

Is a “two-state solution” still possible?
A review of MEPP issues for members of the Oireachtas



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SADAKA PAPER 1

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Executive Summary

This paper reviews developments in the Middle East Peace Process (MEPP) since President Obama's inauguration, or rather the lack of them, and other issues to do with the process.

The Road Map, which is the internationally endorsed framework for the process, lays down pre-conditions that Israel should fulfil before the start of negotiations. One of these is a complete halt to settlement building. Israel has refused to fulfil this condition, offering “restraint” instead, which, as the paper shows, is of little significance.

Nevertheless, the President wants Palestinians to start negotiations with Israel right away. Understandably, they have refused, asking: if America cannot get Israel to implement a settlement freeze, what chance do Palestinians have of reaching agreement with Israel on permanent status issues?

On these issues – borders, Jerusalem, refugees, settlements – the paper examines the publicly stated negotiating positions of the PLO and the current Israeli Government, led by Prime Minister Binyamin Netanyahu.

On borders, while taking the 1967 borders as the baseline for a Palestinian state, the PLO has stated its willingness to negotiate one-for-one land swaps with Israel. In other words, the PLO accepts that a Palestinian state will be restricted to 22% of mandate Palestine, leaving Israel with 78%. However, Prime Minister Netanyahu has made it clear that Israel will not settle for 78% and insists on holding on to some of the territory in the West Bank (including East Jerusalem) it conquered and occupied in 1967.

On Jerusalem, Prime Minister Netanyahu has stated bluntly that East Jerusalem, annexed by Israel in 1967, contrary to a raft of Security Council resolutions, will remain annexed. The PLO insists that the capital of a Palestinian state be in East Jerusalem, but is prepared to be flexible, for example, Jerusalem might become the capital of both Israel and a Palestinian state.

On refugees, Prime Minister Netanyahu has ruled out the possibility of any Palestinian refugees returning to where they or their ancestors lived in the territory that became Israel. The PLO insists that Israel accept that the refugees have a right of return, but is prepared to negotiate about how that right is implemented.

The paper discusses the position of Hamas, pointing out that its leader, Khaled Meshaal, told the Wall Street Journal recently that, along with other Palestinian groups, Hamas has agreed to accept a Palestinian state based on the 1967 borders.

The paper concludes by casting doubt upon Israel's willingness to allow the creation of a viable Palestinian state. It argues that, if this is the case and Palestinians in the occupied territories continue to be ruled by Israel, as they have been for over 40 years, then they will have to be granted a vote in elections to the Knesset – otherwise Israel cannot claim to be a democracy. How can Israel justify Jewish settlers in the occupied territories having a vote for the Knesset, while Palestinians in the same territories don't?



Introduction

The Joint Oireachtas Foreign and European Affairs Committees found on their visit to Israel and the Palestinian Territories in July 2009 that

“ On all sides there was a welcome for President Obama ’ s commitment to vigorously pursue a two-state solution and a comprehensive peace in the Middle East. ” [\[1\]](#)

Unfortunately, in the intervening months, Obama ’ s vigour has evaporated in the face of Israeli intransigence. Israel refuses to call a halt to settlement construction in the occupied territories, as required by the Road Map. And, the PLO is understandably refusing to enter into negotiations with Israel, while the latter prejudices the outcome of negotiations by planting more and more Jewish settlers on the land that is supposed to belong one day to a Palestinian state.

This document examines the stated positions of Israel and the PLO in the negotiations that have yet to begin and questions whether a two-state solution is any longer possible.

The Committees report on a conversation with Jaber Wishah of the Palestinian Centre for Human Rights (PCHR) on their visit to Gaza in the following terms:

“ In terms of an overall solution, Mr. Wishah argued that Israel must choose between either “marriage or divorce”. “Marriage” would be a one state solution with equality and equal opportunities for both Israelis and Palestinians living in a unified state. Israel would need to accept full citizenship rights for Palestinians in a single democratic state. ‘Divorce’ would be a two-state solution which is currently envisaged under the international road map for peace or the Geneva Accord.”

A clean “divorce”, in which an independent and viable Palestinian state is created on the territory occupied by Israel in 1967, is no nearer today than it was when negotiations about it started nearly two decades ago. It may be time to think about “marriage”.



Obama bows to Israeli intransigence

President Obama has bowed to Israel’s demand that negotiations between Israel and the Palestinians should begin without pre-conditions. In particular, the freezing of all settlement activity, which seemed at the outset to be a pre-condition for him, has been abandoned. With that, he may have dealt the “two-state solution” a death blow.

The internationally approved framework for negotiations between Israel and the Palestinians is the Road Map (aka *A performance-based roadmap to a permanent two-state solution to the Israeli-Palestinian conflict* [2]). This was proposed by the Middle East Quartet (US, EU, Russia and the UN Secretary General) in 2003 and accepted by Israel and by the PLO on behalf of Palestinians – and later endorsed by the Security Council. The Obama administration assured the PLO that the Road Map would be the framework for negotiations this time.

The Road Map lays down a number of conditions that Israel must fulfil before the opening of negotiations. These include:

- making an unequivocal public commitment to an independent, viable, sovereign Palestinian state,
- freezing all settlement activity, including natural growth, and
- Dismantling all settlement outposts erected since March 2001.

As we will see, Israel has fulfilled none of these conditions, yet the Obama administration is now urging the PLO to enter into negotiations with Israel. The PLO has refused to do so, its chief negotiator, Saeb Erakat, saying on 1 November 2009:

“ If America cannot get Israel to implement a settlement freeze, what chance do Palestinians have of reaching agreement with Israel on permanent status issues? Only negotiations that are based on internationally recognized terms of reference, and that hold both parties accountable to international law and their respective obligations under existing agreements as reinforced by the Quartet in its most recent statement issued on 24 September, have any chance of delivering a just and lasting peace. Pressuring Palestinians to make further concessions to accommodate Israeli intransigence is not the answer.” [3]

It’s difficult to argue with that.

(*)

It is true to say that neither President Obama, nor his Secretary of State, Hillary Clinton, made an unequivocal public statement that the opening of negotiations would be conditional on the Road Map pre-conditions being fulfilled.

At the outset, Prime Minister Binyamin Netanyahu wasn’t prepared to use the word “state” to describe the Palestinian entity that might be the outcome of negotiations. After pressure from Obama, he did allow the word “state” to pass his lips in a speech on 14 June 2009 [4], though he made it clear that the “state” he had in mind would be neither independent, viable nor sovereign, as required by the Road Map. Rather, it would be independent in the way that the Bantustans in Apartheid South Africa were independent. Nevertheless, this seemed to satisfy the Obama administration.



At the outset, both the President and his Secretary of State made unusually blunt demands of Israel that settlement building cease. As a result, expectations were raised in the Arab world and further afield that at last the US was going to use its considerable muscle to halt the Jewish colonisation of the occupied Palestinian territories, contrary to Security Council resolutions, that has gone on since 1967. For example, on 27 May 2009, Clinton laid down the law in the following terms:

“ With respect to settlements, the President was very clear when Prime Minister Netanyahu was here. He wants to see a stop to settlements – not some settlements, not outposts, not natural growth exceptions. ... That is our position. ” [\[5\]](#)

A few days later, in his much heralded speech in Cairo, supposedly geared to repair US relations with the Muslim world, Obama said:

“ The United States does not accept the legitimacy of continued Israeli settlements. This construction violates previous agreements and undermines efforts to achieve peace. It is time for these settlements to stop. ” [\[6\]](#)

However, Israel refused to comply with these demands, offering to “restrain” settlement building instead, and Obama has refused to force Israel to comply, by, for example, suspending a tiny fraction of the US tax dollars that find their way to Israel each year. (Note that in 2007 the US donated \$2,500 million to Israel, \$2,340 million in military aid and \$120 million in economic aid. See Congressional Research Service Report: *US Foreign Aid to Israel*, 2 January 2008 [\[7\]](#)).

As time went by, the administration’s bluntness about settlement building melted away. By September, the President was commending Israel for having “discussed important steps to restrain settlement activity” [\[8\]](#). As we will see later, these “important steps” are of little significance.

Speaking to the UN General Assembly on 23 September 2009, while the President restated that “America does not accept the legitimacy of continued Israeli settlements”, he also said:

“ The time has come ... to re-launch negotiations without preconditions ... ” [\[9\]](#)

With that, Obama bowed to Israel’s demand that negotiations should begin without pre-conditions and abandoned the freezing of settlement building as a pre-condition for negotiations, as required by the Road Map.

However, it wasn’t until 31 October 2009 that the US capitulation produced a public row. The occasion was a press conference in Jerusalem, at which, standing beside Prime Minister Netanyahu in Jerusalem, Hillary Clinton declared his offer of “restraint” on settlement building to be “unprecedented” [\[10\]](#) and called for negotiations to begin right away. She did not restate American opposition to settlement building, as her boss had earlier done at the UN.

Understandably, this provoked fierce criticism of the Obama administration from the Arab world, including from America’s best friends, Egypt, Jordan and Saudi Arabia. As a result, Clinton felt obliged to clarify to camera at her next stop in Marrakech that US policy on settlements hadn’t changed, that “the United States does not accept the legitimacy of continued Israeli settlements” and that Netanyahu’s offer of “restraint” fell “far short of ... what our



preference would be” [11]. Then, instead of going home to Washington, she went back to Cairo to meet Egyptian leaders: there she went so far as to say that the US does “not accept the legitimacy of settlement activity” and “would like to see” settlement building “ended forever” [12].

Many people would maintain that if the US really wished to see settlement building “ended forever”, it would be “ended forever”, since the US has ample leverage over Israel to bring it about.

Netanyahu’s “restraint”

What does Netanyahu’s offer of “restraint” with regard to settlement building amount to? Here’s how he described it in a statement on 25 November 2009:

“ I have already said that we will not build new settlements and that we would not expropriate additional land for existing settlements. I said we would also restrain settlement activity, and that’s exactly what we decided to do today. I promised to enable normal life to continue for the three hundred thousand Israeli citizens, our brothers and sisters, who live in Judea and Samaria.

“ That is why this suspension will not affect construction currently underway. It will not include the schools, kindergartens, synagogues and public buildings necessary for the continuation of normal life over the time period of the suspension. Obviously, any infrastructure that may be needed to protect our national security or to safeguard the lives of our citizens will also be provided during this time.

“ Regarding Jerusalem, our sovereign capital, our position is well known. We do not put any restrictions on building in our sovereign capital.” [13]

So, first and foremost, the “restraint” only applies to the West Bank, not to East Jerusalem.

Second, the “restraint” doesn’t apply to housing units under construction in the West Bank. Nor does it apply to “public” buildings at all.

Third, it is not clear what “under construction” means in respect of buildings comprising housing units. Commenting on Netanyahu’s statement, the Israeli movement *Peace Now* states:

“ It is not clear by what mechanism Israel will define what constitutes a building where construction has started. For instance, Peace Now revealed that settlers had started laying foundations for 800 buildings in anticipation of an announcement like this. Will work on these be frozen as a part of the moratorium?” [14]

These may be additional to the 700 or so buildings, comprising 2,500 housing units, which, according to Peace Now, are “under construction” in the usual sense of the phrase.

Conceivably, the Israeli government could even interpret “under construction” as including thousands of buildings for which planning approval, but not construction approval, has been granted.



Add to this the fact that the “ moratorium ” is for a mere 10 months, and it is clear that Netanyahu ’s “ restraint ” is of little significance. It certainly doesn ’t amount to freezing all settlement activity, including natural growth, as required by the Road Map.

The Road Map pre-conditions

The Road Map requires Israel to take a number of well-defined steps prior to the start of negotiations. These include:

- (a) “ Israeli leadership issues unequivocal statement affirming its commitment to the two-state vision of an independent, viable, sovereign Palestinian state living in peace and security alongside Israel ”
- (b) “ GOI [Government of Israel] immediately dismantles settlement outposts erected since March 2001 ”, and
- (c) “ Consistent with the Mitchell Report, GOI freezes all settlement activity (including natural growth of settlements) ” .



On 25 May 2003, the Israeli Government, headed by Ariel Sharon, approved the Road Map by 12 votes to 7, albeit with reservations [\[15\]](#). However, these reservations did not relate to points (a), (b) or (c). The PLO accepted the Road Map without reservations.

The Road Map was endorsed unanimously by the UN Security Council in resolution 1515, passed on 19 November 2003, which called on the parties

“ to fulfil their obligations under the Roadmap in cooperation with the Quartet and to achieve the vision of two States living side by side in peace and security ” [\[16\]](#)



And as recently as 16 December 2008, in resolution 1850, the Security Council again called on both parties

“ to fulfil their obligations under the Performance-Based Roadmap, as stated in their Annapolis Joint Understanding, and refrain from any steps that could undermine confidence or prejudice the outcome of negotiations ”
[\[17\]](#)

At Annapolis in November 2007, Prime Minister Olmert and President Abbas had put their names to a Joint Understanding committing themselves to “immediately implement their respective obligations under the performance-based road map to a permanent two-state solution to the Israeli-Palestinian conflict issued by the Quartet on 30 April, 2003”. And, President Bush went so far as to say that “ Israel must demonstrate it’s support for the creation of a prosperous and successful Palestinian state by removing unauthorized outposts, ending settlement expansion, ...” [\[18\]](#). But, in practice, Israel never implemented the Road Map pre-conditions on settlements and the Bush administration didn ’t force it to do so.

Israel hasn’t fulfilled any of the pre-conditions

This time, Israel hasn ’t fulfilled any of the pre-conditions either, and shows no sign of doing so. It hasn’ t dismantled the settlement outposts erected since March 2001, nor frozen all settlement activity. It hasn ’t even agreed to the ultimate objective of the Road Map – the establishment of “ a n independent, viable, sovereign Palestinian state ”.

Netanyahu made it crystal clear, in his speech on 14 June 2009 [\[4\]](#), that the Palestinian “ state ” he envisaged would be neither independent, viable nor sovereign. The security needs of Israel demanded, he said, “clear commitments ” from the US that “in a future peace agreement, the territory controlled by the Palestinians will be demilitarized ”, by which he meant:

“ without an army, without control of its airspace, and with effective security measures to prevent weapons smuggling into the territory - real monitoring, and not what occurs in Gaza today. And obviously, the Palestinians will not be able to forge military pacts. Without this, sooner or later, these territories will become another Hamastan ”.

Clearly, the Palestinian “ state ” envisaged by Netanyahu will be firmly under Israeli control, much as Gaza is today.

Permanent status issues

So, in advance of negotiations, Netanyahu has ruled out “ an independent, viable, sovereign Palestinian state ”, as required by the Road Map. Not only that, contrary to the terms of the Road Map, he has stated bluntly in advance that on various “ permanent status issues ” his positions are non-negotiable, for example, he has said that

- the 1967 borders are unacceptable for a Palestinian state,
- Jerusalem will remain united and annexed to Israel permanently, and
- no Palestinian refugees will be allowed to return to Israel.



The Road Map says of permanent status negotiations:

“ Parties reach final and comprehensive permanent status agreement that ends the Israel-Palestinian conflict in 2005, through a settlement negotiated between the parties based on UNSCR [UN Security Council Resolutions] 242, 338, and 1397, that ends the occupation that began in 1967, and includes an agreed, just, fair, and realistic solution to the refugee issue, and a negotiated resolution on the status of Jerusalem that takes into account the political and religious concerns of both sides, and protects the religious interests of Jews, Christians, and Muslims worldwide, and fulfills the vision of two states, Israel and sovereign, independent, democratic and viable Palestine, living side-by-side in peace and security. ”

Security Council Resolution 242 [\[19\]](#), passed on 22 November 1967, calls for the “ withdrawal of Israel armed forces from territories occupied ” by Israel in June 1967 and emphasises “ the inadmissibility of the acquisition of territory by war ” .

Borders

The Road Map says plainly that “ the occupation that began in 1967 ” should be ended. It follows that Israel ’ s border with the Palestinian state to be established by the negotiations should be the 1967 border between the West Bank and Israel, aka the Green Line.

Of course, in negotiations, Israel may ask for changes in this border, for example, to incorporate some of the settlement blocs east of the Green Line within Israel. But, any changes must be agreed with Palestinians, no doubt in exchange for equivalent territory west of the Green Line being incorporated into the new Palestinian state. However, the starting point for negotiations must be the 1967 border.

The PLO negotiating position on borders is as follows:

“ Though Israel has no legal claim to any of the territory it occupied in 1967, in the interest of peace, the PLO is willing to discuss minor, reciprocal, and mutually agreed changes to the 1967 boundary, should it be in the Palestinian interest to do so. For example, during the Camp David Summit in July 2000, the Palestinian delegation considered the idea of a 1:1 land swap. Israel, however, proposed a nine to one land swap (in Israel ’ s favor) , in a clear indication that Israel ’ s appetite for expansion has not receded. ” (PLO Negotiations Primer, p27 [\[20\]](#))

Netanyahu has categorically rejected the 1967 borders as the starting point for negotiations. See, for example, his interview with *Haaretz* on 24 September 2009 [\[21\]](#), where he said that “ governments before the one I head ... did not agree to go back to the 1967 borders ” and stated bluntly:

“ We certainly would [also] not agree to that. ”

In 1988, the PLO relinquished its claim to all of mandate Palestine, recognised Israel ’ s right to exist within its 1967 borders (with 78% of the land area of Palestine) , and adopted the objective of establishing an independent



Palestinian state, with East Jerusalem as its capital, in the remaining 22% of Palestine. Given this enormous sacrifice by Palestinians, it is utterly unreasonable of Israel, or any outside power, to demand that Palestinians settle for less than 22% of Palestine.

Jerusalem

In his speech on 14 June 2009 [\[4\]](#), Netanyahu said that “Jerusalem must remain the united capital of Israel with continued religious freedom for all faiths ”. In other words, the Israeli Government ’s position is that East Jerusalem, which Israel annexed after occupying it in 1967, must be part of Israel permanently.

This is contrary to a raft of Security Council resolutions, which have called upon Israel to reverse its annexation of East Jerusalem. The first of these – resolution 252, passed on 21 May 1968 – states in paragraphs 2 and 3:

[The Security Council]

2. Considers that all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status;
3. Urgently calls upon Israel to rescind all such measures already taken and to desist forthwith from taking any further action which tends to change the status of Jerusalem;



Israel ’s failure to comply with this resolution prompted further resolutions – 267 on 3 July 1969, 271 on 15 September 1969, 298 on 25 September 1971, 476 on 30 June 1980, and 478 on 20 August 1980 – demanding the reversal of its annexation of East Jerusalem.

The present position of the Israeli Government, as expressed by Prime Minister Netanyahu on 14 June 2009, is in open defiance of these Security Council resolutions. It is also contrary to the Road Map requirement for “a negotiated resolution on the status of Jerusalem that takes into account the political and religious concerns of both sides”.

The PLO negotiating position on Jerusalem is as follows:

“Palestinians will not accept a state without East Jerusalem as its capital. Of particular importance is the Old City and the surrounding areas. The PLO is committed to respecting the freedom of worship at, and access to, religious sites within Jerusalem for all faiths. All possible measures will be taken to protect such sites and preserve their dignity.

“The PLO is willing to consider a number of creative solutions with respect to the administration of the city, as long as they are in Palestinian interests and in line with international law. For example, Jerusalem could become a city opened to both Palestinians and Israelis – the capital of two states.” (PLO Negotiations Primer, p19 [\[20\]](#))

The PLO’s position is in conformity with the terms of the Security Council resolutions on Jerusalem and of the Road Map.

Refugees

From 1947 to 1949, around 750,000 Palestinians became refugees when they were expelled or fled from the fighting prior to and following the declaration of the State of Israel in 1948. This amounts to 80% of the Palestinian population then living in the territory that became Israel. Today, these refugees, and their descendants, live in the West Bank and Gaza, and in surrounding Arab states.

Israel has always refused to allow Palestinian refugees to return to where they or their ancestors lived in the territory that became Israel. Prime Minister Netanyahu reiterated this position in his speech on 14 June 2009 [\[4\]](#), saying that “justice and logic demand that the Palestinian refugee problem be solved outside Israel’s borders”.

Under the provisions of the Israeli Law of Return, Jews from any part of the world are allowed to live anywhere in Israel or the occupied Palestinian territories. By contrast, Palestinians are not allowed to return to where they or their ancestors lived. You can see the “justice and logic” of it.

Israel’s denial of the right of return to Palestinians is in breach of UN General Assembly resolution 194, passed on 11 December 1948, which states:

“... the [Palestinian] refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.” [\[22\]](#)

The right of Palestinian refugees to return to what is now Israel has been reaffirmed by the UN General Assembly many times since 1948. A general right of return is also enshrined in the Universal Declaration of Human Rights, which was adopted in 1948, Article 13 (2) of which states:



“ Everyone has the right to leave any country, including his own, and to return to his country. ” [\[23\]](#)

The PLO insists that Palestinian refugees have the right to return to Israel, but is prepared to negotiate about the implementation of this right:

“ There can be no comprehensive solution to the Palestinian-Israeli conflict without honoring the rights of Palestinian refugees. Key to the resolution of the refugee issue is Israel ’ s acknowledgment of responsibility for the creation of the refugee problem, and Israel ’ s recognition of the applicable principles and rights of the refugees including the refugees ’ right to return to their homes and lands. The recognition of these rights, as a matter of principle will then open the way to negotiating their implementation between the two parties.

“ A negotiated solution on the implementation of the refugee rights has to include the following basic principles: voluntary repatriation, or resettlement, restitution and compensation for material and non-material losses. A successful resolution to the refugee issue will be one that is agreed upon by Israel and the PLO and one that will provide Palestinian refugees with the ability to choose from a number of options, ways for normalizing their status,

including the option to exercise their right of return to Israel. Some refugees may prefer other options, such as: (i) resettlement in third countries, (ii) resettlement in a newly independent Palestine (even though they originate from that part of Palestine which became Israel) or (iii) normalization of their legal status in the host country where they currently reside. ” (PLO Negotiations Primer, p16 [\[20\]](#))

Settlements

Settlement building in occupied territory is contrary to the Fourth Geneva Convention, which was ratified by Israel in 1951. Article 49 (6) of the Convention states:

“ The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies. ” [\[24\]](#)

The International Red Cross commentary on the thinking behind Article 49(6) says:

“ It is intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories. Such transfers worsened the economic situation of the native population and endangered their separate existence as a race. ” [\[25\]](#)

The Security Council has demanded – in resolutions 446, 452 and 465 – that settlement building cease and existing settlements be removed. For example, resolution 465, passed on 22 March 1979, states:

[The Security Council]

5. *Determines* that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including

Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;

6. *Strongly depl*ores the continuation and persistence of Israel in pursuing those policies and practices and calls upon the Government and people of Israel to rescind those measures, to dismantle the existing settlements and in particular to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem; [\[26\]](#)



This resolution was passed unanimously, all 5 permanent members, including the US, voting for it.

(*)

Every year, the UN General Assembly passes a resolution demanding that settlement building cease and existing settlements be removed, most recently in resolution 63/97 passed on 18 December 2008. This reiterates the General Assembly 's demand

“ for the immediate and complete cessation of all Israeli settlement activities in all of the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, and calls in this regard for the full implementation of the relevant Security Council resolutions, including resolution 465 (1980) ” [\[27\]](#)

This resolution was passed by 171 votes to 6. Ireland and other EU states voted for the resolution. The only opponents apart from Israel and the US were four tiny Pacific states – Marshall Islands, Micronesia, Nauru and Palau – which are US clients.



It can be said without fear of contradiction that Israel is flouting the will of the “international community” in refusing to cease settlement building.

(*)

The International Court of Justice (ICJ) has also declared, in its Advisory Opinion on the construction of the Wall [\[28\]](#) (paragraph 120), that “Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law ”, contrary to Article 49 of the Fourth Geneva Convention.

(*)

The Rome Statute [\[29\]](#) defines the offences – genocide, crimes against humanity and war crimes – for which the International Criminal Court (ICC) may, in certain circumstances, prosecute individuals. Article 8.2 (b) (viii) of the Statute defines as a war crime

“ the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies ”.

Since there is no doubt that some 500,000 Israeli civilians have been transferred into territory occupied by Israel, there is a prima facie case that the many Israeli citizens responsible for these transfers have committed war crimes.

However, like the US and other states, for example, Sudan, Israel has not signed up to the ICC and accepted its jurisdiction, so there is no prospect of the ICC prosecuting these Israelis.

Theoretically, the Security Council could refer the situation in the occupied Palestinian territories to the ICC (as it did the situation in Darfur in March 2005, which led to the indictment of President Bashir of Sudan and others by the ICC). Then, the ICC could prosecute Israelis for settlement building carried out since 1 July 2002, when the Rome Statute came into force. A useful side effect of such a referral would be that the ICC ’s reputation as a Court for trying Africans only would be diminished. Needless to say, it is certain that the US would wield its veto on the Security Council to prevent this happening.

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The PLO negotiation position on settlements is as follows:

“ In addition to being illegal, Israeli settlements in the oPt [occupied Palestinian territory] pose the single greatest threat to a viable two-state solution, and hence, to a just and lasting peace. Settlements, their infrastructure and areas of control grossly reduce the amount and quality of land remaining for a future Palestinian state, and seriously undermine the contiguity of a future Palestinian state. Under the ‘land for peace’ formula embodied in UN Security Council Resolutions 242 and 338, on which the peace process is based, Israel is to withdraw from the territories it occupied in 1967 in exchange for full peace and recognition from its neighbors.

“ The evacuation of Israeli settlements would be the most appropriate first step towards satisfying Palestinian rights and allowing for the complete exercise of sovereignty over all territory within their future state. ...



“ Until a final agreement is reached, however, a genuine and comprehensive settlement freeze is the only way to minimize further prejudice to the current negotiations. The requirement for a settlement freeze is spelled out clearly in Phase I of the Roadmap, which calls on the Government of Israel to ‘freeze all settlement activity (including natural growth of settlements) ’ and immediately dismantle settlement outposts erected since March 2001. ” (PLO Negotiations Primer, p22 [\[20\]](#))

The PLO ’s position is in conformity with the terms of the Security Council resolutions on settlements and of the Road Map.

Historic compromise

Settlement negotiations between Israel and Palestinians are no nearer success today than they were nearly two decades ago, when they began. The trigger for these negotiations was the PLO ’s recognition in 1988 of Israel ’s right to exist within its 1967 borders and its adoption of the objective of establishing an independent Palestinian state in the remaining 22% of Palestine. This “historic compromise” led to the Oslo agreement in August 1993 and to a series of negotiations under that agreement, culminating in the unsuccessful Camp David talks in July 2000.

Throughout the Oslo process, and subsequently, Israel has relentlessly continued to confiscate Palestinian land in the occupied territories and to plant Jewish settlers on it. In 1988, there were fewer than 200,000 Jewish settlers in the occupied territories. When the Oslo process began in 1993, there were about 269,000. By 2000, there were around 382,000. Today, there are around 500,000. (See, for example, *Comprehensive Settlement Population 1972-2008* [\[30\]](#), compiled by Foundation for Middle East Peace),

The territory which is supposed to belong one day to a Palestinian state is being steadily eaten into by Jewish colonisation. This has been the PLO ’s reward for recognising Israel’ s right to exist and entering into negotiations with it.

Michael Tarazy, a legal advisor to the PLO, once said: “ It ’ s like you and I are negotiating over a piece of pizza. How much of the pizza do I get? And how much do you get? And while we are negotiating it, you are eating it” . Israel must be forced to stop eating the pizza, otherwise there will be no pizza left to negotiate about.

That ’ s why the cessation of settlement activity by Israel is an essential pre-condition for the opening of negotiations with Palestinians. If Israel is not prepared to cease settlement activity, as demanded by the “international community ”, in order to facilitate negotiations with Palestinians, then there is, to say the least of it, grave doubt about its willingness to allow the creation of an independent and viable Palestinian state within the 1967 borders.

The Arab Peace Initiative

Meeting in Beirut in March 2002, the Arab League made a proposal for a comprehensive settlement in the Middle East, based on the creation of a Palestinian state within the 1967 borders and including the normalisation of relations between Israel and the Arab state members of the League.



The following is an extract from the text of the proposal:

Proceeding from the conviction of the Arab States that a military solution to the conflict will not achieve peace or provide security for any of the parties,

1. Requests Israel to re-examine its policies and to incline towards peace and declare that a just peace is also its own strategic choice;

2. Further calls upon it:

(a) To withdraw fully from the occupied Arab territories, including the Syrian Golan to the line of 4 June 1967, and from the territories in southern Lebanon that are still occupied;

(b) To arrive at a just and agreed solution to the Palestine refugee problem in accordance with United Nations General Assembly resolution 194 (III) ;

(c) To accept the establishment of an independent, sovereign Palestinian State in the Palestinian territories occupied since 4 June 1967 in the West Bank and Gaza Strip, with East Jerusalem as its capital;

3. Undertakes that the Arab States shall then:

(a) Consider the Arab-Israeli conflict at an end and enter into a peace agreement between them and Israel while achieving security for all the States of the region;

(b) Establish normal relations with Israel in the context of this comprehensive peace; [\[31\]](#)

The Arab League went on to urge

“ the Government of Israel and all Israelis to accept the foregoing Initiative in order to safeguard the prospects for peace and spare further bloodshed, thus enabling the Arab States and Israel to live side by side in peace and ensuring for generations to come a secure future in which stability and prosperity can prevail ” .

This proposal was endorsed unanimously at the Beirut meeting of the League in March 2002 and re-endorsed, again unanimously, at a meeting of the League in Riyadh in March 2007. It has also been endorsed the Organisation of the Islamic Conference, which has 57 member states.

The Israeli government has never formally accepted or rejected this Arab proposal, despite the glittering prize on offer within it. It is difficult to avoid the conclusion that Israel is simply unwilling to pay the price, that is, the end of its occupation of the West Bank, including East Jerusalem, and Gaza and the creation of a Palestinian state on that territory.

Hamas

Hamas has not formally signed up to the “historic compromise ” and recognised Israel’ s right to exist. As far as the PLO was concerned, when it did so in 1988, it was recognising Israel ’ s right to exist within its 1967 borders, with the expectation that Israel would in time withdraw to those borders, leaving the remaining 22% of Palestine free for the establishment of a Palestinian state.

Over 20 years later, this hasn't happened. No Israeli government during those 20 years has shown willing to withdraw to its 1967 borders, and that is certainly true of the present government. The evidence is that Israel will not willingly settle for 78% of Palestine. It wants more. It's staking a claim to more by continuing to plant Jewish settlers in the occupied territories. Since 1988, the number of Jewish settlers has expanded from less than 200,000 to around 500,000 – and there is no end in sight.

The US and the EU have made “recognition of Israel” a condition for engagement with Hamas. There is little doubt that, if a state of Israel existed within its 1967 borders today, then Hamas would recognise it. Hamas has said as much. For years, Hamas spokesmen have said that they are seeking a long-term truce with Israel, the price being Israeli withdrawal from the West Bank and Gaza.

For example, on 8 February 2006, shortly after Hamas won the Palestine Legislative Council elections, its leader,

Khaled Meshaal, told the BBC:

“ If Israel withdrew to the 1967 borders and recognised the rights of the Palestinian people - including the right of those in the diaspora to return to their land and to East Jerusalem and to dismantle the settlements - Hamas can then state its position and possibly give a long-term truce with Israel

“ This is a position that Hamas could take but only after Israel recognises the right of the Palestinians, to show and confirm its willingness to withdraw to the 1967 borders.” [\[32\]](#)

More recently, on 31 July 2009, he told the Wall Street Journal:

“ We along with other Palestinian factions in consensus agreed upon accepting a Palestinian state on the 1967 lines. This is the national program. This is our program. This is a position we stand by and respect. ” [\[33\]](#)

The Wall Street Journal report continues:

“ Khaled Meshaal ... said in a 90-minute interview at Hamas's Syrian headquarters that his political party and military wing would commit to an immediate reciprocal cease-fire with Israel, as well as a prisoner swap that would return Hamas fighters for kidnapped Israeli soldier Gilad Shalit.

“ He also said his organization would accept and respect a Palestinian state based on 1967 borders as part of a broader peace agreement with Israel—provided Israeli negotiators accept the right of return for millions of Palestinian refugees and the establishment of a capital for the Palestinian state in East Jerusalem. ”

So, it appears that Hamas' negotiating position is not very different from that of the PLO. Unfortunately, neither the Quartet, nor Israel, is prepared to negotiate with Hamas.

It is simply unrealistic to suppose that a final settlement can be arrived at in Palestine without the involvement of Hamas. It represents too large a proportion of the Palestinian population. Starting a Middle East peace process



without Hamas in 2009 is as unrealistic as starting the Northern Ireland peace process in the 1990s without Sinn Féin would have been.

If not divorce, then marriage?

If Israel is unwilling to allow the creation of an independent and viable Palestinian state within the 1967 boundaries – and that seems to be the case – then a two-state solution is a non-starter, in which case the only feasible political objective for Palestinians is a single bi-national state: instead of struggling for an independent and viable state of their own, Palestinians would seek equal rights with Jews in a single state. If, in the words of Jaber Wishah of the PCHR, “divorce” is impossible, then “marriage” is the only other option.

Israel likes to boast that it is the only democracy in the Middle East. Its claim to be a democracy is bogus, while it rules over millions of Palestinians in the occupied territories and these Palestinians are unrepresented in the Israeli



institutions that govern them. In the 21st Century, an Israeli government cannot forever rule over all the people between the Jordan and the Sea, without a proper democratic mandate. There will have to be “one person one vote” for everyone currently subject to Israeli rule.

Without that, how can Israel justify Jewish settlers in the occupied territories having a vote for the Knesset, while Palestinians in the same territory don't? It is difficult to avoid the charge of religious and/or racial discrimination.

In November 2007, at Annapolis, former Israeli Prime Minister, Ehud Olmert, made the following interesting remarks about the collapse of the “two-state solution” :



“ If the day comes when the two-state solution collapses, and we face a South African-style struggle for equal voting rights (also for the Palestinians in the territories), then, as soon as that happens, the State of Israel is finished. ... The Jewish organizations, which were our power base in America, will be the first to come out against us, because they will say they cannot support a state that does not support democracy and equal voting rights for all its residents. ” [\[34\]](#)

It is time for Israel to choose either “divorce” or “marriage” .



Appendix 1 Background (1947-2000)

If the founders of Israel had accepted the 1947 UN partition plan, it would exist today in 56% of mandate Palestine, and Jerusalem and the surrounding area would be under international control. That’s what the UN General Assembly recommended in Resolution 181, passed on 29 November 1947. But they didn’t.

Instead, Israel expanded the area allocated by the UN General Assembly for a Jewish state by force to include 78% of Palestine, even though at the time Jews made up only about a third of the population of Palestine as a whole and owned a mere 6% of the land. To ensure that Jews were numerically dominant in the new Jewish state, nearly all the Arabs — around 750,000 — were expelled from it into the rest of Palestine and the surrounding Arab states, where they and their descendants live today. Over 500 Arab villages were destroyed so that those expelled had no homes to return to.

In June 1967, Israel occupied the remaining 22% of Palestine (the West Bank, including East Jerusalem, and Gaza), and subsequently annexed East Jerusalem and colonised this occupied Palestinian territory, contrary to the Fourth Geneva Convention. Today, more than 40 years later, nearly 500,000 Jews live in settlements in the West Bank, including East Jerusalem, built on land confiscated from Palestinians.

These settlements range in size from small “outposts”, consisting of a few trailers, to entire towns of tens of thousands of settlers. The negative impact of the settlement enterprise on Palestinians extends far beyond the settlements themselves. While the built-up areas of the settlements comprise about 1.2% of the West Bank, their impact, direct and indirect, extends to about 40% of the West Bank territory – because of the settler roads connecting settlements together and to Israel, because of the extensive network of military checkpoints and other physical barriers, not to mention the Wall and its associated infrastructure, all of which severely disrupts the lives of Palestinians.

The objective of Israel’s settlement enterprise has been to stake a claim to Palestinian land in the occupied territory, with a view to annexing some or all of it to Israel and to prevent the return of the whole territory to a Palestinian state.

(*)

In 1988, the PLO made an historic compromise. It relinquished its claim to all of mandate Palestine, recognised Israel’s right to exist within its 1967 borders (with 78% of the land area of Palestine) and adopted the objective of establishing an independent Palestinian state, with East Jerusalem as its capital, in the remaining 22% of Palestine. Given this enormous sacrifice by Palestinians, it is utterly unreasonable of Israel, or any outside power, to demand that Palestinians settle for less than 22% of Palestine, by, for example, moving the border eastwards to incorporate Jewish settlement blocs in the West Bank into Israel.

The PLO’s recognition of Israel led to the Oslo agreement in August 1993, which was to provide the framework for future negotiations between Israel and Palestinians. It established a Palestinian Authority, ostensibly to take over the administration of the occupied Palestinian territories in phases as Israel withdrew. A permanent settlement was to be reached within five years. But it didn’t happen.



Throughout the period, Israel violated the spirit and the letter of the Oslo agreement and subsequent agreements signed under Oslo. It repeatedly delayed the process, frequently missing deadlines for withdrawal from the occupied territories, so that the majority of the occupied territory remained under Israel ' s full control.

At the final status negotiations in Camp David in July 2000, by its own account, Israel made a very generous offer to Palestinians, which they foolishly turned down. In reality, Israel ' s “ generous ” offer, was neither generous, nor formally tabled in written form. The Palestinian state proposed in it was divided into four cantons, entirely surrounded and controlled by Israel, and excluded East Jerusalem, which was to remain in Israeli hands permanently. Palestinians were to have no control of their own borders, airspace and water resources and the Jewish settlements in Palestinian territory were to be legitimised.

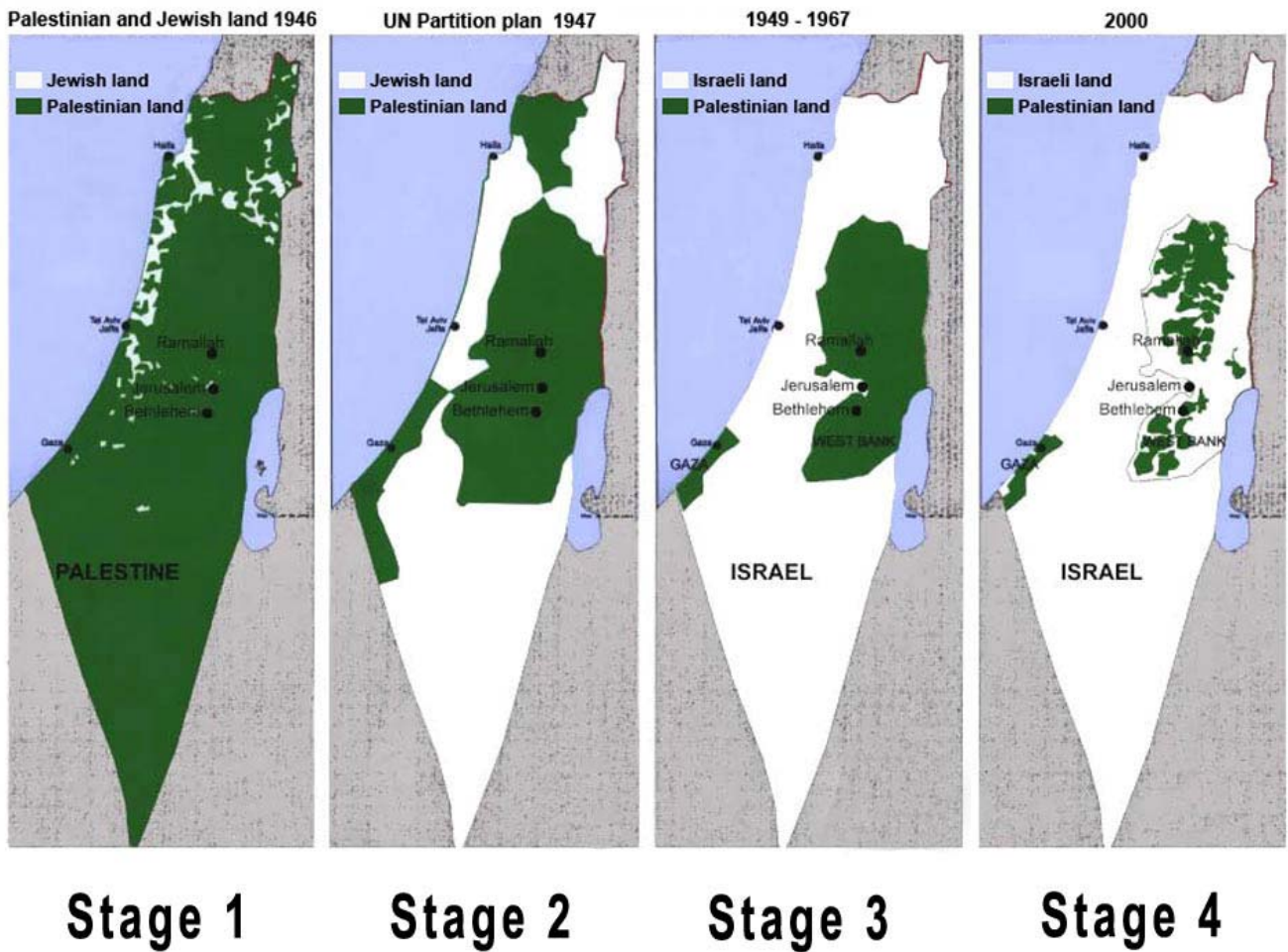


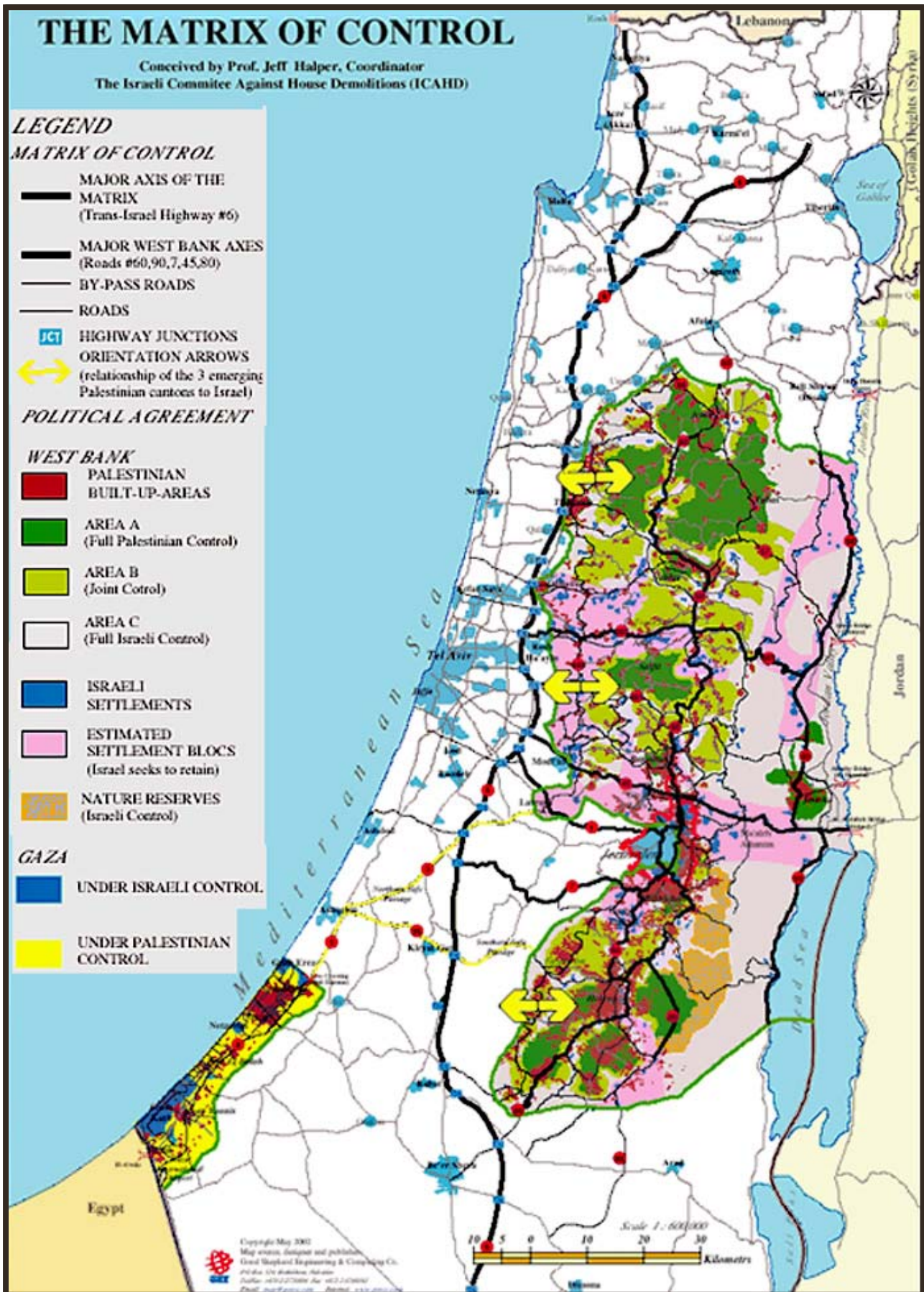
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Palestinian loss of land 1946 to 2000







The Ireland Palestine Alliance ♦ www.sadaka.ie

Sadaka - an Arabic term meaning "friendship" - is an Association established in Ireland in 2009 to promote the cause of Palestine throughout Ireland,, raising public awareness and engaging in political dialogue. It aims is to persuade those in Government to champion the cause of justice for the Palestinian people.

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