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to Australia, New Zealand and
the Pacific**



INTERN POLICY REPORT

**Settlement Expansion, the Australian Position, and
the Peace Process**

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Introduction: Settlements and Expansion

Following the annexation and occupation of the West Bank in 1967, Israel has built over 100 illegal settlements. In total, the settlements and “areas under the jurisdiction of the regional councils” cover more than 60% of Area C, and this percentage is expected to rise as Israel announced in January 2017 the approval of a plan to build 2,500 new settler homes in Occupied West Bank and 556 homes in Occupied East Jerusalem.¹ The estimated population of settlers living in Occupied West Bank (does this include East Jerusalem) is currently 588,000.²

The number of illegal settlements also increases when applied to outposts, or settlements that are not officially sanctioned by the Israeli Government.³ Israel, however, has recently moved to retroactively legalise outposts.⁴ In February 2017 the Knesset passed a law, which was described as unconstitutional by the Attorney-General who also said he would not defend the law, which legalised 4,000 settler homes that had build on private Palestinian land.⁵ Overall, 33 percent of outposts have been, or are being, retroactively authorised.⁶ One member of the Likud Party, which also the party of Prime Minister Benjamin Netanyahu, Ofir Akuni went on record to state that the law was confirmation of the “connection between the Jewish people and its land,” and that “this whole land is ours. All of it.”⁷

¹Ibid.; “UN Condemns Huge Israeli Settler Plan,” *Al Jazeera*, January 25, 2017, accessed May 29, 2017, <http://www.aljazeera.com/news/2017/01/condemns-huge-israeli-settlement-plan-170125041616025.html>.; “Israel Approves Permits for 556 Settler Homes,” *Al Jazeera*, February 2, 2017, accessed May 29, 2017, <http://www.aljazeera.com/news/2017/01/israel-approves-permits-566-settler-homes-170122111203317.html>.; The West Bank is divided into three areas: Area A is 18% of the Occupied West Bank and includes all Palestinian cities and most of the Palestinian population and is governed by the Palestinian Authority (PA), Area B comprises 22% of Occupied West Bank and the control of this land was transferred to the PA, and Area C which is 60% of Occupied West Bank and is under full Israeli Control.

² “Land Expropriation and Settlements,” *B’Tselem*, updated May 11, 2017, accessed May 31, 2017, <http://www.btselem.org/settlements>.

³ “Settlements,” *B’Tselem*, accessed May 31, 2017, <http://www.btselem.org/topic/settlements>.

⁴ “Israel passes controversial law on West Bank settlements,” *BBC*, February 7, 2017, accessed June 1, 2017, <http://www.bbc.com/news/world-middle-east-38888649>.

⁵ Ibid.

⁶ “Settlements,” *B’Tselem*.; “From Occupation to Annexation: the silent adoption of the Levy report on retroactive authorization of illegal construction in the West Bank,” *Yesh Din*, February 2, 2016, accessed June 5, 2017, <https://www.yesh-din.org/en/from-occupation-to-annexation-the-silent-adoption-of-the-levy-report-on-retroactive-authorization-of-illegal-construction-in-the-west-bank/>.

⁷ Ibid.

Settlements have long been recognised as harmful to the two-state solution and have contributed to the disintegration of the Palestinian state.⁸ This concern has been shared by many countries, including the United States and United Kingdom. In December 2016, the US Ambassador to the UN, Samantha Power, stated that “settlements undermined Israel’s security and eroded prospects for peace and stability,” while in October 2016, the UK’s Permanent Representative to the UN stated that, “continuing Israeli settlement expansion in the West Bank is eroding the viability of the two-state solution.”⁹

Similar resolutions have been passed that reaffirm the same sentiments about the harmful impact of the Israel’s settlement expansion policy. For example, in December 2012, the United National General Assembly voted overwhelmingly in favour of a resolution 67/21 with 162 votes, which called upon Israel to stop its settlement activity which “gravely and detrimentally impact” the prospects for the peace process.¹⁰ Furthermore, in December 2014, the United Nations General Assembly again passed a resolution that expressed “grave concern about the extremely detrimental impact of Israeli settlement policies, decisions and activities in the Occupied Palestinian Territory, including East Jerusalem, including on the contiguity, integrity and viability of the Territory and the efforts to advance a peaceful settlement in the Middle East.”¹¹

Despite the overwhelming global recognition that Israeli settlement activity endangers the two state solution and is also illegal by International Law, the Australian official position stands in stark contrast to the international position and contributes to the erosion of the peace process. This report will address settlement expansion and the peace process in four sections. The first will present the Australian position on settlements and the peace process, while the second will present the position of

⁸ Please see Appendix for Map A, which was produced by B’Tselem and used in, “Israel passes controversial law on West Bank settlements,” *BBC*, February 7, 2017, accessed June 1, 2017, <http://www.bbc.com/news/world-middle-east-38888649>.

⁹ Israel’s Settlements Have No Legal Validity, Constitute Flagrant Violation of International Law, Security Council Reaffirms,” *United Nations*.; Matthew Rycroft, “Statement by Ambassador Matthew Rycroft, UK Permanent Representative to the UN at the UNSC Arria Formula meeting on Israeli settlements,” *Foreign & Commonwealth Office*, October 14, 2016, accessed May 29, 2017, <https://www.gov.uk/government/speeches/continuing-israeli-settlement-expansion-in-the-west-bank-is-eroding-the-viability-of-the-two-state-solution>.

¹⁰ “Resolution [67/121] Adopted by the General Assembly on 18 December 2012,” *United Nations General Assembly*, January 14, 2013, 4, accessed June 1, 2017, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/121.

¹¹ “Resolution adopted by the General Assembly on 25 November 2014,” *UN General Assembly*, December 12, 2016, accessed May 13, 2017, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/69/23.

international law. The Third section will discuss how the expansion of settlements negatively impacts the peace process by creating and expanding the severe imbalance between Israel and Palestine. This imbalance is not conducive to the peace process. Finally, the report will offer a conclusion and provide recommendations.

Australian Position

The Australian position on the question of Israeli settlements and the peace process is most clearly articulated by statements from both the Foreign minister of Australia, Ms Julie Bishop, and Prime Minister Malcolm Turnbull. In January 2014, Julie Bishop was asked whether or not she accepted the international legal argument that Israel settlements were illegal, she responded, "I would like to see which international law has declared them illegal."¹² Bishop also stated that, "The issue of settlements is absolutely and utterly fundamental to the negotiations that are under way and I think it's appropriate that we give those negotiations every chance of succeeding."¹³

Immediately following the UNSC vote on resolution 2334 in December 2016, Australia sought to distance itself from the resolution. The resolution in question was adopted by a vote of 14-0 which confirmed the illegal status of Israel's settlements. Julie Bishop stated that, "Australia urges both sides to refrain from steps that damage the prospect for peace and to resume direct negotiations for a two-state solution as soon as possible."¹⁴ Bishop also noted that if Australia had been on the Security Council, it would not have supported the resolution.¹⁵

In February 2017, Malcolm Turnbull was critical of Resolution 2334 and stated that, "My government will not support one-sided resolutions criticising Israel of the kind recently adopted by the UN Security Council..."¹⁶ Turnbull stated that he supported, "a directly negotiated two-state solution... So that

¹² Raphael Ahren, "Australian FM: Don't call settlements illegal under international law," *Times of Israel*, January 15, 2014, accessed May 17, 2017, <http://www.timesofisrael.com/australia-fm-dont-call-settlements-illegal-under-international-law/>.

¹³ Ibid.

¹⁴ Andrew Greene, "Australia distances itself from Obama administration's stance against Israel," *ABC*, December 30, 2016, accessed May 29, 2017, <http://www.abc.net.au/news/2016-12-30/australia-rejects-obama-stance-against-israeli-settlements/8153504>

¹⁵ Ibid.

¹⁶ Latika Bourke, "Malcolm Turnbull affirms Israel support, criticises UN, ahead of Benjamin Netanyahu visit," *Sydney Morning Herald*, February 22, 2017, accessed May 17, 2017, <http://www.smh.com.au/federal->

Palestinians will have their own state and the people of Israel can be secure within agreed borders.”¹⁷

Turnbull also stated that,

“We believe that with so many other larger, more destructive and intractable disputes in the Middle East, this is a time when Israeli and Palestinian leaders, supported by the global community, should return to the negotiating table and work towards a solution that upholds the rights of both peoples to live side-by-side in peace and security.”¹⁸

Finally, In March 2017, Julia Bishop, when asked about the legality of Israeli settlements, stated, “that is a matter for the final determination of the negotiations between the Palestinians and the Israelis...”¹⁹

In this way, the Australian position on the issue of Israeli settlements and the peace process is that: 1) settlements are not necessarily illegal and are a matter to be decided in final status negotiations, 2) the UN has passed several biased resolutions against Israel, 3) the Turnbull Government will not support resolutions deemed to be “one-sided,” and 4) the Turnbull Government supports a two-state solution that is to be negotiated between the Palestinians and the Israelis.

International Law

The international community and international legal opinion is near unanimous: Israeli settlements are illegal. This illegality stems from Convention (IV) relative to the Protection of Civilian Persons in Time of War (hereinafter Fourth Geneva Convention). Article 49 of the Fourth Geneva Convention states that “Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are

politics/political-news/malcolm-turnbull-affirms-israel-support-criticises-un-ahead-of-benjamin-netanyahu-visit-20170221-gui835.html.

¹⁷ Ibid.

¹⁸ Simon Benson, “Malcolm Turnbull blasts UN over vote on Israel,” *The Australian*, February 22, 2017, accessed June 1, 2017, <http://www.theaustralian.com.au/national-affairs/foreign-affairs/malcolm-turnbull-blasts-un-over-vote-on-israel/news-story/10af365ffbb27d88928a2646a0615e37>.

¹⁹ Latika Bourke, “Boris Johnson refers to Israel’s ‘illegal settlements’ in stark contrast to Julie Bishop,” *Sydney Morning Herald*, March 9, 2017, accessed May 28, 2017, <http://www.smh.com.au/world/boris-johnson-refers-to-israels-illegal-settlements-in-stark-contrast-to-julie-bishop-20170308-gutwy9.html>.

prohibited, regardless of their motive.”²⁰ Furthermore, article 49 also states that, “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”²¹ Israel’s settlement activity has been declared as in violation of this article numerous times by the international community.

In 2004, for example, the International Court of Justice (ICJ) affirmed this position when issuing a vote of 14-1 on the question of legality regarding Israel’s “separation barrier.” In paragraph 120 of the advisory opinion, the ICJ found that, “since 1977, Israel has conducted a policy and developed practices involving the establishment of Settlements in the Occupied Palestinian Territory, contrary to the terms of Article 49, paragraph 6 [of the Fourth Geneva Convention].”²² The status of settlements has been also been declared illegal countless times by the United Nations General Assembly. For example, in December 2016, the United Nations General Assembly passed resolution 71/97 by an overwhelming majority of 165 states that, among other things, Israeli settlements were illegal under international law.²³

The illegality of Israeli settlements was also voiced by the United Nations Security Council (UNSC). In December 2016 when resolution 2234 was passed with a vote of 14-0. Resolution 2234 stated the following:

“Israel’s establishment of settlements in Palestinian territory occupied since 1967, including East Jerusalem, had no legal validity, constituting a flagrant violation under international law and a major obstacle to the vision of two States living side-by-side in peace and security, within internationally recognized borders.”²⁴

²⁰ “Convention (IV) relative to the Protection of Civilian Persons in Time of War,” *International Committee of the Red Cross*, August 12, 1949, accessed May 20, 2017, <https://ihl-databases.icrc.org/ihl/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>.

²¹ *Ibid.*

²² “Report of Judgments, Advisory Opinions and Orders: Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,” *International Court of Justice*, July 9, 2004, 51, accessed June 2, 2017, <http://www.icj-cij.org/docket/files/131/1671.pdf>.

²³ “Resolution adopted by the General Assembly on 6 December 2016: Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan,” *United Nations General Assembly*, December 23, 2016, accessed June 1, 2017, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/97.

²⁴ “Israel’s Settlements Have No Legal Validity, Constitute Flagrant Violation of International Law, Security Council Reaffirms,” *United Nations*, December 23, 2016, accessed May 29, 2017, <https://www.un.org/press/en/2016/sc12657.doc.htm>.

In this way, the illegality of Israel's settlements in OPT have been declared illegal by the ICJ, the UNGA, and the UNSC. Israel has continued to expand their settlements despite these international rulings and in direction contravention of a rules-based global order.

The Australian position stands in direct contravention to the internationally accepted argument that Israeli settlements are illegal. Australia has great pride in describing itself as a "good international citizen," but the failure to uphold and defend internationally accepted resolutions and legal arguments regarding Israeli settlement expansion stands in contrast to this reputation. Rather, the Australian position has caused some to raise serious questions regarding its status as an "independent and serious international player."²⁵

Furthermore, the Australian position that insists upon direct negotiations between Palestine and Israel with no legal reference is unhelpful for the peace process. The international community has a clear starting point for the peace process: UNSC resolution 242 which was passed unanimously in 1967. Resolution 242 stated that a "just and lasting peace should include the application of two principles," which were Israeli withdrawal from territories it occupied during the 1967 conflict, and the "Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force."²⁶ The comments from both Turnbull and Bishop ignore the groundwork for the peace process in resolution 242, which should be included in discussions about the peace process.

Imbalance of Power and the Political Argument

The continued expansion of settlements negatively contributes to the peace process by creating a severe power imbalance, which is not conducive for the peace processes. The Conflict Research Consortium at the University of Colorado found that, "If one side is far more powerful than another,

²⁵ Dara Conduit and Professor Shahram Akbarzadeh, "Rethinking Australia's Position on Israeli Settlements," *Australian Institute of International Affairs*, March 13, 2017, accessed May 29, 2017, http://www.internationalaffairs.org.au/australian_outlook/rethinking-australias-position-on-israeli-settlements/.

²⁶ "1967 and 1973 Wars," *United Nations*, accessed June 5, 2017, <http://www.un.org/Depts/dpi/palestine/ch3.pdf>.

they are likely to simply impose their solution on the other side, who will be forced to accept it, because they have no other choice.”²⁷ Furthermore, severe power imbalances may also result in the possibility where “the high power party may simply refuse to enter into a negotiation, because they have no need to. They can get what they want without compromising, or in any way giving in to the other side.”²⁸ The same conclusions were also found by Paul Duffill who argued that “unequal partners can’t negotiate.”²⁹ Indeed, Giorgio Gallo and Arturo Marzano also argued this and found that, “A fairly necessary condition for arriving at the negotiation stage is the reduction of the parties’ imbalance.”³⁰ Furthermore, this is especially true when applied to negotiations involving “legal status,” which are cases in which one group, typically a government, either denies or undermines rights to another party.³¹

When applied to Israeli/Palestinian relations, these observations are certainly true. Since 1967, Israel has continued to expand upon this power imbalance. Among the first actions by Israel following the 1967 War was to issue Military Order 291 which abrogated all existing water and land arrangements prior to the occupation.³² Since then, as the introduction detailed, Israel has deepened its occupation with the expansion of new settlements and has recently retroactively approved outposts. The deepening of the occupation has been carried out in contravention of the ruling from the ICJ, the numerous resolutions by the UNGA, and the UNSC resolution in December 2016 and the balance of power has been an ever-present issue in negotiations. During negotiations in 1999 for the Sharm el-Sheikh Memorandum, for example, the strategy used by Ehud Barak, then Israeli PM, was described as “peace by ultimatum,” and the memorandum largely reflected “the underlying balance of power between the two parties.”³³ Barak approached the peace process as a “soldier,” and believed that “with the help of America...he would be able to impose his terms for the final settlement” on the Palestinians.³⁴

²⁷ “Power Imbalances,” *Conflict Research Consortium at the University of Colorado*, December 2, 2005, accessed June 1, 2017, <http://www.colorado.edu/conflict/peace/problem/powerimb.htm>.

²⁸ Ibid

²⁹ Paul Duffill, “Unequal Partners Can’t Negotiate,” *Sydney Peace Foundation*, October 10, 2011, accessed June 1, 2017, <http://sydneypeacefoundation.org.au/unequal-partners-cant-negotiate/>.

³⁰ Giorgio Gallo and Arturo Marzano, “The Dynamics of Asymmetric Conflicts: The Israeli-Palestinian Case,” *Journal of Conflict Studies* 29 (April 2009), accessed June 5, 2017, <https://journals.lib.unb.ca/index.php/jcs/article/view/15231/19943>.

³¹ Ibid.

³² “Troubled Waters – Palestinians Denied Fair Access to Water,” *Amnesty International*, October 2009, 12, accessed May 25, 2017, <https://www.amnestyusa.org/pdf/mde150272009en.pdf>.

³³ Louse Fawcett, *International Relations of the Middle East* (Oxford, Oxford University Press, 2016), 298.

³⁴ Ibid.

What the expansion of settlements means for the contemporary peace process is that Israel has continued to increase its position of power by establishing facts on the ground that will have to be negotiated in the peace process. As Israeli has continued to expand its presence in the occupied West Bank, the power imbalance with Palestine becomes greater. This allows Israel to approach the peace-process from an extreme advantage where they effectively hold all of the cards, and can “get what they want without compromising,” which is not conducive to a just peace process.³⁵

Israeli settlements and their continued expansion is also a major obstacle to the peace process. Professor Yossi Mekelberg of Chatham House, for example, has stated one of the most prominent issues the contemporary conflict and the peace process faces is Israeli settlement expansion. Mekelberg argued that settlement expansion has “rendered a viable Palestinian state with contiguous territory impossible.”³⁶ The results of the settlements on the contiguity of the Palestinian state can be seen in full detail in the map in the Appendix . This disintegration undermines the implementation of the two-state solution and the creation of an independent and contiguous Palestinian state. The impact on the peace process can be readily seen when Palestinians are surveyed. Research from the Palestinian Center for Policy and Survey Research from March 2016 found that only 51 percent of Palestinians supported the two-state solution, while a strong 63 percent would like to do away with the Oslo Accords, the current framework for the peace process.³⁷ If the current trend of settlement expansion continues, there is a real possibility that Palestinians will be forced to live under an “Apartheid” regime. According to a March 2017 United Nations report, Israel is establishing an “apartheid” regime based on “racial discrimination” that “dominates Palestinian people as a whole.”³⁸

The Australian position, which has no opinion on the question of settlement expansion and insists upon direct negotiations between Israel and Palestine with no legal reference, does not take these aspects into consideration. In the current power relationship, a just peace process cannot take place and would likely result in the imposition of peace by ultimatum. Furthermore, the expansion of settlements not

³⁵ “Power Imbalances,” Conflict Research Consortium at the University of Colorado.

³⁶ Yossi Mekelberg, “The Quiet Death of the Two-State Solution,” *Chatham House*, April 26, 2016, accessed July 22, 2017, <https://www.chathamhouse.org/expert/comment/quiet-death-two-state-solution>.

³⁷ Ibid.; “Palestinian Public Opinion Poll No 59,” Palestinian Center for Policy and Survey Research, March 19, 2016, accessed July 22, 2017, <http://www.pcpsr.org/en/node/636>.

³⁸ Tom Perry, “Israel is imposing ‘apartheid regime’ on Palestinians, UN agency says,” *The Independent*, March 16, 2017, accessed July 22, 2017, <https://www.independent.co.uk/news/world/middle-east/un-israel-report-apartheid-palestinians-gaza-a7632336.html>.

only undermines the peace process, but is also counterproductive and has led to the establishment of an apartheid regime for the Palestinians. The best way forward is a new peace process that can address the present and growing power imbalance and settlements. A complete freeze on settlement expansion is a good starting point to address the growing power imbalance.

Conclusion and Recommendations

The current Australian position on the issue of Israeli settlements does not coincide with international law and contributes to the erosion of the peace process. The Australian position contributes to the erosion of the peace process by facilitating the growing power imbalance between Israel and Palestine. This power imbalance allows Israel to continue to build facts on the ground and approach the peace process from a position of absolute power which does not allow for a just and sustainable peace. Rather, it creates an environment where “peace by ultimatum” is the likely outcome.

Recommendations

- That Australia vote in favour of UN resolutions, which declare the international consensus that Israel’s settlements are illegal.
- That Australia voice their concern about the continued expansion of settlements and its negative impact on the peace-process.
- That Australia make a clear legal reference when discussing the Israeli-Palestinian peace process
- That Australia support a freeze of settlement expansion to produce the best possible climate for the peace process
- That Australia recognize the state of Palestine to save the two-state solution based on the continuation of the Israeli settlement activities.

Appendix

Map A

West Bank settlements

