

Negotiations between Israel and the Palestinians

Allowing the thief to negotiate with his victim

The negotiations between Israel and the Palestinians are equivalent to allowing a thief to negotiate with his victim about the amount of stolen goods he is going to give back, while he keeps his boot on the victim's throat.

Direct negotiations between Israel and the Palestinians began in early September. President Abbas was opposed to direct negotiations without Israel calling a halt to settlement construction in the West Bank and East Jerusalem. But, he came under great pressure from President Obama to do so and reluctantly gave in.

The Road Map

In May 2003, Israel agreed to freeze all settlement activity prior to the start of negotiations, when it accepted the Road Map (aka "a performance-based roadmap to a permanent two-state solution to the Israeli-Palestinian conflict") [1].

Drawn up by the Bush Administration, it is the internationally accepted framework for negotiations between Israel and the Palestinians, endorsed by the Security Council in resolution 1515 [2]. The EU and the Quartet (the US, the EU, Russia and the UN Secretary-General) have regularly called upon both sides to fulfil their obligations under the Road Map (see, for example, a recent Quartet statement of 21 September 2010 [3]).

One of Israel's obligations is that, prior to the start of negotiations:

"Consistent with the Mitchell Report, GOI [Government of Israel] freezes all settlement activity (including natural growth of settlements)"

Another obligation was to dismantle all the settlement outposts built after March 2001.

The Israeli government attached reservations to its acceptance of the Road Map, but none of them objected to the obligation to freeze settlement construction [4]. The Palestinians accepted the Road Map without reservations.

The Israeli government has reiterated its commitment to the Road Map on several occasions, for example, at the Annapolis conference held in November 2007, when, in a joint memorandum with President Abbas, Israeli Prime Minister Ehud Olmert repeated Israel's commitment [5]. However, Israel continued settlement activity while the negotiations following the conference went on.

Obama backs down

So, Mahmoud Abbas was entirely justified in resisting direct negotiations while settlement building continued. Israel's 10-month "moratorium" on settlement building was never a complete freeze, and anyway it didn't apply to East Jerusalem, so it didn't meet the Road Map requirement. And settlement outposts haven't been removed. At the time of writing, the "moratorium" has expired – and Abbas may pull out of direct negotiations.

A year ago, Obama was on Abbas's side in insisting on a freeze on the Jewish colonisation of the West Bank and East Jerusalem, prior to the start of negotiations. In his speech in Cairo on 4 June 2009, he declared:

"The United States does not accept the legitimacy of continued Israeli settlements. This construction violates previous agreements [eg the Road Map] and undermines efforts to achieve peace. It is time for these settlements to stop." [6]

However, a few months later, in the face of opposition from Prime Minister Netanyahu, he backed down ignominiously. Violating previous agreements and undermining efforts to achieve peace is apparently OK, as long as it is Israel that is doing it.

(It is difficult to believe that he would be as forgiving of Palestinian action that he deemed to be in violation of previous agreements and to undermine efforts to achieve peace. In the same Cairo speech, he insisted that in order "to play a role in fulfilling Palestinian aspirations" Hamas had to "recognize past agreements". He has yet to lift this requirement on Hamas.)

So, having given up trying to persuade the stronger party to stick to past agreements, Obama has been putting ever increasing pressure on the weaker party to enter into direct negotiations while the stronger party continues to be in breach of past agreements – and in early September, with great reluctance, Abbas conceded.

The only reason anybody can think of for this disgraceful bullying of Abbas by Obama is that he wanted a foreign policy "success" before the US mid-term elections.

Mitchell reports

A report published on 30 April 2001 stated:

"Palestinians are genuinely angry at the continued growth of settlements and at their daily experiences of humiliation and disruption as a result of Israel's presence in the Palestinian territories. Palestinians see settlers and settlements in their midst not only as violating the spirit of the Oslo process, but also as an application of force in the form of Israel's overwhelming military superiority, which sustains and protects the settlements." [7]

The chairman of the fact finding mission that drew up this report was George Mitchell, now Obama's Special Envoy for Middle East Peace. Mitchell went on to recommend, inter alia, that, in order to build confidence prior to a resumption of negotiations:

"The GOI [Government of Israel] should freeze all settlement activity, including the 'natural growth' of existing settlements."

which, as we have seen, was replicated in the Road Map two years later.

One wonders how Mitchell feels now that he has been party to pressuring the Palestinians into direct negotiations with Israel without his proposal from 10 years ago being implemented, particularly since, in the interim, Palestinians have had to endure a rapidly growing number of settlers in their midst.

The Kuwait example

The negotiations are supposed to be about ending Israel's military occupation of the West Bank and Gaza, which began in June 1967. The Quartet statement of 21 September stated that "negotiations should lead to an agreement that ends the occupation that began in 1967 and results in the emergence of an independent, democratic, contiguous and viable Palestinian State" [3].

The proper international response to Israel's acquisition of these (and other) territories by force in 1967 should have been to apply what ever pressure was necessary to force Israel to withdraw. The Security Council should have told Israel to leave and, if it didn't, economic sanctions should have been applied to make it leave. If that didn't work, it should have been made to leave by the application of armed force. That's what was done to Iraq when it invaded Kuwait in 1990, and should have been done to Israel in 1967.

But, Israel was not forced to leave. Instead, today, the Israeli occupier is being allowed to negotiate with the people under its occupation about how much, if any, of the territory it acquired by armed force 43 years ago it will give up, and when it will give it up. In these negotiations, Israel holds all the cards, since it dominates the occupied territories, militarily and economically, and is therefore in a position to dictate terms. And, if the Palestinians refuse to agree to those terms, they will continue to be occupied sine die.

These negotiations between Israel and the Palestinians are equivalent to allowing a thief to negotiate with his victim about the amount of stolen goods he is going to give back, while he keeps his boot on the victim's throat.

The US has made it clear that it isn't going to help the victim recover the stolen goods, Obama said at the outset the US "cannot impose a solution" [8]. He meant "will not". This statement is a green light to Netanyahu to set terms which Abbas cannot accept, in the full knowledge that Obama isn't going to make his life difficult if he does. On present form, Obama is much more likely to make life difficult for Abbas if he refuses to accept Netanyahu's terms.

The US could impose a solution – all it has to do is to cut off, or threaten to cut off, some or all of the US tax dollars that Israel receives annually (around \$2.5 billion in 2007 [9]) and/or to make it clear that the US is no longer prepared to protect Israel from criticism, or worse, in international fora, in particular, that the US veto might not always be exercised to protect Israel in the Security Council.

Relentless settlement building

Meanwhile, Israel continues to expand Jewish settlements on the West Bank and East Jerusalem, on the territory that is meant to belong to a Palestinian state at the end of the negotiations. B'Tselem, the Israeli Information Center for Human Rights in the Occupied Territories, recently published a report on Israel's settlement policy in the West Bank [10]. The report begins:

"Some half a million Israelis are now living over the Green Line [the 1967 border] : more than 300,000 in 121 settlements and about one hundred outposts, which control 42 percent of the land area of the West Bank, and the rest in twelve neighborhoods that Israel established on land it annexed to the Jerusalem Municipality."

The Jewish state was assigned 56% of mandate Palestine by UN General Assembly in November 1947. It was expanded by force to 78% in 1947/48, and 750,000 Arabs were expelled into the rest of Palestine and the surrounding Arab states, where they and their descendants live today. That is how a viable Jewish state was established in Palestine in 1948.

In 1967, Israel occupied the remaining 22% and has set about colonising the West Bank, including East Jerusalem, thereby staking a claim to even more territory.

In 1988, the Palestine Liberation Organisation (PLO) recognised Israel's right to exist within its 1967 borders and adopted the objective of establishing an independent Palestinian state in the remaining 22% of mandate 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 continued relentlessly to confiscate Palestinian land and to plant Jewish settlers on it. In 1988, there were about 60,000 settlers in the West Bank and about 120,000 in East Jerusalem (see B'Tselem report [\[10\]](#), p 9/10). Today, those numbers have increased to around 300,000 and 200,000 respectively. The total today at 500,000 is nearly triple what it was in 1988, when the PLO formally settled for a state in 22% of mandate Palestine.

It cannot be coincidental that when Palestinians expressed their willingness to accept a state in 22% of mandate Palestine, Israel accelerated settlement building to make it ever more difficult, if not possible, for them to reach that objective. The territory which is supposed to belong one day to a Palestinian state is being steadily eaten into by Jewish colonisation.

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".

Contrary to 4th Geneva Convention

All of Israel's settlement building is contrary to international law, because it involves the transfer of Israeli civilians into territory occupied by Israel. This is forbidden under Article 49, paragraph 6, of the 4th Geneva Convention, which states:

"The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." [\[11\]](#)

The United Nations Security Council has made this clear in resolutions 446, 452 and 465, all of which demand that Israel cease settlement building and remove existing settlements. For example, in resolution 446, passed on 22 March 1979, the Security Council states 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"

and calls upon Israel

“to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories” [\[12\]](#).

UN General Assembly

Every year, the UN General Assembly passes a series of resolutions on Israel/Palestine including one demanding that settlement building cease and existing settlements be removed, most recently resolution 64/93 passed on 10 December 2009. 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)” [\[13\]](#)

This resolution was passed overwhelmingly (as it is every year), this year by 171 votes to 7. EU states voted for the resolution. The only opponents apart from Israel and the US were Panama and four tiny Pacific states – Marshall Islands, Micronesia, Nauru and Palau – which are US clients.

On this matter, and others concerning Israel/Palestine, Israel and the US have very few friends in the world.

The International Court of Justice

The International Court of Justice (ICJ) has also declared, in its Advisory Opinion on the construction of the Wall [\[14\]](#) (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.

International Criminal Court

Under the Rome Statute of International Criminal Court (ICC), the colonisation of occupied territory is a war crime. Article 8.2(b)(viii) of the Statute defines “the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies” as a war crime [\[15\]](#).

Since there is no doubt that such transfers have taken place, 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. Needless to say, it is certain that the US would wield its veto on the Security Council to prevent this happening.

(Speaking of the ICC, it is possible that Israelis could be brought before the ICC for the attack on the Mavi Marmara, which although a Turkish-owned ship was registered in, and flew the flag of, the Comoros. Legally speaking, therefore, the attack took place on

the territory of Comoros, which is a party to the ICC. The ICC therefore has jurisdiction over the ship at the time of the attack. This was confirmed [16] by Desmond de Silva, a British judge, who was a member of the UN Human Rights Council Fact-Finding Mission into the incident. The mission reported on 22 September 2010 [17].

It appears that the Turkish NGO, IHH, that owned the ship deliberately chose to register it in the Comoros, because the Comoros was a party to the ICC, unlike Turkey.)

What freeze?

At the time of writing, the question dominating media attention is: will Israel renew its "moratorium" on settlement building and save the negotiations?

One question that is worthy of media attention, but is receiving very little, is: what effect did the "moratorium" have on settlement building while it was in operation? The answer is very little.

Here's how Dror Etkes described its effect in a *Ha'aretz* article [18] entitled *Settlement freeze? It was barely a slowdown*:

"The official statistics supplied by the Central Bureau of Statistics describe the story behind the 10-month construction moratorium in the West Bank. The story can be called many things but 'freeze' is certainly not one of them. What took place in the past few months is, in the best case scenario, not more than a negligible decrease in the number of housing units that were built in settlements.

"The data that appeared in the bureau's tables clearly show that. At the end of 2009, the number of housing units that were actively being built on all the settlements together amounted to 2,955. Three months later, at the end of March 2010, the number stood at 2,517. We are therefore talking about a drop of a little more than 400 housing units - some 16 percent of Israeli construction in the West Bank over that period. ...

"The real story behind the PR stunt known as the freeze took place in fact in the months prior to that, during which the settlers, with the assistance of the government, prepared well for the months of hibernation foisted upon them. In the half year that preceded the declaration of the freeze, which started at the end of November 2009, dozens of new building sites sprang up, especially in isolated and more extreme settlements east of the fence.

"This piece of information is also well documented in the bureau's numbers. In the first half of 2009, they started to build 669 housing units in the settlements, and then, as the months wore on, the pace of construction increased. Thus in the second half of 2009, no fewer than 1,204 housing units were built - an increase of some 90 percent in construction starts as compared with the first half of the year. ...

"If we add to these statistics the fact that the government announced in advance that it planned to approve, in any circumstances and with no connection to the 'freeze', the construction of 600 housing units in various settlements, and the chaos and anarchy that exists in some settlements and outposts, making it possible for every person to build where and when he feels like it, we shall get quite a good picture of what really happened to the settlements in the past few months."

A real freeze (and demolitions)

By contrast, Palestinian building is severely restricted by Israel in large areas of the West Bank, and has been restricted since Israeli occupation began in 1967. This is graphically described in a fact sheet published in August 2010 [19] by the UN Office for the Co-ordination of Humanitarian Affairs (OCHA) on life for the approximately 150,000 Palestinians living in Area C of the West Bank.

As part of the Oslo process, the West Bank was divided into three zones, referred to as Areas A, B and C, A controlled by the Palestinian Authority (PA), B under joint PA and Israeli control and C wholly under Israeli control. Areas A and B consist of a series of small islands within Area C, which comprises approximately 62% of the West Bank. There, the Israeli Civil Administration (ICA) is in charge of building and planning.

On this, the OCHA fact sheet comments:

“Difficulties in obtaining building permits from the ICA for construction and/or rehabilitation of buildings, prevents the construction of housing to meet natural population growth. In addition, the inability to build or rehabilitate schools and health clinics significantly impedes the adequate provision of basic services. In some cases, permit applications of a high technical standard for funded projects have been pending for years. The ability to rehabilitate rainwater harvesting cisterns and the weatherproofing of dwellings, and even their replacement by portable tents, is prohibited by the ICA.

“Due to the restrictive planning and zoning regulations in practice, the Israeli authorities generally allow Palestinian construction only within the boundaries of ICA-approved municipal plans. These cover less than one percent of Area C, and much of this one percent is already built-up. As a result, Palestinians needing to build in Area C are left with no alternative than to build without a permit and risk demolition of their structure.”

And demolitions are common.

Right next to the Palestinians living under these severe building restrictions imposed by Israel are the Jewish-only settlements, which are all in Area C. There, even temporary restrictions on building are fiercely resisted by Israel. It is unthinkable, it is said, that homes cannot be extended to cater for growing families, or that schools and health clinics cannot be built or rehabilitated.

But not if the homes and schools and health centres are for Palestinians.

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