



Israeli settlements and the E1 area

Standard Note: SNIA/6494

Last updated: 4 December 2012

Author: Ben Smith

Section International Affairs and Defence Section

In December 2012, the Israeli government announced that it had authorised the construction of some 3000 new housing units in the occupied West Bank and East Jerusalem. This was widely taken to be in retaliation to the Palestinian Authority's move at the United Nations, where Palestine was accorded non-member observer state status on 29 November. The construction of settlements in the Occupied Territories has continued almost unabated since the Six Day War in 1967, despite the general (but not Israeli) view that they are illegal under international law.

The latest announcement has brought condemnation from many sides and has further called in to question the viability of the two-state solution. Many commentators, however, think that construction in the E1 area to the east of Jerusalem is unlikely to proceed.

Contents

1	1967 and occupation	2
2	Settlements and legality	2
3	Settlement growth	3
	3.1 Total population of the settlements since 1972	4
	3.2 How much of the land is taken up by settlements?	4
4	Recent developments and the E1 area	4
5	Is the E1 move a bluff?	5
6	Reaction	6
7	Map showing Areas A, B and C under the Oslo accords	8

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

1 1967 and occupation

In June 1967, after persistent attacks on Israel by groups based in neighbouring Arab countries and a series of escalations of military tension, Israel attacked the air forces of Jordan, Syria and the UAR (as Egypt was then known) and captured territory from those countries. The war was over very quickly (it is known as the Six-Day War), but its effects are still here.

The occupation of the Golan Heights, a strategic area on the border with Syria, the West Bank of the River Jordan, territory held by Jordan, and the Gaza Strip, part of the UAR, has persisted since then.

The United Nations Security Council passed Resolution 242 in November 1967, calling for:

- Israel to withdraw from the Occupied Territories
- All countries in the region to recognise the sovereignty of the others
- The parties to find a just solution to the Palestinian refugees problem
- A negotiated settlement to the overall problem.¹

2 Settlements and legality

From 1967 to 2011, the Israeli government established 124 official settlements in the West Bank; another about 100 'outposts' (unofficial settlements that received no authorisation from the Israeli government) were established. In addition, 12 neighbourhoods in territory in East Jerusalem that was annexed by Israel are generally considered to have the same legal status as settlements.

Most countries view the settlements as illegal under international law, specifically the Fourth Geneva Convention, Article 49 of which says that 'The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies'.² Israel maintains that the Geneva Conventions do not apply to these areas because there was no clear sovereignty of the territory taken control of in 1967, meaning that they are not 'occupied', and because the settlers were not transferred to the territories:

Attempts have been made to claim that the settlements violate international law for two reasons - first because the West Bank is claimed to be considered 'occupied territory', and second, because a state is prohibited from deporting or transferring parts of its own civilian population into a territory it occupies. However, these allegations have no validity in law because firstly, it is an historical fact that the disputed West Bank is not the sovereign territory of any other state and thus cannot be considered 'occupied', and second, Israeli citizens were neither deported nor transferred to the territories, but rather chose their place of residence voluntarily.³

¹ [SECURITY COUNCIL RESOLUTIONS - 1967](#)

² Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, [Article 49](#), International Committee of the Red Cross

³ Frequently asked questions, [Are Israeli settlements legal?](#), Israel Ministry of Foreign Affairs

A number of UN Security Council Resolutions have stated clearly that the territories are occupied and that the settlements have no basis in international law, however. 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.⁴

16 settlements in Gaza and four isolated communities in the northern West Bank were dismantled in 2005, in accordance with the disengagement plan. Although Israel withdrew its settlers and military forces, it is still occupying Gaza under international law because it controls Gazan borders, airspace and coastline, and has overwhelming control over life in the area.⁵

3 Settlement growth

After years of steady growth both of the number of settlements and the number of settlers, the Israeli government agreed in 2003 to the Road Map to Middle East Peace. The Road Map stipulated that in phase 1, the government of Israel would freeze settlement construction:

- GOI immediately dismantles settlement outposts erected since March 2001.
- Consistent with the Mitchell Report, GOI freezes all settlement activity (including natural growth of settlements).⁶

Soon after the publication of the Road Map, however, doubts began to surface about Israel's commitment to implementing the freeze on settlement construction. There was little effort to dismantle illegal outposts, and evidence emerged that existing official settlements were continuing to be expanded. From 2003 to 2004, the settler population in the West Bank expanded by about 10,000.⁷

A plan also was reported in 2004 for the creation of a new settlement in a crucial area to the East of Jerusalem.⁸

As the Obama Administration tried to revive the Road Map process, Israel experienced significant international pressure to halt the construction of settlements, and in August 2009, President Obama demanded a complete freeze on all construction. The Israeli government responded by agreeing to freeze in the West Bank, but in November 2009 approved 900 new housing units in East Jerusalem.

There is a perceptible halt in the settler population growth in 2009, but the numbers for 2010 show a resumed increase. According to the Israeli organisation Peace Now, 2011 saw a 20% rise in settlement construction starts, and approval for 3,690 housing units in east Jerusalem, the highest ever number of approvals.⁹

⁴ United Nations Security Council, [Resolution 446 \(1979\) of 22 March 1979](#)

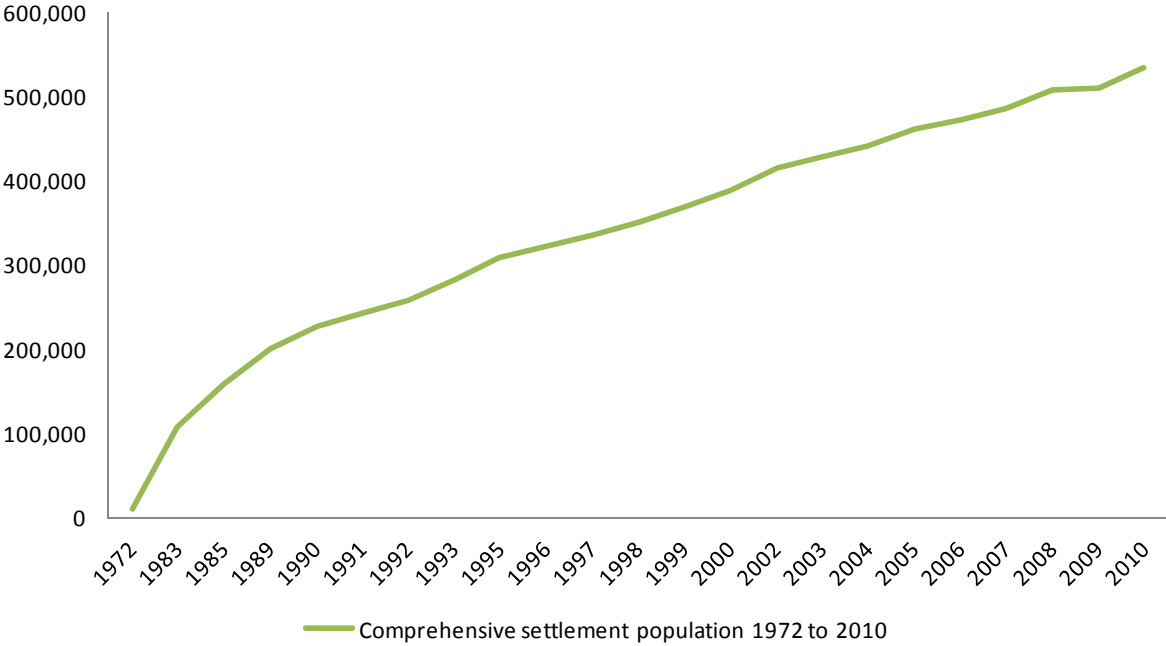
⁵ "Israel: 'Disengagement' Will Not End Gaza Occupation", Human Rights Watch, 29 October 2004

⁶ "The roadmap: Full text", *BBC News Online*, 30 April 2003

⁷ *By Hook and by Crook Israeli Settlement Policy in the West Bank*, B'Tselem, 2010

⁸ "Israel flouts road map with new settlement", *Guardian*, 6 August 2004

3.1 Total population of the settlements since 1972



Source: Foundation for Middle East Peace

The number of tenders published for settlement construction will go from 170 units in 2009 to 6,046 units, if the 3,000 units are added to the 3,046 published so far this year. They may not be published until next year, which might make the statistics look slightly less dramatic.

3.2 How much of the land is taken up by settlements?

According to figures released in 2002, settlements and their infrastructure take up more than 40% of the West Bank with 1.7% of the land designated for the settlements, 6.8% for their municipal boundaries and 35.1% designated for regional councils for smaller communities.¹⁰

4 Recent developments and the E1 area

On 30 November 2012 the Israeli government announced that it would build 3,000 new housing units in the West Bank and East Jerusalem. This was taken to be in retaliation for the Palestinian success in gaining non-member observer state status at the United Nations.¹¹ These units would be built in the Ariel, Elkana, Efrat, Karnei Shomron settlements in the West Bank and the settlements of Pisgat Ze'ev and Gilo in occupied East Jerusalem, according to a spokesman for the Ministry of Construction and Housing.¹²

At the same time, a decision was announced to proceed with zoning and planning work on the E1 area, considered crucial for the future of East Jerusalem because an Israeli settlement would largely cut off occupied East Jerusalem from the rest of the Occupied Territories.

⁹ [Peace Now: Settlement construction soared in 2011](#)
¹⁰ "Land grab: Israel's settlement policy in the West Bank", B'Tselem press notice, 13 May 2002
¹¹ For more on Palestinian statehood and its legal implications, see the Library standard note [Palestinian statehood](#), August 2011
¹² "Netanyahu: Gov't okayed E1 planning, not building", *Jerusalem Post*, 2 December 2012

This was the project that had caused such controversy when approval was first granted to it in 2004. Even before that proposals for development in the area to the east of Jerusalem were causing worries about the future viability of the two-state solution. The International Crisis Group commented in 2003:

Such a development project would do grievous and perhaps irreparable harm to any possible connection between Arab neighbourhoods of East Jerusalem and the West Bank.¹³



Source: New York Times

5 Is the E1 move a bluff?

Some commentators have suggested that Israel is in fact unlikely to go ahead with building a settlement on E1.¹⁴ The Israeli government is reported to have given an assurance to President Obama in 2009 that no building would take place in E1. In a briefing to Palestinian

¹³ *The Israeli-Palestinian Roadmap: What A Settlement Freeze Means And Why It Matters*, International Crisis Group Middle East Report N°16, 25 July 2003
¹⁴ Michael Koplow, "Bibi Is Bluffing On E1", *Daily Beast*, 3 December 2012

staffers, the lead Palestinian negotiator Saeb Erekat is reported to have said that Israel secretly gave the commitment:

Obama said he got Israel to commit to stop construction in E1 but nothing yet on home demolitions. [U.S. envoy] Mitchell said Obama was very tough with Bibi. Clinton said the same. The meeting with the Israelis did not produce anything besides the commitment to stop E1 construction, but that is secret.¹⁵

Commentators say that, with an election approaching, to suggest building on E1 plays well with the settler lobby and with the right wing parties that may form coalition with Netanyahu's Likud party after the poll. Binyamin Netanyahu, it is argued, knows well that building on E1 would be crossing a 'red line' for Europe and the US, as it would be seen as deliberately killing off the two-state solution, as has been made clear every time the subject is raised by Israel, as the 2003 International Crisis Group report mentioned above made clear.

A senior European diplomat told the *Times of Israel*:

E1 is definitely the key word — it's a red line that cannot be crossed, and the American and European governments did right to condemn Israel's announcement. But really, hardly anyone thinks that the Israeli government is actually going to cross that line. Netanyahu is playing with fire by making these kinds of announcements. But I don't see the bulldozers rolling.¹⁶

6 Reaction

On 3 and 4 December, Denmark, Finland, France, Ireland, Spain, Sweden and the UK summoned Israeli ambassadors to issue formal complaints. This was an exceptionally strong reaction; there had even been press speculation that the UK and France might recall their ambassadors from Tel Aviv in response to the Israeli move but this did not happen.

To the suggestion in the House of Commons that Israel was behaving in a way that would isolate it and would not achieve peace, Foreign Secretary William Hague answered:

We summoned the Israeli ambassador to the Foreign Office yesterday to hear exactly that message from the Under-Secretary of State for Foreign and Commonwealth Affairs, my hon. Friend the Member for North East Bedfordshire (Alistair Burt), who has responsibility for the Middle East. If implemented, the plans that were announced on Friday would alter the situation on the ground on a scale that would make the two-state solution with Jerusalem as a shared capital almost inconceivable, or certainly very difficult to implement. Much as we had misgivings, for some of the same reasons, about pressing for a resolution at the United Nations, we think that that was the wrong way for Israel to react. That message is coming loud and clear from all around Europe and the United States.¹⁷

In a White House press briefing, US opposition to the Israeli move was made clear:

We oppose all unilateral actions, including settlement activity and housing construction, as they complicate efforts to resume direct bilateral negotiations and risk prejudging the outcome of those negotiations. And this includes building in the so-called E1 area.

¹⁵ ["Netanyahu secretly promised not to link Jerusalem and nearby settlement, Palestine papers show"](#), *Haaretz*, 26 January 2011

¹⁶ ["With elections around the corner, is Netanyahu bluffing on E1 housing plan?"](#), *Times of Israel*, 4 December 2012

¹⁷ [HC Deb 4 Dec 2012, c708](#)

We have made clear to the Israeli government that such action is contrary to U.S. policy, opposing unilateral action including settlement activity and housing construction in East Jerusalem. And we in the international community expect all parties to play a constructive role in efforts to achieve peace. We urge Israeli leaders to reconsider these unilateral decisions and exercise restraint as these actions are counterproductive and make it harder to resume direct negotiations to achieve a two-state solution.¹⁸

Catherine Ashton, High Representative for EU foreign affairs suggested that it could be seen as a deliberate move to torpedo the two-state solution:

I am therefore extremely worried by the prospects of settlement expansion on such a scale. The reaction of the international community to any such decision is likely also to be influenced by the extent to which such expansion may represent a strategic step undermining the prospects of a contiguous and viable Palestine with Jerusalem as the shared capital of both it and Israel.¹⁹

¹⁸ White House, [Press Briefing by Press Secretary Jay Carney, 3 December 2012](#)

¹⁹ [Statement by the EU High Representative Catherine Ashton on reports indicating the Israeli Government's intention to expand settlements](#), EU press release, 2 December 2012

7 Map showing Areas A, B and C under the Oslo accords



United Nations Office for the Coordination of Humanitarian Affairs

Restrictions on Palestinian Access in the West Bank

CAP 2010 - Consolidated Appeal Process

June 2010

