whole Land of Israel Movement, enjoying the support of a wide and varied segment of the public, challenged the prevailing policy by supporting both morally and financially the efforts of those who were planning to reestablish the pre-1948 Jewish settlements in the Etzion Bloc between Jerusalem and Hebron, that had been captured and destroyed by the Jordanians during the War of Independence. The government gave in to these pressures and the settlements in the Etzion Bloc were restored.

Another challenge to government policy was successful when, in April 1968, a small group of religious settlers financed by the Whole Land of Israel Movement moved into the city of Hebron. (This too was an area of pre-Israel Jewish settlement, from which the Jews had fled after a pogrom during the 1929 Arab riots.) They were, for a time, confined to an Israeli military post within the city, but eventually the government decided to transfer the new settlement through the construction of a Jewish suburb and industrial complex known as Kiryat Arba (a Biblical name) in September 1971. At the same time that Kfar Etzion was resettled in November 1967, the government also decided to allow the rebuilding of Beit HaArava, a kibbutz located prior to 1948 at the juncture of the Jordan River and the Dead Sea.

However, by May 1968, the government had decided to establish Jewish settlements throughout the entire length of the Jordan Valley, and not only in areas where Jewish settlements had existed in the pre-1948 period. All the Israeli Prime Ministers since the Six-Day War have stated that Israeli policy was to maintain the Jordan River as Israel's security border and the settlements along the Jordan Rift would help establish Israel's control. This approach kept open the option of negotiations between Israel and Jordan. The Nahal (fighting, pioneer youth) settlements established by the Israel Defense Forces in conjunction with the various kibbutz movements combine military training with farm work. Israel has claimed that these settlements are in substance military outposts like those manned by regular units of the Israel Defense Forces.

Those settlements which are essentially civilian in character have been established in areas which the government had hoped would be assigned to its jurisdiction by peace treaties. Various guidelines were adopted with regard to the location of these settlements. They were to be placed on unused land with full compensation paid to the Arab owners. (State-owned land held by the Jordanian Government prior to 1967 is presently under the control of the Israel Lands Authority.) Preference was given to strategically important and underpopulated areas. In the case of civilian settlements consideration was also given to the availability of arable land and water resources.

The policy remained essentially in effect as long as the Labor Party had been in control of the government, although certain modifications in emphasis were introduced in the face of domestic pressures and external events. Prior to the Yom Kippur War, and in anticipation of elections scheduled for October 31, 1973, the Labor Party adopted a program drafted by Minister Without Portfolio Israel Galili which seemed to represent a shift toward a more hardline stance. Under the Galili plan one and a quarter billion Israeli pounds was to be allocated for the development of the West Bank and Gaza and for the integration of Arab agriculture and industry with Israel's own economy. The plan also envisioned new Jewish settlements in

all the occupied territories. It would, for the first time, entitle Jews to purchase Arab lands and property in the West Bank and Gaza.

After the Yom Kippur War, the Galili plan was shelved. In its place, the Labor Party adopted a new platform which contained a policy phrased in general terms stating that "all will be done to continue and strengthen land settlement in accordance with decisions which the Government of Israel will take from time to time, with priority given to considerations of state security." While the Alignment platform undertook to seek "defensible borders that will ensure Israel's ability to protect herself effectively," it expressed a desire for peace based on "territorial compromise," in essence, a reaffirmation of the principles behind the Allon Plan. However, pressures for new settlements, outside the general framework of the Allon Plan have continued.

The Gush Emunim movement, in defiance of Labor Government policy set up a settlement at Kadum near the ruins of ancient Sebastia in December 1975. Prime Minister Yitzhak Rabin viewed the settlement at Kadum, in the densely Arab populated Samaria, as a challenge to government authority and threatened to remove it by force if necessary. This action, however, was never carried out although the government refused to recognize its legality.

The Begin Government's Policy

After Likud defeated Labor in the Israeli election in May 1977, its leader Menahem Begin set up a narrow coalition with the National Religious Party and General Ariel Sharon's Shlomzion Party, with the support of the Agudat Israel Party in the Knesset. All these parties support wider settlement in the West Bank. Begin had campaigned on a platform calling for the retention of Israeli control over Judea and Samaria, and the continued settlement of Jews on the West Bank. He rejected the concept of any area barred to Jewish settlement (made Judenrein). Shortly after the election Begin visited the settlement at Kadum and announced "we stand on the land of liberated Israel. We believe this is the land of Israel as a right. It belongs to the Jewish people," and called again for the establishment of new settlements.

At the same time Prime Minister Begin reiterated his readiness to meet directly with the leaders of the Arab states at Geneva or elsewhere to conclude peace treaties, emphasizing that there were no preconditions and that each side would be free to present any proposals it wished.

Mr. Begin's visit with President Carter in July did not lead to the open confrontation many had feared as both leaders stressed the personal rapport they had achieved. Yet, the much heralded peace proposal Begin brought along with him to Washington turned out to be "a plan for the framework of the peacemaking process" rather than a specific proposal for the substance of a peace agreement. Begin did not publicly specify the extent to which Israel would be prepared to withdraw from occupied land nor did he commit himself to refrain from establishing new settlements on the West Bank. Israeli press reports suggested that he was prepared for extensive withdrawal from Sinai and the Golan Heights, but would continue to insist on Israeli control of the West Bank.

Underscoring the lack of agreement with Carter on substantive issues, Begin, on his return to Israel, overruled the decision of the previous Israeli government and recognized three formerly unauthorized civilian settlements on the West Bank, including that at Kadum (renamed Elon Moreh), as legal and permanent entities. Legalization of these settlements in the heart of the West Bank appears to signify that the question of security will no longer be claimed as the sole or primary justification for settlement.

The legalization of the three settlements was immediately criticized by Secretary of State Vance who called the action an obstacle to peace. Carter, at a press conference, agreed with this assessment but tended to downplay the significance of the Israeli action. Although Begin did not clearly state whether he would accede to Carter's request that he abstain from further settlement and denied that a freeze on new settlements was in

effect, some observers gave the optimistic interpretation that Begin's action was a move to defuse the demands of his more activist supporters. These observers believe that by legalizing the three settlements and thus reaffirming the principle of support for Jewish settlement, Begin may now refrain in practice from starting any new ones until the Geneva talks are given a chance.

The decision, approved by Begin, to legalize the settlements was actually made by the Ministerial Committee on Settlements, headed by Minister of Agriculture General (ret.) Ariel Sharon, and consisting of other Cabinet members and representatives of the Jewish National Fund and the Jewish Agency, the two voluntary bodies that have historically been involved in the purchase of land and the settlement of Jewish immigrants. The Committee reportedly has before it plans, not yet approved, for at least 16 new settlements in the West Bank.

According to a report in the Washington Post of July 13, 1977, there are four projects in the planning stage for the highly populated Jordan Valley areas. At least seven new settlements are planned by the Gush Emunim movement in the more densely populated areas of the West Bank. (Leaders of the Gush Emunim announced at a press conference in New York on August 7, 1977, that 12 new Jewish settlements by their movement were in the planning stage.) Begin's own Likud Party reportedly has plans for the building of five new Jewish urban areas in the West Bank with a potential total population of 150,000 to be erected over a four-year period.

On September 3, Minister of Agriculture Sharon, an outspoken advocate of Jewish settlement in the occupied territories, stated on Israeli radio that he had a plan to settle two million Jewish settlers in a security belt extending from the Golan Heights in the north to the tip of the Sinai Peninsula in the south. The plan envisaged the establishment of a number of Jewish urban and agricultural settlements in sparsely inhabited areas of the West Bank. Sharon's plan, however, has been greeted with skepticism by the Israeli public. Most Israelis, including some members of the Begin Government, regard it as impractical in view of Israel's lack of financial resources and its present total Jewish population of only three million.

Sharon caused another stir when on September 8 he implied in an interview in the Israeli newspaper Ma'ariv that several new settlements had been secretly established on the West Bank over the last month. The Israel Government immediately notified the U.S. State Department that despite Israeli press reports to the contrary, it had not begun any new Jewish settlements in occupied territory. Sharon himself issued a clarification, claiming that the paper had misconstrued a general comment to the effect that not all steps in the lengthy settlement process are announced in the press.

Foreign Minister Moshe Dayan has defended the settlements as "productive and constructive for peace" because they bring Jews and Arabs together; therefore the West Bank settlements could be seen as assets rather than as obstacles to peace. It was Dayan, who as defense minister in the Labor government had successfully advocated the open bridges policy with Jordan and had also authorized the relatively free movement of Arab workers from the territories into pre-1967 Israel. So far there is not much social contact between the Jewish inhabitants of the settlements and their Arab neighbors, although there is growing economic cooperation.

Dayan has now elaborated a proposal for the West Bank for presentation to President Carter on behalf of the Israel Government during his September visit to the United States to attend the UN General Assembly. The proposal reportedly suggests that the Arab inhabitants of the West Bank be given substantial autonomy, with the option of retaining Jordanian citizenship, while Israel would maintain control over the defense and security of the territory. It calls for "functional" arrangements that would give the Arab population a large degree of self-government and would rely heavily on the cooperation of moderate West Bank leaders while excluding strong supporters of the Palestine Liberation Organization. The plan conceives of the evolution of several West Bank ministries, headed by local Arabs, which would deal with specific areas such as commerce, industry, health, and education, and it would encourage economic links between Israel, the West Bank, and Jordan with an unhindered flow of people and goods. Ac-

According to the plan, Israel would reserve the right to buy and settle vacant lands. Dayan's proposal is in line with his belief that since there is no current prospect for a territorial agreement between the Arabs and Israel with regard to the West Bank, a practical solution should be attempted that would allow both sides to live together.

The Dayan plan reportedly also would offer the 300,000 stateless Palestinian refugees in the Gaza Strip a choice of Israeli or Jordanian citizenship.

Legal Considerations Under Security Council Resolution 242

The major legal arguments put forward by those who would demand Israel's complete withdrawal from all the territories that came under its control in June 1967 are based on the erroneous interpretation of the provisions of Security Council Resolution 242 which calls for "withdrawal of Israeli armed forces from territories occupied in the recent conflict" and the second paragraph of the preamble of the resolution which asserts the principle of the "inadmissibility of the acquisition of territory by war."

U.S. Ambassador Arthur Goldberg and British delegate Lord Caradon, author of the final text, both have affirmed that the omission of the definite article before the word "territories" in the withdrawal clause was deliberate. The primary territorial objective of the resolution is the establishment of "secure and recognized boundaries." Resolution 242 does not legally require full Israeli withdrawal from all the territories it occupied in June 1967; yet, at the same time, it does not preclude a demand by the Arabs in negotiations for complete withdrawal.

The ambiguity of Resolution 242 leaves room for both opposing demands during the process of negotiations between the parties, but does not require an Israeli commitment for full withdrawal as a condition for those negotiations. Nevertheless, as Goldberg recently indicated, while the resolution's sponsors contemplated "less than total withdrawal," they definitely expected substantial Israeli withdrawal on all fronts, including the West Bank.

A more complex legal question concerns the preamble's clause affirming the principle of the "inadmissibility of the acquisition of territory by war." The Arabs and their supporters point to this clause of the resolution as the basis for their demand that Israel withdraw from all the territories occupied in June 1967 as a condition for the settlement of the Arab-Israeli dispute. The Arab states, until recently, had demanded this even as a precondition for entering negotiations for a settlement.

The contrary Israeli argument as presented by Professor Yehuda Blum, Senior Lecturer in International Law at the Hebrew University in his book, Secure Boundaries and Middle East Peace, (Jerusalem, Hamakor Press, 1971, pp. 80-91), asserts that the pro-Arab view is based on a confusion between the acquisition of territories and their occupation. According to Blum, there is nothing under the UN Charter or general international law that would lead one to suppose that military occupation, especially when it is the result of a war undertaken in self-defense, is illegal. Consequently, the clause of Resolution 242 regarding the "inadmissibility of the acquisition of territory by war" cannot mean that a military occupier must withdraw before peace terms are agreed upon.

The real meaning of the clause, noted Professor Blum, is that it considers as inadmissible the attempt to base title to territory on conquest--that military victory itself does not give rights to territory, and that the future disposition of territory can only follow from an international agreement between the parties concerned. Thus if a future peace agreement between Israel and its Arab neighbors provides for secure boundaries that depart from the military demarcation lines of the 1948 Armistice Agreements, those future boundaries will be decided not on the basis of the mere physical presence of Israeli forces, but from an international agreement concluded by the parties concerned. (At Arab insistence, the Armistice Agreements explicitly state that the demarcation lines are not permanent political boundaries, and that the determination of the final boundaries between Israel and her neighbors would be left for the "ultimate settlement of the Palestine question.")

Legal Basis for Israel's Claim that the West Bank is Not "Occupied"

While these general legal considerations appear valid with regard to those territories occupied by Israel in June 1967 which lie beyond the boundaries of former Mandatory Palestine (the Sinai Peninsula and the Golan Heights), other considerations are also pertinent with regard to those territories lying within the former Mandate area which had been invaded by Jordan and Egypt in 1948. In fact, the Egyptian occupation of Gaza and the Jordanian annexation of the West Bank, Blum argues, were unlawful in themselves, and in violation of Article 2(4) of the UN Charter which calls on all members to refrain in their international relations "from the threat or use of force against the territorial integrity and political independence of any state." Consequently, the use of force by Egypt and Jordan having been illegal, it could not give rise to any valid legal claims or rights of sovereignty over any part of the former Mandatory Palestine--certainly their rights could not exceed those of Israel which assumed control over these territories in 1967.

The annexation of the West Bank by Jordan in 1950 can thus be regarded as invalid under international law. (Egypt never claimed sovereignty over Gaza.) Only two states, the UK and Pakistan, formally recognized the Jordanian annexation. After a lengthy squabble, the Arab League only saw fit to acknowledge the Jordanian annexation as a "trust" and "without prejudice to any final settlement of the Palestine question." Israel in May 1950, denounced the Jordanian action as "a unilateral act which in no way binds Israel" and that "the question of...territories west of the Jordan remains...open."

Prime Minister Begin repeated this argument recently in Jerusalem on July 27, 1977, on his return from the U.S. Responding to the State Department statement criticizing the legalization of three settlements on the West Bank, Mr. Begin said that Israel cannot be considered an occupying power in the West Bank in the legal sense because Jordan which had earlier held the territory had occupied it by aggression in the 1948 war.

In contrast to Jordan's 1948 occupation, Israelis contend that when Israel used force in 1967, it was legitimately used in exercise of its inherent rights of self-defense under the UN Charter. Since the boundary line with Jordan until 1967 was the armistice line of 1949, and not a recognized international border, when the Jordanians attacked across the line into Israel in 1967, the action constituted a violation of the armistice and the armistice agreement then became invalid. This argument, however, leaves open the possibility of the Arabs also claiming the invalidity of the 1949 armistice lines and demanding a return to the 1947 partition lines recommended by the UN General Assembly, the only internationally-approved proposal for dividing former Mandatory Palestine.

The Legal Problems of Settlement on Occupied Territory and the U.S. Position

Other legal questions arise with respect to the establishment of settlements in the occupied territories. In the past, Israel has considered these areas (excluding Jerusalem) as that of territory occupied during war and it has not annexed any part. (In June 1967, East Jerusalem was "re-unified" with West Jerusalem when the Knesset enacted a law extending Israeli administrative jurisdiction to an enlarged Jerusalem municipality.)

The United States currently claims that the establishment of settlements in the occupied territories is a violation of international law under the provisions of the Fourth Geneva Convention of 1949 which declared illegal the type of population shifts employed by Nazi Germany during World War II. According to Article 49, paragraph 6 of the Convention, "The occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." (Emphasis added.) Last year William Scranton, then the U.S. Ambassador to the UN, for the first time explicitly declared that the U.S. regarded Israeli settlements in the occupied territories as "illegal," and that they presented an obstacle to peace.

However, previous to Scranton, U.S. Ambassadors to the UN were not as explicit as he was in terming Israeli settlement policy in the occupied

territories as illegal, and in the main their comments focused on the Jerusalem issue. Ambassador Goldberg, in referring to measures Israel had taken with respect to East Jerusalem, emphasized that the U.S. did not consider these measures other than "interim and provisional" which "cannot affect the present international status nor prejudge the final and permanent status of Jerusalem." Ambassador Charles Yost in July 1969 told the Security Council that the international law governing occupied territories also applied to East Jerusalem. In the U.S. view, he said: "The expropriation or confiscation of land, the construction of housing on such land, the demolition or confiscation of buildings, including those having historic or religious significance, and the application of Israeli law to occupied portions of the city are detrimental to our common interests in the city." (Emphasis added.)

By March 1976, Ambassador Scranton was asserting in the Security Council a new emphasis in U.S. policy with respect to Israeli measures in the occupied territories. On March 31, he quoted from article 49 of the Fourth Geneva Convention and then added: "Clearly, then, substantial re-settlement of the Israeli civilian population in occupied territories, including 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." He went on to say that, "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."

Secretary of State Cyrus Vance recently repeated this contention after Israel's legalization of three settlements on the West Bank in July 1977: "We have consistently stated and reiterated during our discussions here in Washington that we are of the opinion that the placing of these settlements is contrary to international law and presents an obstacle to peace."

But the view that the settlements violate international law is disputed by other legal scholars. As noted above, Article 49 of the Fourth Geneva Convention was drafted to outlaw the "forcible transfers, as well as deportations" of the kind massively undertaken by the Nazis. Consequently, the prohibition in paragraph 6 has been interpreted by leading international law authorities as only "intended to cover cases of the occupant bringing in its nationals for the purpose of displacing the population of the occupied territory." (Lauterpacht's Oppenheim, International Law, 7th ed., Vol. II, p. 452) The new Jewish settlements have not displaced the local Arab population. Moreover, Israel contends that although the Geneva Convention does not legally apply to the West Bank and Gaza, it adheres to its provisions in the treatment of the Arab civilian population.

Political Considerations

Irrespective of the legal merits of the case, there are two issues of practical political consideration. 1. Are the settlements in the West Bank a minor factor in the Arab-Israel conflict, or do they really present a major obstacle to a peace agreement? 2. Will these issues develop into a major crisis in U.S.-Israel relations.

It seems apparent that President Carter is set on bringing about a Middle East peace settlement based on the three major principles of his Middle East policy despite the current Israel Government's opposition to two of them--the withdrawal of Israeli forces from almost all of the territory it occupied in June 1967 with only minor alterations in the pre-1967 borders, and the establishment of some kind of Palestinian homeland on the West Bank, preferably linked with Jordan. Only on the third component of Carter's outline for peace is there agreement with Israel--the acceptance by the Arabs of a real peace with diplomatic and trade relations with Israel.

In his news conference following the Begin visit, Carter indicated his awareness of the pressures within Israel for the establishment of new settlements that Begin has to contend with. However, when asked in a Time magazine interview, published August 8, whether he would use "persuasion or pressure" if Israel's position at Geneva was quite different from his own, Carter responded in general terms, referring to his efforts to convince both Arab and Israeli leaders to support the American approach, but

clearly implied that he would appeal to Begin's domestic and foreign opposition: "I would try to marshal the support of the leader, first of all. Secondly, the opinion of his people back home, the constituencies that might exist in our own country that would have influence around the world, opinion that exists in the European community, and in the Arab nations as well." Thus President Carter appears determined to gain wide support for his own view of a fair territorial settlement. Prime Minister Begin has similarly indicated that he is prepared to appeal directly to American public opinion to oppose objectionable features in the Carter Administration's Middle East policy.

It is still too early to speculate on the final outcome of the current Israeli and Arab foreign ministers' consultations with President Carter. In a September 20 news conference following his talks with President Carter and State Department officials, Foreign Minister Dayan acknowledged that wide gaps still existed between Israel and the United States as well as between Israel and the Arabs, but added that, "We all have to distinguish between the start of negotiations, the bargaining, and the ultimate compromise. I think ultimately an agreed formula will be found."

While noting the differences between Israel and the U.S. over continued plans for Israeli settlements in the territories occupied by Israel during the 1967 war, Dayan said that in a final agreement, "if some settlements were on the other side of the ultimate border" means will be found to "remove them" or adjust to circumstances in some other way. However, Dayan added that, "we can assure the Arab states negotiations will not be decided on settlements."

Dayan thus reflected the Israeli view that the real obstacle to peace in the Middle East is not the restoration of Jewish communities in the historic land of Israel, but the continuing Arab refusal to acknowledge the right of a sovereign Jewish state to exist in the Middle East alongside the 21 sovereign Arab states.

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