



IS IT ALL ABOUT TERRITORY?

ISRAEL'S SETTLEMENT POLICY IN
THE OCCUPIED PALESTINIAN TERRITORY
SINCE 1967

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Abstract

Changing with rapid speed, the current political geography of the occupied Palestinian territory has de facto come to undermine a two-state solution and is turning the official aim and end point of international negotiations at best into a naïve mirage for policymakers and at worst into a façade for a very different political game playing out in the occupied territory of the West Bank and Israeli-annexed East Jerusalem: that of Israel's ongoing territorial expansion into Palestinian land. The study shows how the settlement policies inside what are internationally-recognised Palestinian territories are not merely undermining the realisation of the two-state solution: the territorial claims put forward and pursued in practice and their anchoring in strategies of legitimisation reach far beyond international legal standards. This reveals a very different political narrative embedded at the core of the conflict from that projected by those images often appearing in the mainstream media and policy circles: a narrative of an ongoing struggle over land detached from any 'Peace Process' measures.

Dansk resumé

Israels bosættelsespolitik har siden 1967 været et centralt omdrejningspunkt for Israel-Palæstina-konfliktens politiske geografi. I dag bor en halv million bosættelse på besat palæstinensisk territorium, der som en følge deraf ændrer sig dag for dag. Udvidelsen af eksisterende israelske bosættelser og opførelsen af nye på besat palæstinensisk territorium udgør i dag en central barriere for realiseringen af den tostatsløsning, som det internationale samfund har sat som officielt mål for løsningen af konflikten. I realiteten udspiller sig en anden virkelighed på Vestbredden og i Østjerusalem: kampen om territorium og international legitimitet. I praksis underminerer de territoriale ændringer mulighederne for en palæstinensisk stat, og dermed bidrager bosættelserne til at skubbe en holdbar fred længere ud i horisonten. Rapporten analyserer Israels legitimeringsstrategier og bosættelsernes humanitære og sociale konsekvenser og sætter den konkrete aktivitet i forbindelse med konfliktens bredere politiske kontekst, både i relation til eksisterende aftaler og diplomatiske forhandlingsspor og i forhold til internationale aktører forståelse af fænomenet. Analysen afdækker et af konfliktens helt centrale kernepunkter: kampen om territorium og international legitimitet. En kamp som i praksis vidner om en virkelighed, der udspiller sig langt fra de nu fastfrosne internationale forhandlingers ramme for en tostatsløsning. De internationale forhandlinger har i bedste fald slået fejl og har i værste fald været med til at forstærke konfliktens asymmetri og cementere de territoriale forandringer, som i dag er med til at underminere muligheden for oprettelsen af en palæstinensisk stat.

Abbreviations

DOP:	Declaration of Principles on Interim Self-government Arrangements (Oslo Accords)
GOI:	Government of Israel
GS:	Gaza Strip
ICA:	Israeli Civil Administration
IHL:	International Humanitarian Law
IDF:	Israeli Defence Forces
OPT:	Occupied Palestinian Territory
PA:	Palestinian Authority
PLO:	Palestine Liberation Organisation
UNGAR:	United Nations General Assembly Resolution
UNRWA:	United Nations Relief and Work Agency for Palestine Refugees in the Near East
UNSCR:	United Nations Security Council Resolution
WB:	West Bank

Introduction

Move, run and grab as many hilltops as you can, everything we take now will stay ours. Everything we don't grab will go to them.

Ariel Sharon¹, 1998,
after the Wye River negotiations
with Bill Clinton and Yasser Arafat

Having its starting point in 1967, the question of Israeli settlements is *old* news to followers of the contest over Palestine. However, *new* facts on the ground reaching unprecedented dimensions and determining the course of the conflict continue to occur on a day-to-day basis. Currently, almost every week new plans for expansion of existing settlements or the erection of new outposts are announced, disrupting the political landscape of what is, according to international consensus, to be a future Palestinian state.²

Aim of the report

The purpose of this report is to investigate the multi-dimensional phenomenon of Israeli settlements inside occupied Palestinian territory (OPT). The settlement enterprise, the study will argue, is the single most important set of policies undermining the tangibility of a two-state solution, advocating peaceful coexistence between Israelis and Palestinians attained through two separate states living side by side. Indeed the nature of the phenomenon and its underlying policy pattern – as a part of an ongoing territorial contest – deserves attention and needs to be dealt with as a deliberate policy of expanding one state's sovereignty into what is internationally recognised as belonging to a different nation and a future state: that of Palestine. To understand what enables the enterprise to evolve it is vital to investigate the significant void between the legal and the political positions of the international community towards the settlements and the state of Israel's claims to territory driving the ongoing settlement enterprise forward. The former seems to have some but only limited impact on the development while the latter, consisting

¹ Then Foreign Minister, later head of the Israeli opposition party Likud and from 2001-2006 Israeli Prime Minister.

² 'international consensus' refers to the parameters for a solution to the conflict based on a two-state solution as pinned out in the 2003 *Performance-based Road Map for a Permanent Two-State Solution to the Israeli-Palestinian Conflict*, for a full version of the text see: <http://news.bbc.co.uk/2/hi/2989783.stm>

of myriad political interests, grievances and motives of the state's political elite and the settlers themselves, reaches far beyond international legal standards and international agreements.³ This gap touches upon the core elements of the Israel–Palestine conflict, which dominate the path of the conflict much more than attempts to perk up the 'Peace Process': a core consisting of a power-based territorial struggle over the West Bank and East Jerusalem embedded in an intense politics of identity and demography based on religious affiliation and ethnicity coupled with the pursuit of legitimacy within the international arena. The nature and extent of the settlement enterprise leads to the question of *how*, in practice, the activities are legitimised and implemented while violating international legal standards. In fact the development begs the painful question: in light of the international positions on settlement construction in occupied territory is there any real remaining commitment 'on the ground' to a two-state solution?

Firstly the report will reflect on the overall role of territory and legitimacy in relation to the conflict and the settlement enterprise more specifically. Secondly the report will look at the embedding of the enterprise in international law and investigate the nature of the settlement enterprise, the rationale and strategies of legitimisation wielded to give the enterprise political legitimacy and strength seen in tandem with the concrete measures of territorial expansion deployed. Lastly it will discuss how this interplays with political agreements made since the Oslo Accords in the early 1990s. In conclusion, some reflections on the consequences of this for the prospect of a two-state solution will be made.

The study recognises the position of the international community with respect to the applicability of International Humanitarian Law (IHL) to the OPT and hence the illegal status of settlement construction inside the Israeli occupied West Bank and annexed East Jerusalem. However, in order to grasp the complex nature and the politisation of the debate around the legal dimension of the enterprise, there is a need to understand how arguments are presented by the involved parties including arguments bypassing international legal standards.⁴

³ For an excellent account of the background and motivation for settler migration to occupied Palestinian territory see Danny Raymond (2011) *Jewish Diasporas and Migrant Settlers on the West Bank*, Ph.D. Dissertation, Roskilde University.

⁴ 'international legal standards' refers to UN resolutions determining the illegality of the settlements and the positions of the Middle East Quartet (Russia, the EU, the UN and the US). More specifically it can be connected to the Advisory Opinion of the International Court of Justice on the illegality of the *Wall and its associated regime* (including settlements): see <http://www.icj-cij.org/docket/files/131/1677.pdf> (accessed January 2012).

Several aspects connected to the broader scheme of the conflict will not be touched upon. These include the broader political reality i.e. the role of Palestinian politics and more extreme political actors; the role of terrorism and political violence; and the developments within the other final status issues which also have great influence on the parties' positions. Additionally, attention could have been directed to internal Israeli politics and trends but, due to space-related considerations, this has not been done.

Lastly, the issue of policies towards Gaza will not be dealt with, mostly due to Israel's 2005 unilateral disengagement (dismantling of settlements) and because the small coastal enclave is a unique and incomparable case. Gaza is completely isolated from the rest of the territory and under an unprecedented hermetic closure since the Hamas takeover in 2007 followed by the ensuing Israeli blockade.⁵

The study is based on the existing literature on the subject including legal, political and economic analyses. Moreover the report draws extensively on the data and analysis presented by both Israeli authority sources and leading human rights observers, mainly Israeli, conducting work on the settlement issue.

⁵ The World Bank notes in its most recent comprehensive analysis: while the West Bank is a fragmented *archipelago* Gaza is an increasingly *isolated island*; see: *Coping with Conflict: Poverty and Inclusion in the West Bank and Gaza*, World Bank Report, 2011, p. 1 (accessed February 2012)

Part I

Back to basics I: the intertwining of territory and legitimacy

In the Israel–Palestine conflict the questions of *legitimacy* and *territory* are intertwined and mutually constitutive. As the conflict is both territorial and a meta-conflict over the nature of the conflict itself,⁶ the interpretation of facts on the ground is essential. At the heart of the pursuit of legitimacy domestically and within the international arena lies the pursuit of territory to claim as a part of the nation: in the Israeli case for the nation of the Jewish people (those residing within Mandate Palestine before the establishment of the state of Israel and those of the post Second World War global Jewish Diaspora choosing to migrate or flee to Israel and take up *aliyah* (Israeli citizenship). Simultaneously, with the political and territorial changes over the last century, many Palestinians have gradually shifted their aspirations for a Palestinian state away from encompassing ‘Historic Palestine’⁷ towards the territory designated under the 1947 UN Partition Plan (UNGAR 181) and, within the last decades, towards the 22 per cent which today is left for a Palestinian state.⁸

Indeed while the ‘age of colonialism’ is often said to be bypassed and not dealt with as a major and prevalent constant in international relations within the Israel–Palestine conflict, the question of territorial control – in this case Israeli control over the OPT – remains salient.⁹ As Darby and McGinthy argue, within the Israel–Palestine conflict the territorial factor is more prominent than in many other zones of conflict.¹⁰ Consequently, as Newman argues, facts on the ground cannot be ignored by decision makers, despite the initial justification, legal or moral, for the territorial changes.¹¹ The struggle over land is combined with a highly charged politics of identity and religion. This is due to Israel’s effort to preserve its Jewish character and to the mainstream

⁶ Kathleen A. Cavanaugh (2002), “Selective Justice: the Case of Israel and the Occupied Territories”, in *Fordham International Law Journal*, Vol. 26, No. 4, p. 936.

⁷ Referring to the geographical unit under the British Mandate of Palestine from 1922–1947/8, which today comprises both the Palestinian Territory and Israel. The British Mandate of Palestine put into effect the Balfour Declaration of 1917 whose principal objective was the establishment in Palestine of a national home for the Jewish people.

⁸ Efraim Inbar (2009), “The Rise and Demise of the Two-State Paradigm”, in *Orbis*, Vol. 53, No. 2, p. 267.

⁹ Paul F. Diehl (1999), *A Roadmap to War: Territorial Dimensions of International Conflict*, Nashville and London: Vanderbilt University Press, p. viii

¹⁰ J. Darby and R. McGinthy (eds.) (2000), *The Management of Peace Processes*. London: Macmillan.

¹¹ David Newman (2002), “The Geopolitics of Peacemaking in Israel-Palestine”, in *Political Geography*, Vol. 21, p. 631.

assumption that a political solution entails partition: the containment of two ethnic groups in two territorial units (Israel and Palestine). In fact, the nature of the conflict is in essence ‘ethnoterritorial’ as two ethnic groups (one Palestinian–Arab, and one Israeli–Jewish) are engaged in the struggle over the same land framed through two, at this stage multifaceted, narratives representing different ‘notions of homeland’. As Newman describes it “nurtured through processes of territorial socialisation, which focus on the historical and cultural rights to that territory”.¹² To the extent that claims to the right to the entire ‘historic Palestine’ are put forward at the extreme ends of the spectrum, these can be termed mutually exclusive nationalisms, leaving little room for the other nation’s territorial integrity: Palestinian nationalism versus Israeli/Jewish nationalism anchored in the political ideology of Zionism.

In addition, the ‘ethnic character’ of the conflict is not only interlinked with varying degrees of territorial claims to ‘historic Palestine’, it also involves a forceful competition over demographic developments as demographic superiority in ethnic–religious terms gives better room for political manoeuvres and, in the case of Israel, it secures its Jewish character. In fact, the focus on ethnicity seems to have the effect that it derails attempts to enforce a legalistic approach to the phenomenon. Within the confines of the conflict, legal arguments are brought into hard competition with past (and reactivated) historical claims to land based on interpretations of history and religion, politics of identity and, not least, the use of these for political considerations. The policies of the state of Israel inside occupied territory might overlap with the interests of settlers espousing a political identity connected to the territory, but perhaps more so might reflect the state’s pursuit of other political interests (than those of the settlers) such as natural resources and a more advantageous point of departure in negotiations.

The nature and extent of the phenomenon

Today, according to the Israeli Central Bureau of Statistics, there are 124 settlements inside the West Bank, of which only three are not recognised by the GOI but they are authorised as military capacities.¹³ Additionally, more than 100 outposts have been erected around the West Bank (according to Palestinian sources there are more than 239 illegal outposts).¹⁴ The newest figures from the Israeli organisation Peace Now report 137 settlements, 100 outposts and ten Israeli industrial areas inside the West

¹² Ibid. p. 633.

¹³ For a breakdown see B’t Selem: <http://www.btselem.org/settlements/statistics> (accessed January 2012).

¹⁴ PIJ policy paper “Israeli Settlements and the Two-State Solution”, *Palestine-Israel Journal*, August 2004, p. 2.

Bank.¹⁵ According to the Jerusalem Institute for Israel Studies, at the end of 2009 some 498,000 settlers were living in the West Bank: 186,646 in neighbourhoods in East Jerusalem and 311,431 in the rest of the West Bank (the latter according to figures from Israel's Central Bureau of Statistics for the end of 2010).¹⁶

Settlements are Jewish communities established inside internationally recognised Palestinian territory, beyond the Green Line (also known as the '1949 armistice line') demarcating the future border between the future state of Palestine and the state of Israel, over which attempts to negotiate a settlement to the conflict have taken place. According to Raymond the Jewish settlements (referring to all of Historic Palestine) have together with the activity of the Jewish Diaspora "been two of the most important building blocks upon which Israeli sovereignty was created".¹⁷ Moreover as Weizman notes, throughout the 1970s with the Likud¹⁸ gaining power in Israel, the settlement project was transformed from an improvised undertaking into an elaborate state project, making the occupation permanent and breaching the fundamental principle of international humanitarian law (IHL) that occupation is temporary.¹⁹ Israeli settlement policies have changed throughout the years in relation to allocation of funding: concrete planning has reflected the political views of the government in power and the shifting weight of political and religious groups at the time in question. However, as Weizman documents, all Israeli governments (Likud, Labour or Unity governments) have, since the start of the settlement construction, "actively contributed to the strengthening, development and expansion of the settlement enterprise".²⁰ Indeed the settlement enterprise has been almost continually ongoing, only stalled by decisions to freeze the process (relatively), in three rounds in 1978–79, 1992 and 2009–10, under special terms allowing the enterprise to largely continue especially in relation to what GOI deemed 'security needs', public buildings and the special case of East Jerusalem. Regarding the Road Map's 2003 demand to freeze settlement expansion including what is termed 'natural growth' and the required dismantling of all 'outposts' erected since 2001, all consecutive Israeli governments since have breached these undertakings.²¹

¹⁵ <http://peacenow.org.il/eng/content/settlements-and-outposts> (accessed January 2012).

¹⁶ <http://www.btselem.org/settlements/statistics> (accessed January 2012).

¹⁷ Danny Raymond, *Jewish Diasporas and Migrant Settlers on the West Bank*; Ph.D. Dissertation, Roskilde University, 2011, p. 5.

¹⁸ The major centre-right party in Israel.

¹⁹ Eyal Weizman (2006), *Hollow Land – Israel's Architecture of Occupation*, London and New York: Verso p. 111.

²⁰ *Ibid.*, p. 123.

²¹ For a view of the text of the performance-based Road Map see: <http://www.un.org/media/main/roadmap122002.html>

In considering the development of the settlement enterprise some overall trends can be observed. On the whole the policies of the Israeli Civil Administration (ICA)²² inside the OPT have had two major objectives: to promote the construction of Jewish settlements and to limit the expansion of Palestinian villages and urban centres. Indeed, since its takeover of control over the OPT in 1967 the Israeli policy has been relatively clear: the GOI has sought control over territory and to ensure as few indigenous people (Palestinians) as possible live in it, this both for territorial gains and as part of the strategy to counter the demographic majority and growth of Palestinians. This strategy has overlapped with the pursuit of other interests, economic and social, such as the quest for natural resources (especially water), military strategic and security purposes, for agricultural use and, of course, the effort to enhance Israel's position in political negotiations (as the quote at the beginning of the report epitomises). As Le More notes in the case of the Jordan Valley settlements,²³ these have been expanded purportedly for military reasons in what can be considered the most important land reserve in the West Bank.²⁴ However the most prominent feature of the, in population terms, relatively small settlements in this area has been the vast areas taken for cultivation of land i.e. Israeli agriculture, while settlements abutting the Green Line are built over the WB's main water aquifers.²⁵ These are just a few examples of overlapping explanations constituting the rationale behind the enterprise in particular locations. In order to understand the width and depth of the issue, the next section will look at the strategies of legitimisation that enable this development.

Strategies of legitimisation

The differing narratives of the nations and their territorial bases provide the background to competing territorial claims fuelling the conflict, this also in the context of the ongoing changes within each society: processes of socialisation in relation to territory and changes in the political identity and nationalism of both Palestinians and Israelis. These can be conceived through prisms of legitimacy, useful to detect how it is possible to keep up the settlement enterprise without outside political interven-

For an analysis of Israel's violations of its provisions see: B'T Selem (2010), *By Hook and By Crook*, p. 15: http://www.btselem.org/download/201007_by_hook_and_by_crook_eng.pdf (accessed December 2011).

²² ICA is in charge of all civil operations in the West Bank, though in practice the line between civil and military is often blurred.

²³ According to B'T Selem, in early 2011 there were 37 settlements including outposts in the Jordan Valley. B'T Selem (May 2011), *Dispossession and Exploitation—Israel's policy in the Jordan Valley*, p. 8.

²⁴ Anne Le More (2005), "Killing with Kindness: the Demise of a Palestinian State", in *International Affairs*, 2005 Vol. 81 No. 5, p. 988.

²⁵ About 80% of the mountain aquifer is located under the West Bank of which Israel uses 83% of its annually available water for the benefit of Israelis or settlements; Palestinians are left with the remaining 17%, Eyal Weizman (2006), *Hollow Land – Israel's Architecture of Occupation*, London and New York: Verso p. 19

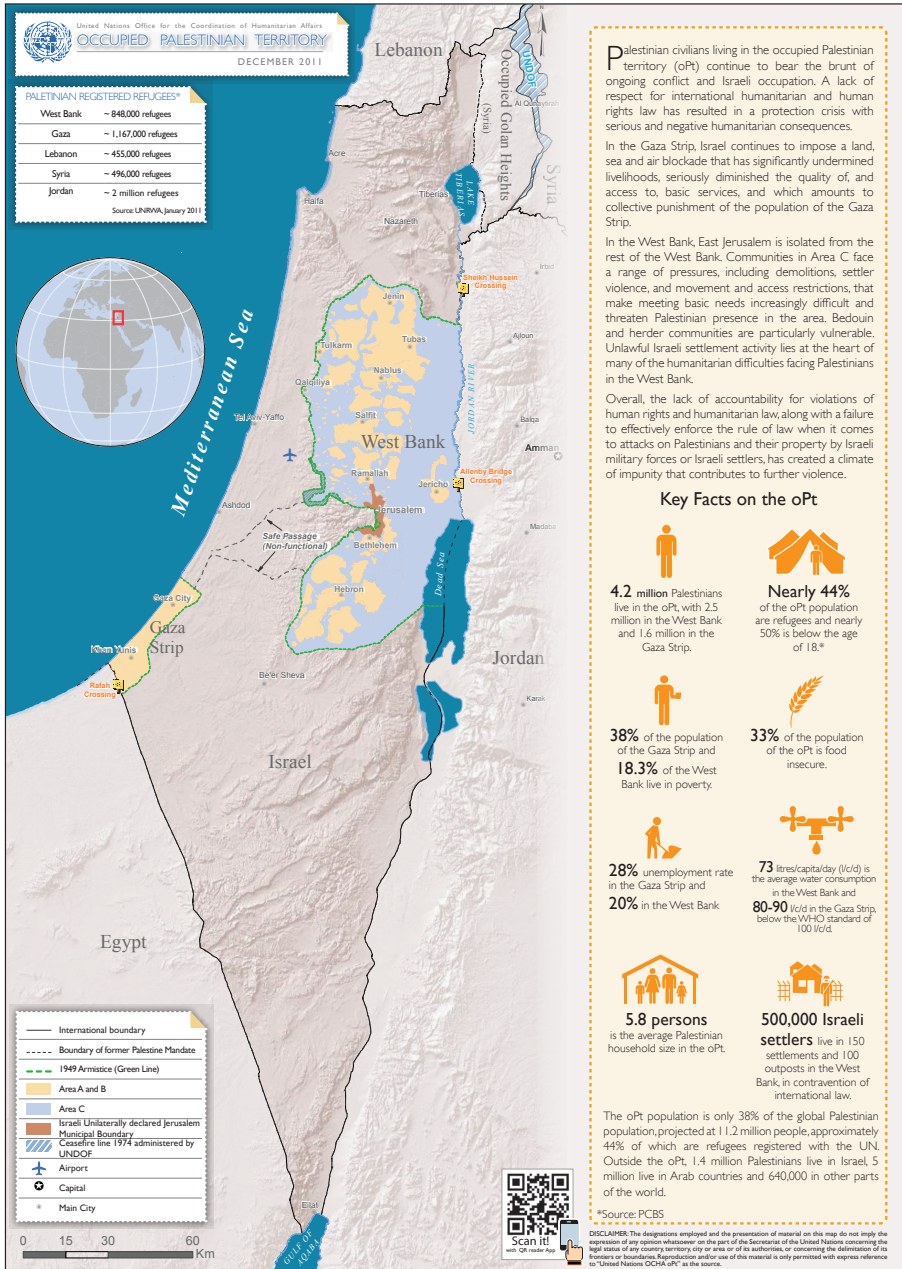
tion. Going through the foundational arguments for territorial change we encounter a broad variety of strategies of legitimisation supported by several diverse methods of expansion being justified and deployed (as demonstrated further on). Indeed while the struggle over legitimacy is tightly knit to the ‘on the ground’ territorial struggle, there is also a crucial need to emphasise and address the very interlinkage between the narratives of the nation and the actors’ pursuit of territory and to answer the question of why this conflict persists. Surely both parties seek to strengthen the legitimacy of their arguments to optimise their territorial interests.

The impasse of the Israeli settlement enterprise revolves around territorial claims derived from interpretations of its legal underpinning, political interests and social constructions anchored in mythical and symbolic claims often contravening accepted legal standards. The resulting blurriness of the legality and the pretexts for settlement construction are, according to Newman, best understood through the lens of territorial claims and the settlements are, effectively, multifold manifestations of claims to territory deployed as strategies of legitimisation with varying intensity and success. These multifold manifestations consist of territory seen as: 1) an *economic resource* (access to more/better agriculture, water, the construction of new ‘neighbourhoods’ pertaining to a mercantilist strategy); 2) a *strategic asset* (purportedly optimising security requirements and military strategic options and to employ ‘realities on the ground’ as point of departure in bilateral negotiations); 3) a *demographic container* (a container of people through which the state attempts to transform sovereignty *de jure* into *de facto* control encompassed in the dual dimensions of the conflict, the territorial control and demographic superiority) and, entering the scene of territorial symbolism; 4) territory as *historic and religious homeland* (attachment to territory based on identification of symbols and signs in the landscape, in the case of the West Bank and East Jerusalem epitomised in the use of the biblical term ‘Judea and Samaria’ or as expressed in the Israeli Declaration of Independence: ‘Eretz Israel’²⁶ (literally meaning ‘Greater Israel’ referring to the entire West Bank and, in some versions, even including part of other states of the region such as Jordan and Egypt). Lastly; 5) territory as an *exclusive entity* (the exclusive claim to land through which others peoples’/nations’ claims to the territory are delegitimised and alienated).²⁷ More concretely in relation to the settlement enterprise, Israel’s main argumentative pillar has evolved around a mixture of Jewish history, security and autonomy (to continue

²⁶ The Israeli Declaration of Independence of 1947.

²⁷ David Newman (1999), *Real Spaces, Symbolic Spaces: Interrelated Notions of Territory in The Arab Israeli Conflict*, pp. 5–16, in Paul F. Diehl (1999), *A Roadmap to War: Territorial Dimensions of International Conflict*, Nashville and London: Vanderbilt University Press.

Map I. Overview of the OPT



United Nations Office for the Coordination of Humanitarian Affairs, Occupied Palestinian Territory, Overview Map, December 2011.

http://www.ochaopt.org/documents/ochaopt_atlas_opt_general_december2011.pdf, accessed April 2012

control and presence). These considerations are central to the state's legitimisation of the settlement enterprise. The Palestinians, in the same way, seek to employ their historical narratives. Much differently, their strategies (embodied in the official positions of the Palestinian Liberation Organisation of today) evolve around their claim to the right to self-determination and a broader spectrum of legalistic arguments drawing on international law and agreements in relation to settlements (referring to the official positions of the international community).²⁸

Taking into account the role of various interpretations of international law in relation to the legal scope of the enterprise, some points on positions of the international community and Israel's argumentation will be presented in the next section.

²⁸ While the centre of attention here is made up of the positions and actions of the officially recognised negotiating parties, the GOI and the PA, without a doubt a variety of Palestinians (and Israelis) have different aspirations and opinions that exceed these demands. In the Palestinian case this includes both factions of the Islamist spectrum and leftist secular groups.

Part 2

The international community's legal positions on settlements and occupation

Occupation

Since 1967 Israel has, according to international law, occupied the West Bank and Gaza (as well as Egypt's Sinai until 1982 and the Syrian Golan Heights still occupied today). Rules governing occupation are laid down in the Geneva Convention to which Israel is signatory, as well as the Hague Regulations. The High Contracting Parties of the Geneva Convention have confirmed and reaffirmed the applicability of the convention to the occupied territories and the status of Israel as the occupying power.²⁹ Indeed the status of the territories has, until today, remained that of 'occupied territory' (see map 1).³⁰ According to Weizman, in 1967 the Israeli military assumed legislative, executive and judicial power over what had, from 1948 onwards, been Jordanian and Egyptian controlled Palestinian territory.³¹ Gaza had been under Egyptian military administration, while the West Bank had been under Jordanian administration and since 1950 Jordan claimed to have annexed it (albeit this was only recognised by Britain, Iraq and Pakistan).³² No government could with validity claim to represent the interests of WB and GS as their sovereign. In categorising Israel as an occupying power Cavanaugh lists four legal principles customarily held to govern belligerent occupation:

- 1) The occupier exercises de facto and not de jure authority over the occupation.
- 2) In exercising authority the occupier must balance its military objectives with the needs of the local people.
- 3) The occupation of territory is temporary.
- 4) The occupied must not exercise its rights to further its own needs or interests of those of its own people.³³

²⁹ Declaration of the High Contracting Parties to the Fourth Geneva Convention, December 2001: <http://domino.un.org/UNISPAL.NSF/85255a0a0010ae82852555340060479d/8fc4f064b9be5bad85256c1400722951>

³⁰ The International Red Cross, the United Nations and the European Union under the Fourth Geneva Convention and other provisions of International Humanitarian Law considers Israel an occupying power.

³¹ Eyal Weizman (2006), *Hollow Land – Israel's Architecture of Occupation*, London and New York: Verso p. 18.

³² Eyal Benevisti (2004), *The International Law of Occupation*, Princeton University Press, p. 108.

³³ Kathleen A. Cavanaugh (2002), "Selective Justice: the Case of Israel and the Occupied Territories", in *Fordham International Law Journal*, Vol. 26, No. 4, p. 944.

In terms of the resolution-based framework UNSCR 242 has been a cornerstone in the effort to negotiate a two-state solution demanding the withdrawal of Israel from 'territories occupied in the recent conflict'.³⁴ The resolution still persists as a point of reference for the Middle East Quartet (the EU, Russia, the UN and the US), before whom the West Bank and Gaza have been designated as the territory for a Palestinian state (with some opening up for the possibility of minor land swaps).

The status of Jerusalem has been somewhat different. An 'International Jerusalem enclave' was part of the 1947 UN General Assembly Resolution 181, stating that: 'The City of Jerusalem shall be established as a 'corpus separatum' under a special international regime and shall be administered by the United Nations'.³⁵ This entails that Israel under UNGAR 181 has no legal claim to Jerusalem. Despite its in principle international status, in practice West Jerusalem is accepted as Israeli, while East Jerusalem is considered occupied/annexed. In 1967 Israel passed the 'Law and Administration Ordinance', which extended Israeli jurisdiction over East Jerusalem and its adjacent eastern neighbourhoods, and in 1980 the Knesset passed the Basic Law, stating in Article 1 that: "Jerusalem, complete and united is the capital of Israel".³⁶ Conversely, the international community considers East Jerusalem occupied under international law, and the UNSC generally speaks of the "occupied Palestinian Territory, including East Jerusalem".³⁷ While Israel is considered an occupying power (in itself not illegal as long as it is not permanent), another level of the debate is whether the GOI lives up to its responsibilities as an occupying power as codified in the Geneva Convention and The Hague Regulations. This includes:

- Maintaining the security of the territory
- Ensuring public order and safety
- Acting for the welfare of the local population

Here the issue of settlements is crucial, as these heavily influence Israel's failure to meet its responsibilities as an occupying power.

³⁴ For the full text of the resolution see: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/240/94/IMG/NR024094.pdf?OpenElement> (accessed January 2012)

³⁵ For the full text of the resolution see: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/038/88/IMG/NR003888.pdf?OpenElement> (accessed December 2011).

³⁶ For a full text of the Basic Law see: http://www.knesset.gov.il/laws/special/eng/basic10_eng.htm (accessed January 2012).

³⁷ <http://unispal.un.org/UNISPAL.NSF/0/E29F7195C53CDDA905256729005035E4> (accessed March 2012).

Settlements

The establishment of settlements in the OPT constitutes a breach of the provisions of the 1907 Hague Convention on the Law and Customs of War on Land and the regulations accompanying it, as well as to the 1949 Fourth Geneva Convention Relative to the Protection of Civilians in Time of War. In relation to the latter, one of the objectives of the Geneva Convention Article 49 is to preserve the demographic status quo in occupied territory, as the article states: “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies”.³⁸ In fact, a range of international bodies accept this premise, including the UN General Assembly, the Security Council, the Economic and Social Council, the Commission on Human Rights and the International Committee of the Red Cross. These all set down that the Geneva Conventions are applicable *de jure* to the OPT. This is also the position of the PLO. With the Advisory Opinion of the International Criminal Court of Justice in 2004 on the ‘Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory’ the Court determined that Israel continues to have the status of an occupying power and affirmed the applicability of the Hague Regulations to the territory. In addressing the applicability of the Fourth Geneva Convention it noted: “Settlements established by Israel in breach of international law in the Occupied Palestinian Territories – Construction of the wall and its associated regime create a ‘fait accompli’ on the ground that could well become permanent”.³⁹

Moreover, in 1979 the United Nations Security Council passed the first among many resolutions against the Israeli settlements. Resolution 446 of 1979 determined that: “the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East”.⁴⁰ In addition there are several other legal aspects at play in relation to the question of the breach of international law in the context of the settlements; the violation of Palestinians’ Human Rights, Right of Property (Enshrined in Article 17 of the Universal Declaration of Human Rights) and in Article 46 of the Hague Regulations and Article 53 of the Fourth Geneva Convention. This is especially relevant in cases where private land has been included in settlement construction. Also the Right to Freedom of Movement and Right to Self-Determination are central to the discus-

³⁸ For a full view of the Fourth Geneva Convention see: <http://www.icrc.org/ihl.nsf/WebART/380-600056>

³⁹ “Legal Consequences of a Wall Constructed in Occupied Territory”, *Advisory Opinion of the International Court of Justice* (July 2004), p. 5: <http://www.icj-cij.org/docket/files/131/1671.pdf>

⁴⁰ <http://unispal.un.org/UNISPAL.NSF/0/BA123CDED3EA84A5852560E50077C2DC> (accessed January 2012).

sion as well (but will not be dealt with extensively here). The agenda of *realpolitik* was exposed when, in February 2011, the US vetoed a resolution condemning the settlements in the Security Council.

Israeli contra-arguments and 'legal regime'

Israel's official position is that Gaza and the West Bank are 'disputed territory', while Jerusalem is part of Israel.⁴¹ This means that Israel cannot be considered an occupying power. For Israel international law is not the main source of authority informing its policies in the OPT in relation to settlements. In fact, as Braverman shows, Israel rather bases its arguments on "an eclectic combination of Ottoman, British Mandatory, and Jordanian laws, as well as an overriding set of roughly 1,000 Israeli military orders, judicial case law, and administrative regulations".⁴² Often Israel criticises the application of international humanitarian law as being used as part of a political manoeuvre and, for many years, has criticised arguments based on UN resolutions for being politically biased in favour of the Palestinians. One example in this case is Israel's argument against the applicability of Article 49 of the Fourth Geneva Convention to the settlements question. Israel argues that the settlers' migration to the OPT happens on a voluntary basis and not as a forceful act on the part of the state,⁴³ just as it serves important provisions of security. A central argument concerns the interpretation of UNSCR 242. Here GOI claims that the requirement that Israel withdraw from 'territories occupied in the recent conflict' is lacking the definition of which territory (and thus not ALL the territory) it should withdraw from, and Israel contests any Palestinian claim to it. Furthermore, on a more overtly political note, the GOI argues that the 1967 borders are 'undefensible'.⁴⁴ In fact, despite Israel's commitment to the Road Map, this undermines much of the premise for a two-state solution, including the demand for dismantling of settlements. This requires further elaboration.

To be sure, despite its ratification of the Geneva Convention in 1951, Israel presents a line of arguments to counter the applicability of International Humanitarian Law

⁴¹ Israeli Ministry of Foreign Affairs (2003), *Disputed territories – Forgotten Facts about the West Bank and Gaza Strip*: http://www.mfa.gov.il/MFA/MFAArchive/2000_2009/2003/2/DISPUTED+TERRITORIES-+Forgotten+Facts+About+the+We.htm (accessed January 2012).

⁴² Irus Braverman (2008), "The Tree Is the Enemy Soldier": A Sociolegal Making of War Landscapes in the Occupied West Bank", in *Law and Society*, Vol. 42. No 3, pp. 449–482.

⁴³ Israeli Ministry of Foreign Affairs, 2001: <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Israeli+Settlements+and+International+Law.htm> (Accessed January 2012).

⁴⁴ For Israel's interpretation of resolution 242 see: Israeli Ministry of Foreign Affairs (2003), *Disputed territories – Forgotten Facts about the West Bank and Gaza Strip*: http://www.mfa.gov.il/MFA/MFAArchive/2000_2009/2003/2/DISPUTED+TERRITORIES-+Forgotten+Facts+About+the+We.htm (accessed January 2012).

to the question of settlements and the nature of its occupation more broadly, summarised within three sets of arguments: 1) that Jewish presence in the West Bank and Gaza has existed 'from time immemorial' and is "recognised as legitimate in the Mandate for Palestine adopted by the League of Nations".⁴⁵ In fact Israel has never officially recognised the applicability of the Fourth Geneva Convention to the West Bank and Gaza let alone East Jerusalem, arguing with main reference to the fact that Israel never accepted the territories as under their former administrators' sovereignty (the West Bank under Jordan and the Gaza Strip under Egyptian administration). As such the sovereignty of the territories was purportedly disputed at the time when Israel assumed control.⁴⁶ Indeed, the GOI's position is that: 'Judea, Samaria and Gaza' have a status *sui generis* (i.e. beyond the law as neither part of Israeli territory, nor formally occupied territory). This position has been termed the 'missing sovereign'.⁴⁷ Although Israel has agreed to observe its 'humanitarian provisions', according to former Israeli attorney general Meir Shagar no list has ever been given of what these provisions include. The positions of the Supreme Court of Israel are more complicated and will not be dealt with here,⁴⁸ apart from mentioning that there have been several legal disputes between the civil administration, the Ministry of Housing and Planning, human rights groups, individual settlers and the Court along with many more authoritative and non-authoritative bodies.⁴⁹ Thus the GOI argues many settlements predate the establishment of the state of Israel and cannot be categorised as occupation.

The last two aspects are: 2) the settling of individuals in the territory happens on a voluntary basis and cannot be considered *transfer*, and should moreover be considered a 'return to the towns and villages from which they, or their ancestors, have been ousted';⁵⁰ 3) that overall, the West Bank and Gaza Strip are best regarded as territory over which there are competing claims, which should be resolved in political

⁴⁵ Israeli Ministry of Foreign Affairs, 2001: <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Israeli+Settlements+and+International+Law.htm> (Accessed December 2011).

⁴⁶ Eyal Benevisti (1993), *The International Law of Occupation*, Princeton University Press. p. 109.

⁴⁷ *Review of the applicability of International Humanitarian Law to the Occupied Palestinian Territory*, Policy Brief, Harvard Program on Humanitarian Policy and Conflict Research, July 2004, p. 4.

⁴⁸ For a thorough analysis see *Review of the Applicability of International Humanitarian Law to the Occupied Palestinian Territory*, Policy Brief, Harvard Program on Humanitarian Policy and Conflict Research, July 2004, p. 5.

⁴⁹ For a thorough account of the domestic enforcement and the Israeli High Court's positions on the OPT see: Kathleen A. Cavanaugh (2002), "Selective Justice: the Case of Israel and the Occupied Territories", in *Fordham International Law Journal*, Vol. 26, No. 4, pp. 946-53. p. 946-53.46-53

⁵⁰ Israeli Ministry of Foreign Affairs, 2001: <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Israeli+Settlements+and+International+Law.htm> (Accessed December 2011).

negotiations, and that any claims about the illegality of settlements are politically motivated. According to Israel the inapplicability of the Conventions was reinforced after Oslo.⁵¹ In fact, as will be further investigated, political agreements made during the last 20 years have complicated the question of territorial division on several levels by creating confusion between the interpretation of considerations to international law and political agreements.

In order to further grasp the immense impact of the enterprise upon the path of the conflict the next chapters will go through some core features and rationales behind the settlements and the people residing in them.

Settlers at the frontline – a question of security?

As already noted, the Israeli security doctrine has been crucial to the enterprise in different ways. Firstly, policy based on security has been a primary justification for establishing settlements. This, as we have seen in relation to the permission under international humanitarian law to, on a temporary basis, take possession of land for military purposes (without granting property rights), and in prolongation of that, as shown, further down the line establish settlements populated by civilians in that space.

This study does not have the ambition to make a steadfast distinction between the ‘true belief’ in the security function of settlements as bolsters against external aggression or even invasion and the use of the security needs as a strategy of legitimisation while serving other purposes. However, it is certain that the overall argument that settlements serve as a necessary front-line warning system against much of the Arab world has been continually propagated and enforced in the context of war and the general situation of Israel’s location in a hostile environment. At the same time, the argument can be made that Israel increases its security concerns by upholding the settlement enterprise, which causes great public dissatisfaction among peoples in the region. The more civilian nature of the settlements allows a further questioning of the actual security function of the settlements, especially those in the Jordan Valley bordering the Arab world. This is both based on the fact that settlement activity has intensified in times of relative peace and because, in the advent of foreign invasion, Israel would need to protect its citizens living at the frontiers, instead of relying on them as a prime line of defence. Next, if the settlers are not there for security reasons, in order to understand the nature of the settlements, the issue of the character of the settlers themselves is pertinent.

Shifting dynamics of the settlers' influence

Overall, the settlers comprise a heterogeneous groups of migrants moving into the OPT from Israel proper or from the Jewish Diaspora originating in the US, Russia, Europe, Africa and the Arab World and elsewhere. However today, more than 40 years after the establishment of the first settlements, there are three generations living there and a growing segment has never lived anywhere else. The annual growth of the settler population has been much higher than inside Israel proper. In 2008 it was three times greater, which proves that there is a higher migration rate to here than to anywhere else in Israel.⁵² Overall roughly it is estimated that 30 per cent of settlers are ultra-orthodox, 30 per cent ideological, 30 per cent non-ideological and 10 per cent mixed, with the religious communities displaying higher growth rates than the secular.⁵³ Today the settlers make up around 10 per cent of the Israeli population and the entire nature of the enterprise is going through a process of transformation with the shifting dynamics of the 'religious right'. Many studies report both an increased militancy and religious radicalism among the settlers as well as an increase in the political influence they have on Israeli politics and their connection to the right wing in Israeli politics.⁵⁴ Over the last years both the institutional and political leverage of the settlers has increased (this of course increases with the rising numbers of settlers enjoying the right to vote in Israel). International Crisis Group states:

Together the national-religious and ultra-orthodox carry weight far in excess of their numbers... they occupy key positions in the military, the government and the education and legal sectors, as well as various layers of the bureaucracy...strengthening the struggle against future territorial withdrawals from within and without state institutions.⁵⁵

An influx of national-religious individuals has filled the ranks of the IDF as, in parallel, paramilitary squads of armed settler volunteers have mushroomed in

⁵¹ There are several opinions on this issue. However as a starting point the Israeli argument is contingent upon the actual implementation of the agreement by the parties, which as the report will show has been largely lacking.

⁵² Dan Suan and Vered Ne'eman-Haviv (eds.), *Judea and Samaria statistical yearbook 2007* (Ariel: Ariel University Center of Samaria and the Samaria and Jordan Valley Regional R&D Center), p. 1; Central Bureau of Statistics, CBS press release, 18 September 2009.

⁵³ PIJ policy paper "Israeli Settlements and the Two-State Solution", *Palestine-Israel Journal*, August 2004, p. 4.

⁵⁴ See among others International Crisis Group, *Israel's Religious Right and the Question of Settlements*, Middle East Report No. 89, July 2009: [http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/Israel%20Palestine/89_israels_religious_right_and_the_question_of_settlements.pdf](http://www.crisisgroup.org/~/media/Files/Middle%20East%20North%20Africa/Israel%20Palestine/89_israels_religious_right_and_the_question_of_settlements.pdf)

⁵⁵ International Crisis Group, *Israel's Religious Right and the Question of Settlements*, Middle East Report No. 89, July 2009: p. 1.

the OPT while as a third factor many religious communities operate under their own 'military rabbinate' providing their own interpretation and imposition of the Torah law.⁵⁶

Some settlers are part of the group of the so-called 'ideological settlers'. These make up a more radicalised, nationalist or orthodox segment taking up violent strategies against both the IDF (serving to protect them in occupied territory) and against Palestinians with whom violent clashes occur more frequently.⁵⁷ The 'ideological settlers' often live in the northern and central part of the West Bank and the more extremist ones reside in the Old City of Hebron in the south. Among these are the so-called 'hilltop youth' – a group of young extremist settlers, who work as a main force behind the erection of outposts.⁵⁸ Other groups of settlers are typically termed 'quality of life settlers' because of their pursuit of cheap, better housing and are thus primarily migrating to live in settlements motivated by economic incentives. The state habitually provides economic support and benefits to citizens accepting to move into occupied territory, often ultra-orthodox people moving from poor neighbourhoods inside Israel proper, mostly Jerusalem. More specifically the GOI has designed incentive programmes to encourage Israeli citizens to migrate from larger cities such as Tel Aviv and Jerusalem and have hence increased settlement activity. While NGOs in Israel report that the state's budgeting around the allocation of resources to the settlement enterprise is opaque and figures in the available budgets mix lists of financial allocations to municipalities inside the OPT and Israel proper, it remains clear that on an overall level GOI gives special benefits to citizens living in occupied territory.⁵⁹ In large these benefits are granted to Israeli citizens in communities defined as 'National Priority Areas', and the entire West Bank is defined as such an area. The objectives of this categorisation were, according to the Prime Minister's Office, "to encourage the next generation to remain in the priority area"... "to encourage new immigrants to settle there", and to encourage "migration of Israeli veterans

⁵⁶ Ibid. pp. 25–27.

⁵⁷ Israeli human rights groups, the IDF and the government report an increase in settler violence both attacking Palestinian and Israeli targets inside the OPT. See Amos Harel, *Shin Beit: Threats of settler violence against Israeli officials rising in the West Bank*, Haaretz, 3 October 2011: <http://www.haaretz.com/print-edition/news/shin-bet-threat-of-settler-violence-against-israeli-officials-rising-in-west-bank-1.387765>

⁵⁸ Erica Chernofsky, *Hilltop Youth Push to Settle West Bank*, BBC News, 18 August 2009: http://news.bbc.co.uk/2/hi/middle_east/8204826.stm

⁵⁹ Benefits are given in the fields of housing, education, industry, agriculture and tourism and local authorities and economic projects in the West Bank. For a documented analysis see the Adva Center (*Information on Equality and Social Justice in Israel*) report on Central Government Transfers to municipalities within the Green Line and in settlements in the OPT: <http://www.adva.org/uploaded/Local%20Authorities%202011%20English.pdf>

to priority areas”.⁶⁰ Naturally, the increased infusion of settlers has also affected the political geography of the OPT.

Restricting use of space: internal closure, planning and zoning

Settlements make up a complicated system of separate infrastructure which needs to be highlighted in order to understand the effect of the enterprise upon the political geography of the OPT. This includes practical measures to, among other things, facilitate the settlements’ sewage systems and water supply and what is termed security measures such as checkpoints and roadblocks.

With the construction of the settlements Israel has de facto annexed the land they are built on and adjacent land and applied Israeli law to them.⁶¹ This has created a situation where separate legal systems (Israeli and Palestinian) apply to peoples living within the same territory (the West Bank). Settlers are living under Israeli civil law while Palestinians are subject to Israeli occupation policies and military orders and, to some extent, Palestinian law. As the legal scholar Lisa Hajjar argues, while the Fourth Geneva Convention establishes the right of an occupying power to force legislation by military order and to amend existing legal structures, at the same time Israel has argued that it is not binding on the state in the OPT on a de jure basis. Consequently, Hajjar argues, the Fourth Geneva Convention has been drawn upon to justify *the making* of the law but has been rejected as *a framework* for the content of the law.⁶²

In 1967 Israel extended its jurisdiction to East Jerusalem and thus completely subjugated it to Israeli law. In spite of this, multifaceted patterns of discrimination are still consistently reported, especially concerning issues of access to land, and house demolitions and settlement expansion/construction. All this, according to EU diplomats, is connected to the stated aim of transferring Palestinians from East Jerusalem to the West Bank, and thus abolishing their right to return and resettle in Jerusalem.⁶³

⁶⁰ Prime Minister’s Office, Coordination and Control Department, National Priority Areas, Jerusalem, 26 April 1998.

⁶¹ The ‘Spiegel Database’, compiled and developed by the Israeli Ministry of Defence, reports that as of 2009 at least 27 settlements had ‘building deviations’ that extend beyond what Israel has claimed as ‘state land’ onto private Palestinian land.

⁶² Lisa Hajjar (2005) *Courting the Conflict: Israeli Military Court System in the West Bank and Gaza*, University of California Press.

⁶³ As an example, the European Heads of Mission (diplomatic representatives of European governments) have several times reported on ‘facts on the ground’ with special attention to the deteriorating situation in East Jerusalem, this both in relation to humanitarian concerns and in relation to the overall ‘peace process’. In addition, for a full account of the role of ID cards, see Jennifer Loewenstein, “Identity and Movement Control in the OPT”, In *Forced Migration*, 2006.

Inside the WB the changes in the landscape have become very evident in relation to the traffic infrastructure. A separate system of roads and bridges (around 20 roads linking West Bank settlements to each other and to Israel) has been built only for Jewish/Israeli individuals, creating a ‘sterile’ traffic flow,⁶⁴ in effect often serving the settlers at the expense of Palestinian access to land and the degradation of their general level of livelihood.⁶⁵ As a UN analysis concludes: “In practice, Palestinians are compelled to use an alternative road network of secondary and more circuitous roads that run between the Israeli road network. In effect a two-tier road system – Israeli and Palestinian – operates side by side.”⁶⁶ This has further fragmented the West Bank into a series of Palestinian enclaves (See map 2). The World Bank has continuously reported on the increasing geographical fragmentation and its influence on spatial disparities in poverty, pointing both to the devastating effect of internal movement restrictions and external border restrictions.⁶⁷ These are merely a few examples of the pervasive nature of the Israeli policies connected to the settlement enterprise. These policies are conducted through micro-management of the OPT.

In terms of the larger geographical scope of the enterprise, according to one Israeli observer of human rights violations in the OPT Bt’ Selem, by and large the settlements have been constructed along three strips running north to south and one around the Jerusalem metropolitan area:

- 1) *The Mountain strip*: settlements cut the West Bank lengthwise and are situated along the largest populous centres of the West Bank (Jenin, Nablus, Ramallah, Hebron and Bethlehem running parallel to Route 60, the main transport artery in the West Bank).
- 2) *The Eastern Strip*: including the Jordan Valley, the shores of the Dead Sea up to the Green Line.
- 3) *The Western Hill Strip*: the area west of the mountain ridge through the Green

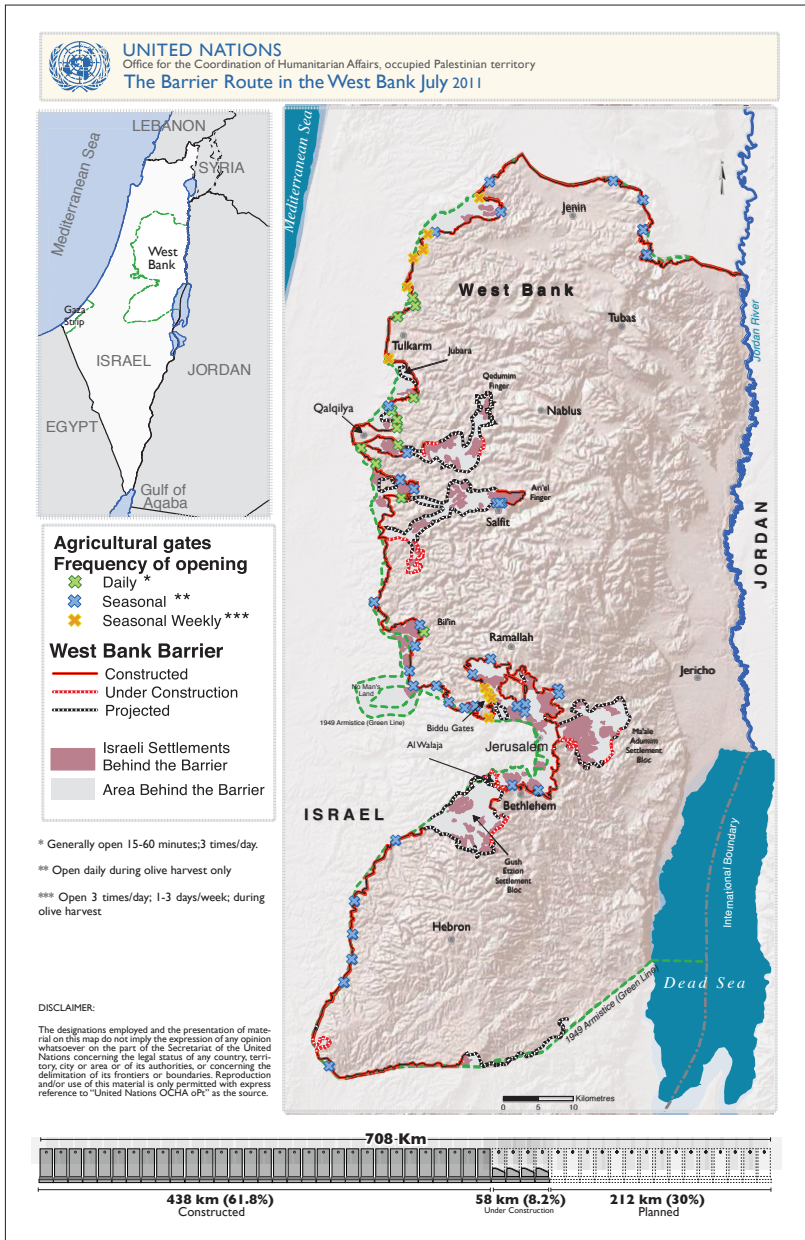
⁶⁴ United Nations – Office for the for the Coordination of Humanitarian Affairs (2007), *The Humanitarian Impact on Palestinians of Israeli Settlements and other Infrastructure in the West Bank*, p. 59: http://www.ochaopt.org/documents/TheHumanitarianImpactOfIsraeliInfrastructureTheWestBank_full.pdf (accessed December 2012).

⁶⁵ It is possible for some Palestinians to obtain permits to access the roads almost exclusively for commercial purposes. Almost no private vehicles have access.

⁶⁶ United Nations – Office for the for the Coordination of Humanitarian Affairs (2007), *The Humanitarian Impact on Palestinians of Israeli Settlements and other Infrastructure in the West Bank*, p. 68: http://www.ochaopt.org/documents/TheHumanitarianImpactOfIsraeliInfrastructureTheWestBank_full.pdf (accessed December 2012).

⁶⁷ *Coping with Conflict: Poverty and Inclusion in the West Bank and Gaza*, World Bank Report, 2011, pp. 68–76

Map 2. The Barrier Route in the West Bank



United Nations Office for the Coordination of Humanitarian Affairs, Occupied Palestinian Territory, the Barrier Route in the West Bank, July 2011.

http://www.ochaopt.org/documents/ocha_opt_west_bank_barrier_route_update_july_2011.pdf
 accessed 19 June 2012

Line (many of these are adjacent and make up continuous urban expanses, often west of the Green Line.

- 4) *Jerusalem Metropolis*: including ‘neighbourhoods’ established in annexed areas considered settlements under international law.⁶⁸ This cuts off the eastern part of the city from the West Bank, and the Old City (shared by Jews, Muslims and Christians) from its Arab Metropolitan areas.

Paired with this zoning strategy, a range of concrete methods of territorial expansion have been deployed. Recalling Newman’s emphasis on strategies of legitimisation, the rationale behind the settlements expansion has more specifically been presented as a mix of needs and legal arguments for justification. This in large terms includes the following pretexts for building settlements in the OPT:

- 1) *‘Military needs’*: Israeli use of military requisition orders to take possession of private Palestinian land, claiming settlements served security–military functions. According to The Hague Regulations the occupying power is allowed to serve its military needs while maintaining the assets of the occupied people.⁶⁹ Thus it is possible for Israel to establish military bases inside the OPT because international humanitarian law permits the occupying power to appropriate property under private ownership for military purposes, albeit on a temporary basis. To be sure, often settlements that started as army bases have subsequently been declared civilian sites. In 2002 the use of military requisition orders accelerated in order to build the Separation Barrier, 85% of the route of which is running inside the West Bank.
- 2) *Declaration of ‘state land’*: Israel’s prime mechanism for gaining control of land is based on Ottoman Land Law of 1858. By employing this means, as Weizman writes: “the legal playground was thus transferred from the late nineteenth and early twentieth century laws of belligerent occupation to the agrarian land laws of the Ottoman Empire”.⁷⁰ The GOI declared 913,000 dunams or 16.8% of the WB to be state land, most between 1979 and 1992 (this is in addition to what was declared state land during the British Mandate).⁷¹ Today ‘state land’ constitutes 1.5 million

⁶⁸ B’t Selem (2002), *Land Grab – Israel’s Settlement policy in the West Bank*, p. 91: http://www.btselem.org/sites/default/files/publication/200205_land_grab_eng.pdf

⁶⁹ For a full text of Article 55 see: <http://www.icrc.org/ihl.nsf/WebART/195-200065>

⁷⁰ Eyal Weizman (2006), *Hollow Land – Israel’s Architecture of Occupation*, London and New York: Verso p. 116.

⁷¹ Bt Selem Report (2010), *By Hook and By Crook*, http://www.btselem.org/sites/default/files2/201007_by_hook_and_by_crook_eng.pdf, p. 24.

dunams,⁷² all in all 26.7% of the West Bank. Israel's subjective interpretation of the law, and indeed application of the law, enables the possession of uncultivated land (which falls into three distinct categories). These pertain to a strict interpretation of 'cultivated'. This started when, in 1968, Israel froze the process of registering property and the Land Registration Office and took land from absentees (people not residing on their own land, including people displaced by force). The Israeli practices contravene key provisions of Ottoman legislation, as Israel does not limit itself to the boundaries of 'state land'. In East Jerusalem 35% of the land has been expropriated for 'state land'. Only citizens of Israel or those legally entitled to claim Israeli citizenship (i.e. Jewish) can buy property built on state land.⁷³

- 3) *'Survey land'*: Land whose ownership has not yet been determined by the Custodian, and thus according to Israel is disputed.⁷⁴ In 2004 there were 667,000 dunams of survey land in the WB (comprising 12% of the WB). Under Israeli law it is illegal to build on 'survey land', however settlement construction takes place regardless.
- 4) *'Expropriation for public needs'*: The Jordanian Land Law notes that the state is allowed to expropriate land only for public needs. Based on a 1969 military order the major settlements in East Jerusalem land for building Ma'ale Audimim, Gilo, Pisgat Ze'ev and Ramot were expropriated for 'public needs'. Also the GOI has used this pretext to built infrastructural roads to connect settlements together and to Israel. None of these projects have been built to benefit the Palestinians.
- 5) *'Annexation of privately owned Palestinian land'*: According to Peace Now's figures, which relate to all the Israeli civilian entities in the WB – settlements, outposts and industrial areas – private Palestinian land constitutes 32.4% of the land controlled by these entities.
- 6) *'Jewish owned land'*: Land purchased and registered by Jews (prior to 1948) comprises 0.19% of the WB.

Several in-depth studies have been made on these different historical–legal aspects.⁷⁵ This presentation has only served to give an overview and demonstrate how myriad

⁷² In many formerly Ottoman regions 1 dunan is now defined as one decare (1000 m2).

⁷³ See: *EU Heads of Mission Report on East Jerusalem*, 2010: <http://www.saar.at/Presseaussendung/EU%20HoM%20report%20on%20Jerusalem%20Dec%202011.pdf>

⁷⁴ *Breaking the Law in the West Bank, One Violation Leads to Another: Israel's Settlement Building on Private Palestinian Property*, Peace Now Report (2006), <http://peacenow.org/images/112106PNReport.pdf> (accessed 22 January 2012).

⁷⁵ For a thorough account of the Israeli reformulation and deployment of British colonial and Ottoman Law in the context of occupation see for example: Robert Home (2003), "An Irreversible Conquest? Colonial and Postcolonial Land Law in Israel/Palestine", in *Social and Legal Studies*, Vol. 12. No. 291.

strategies of legitimisation are anchored in a variety of interpretations of a diverse set of historical epochs, legacies and methods for expansion. However, a major driver of the enterprise is the establishment of outposts, which because of its extent deserves further attention.

Settlements and outposts: a false dichotomy between ‘legal’ and ‘illegal’

In practice the so-called ‘outposts’ are merely smaller settlements often in the shape of caravans erected by a group of settlers from hundreds of metres up to a few kilometres away from the ‘mother settlement’. Israel labels the outposts ‘illegal’, but in practice few are erected without the indirect acceptance of the GOI, and various Israeli state leaders have, over the years, called for their removal but done little to actually effect this except from a few relocations of settlers leaving their total number the same.⁷⁶ The differentiation between outposts and settlements can also be seen as one way of driving the enterprise forwards while blurring the complicity of authorities in the process of expansion and hence the clarity of the process. In 2005 a major report, the Sasson Report commissioned by then Prime Minister Sharon revealed that different Israeli government bodies had supported and supplied at least 150 ‘communities’ in the West Bank.⁷⁷ In addition, in practice and considering the role and power of the IDF it would be hard to imagine that the state authorities do not have the resources at hand to stop the settlers’ illegal activities. Indeed outposts cannot develop into consolidated ‘facts on the ground’ without, if not the formal endorsement of the authoritative forces and economic remittances, at least not without the protection of the settlers by the IDF from potential Palestinian protests or attack. In fact, while illegal under Israeli law, residents of outposts are still entitled to protection from the IDF. Over time numerous outposts have, according to the UN, “received retroactive legal approval based on the claim that they serve the ‘natural growth’ needs of settlement”.⁷⁸ Accordingly outposts can be considered a first step in a web-like process to expand existing or establish new settlements and eventually connect them with

⁷⁶ Tovah Lazaroff, *Settler Affairs: Running for the Hilltops*, Jerusalem Post 25 June 2009: <http://www.jpost.com/Features/FrontLines/Article.aspx?id=146752> (accessed, December 2011)

⁷⁷ For an English summary of the report see: <http://www.mfa.gov.il/MFA/Government/Law/Legal+Issues+and+Rulings/Summary+of+Opinion+Concerning+Unauthorized+Outposts+-+Talya+Sason+Adv.htm> (accessed December 2011).

⁷⁸ United Nations – Office for the Coordination of Humanitarian Affairs (2007), *The Humanitarian Impact on Palestinians of Israeli Settlements and other Infrastructure in the West Bank*, p. 36: http://www.ochaopt.org/documents/TheHumanitarianImpactOfIsraeliInfrastructureTheWestBank_full.pdf (accessed December 2012).

other parts of the occupational infrastructure potentially developing into new settlement blocs. The practice of erecting outposts began in 1996 and the majority were established between 1998 and 2002, whereof most have either grown together with their 'mother settlement' or developed into consolidated settlements on their own. The 'outpost methodology' has led, as Weizman argues, to a misunderstood dichotomy between 'legal' settlements and 'illegal' outposts by many Israelis, with a different if connected moral code applying to each type of settlement.⁷⁹ Even though it may be self-evident that there is no such thing as 'legal illegality', this dichotomy nevertheless serves to spread doubt around the legal status of settlements as if they had a more legitimate status. Yet, semantics do have an impact on the perceptions of the 'outsider' and this misleading dichotomy has been particularly integrated into mainstream perceptions of the Israeli policy of occupation among the Israeli public, where the dichotomy is eagerly employed in Israeli mainstream media. Through the discourse of 'illegal' and 'legal' settlements GOI is, in its opposition to 'outposts', transforming settlements into 'legal entities' or 'legalising' settlement.

In conclusion, through the analysis of the various methods employed to expand Israel's territory it has been shown that concrete and symbolic manifestations of territory constitute a single system in which each feeds into and reinforces, the other.⁸⁰ At the same time territorial changes add to the different dimensions of legitimacy: strategic, mythical and symbolic arguments anchored in the claim to the OPT implicitly or explicitly serving political interests have blurred the clarity of the ongoing process of land expropriation. Albeit in counting the numbers of Israeli/Jewish civilians transferred into the West Bank since 1967 it seems clear that the struggle for international legitimacy is heavily connected to the degree of territorial change possible under Israeli occupation.

⁷⁹ Eyal Weizman (2006), *Hollow Land – Israel's Architecture of Occupation*, London and New York: Verso p. 11

⁸⁰ David Newman (1999), "Real Spaces, Symbolic Spaces: Interrelated Notions of Territory in the Arab-Israeli Conflict" in Paul F. Diehl (ed.), *A Roadmap to War: Territorial Dimensions of International Conflict*, Nashville and London: Vanderbilt University Press. p. 5.

Part 3

Back to basics 2: asymmetry as a precondition

Since the Israeli occupation of the West Bank, Gaza and East Jerusalem in 1967 much attention has been given to high diplomacy, purportedly having the main aim of identifying fixed points over which consensus could be agreed by the parties – not only to secure a just political solution but also out of pragmatism, to secure stability through the identification of a level of consensus between the parties – needless to say without success.

Having determined that the settlement enterprise has been a central feature of Israel's policy towards the Palestinians rather than an exception, in order to understand the role of the international community and their failure to halt the enterprise it is pertinent to grasp how political agreements made as outcomes of years of negotiations have interplayed with this policy. Agreements signed cannot only be judged based on their political substance but also on the terms and process of the issue in question. Two key conditions should be highlighted: 1) the core concern of negotiations has been evolving around diverse parameters of success – for Israel, limited autonomy (and the retention of control)⁸¹ and for the Palestinians – the pursuit of self-determination and territorial sovereignty, which in turn lead to 2) a very basic sense of asymmetry deeply rooted in the occupied/occupier relationship affecting both the nature of the agreements and their way of (or lack of) implementation.

To be sure, the relationship between the parties is unorthodox as it is between the actors of a state and a non-state, where the latter is often confronted with structural constraints. While the Palestinians do have an internationally accepted political representative in the form of the PLO (until now not including the ruling authority in Gaza; Hamas and other Islamist factions), the role of a non-state in the international arena is naturally limited because of the state-structured international system and as Newman and Falah argue: “the institutional mediation of power to which a sovereign state has access enables it to advance its own agenda within the international political arena.”⁸² Given

⁸¹ As initially outlined in the Allon Plan of 1967 recommending annexation to Israel of areas in the West Bank that were not densely populated with Palestinians, such as the Jordan Valley, areas around Jerusalem, Gush Etzion, most of the Judean Desert and a strip of land in the southern Hebron hills. This was done in order to acquire as much land as possible while encircling the Palestinians in the urban centres.

⁸² David Newman and Ghazi Falah (1997), “Bridging the Gap: Palestinian and Israeli Discourses on Autonomy and Statehood” in *Royal Geographical Society New Series*, Vol. 22, No. 2, p. 114.

the GOI's role as the politically dominant party, the Israeli state has the main power to control the agenda. Crucially, asymmetrical power relations between the parties; the state (Israel) rather than the nation (the Palestinians) has the power not only to dominate the process of agenda setting and, to a large extent, to influence the role of international law in some instances seeking to deny legitimacy and/or existence of the other party's narrative.⁸³ This has created a shift from deploying international standards as the main reference to, in practice, focusing on the discussion of territory as a spectrum of claims where a political compromise needs to be found in order to negotiate a solution. In short: facts on the ground, crucially settlements, create a new reality that precedes and determines the politics of negotiations, which de facto confers Israel with weighty advantages in negotiations. This has also been a reality guiding the course of the last 20 years of negotiations with great effect on its outcomes, as will be explored further in the next sections.

Blurring the lines: Oslo's failure to halt settlements

The last 20 years have been marked by a bidirectional strategy, confused and contradictory: that of engaging in negotiations including opening up to territorial concessions paired with a strong sense of Israeli unilateralism (as we have seen in the case of the settlement policy) encountering varying intensity of Palestinian violent resistance and terrorist attacks.⁸⁴

The issue of settlements is key to the 'Peace Process' and continues to be a major point of contention between the parties.⁸⁵ With the signing of the Declaration of Principles in Washington in 1993, under the first Oslo Accords emphasis was put on the need for mutual recognition, confidence building and a gradual granting of autonomy to the newly established Palestinian Authority (PA). Following the signing of the DOP followed by the interim agreement of Oslo II (1995) hope grew among advocates of a two-state solution, that a line in the sand had been drawn in order to uphold the territorial *status quo* while further negotiations of the final status issues take place, i.e. those of settlements, Jerusalem, refugees, borders and water (which today still have not materialised into a implementable solution). Ironically, as Le More notes, since

⁸³ Alexis Heraclides in David Newman and Ghazi Falah (1997), "Bridging the Gap: Palestinian and Israeli Discourses on Autonomy and Statehood" in *Royal Geographical Society New Series*, Vol. 22, No. 2, p. 114

⁸⁴ Oren Yiftachel (2005), "Neither Two States Nor One", in *The Arab World Geographer*, Vol. 8, No. 3, p. 126

⁸⁵ Avi Schlaim (2008) argues that the settlement policy is a prelude to the emergence of a viable Palestinian state; *without which there can be no end to the conflict*, Avi Schlaim (2008), "The Rise and Fall of the Oslo Peace Process", p. 269, in Louise Fawcett (ed.) *International Relations of the Middle East*, Oxford: Oxford University Press.

the launch of Oslo the construction of settlements has mushroomed in parallel with the clear emergence of an international consensus over a two-state solution as the best option for peace in the Middle East. Accordingly between 1993 and 2007 the total settler population increased by 63%.⁸⁶ This was coupled with the intensification of violence and redeployment of Israeli military presence in the West Bank during the second *intifada* (2000–2003) when the level of Palestinian suicide bombings were at their highest, creating a massive climate of fear and insecurity among the Israeli civilian population. At the same time Israel's 'policies on the ground' were increasingly militarised perpetuated by the reactions and policies within the international realm after 9/11 and the US-led international 'war on terror'.⁸⁷

In fact the interim nature of Oslo, in many ways, enabled Israel to begin separating Palestinians and Israelis without withdrawal of its occupation. In turn it seems that the continued growth in settlements is both rooted in pre-emptive territorial expansion (settlement construction) but also in the political set-up enacted as part of the establishment of the Palestinian Authority. Indeed, as Cavanaugh shows, the set-up sparked confusion over the need for territorial withdrawal as a parameter for peace (at least in the interim phases), which led to the question posed by some scholars: did the DOP end the Israeli occupation? This indeed opened up to many legal interpretations, and thus varying answers.⁸⁸

While the settlements and the associated 'closure regime'⁸⁹ are often described as violations of existing agreements the possibility to continue the enterprise also needs to be understood as rooted in the Oslo set-up. The arrangements of the 1990s were accepted as an interim agreement before a final settlement could be reached. In fact, implicit in this acceptance of the Oslo set-up from the side of the Palestinians was indeed the increased sidelining of international law, particularly the Fourth Geneva Convention, as a point of reference and source of legislation and jurisdiction guiding

⁸⁶ United Nations – Office for the for the Coordination of Humanitarian Affairs (2007), *The Humanitarian Impact on Palestinians of Israeli Settlements and other Infrastructure in the West Bank*, p. 16: http://www.ochaopt.org/documents/TheHumanitarianImpactOfIsraeliInfrastructureTheWestBank_full.pdf (accessed December 2012).

⁸⁷ Derek Gregory (2004), "Palestine and the 'War on Terror' ", *Comparative Studies of South Asia, Africa and the Middle East*, Vol. 24. No. 1, pp. 183–195.

⁸⁸ See Kathleen A. Cavanaugh (2002), "Selective Justice: the Case of Israel and the Occupied Territories", in *Fordham International Law Journal*, Vol. 26, No. 4. pp. 953–955; Peter Malanczuk (1996) "Some Basic Aspects of the Agreements between Israel and the PLO from the Perspective of International Law", in *European Journal of International Law*, pp. 485–500.

⁸⁹ A term deployed by both the UN and the World Bank to describe Israel's restrictions on movements and access.

negotiations and, in consequence, the terms of how to solve the conflict.⁹⁰ In fact the agreement delinked interim issues from the solution of the core, final status issues, essential to solve the fundamentals of the conflict. In terms of resolution-based principles, as Roy notes, the Oslo Accords left only UNSCR 242 (and 338, reaffirming 242) as its point of reference to international legal standards and resolutions calling for the withdrawal of Israeli troops from territory occupied in the 1967 war.⁹¹

In terms of the status of the WB, the post-Oslo political landscape in many ways planted the seeds for the territorial changes to continue overtly accepted by Arafat. The West Bank was divided into three zones or areas A, B and C, reflecting different levels of security control and administration allocated to the parties; in practice leaving the new Palestinian Authority very little autonomy let alone authority. With the Interim Agreement of 1995 (Oslo II) in the West Bank these zones were defined and divided as following:

In Area A (17.2% of the West Bank) the PA has sole civil jurisdiction and security control, while Israel retains authority over movement in and out of the area.

In Area B (23.8%) the PA has civil authority and responsibility for public order, while Israel maintains a security presence and overriding security responsibility.

In Area C (59%) the PA has restricted civil authority in fields such as education and welfare. Most civil authorities and all security authorities have remained in the hands of the IDF.

According to Amnesty International, already by 1999 the Oslo Interim Arrangements had created 227 separate areas in the West Bank under the auspices of the PA, whereof the overwhelming majority were under Israeli military control through the installing of checkpoints.⁹² This is a clear example of the PLO's acceptance of an interim solution at the expense of reference to valid UN resolutions. Despite the PLO's attempts

⁹⁰ See Avi Schlam (2008), *The Rise and Fall of the Oslo Peace Process*, p. 269; In Louise Fawcett (ed.) *International Relations of the Middle East*, Oxford: Oxford University Press, p. 263.

⁹¹ Until today Israel's interpretation of resolution 242 differs from that of the PLO and the international community at large. The GOI argues that the resolution does not necessarily encompass all of the West Bank, Gaza and East Jerusalem (occupied in 1967), but is more open to interpretation as the territories remain disputed. In fact with reference to the resolution text the GOI argues that the territory in question is referred to in more abstract terms *territories* and not *the territories*. In fact this was an important point of discussion when the resolution was written. Sara Roy (2002), "Why Peace Failed: an Oslo Autopsy" in *Current History*, Vol. 100, No. 651, p. 14.

⁹² Amnesty International (December 1999), *Demolition and Dispossession: The Destruction of Palestinians' Homes*,

Map 3. Overview of Area C



United Nations Office for the Coordination of Humanitarian Affairs
occupied Palestinian territory

West Bank: Area C Map

February 2011



United Nations Office for the Coordination of Humanitarian Affairs, Occupied Palestinian Territory, West Bank Area C Map, February 2011.

http://www.ochaopt.org/documents/ocha_opt_area_c_map_2011_02_22.pdf, accessed 12 April 2012

to get Israel to accept a 'side letter' attached to the agreement wherein Israel would commit to restricting settlement construction in area C, and while Israel as an alternative to the 'side letter' in principle accepted a formulation restricting construction on the basis of a government decision, as Roy notes: "settlement expansion and land confiscation were not expressly prohibited by the DOP".⁹³ However, with the argument that Oslo was not explicit or clear on the issue of settlements it did not make their dismantling a precondition for peace. The Interim Agreement, in article XI and in its final clause in XXXI, did require both sides not to take any steps that would change "the integrity status of the West Bank and Gaza Strip pending the outcomes of the final status negotiations".⁹⁴ Indeed the argument of awaiting a final settlement before halting settlement construction has been central to Israel's case.

With the acceptance of the zoning system under Oslo II in particular, the PA accepted Israeli land confiscation and the construction of infrastructure inside the West Bank. After Oslo, Israeli Military Law pertained as the legal framework under which Israeli policies were implemented enforcing the pretext of security for the settlement enterprise. Today ICA continues to declare land in the West Bank as 'state land', and between 2003 and 2009 it declared 5,114 dunams in area C to be government property.⁹⁵ Despite preliminary plans of gradually increasing Palestinian sovereignty through negotiated withdrawals, in areas B and C, this has never materialised.⁹⁶

Post-Oslo: old wine, old bottles

In 2000 under the auspices of US President Clinton at Camp David the issue of the larger settlement blocs next to the 1967 lines became a central point of disagreement (together with the questions of the 'right of return' of Palestinian refugees and of Jerusalem). Barak's insisting of their preservation and Arafat's demand for them to be dismantled contributed to the collapse of the summit and soon afterwards the second Intifada broke out. The continuation of the dominance of process over substance was epitomised in the Quartet's performance-based 2003 'Road Map' structured into phases prioritising security and capacity building and, yet again, avoiding addressing

MDE 15, 059, 1999.

⁹³ Ibid. p. 15.

⁹⁴ For a full text of the Israeli-Palestinian Interim Agreement see: <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/THE+ISRAELI-PALESTINIAN+INTERIM+AGREEMENT.htm> (accessed January 2012)

⁹⁵ B't Selem, *By Hook and by Crook – Israeli Settlement Policy in the West Bank*, 2010, p. 18

⁹⁶ Interim Agreement, article XXXII, <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/THE+ISRAELI-PALESTINIAN+INTERIM+AGREEMENT.htm> (accessed January 2012)

the final status issues directly and postponing these to a later stage. However, with the 'Road Map' Israel committed to freeze settlement activity, (including 'natural growth' activity), as well as undertook, but never realised, the dismantlement of all outposts erected after 2001.⁹⁷ At around the same time the GOI took up its project of building the more than 700km long 'Separation Barrier' (around 60% has been constructed so far). The purpose and effect of this endeavour is too overwhelming to deal with here. However it does connect to and facilitate the settlement infrastructure and the expropriation of Palestinian land as the UN has argued that the protection of settlements is one of the main factors determining the route of the barrier. The Separation Barrier has had a double-sided effect: on one hand, according to UN figures, 85% of its length when it is fully constructed will run on the Palestinian side of the Green Line, isolating Palestinian land or No-Man's land as well as more than 6000 Palestinians.⁹⁸ On the other hand it has cemented a 'border' which further complicates a total annexation of territory east of its route. In 2007, during the Annapolis conference, then Prime Minister Olmert confirmed the Road Map commitment to freezing settlement expansion. Conversely, since the summit the rate of settlement construction in East Jerusalem has accelerated to an unprecedented degree. In East Jerusalem alone, within 18 months of Annapolis, Israeli authorities have advanced plans for some 9,617 housing units in Israeli settlements.⁹⁹

From bleak to bleaker

The political meddling and ambiguity over the relationship between legal references and political strategies originating in the Oslo set-up and characterising all agreements, talks and summits since, have impacted heavily on territorial changes within the OPT. Policy tracks facilitated by a US-led international community have never pushed forward and materialised in any tangible approach with an idea about how to deal with the very essence of the conflict. Mutually exclusive claims to the same territory focus on gradual processes instead of confronting the core issues needing to be solved for change to take place. In conclusion, the *fil rouge* of the policies conducted 'on the ground' has brought about a situation contradicting this 'state building process', as Meital argues stirring Israel to adopt a strategy of unilateralism.¹⁰⁰ This has, in

⁹⁷ <http://news.bbc.co.uk/2/hi/2989783.stm>

⁹⁸ United Nations Office for the Coordination of Humanitarian Affairs, *Barrier Update July 2011*, p. 2: http://www.ochaopt.org/documents/ocha_opt_barrier_update_july_2011_english.pdf

⁹⁹ Ir Amim Monitoring Report (April 2008), *Negotiations toward an Accord on Jerusalem: Declarations vs. Actions*: http://www.ir-amim.org.il/Eng/_Uploads/dbsAttachedFiles/MonitoringReportEng.doc (accessed December 2012).

¹⁰⁰ Yoram Meita (2006), *Peace in Tatters: Israel, Palestine and the Middle East*, Boulder, Colorado: Lynne Rienner.

turn, led to: 1) the consolidation of the Israeli occupation supported by settler and military infrastructure; 2) the institutionalisation of cooperation between the PA and GOI designed to outsource security control of the population in the territory to the Palestinians themselves with the economic support of the international community through international aid and social assistance;¹⁰¹ and 3) A split between Gaza and the West Bank, both in terms of geographical disconnection and the split in political representation, with the years-long standoff between Hamas and Fatah. The quandary is that the course of negotiations has to begin not with agreeing on a solution but, first of all, with agreement on the terms themselves over which to negotiate.

Finally, in recent years the donor community's emphasis has been on a highly arbitrary process of Palestinian state building within the context of limited self-rule and the lack of territorial sovereignty. However, this has led to the announcement by the World Bank, the EU and the IMF, that the Palestinians under the PA have been remarkably successful in building Palestinian public institutions and thus have become 'ready for a state'.¹⁰² This stands in stark contrast to the ongoing settlement enterprise, which since the PLO started their 'UN strategy', has only intensified. In fact, while the international community declares Palestine ready to be a state, the situation on the ground has never been bleaker in terms of securing the OPT viability and geographical continuity. Currently this remains the case, as in the wake of the still-pending likely-to-fail UN strategy of the PLO; the Quartet's attempts to revive negotiations have been blocked in part because of the Palestinians' unfulfilled precondition to Israel to freeze settlement construction while negotiating.

¹⁰¹ *Coping with Conflict: Poverty and Inclusion in the West Bank and Gaza*, World Bank Report, 2011, p. 116.

¹⁰² For a full account of the Palestinian development project of state building see the report submitted to the Liaison Committee of international donors:

http://www.mop-gov.ps/new/web_files/publishing_file/PNA%20AHLC%20Report%20April%2013%202010.pdf (accessed January 2012).

Conclusion: de facto abandonment of a two-state solution?

After 64 years of conflict and 44 years of Israeli occupation of Palestinian territory the settlements and their ongoing expansion lie at the heart of the conflict; they comprise a cornerstone in Israel's policies towards the Palestinians overshadowing any attempt to build confidence between the parties as initiated through various political and institutional arrangements. In part as a consequence of this settlement enterprise, the West Bank and Gaza Strip can today no longer be taken to be a legal entity and as the basis for meaningful statehood.¹⁰³

This study has shown how Israel, through a variety of strategies of legitimisation, has steadily expanded its settlements inside occupied territory. Also, it has been shown that the most dangerous shift in the course of settlement construction is its blatant role in turning the occupation permanent. It is certain that at the heart of the question of a two-state solution lies the issue of settlements and the struggle over territory, as it remains a fact that the interstate recognition which Palestinians seek has emerged as a result of the historical struggle for the recognition of a Jewish state. The question is whether the very paradigm of working towards a two-state solution within the ongoing changes in the demographics of the conflict should be abandoned altogether, or whether the international community should intensify its efforts to avoid further change?

The demographics and political geography of the conflict perpetuated by the expansionist settlement policies of the Israeli state have, in fact, undermined the tangibility of the two-state solution, which continues to dominate the international debate with little effect on the ongoing expansion. In addition both the 20% of Israeli-Arabs (1.5 million) living inside Israel proper and the just under 5 million UNRWA-registered Palestinian refugees and the many more unregistered living in the global Palestinian Diaspora complicate the puzzle. The demographic distribution of peoples corresponds very little with the political framework upon which negotiations take place. Demographic balances and the actual locations of populaces inside 'other' sovereign entities contradict the assumptions behind the two-state solution based on the idea of separating people from the sovereign land of 'the other'

¹⁰³ Anne Le More (2005), "Killing with Kindness: the Demise of a Palestinian State", in *International Affairs*, 2005 Vol. 81 No. 5, pp. 981–999.

(dismantling settlements with a few exceptions) and possibly ensuring the return of others to the sovereign land of the other (Palestinian refugees claiming their resolution-based 'right of return'). If no willingness to address this reality surfaces in the near future the detachment of international diplomacy from developments on the ground will be strengthened even further. The concepts of partition and division remain central to the territorial changes in the OPT and the premises for negotiations between the GOI and the PLO. The settlement enterprise inside the OPT has created a whole new pattern of ethno-spatial relations – not just between two governmental entities, but between two peoples – de facto undermining the underlying premises of the two-state solution.

