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## Policy Forum

# *The changing character of Israel's occupation: planning and civilian control*

Israel's occupation of the West Bank is literally changing before our eyes. What began as a form of military control with marginal, messianic undertones, has transformed into a fully fledged sovereign endeavour, which has two central pillars. The first relates to the Palestinian population and aims to restrict their access to land and to development in the West bank. The second focuses on the seam between Jews and Palestinians and may be termed the policy of separation.

The settlement division of the World Zionist Organization (WZO), a non-governmental body that served for many years as the main channel for the foundation of settlements and the direction of state funds for this purpose, prepared a master plan for the Samaria Regional Council in the West Bank in 1983. Of the objectives stated by the plan, those that stand out are 'limiting the dispersion of Arab buildings' and 'preventing the creation of blocks of Arab communities'. The plan emphasised that insofar as areas adjacent to the 1948/49 armistice Green Line were concerned, 'immediate action on the subject of planning is essential both within and outside the area' (WZO, 1983, 7–8).

Such candour is quite rare, and it is probably no coincidence that no government document expresses Israel's planning objectives in the West Bank in such forthright a manner. However, the WZO's professed aim, along with its central role in the planning and development of the West Bank, provides the necessary structure through which Israel's actions may be understood, especially during the last 15 years.

The separation principle, epitomised in (then) Prime Minister's Ehud Barak's quip: 'Us here, them there', has become a governing policy of Israel's control of the West Bank. Spatially, the principle consists of two kinds of separations – first, between Israel and the West Bank; and, second, between Jewish settlements in the West Bank and Palestinian villages and inhabitants. Although this perception serves now as a paradigm for Israeli rule in the West Bank, it is a relatively recent one. Separation has supplemented, and then supplanted, the effort to control and manage the lives of Palestinian population. Through the deployment of planning and legal instruments, Israel reorganised its use of power, thus continuing the occupation by other means (Gordon, 2008; Dayan, 2009). Understanding these means requires clarifying the regime within which Israel operates in the West Bank. Immediately following the



Figure 1 The widespread diffusion of the settlements in the West Bank

occupation of the West Bank, Israel began, in a calculated and strategic fashion, to settle the land. Over the years, 120 settlements and 100 outposts were erected, most as a government initiative, and some as part of the settler movement. The dispersing of the settlements resembled the work of a farmer scattering his seeds throughout his plot, hoping and intending that the crop will cover it all (see Figure 1). The location of the settlements and the system of control that derives from it was decisive in times of tension and conflict (e.g. the first and second Intifida), but is also important in times of calm, thus enabling and motivating the construction of bypass roads that created a new grid of restriction and control (B'Tselem, 2004; Dayan, 2009).

Following the 1995 Oslo Accords, as amended in a series of later agreements, the West Bank was divided into three administrative zones: in terms of the division of powers between Israel and the Palestinian Authority with respect to physical planning, Areas A and B, which amounted to 40% of the West Bank's land and 96% of the Palestinian population, are identical. In these regions the Palestinian Authority was awarded planning and building powers. In Area C, which covers 60% of the West Bank (3.4 million dunams or 340,000 hectares) and 150,000 Palestinians (4% of the population), Israel retained responsibility not only for issues of security and public order, but also for civil issues relating to territory, such as planning, zoning and archaeology. Recent research by the Israeli human rights organisations and the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) (2009) reveals that, through a variety of methods, Israel severely limits the Palestinian planning and construction. These instruments may be divided into three categories, in increasing order of visibility: (i) the hidden layers of land policy; (ii) planning measures and instruments; and (iii) the visible and physical consequences.

## **The hidden layers of land policy**

Recent political chasms, internationally and in Israel internally, may lead observers to conclude that the physical construction within the settlements is the primary inhibitor of Palestinian development and of the ability to reach a two-state agreement. Such a conclusion, however, would miss the much larger picture that is, somewhat ironically, hidden from view. Because it does not appear on the land, or even on commonly accessible maps, Israel land policy has increasingly become one of the more effective instruments in restricting Palestinian planning and construction in the West Bank.

Over the first 12 years of the occupation, Israel established settlements on Palestinian private land, ostensibly as part of 'military necessity'. The ruling by the Supreme Court in the *Elon Moreh* case (1979) put an end to this strategy. In that case, the High Court of Justice accepted, for the first and only time, a claim by the Palestinian villagers of Rujeib that the military confiscation of their land to establish the settlement of Elon Moreh was illegal. However, this turned out to be a pyrrhic victory.

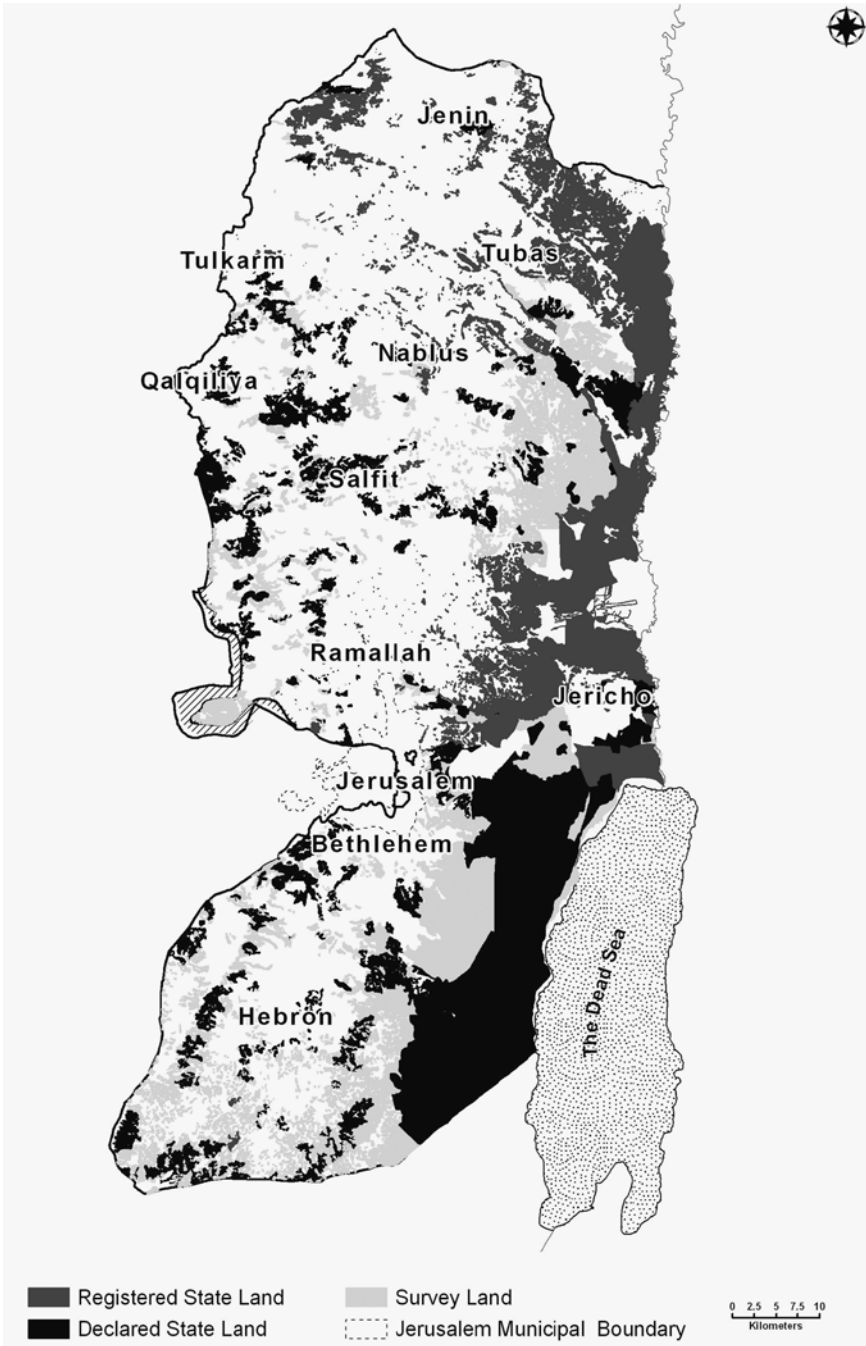


Figure 2 The Israeli government's increasing acquisition of land in the West Bank

Devoid of this instrument, Israel reinterpreted its power, under the 1858 Ottoman Land Code, to declare as state land not only 'dead' land (*Mawat*), but also land that was cultivated, but not continuously (*Miri*). Between 1979 and 1992, Israel declared an additional 900,000 dunams (18% of the West Bank) as state land. In addition to the 700,000 dunams of the West Bank that were declared state land prior to 1967, the 1.6 million dunams constitute 30% of the land area of the West Bank (excluding East Jerusalem), designed almost exclusively for Israeli use (Figure 2).

Alongside the declaration of land as state land, significant areas were declared part of the municipal and regional councils' jurisdiction, and so, although the built-up area of the settlements totals only 52,000 dunams, or 1% of the West Bank, their effective control is much larger. First, their municipal jurisdiction covers over 20% of the West Bank. The lack of proportion between the actual built-up area and the jurisdiction of the settlement is evidence that the latter has very little to do with the true needs of the settlement or regional council. The Ma'ale Adummim settlement (population 38,000), for example, enjoys a jurisdiction area of 50,000 dunams, similar to that of Tel-Aviv, where 350,000 people reside. The built-up area of Ma'ale Adummim is 4000 dunams or 8% of its jurisdiction area. And yet, the Israeli Ministry of Interior's Border Committee recently recommended expanding the jurisdiction area of Ma'ale Adummim by an additional 11,000 dunams.

In addition to these fundamental instruments of settlement jurisdiction and state land declarations, additional measures were employed to detract areas from Palestinian access:

- *Survey lands*: Palestinians are also prohibited from building on 'survey lands', which constitute an additional 500,000 dunams or 8% of the West Bank and where the declaration of the land as 'state land' is postponed, pending verification of ownership. In the interim, however, Palestinian construction on these lands is not permitted.
- *Closed military zones*: according to Israel military orders, 'a military commander is entitled to declare any area or place closed' and to prohibit the entry of persons therein. Construction and development are effectively impossible in these zones. Israel has designated 18% of the West Bank as a closed military zone designed for military training. Military zones are not always used for military exercises and are often, as in the case of the village of Jiftlik in the Jordan Valley, declared in proximity to Palestinian villages. This suggests that they may be at least partly motivated by the aim of obstructing Palestinian development and expansion.
- *Nature reserves*: Palestinian construction is prohibited on approximately 10% of the West Bank that Israel designated as a nature reserve, of which 3% fall into Area B. The implication being that Israel's planning and development powers extend to 63% of the West Bank (Area C + 3% of Area B). Some 48% of these lands overlap with closed military training zones.

The December 2009 OCHA report concluded that, within Area C, these categories limit Palestinian construction to 30% of the land, but even within that area, the ability of Palestinians to obtain a planning permit is very limited.

## **The planning layers that enable and disable development**

The land of Israel/Palestine was planned for the first time between 1942 and 1948, during and by the British Mandate. The regional plans were quite advanced for their time and, on their basis, building permits were issued in many villages, for which no detailed plans were prepared. Although Israel changed these plans within its sovereign territory, they remain in force in most of the West Bank, and especially in Area C. Israel has adorned the plans with a unique interpretation, using them as a planning tool to limit Palestinian building and development.

An enabling, meta-explanation to the planning procedures detailed below concerns the entity empowered to make planning decisions in the West Bank. As early as 1971, the Israeli military commander published the Order Concerning Towns, Villages and Buildings Planning Law (Order 418), which amended the Jordanian Planning Law. Order 418 annulled the possibility for the village council to serve as a Local Planning Committee, abolished District Committees, and concentrated all planning powers in the hands of the Higher Planning Council and its subcommittees. As currently composed, the Higher Planning Council includes officials from the Civil Administration but does not include Palestinians. To complete the picture, it is noted that Order 418 empowers the commander to establish Special Local Planning Committees in areas 'that do not include a city or a village council'. If such wording seems peculiar, it is because it was tailored specifically to fit one situation only: that of Jewish settlements (Bimkom, 2008). We find, therefore, that from very early on, Israel has erected a planning structure that would enable significant changes in the planning process within the West Bank. Although it was barred, by international law, from changing the governing law in the territory, it created a matrix of bureaucracy and military orders that undermined its logic and spirit.

An example of Israeli policy in this respect is the harsh and perhaps unfounded interpretation of the term 'permissible building area' on the plot. Even though the British Mandate clearly indicated that 'permissible building area' refers to the land covered, the planning committee prefers the much more restrictive interpretation of 'floor area'. And so, if the plans allow the construction on 150 m<sup>2</sup>, a Palestinian who requests a permit for a two-storey building with a total floor area (but not coverage) of 300 m<sup>2</sup> supposedly exceeds the maximum permissible area.

A different limitation on Palestinian development through planning instrument concerns the Civil Administration's persistent refusal to allow plot subdivisions (parcellation). Such a policy is particularly detrimental to Palestinians since most of

the plots in the West Bank cover several dozen dunams and, in some cases, are over 100 dunams. The original instructions of British Mandate plans permit construction of one structure in agricultural areas where the plot is at least one dunam. The plans also offer a mechanism of plot subdivision through parcellation, thus enabling the construction of more than one structure on the original plot. The constant refusal by the Civil Administration to employ this mechanism undermines the Palestinian cultural and spatial tradition of a son building his home on his father's plot, for example.

In addition, applications are also rejected because the applicant failed to prove ownership of the land. Proof of Palestinian ownership, however, is obstructed by the fact that Israel has refused to register 70% of the land in the West Bank with the Lands Registrar. Instead, the land is registered only in property tax ledgers where it appears under the name of the original landowner during the period of Jordanian rule. When the landowner dies, his heirs become joint owners of the land since, as noted, the Civil Administration refuses to authorise division of the land among heirs. In such cases, an application is rejected if it does not include the support of all heirs. For example, an application submitted by a resident of Bil'in for a permit for an agricultural outbuilding was rejected because the plot was owned jointly by 23 heirs, only 9 of whom signed the application, even though the rest do not live in the West Bank and have not visited the area for over 15 years. Here, too, the interpretation adopted by the planning committees are far stricter than those required by law and by the regional plans, which define the 'owner' as 'any partner in ownership' (Bimkom, 2008, 83).

Finally, another innovative procedure was implemented between 1988 and 1995, when Israel prepared and authorized 400 Special Partial Outline Plans (SPOP) for Palestinian villages. Generally speaking, these plans are not designed to develop the villages, but rather to create a system of restriction and control on village development through planning instruments. The category of SPOP is in itself a unique Civil Administration creation, and one that is not recognised in the hierarchy of plans as defined in the Jordanian planning law. A further indication of the true motivation of these plans is that they were designed solely for existing Palestinian villages, and not for new villages.

The nature and quality of the SPOPs should also be noted. All 400 plans were designed by a small staff within the Planning Bureau of the Civil Administration, an average of 50 plans a year, or one per week. The astounding pace is easily explained by the low quality of the plans. The plans' instructions to the hundreds of villages remain identical, with only the village name, plan number and area changing.

The SPOP blueprint plans are, in effect, an aerial photo on which a blue line designates the limited boundaries of the plan. In many plans, existing structures remain outside the plan's borders. The plans' details include two types of land-use assignments, an arbitrary system of roads (mainly based on the existing road network)

and residential densities which, at 6.6–15 units per net dunam, are significantly higher than the density in plans for villages within Israel or for the settlements. The plans for Palestinian villages offer a powerful planning and legal instrument that allows Israel to reject requests for permits applying to structures that fall outside the plan's designated area. They also provide the legal structure for house demolitions. In the Jiftlik village (population 5000), for example, where 40% of the existing structures fall outside the plan, the three applicable SPOPs cover less than 600 dunams. Accordingly, following the plan's approval, over 100 demolitions orders were issued for such structures, and 30 houses have been demolished to date. It should be noted that, notwithstanding the defects in these plans, they provide a minimal shield from demolition to those houses that fall within the plan's area, and are thus preferable when compared to the situation in 90% of the Palestinian villages in Area C, where no plan, other than the Mandatory Plan, exists at all. And so, insofar as the Palestinian population is concerned, Israel policy is aptly termed more as 'anti-planning' than planning (Weizman, 2007, 93).

These procedural measures have led to concrete consequences. In 1972, over 2199 applications for building permits were submitted by Palestinians in the West Bank, of which 97% were granted. In 1988, these numbers fell to 1682 applications, of which 32% were granted. Between 2000 and 2007, a total of 1624 applications were submitted in Area C (241 per year), of which 91 were granted (13 per year – 5.5%). Israeli settlement expansion, on the other hand, is supported with great zeal.

### Meanwhile, in the settlements

It should be made clear that none of the above is applicable to planning policy in the settlements. In fact, insofar as settlements are concerned, the British Mandate plans and instructions, along with international law, are interpreted in an extremely flexible fashion. Thus, documents show that Israel is building what can only be described as new settlements, while presenting them as expansions of neighbourhoods of existing settlements. This is done even in cases where the old and new communities are separated by a significant distance, several hills, and are not joined by connecting roads. The recent deposition of a planning scheme for Sansana, putatively a 'neighbourhood' of Eshkolot, near Hebron, is a case in point. Sansana and Eshkolot are 3 km apart in aerial line; there is no territorial contiguity between them; and the existence of both settlements and the route of the separation barrier around them denies the residents of the Palestinian village of Ramadin access to their lands, used for herding sheep and growing wheat (see Figure 3). Moreover, Israel was criticised, internally and externally, for the December 2009 decision to grant funding priority to dozens of isolated settlements in the West Bank, while simultaneously declaring a 10-month freeze on construction. Less noted was the fact that one of the isolated

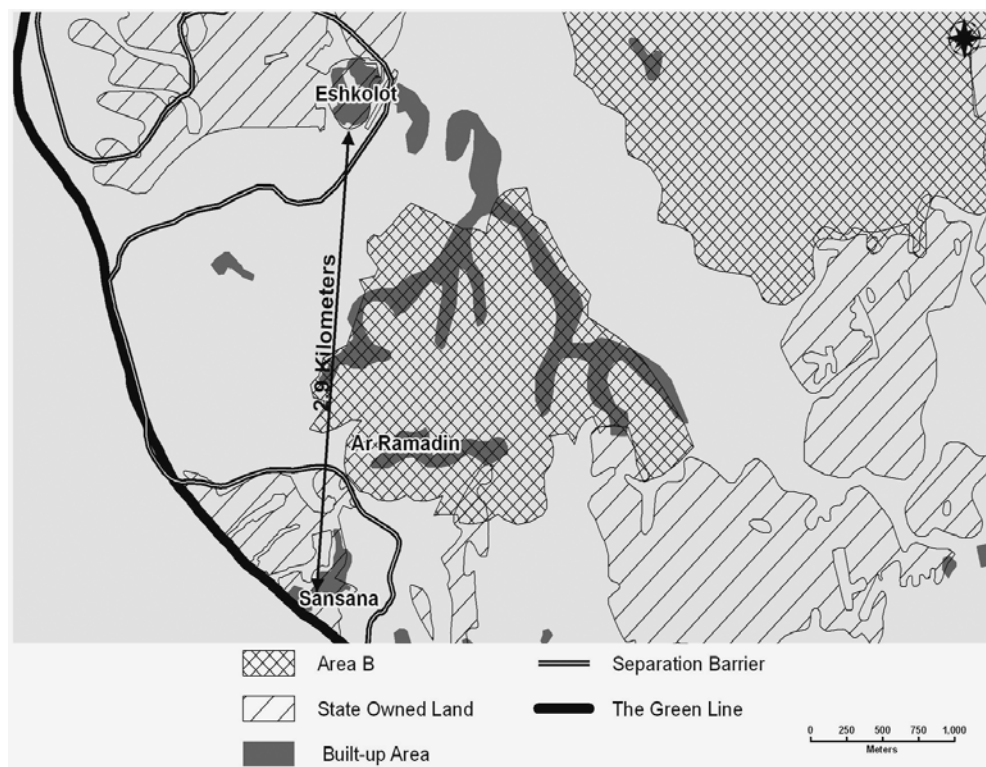


Figure 3 The duplicitous expansion of the settlements

settlements listed was the settlement of Sansana, appearing now not as an Eshkolot neighbourhood, but rather as an independent entity.

Similarly, the Defence Minister recently authorised the construction of an additional 300 housing units in the Water Reservoir Hill ‘neighbourhood’, near Ramallah, retrospectively legalising the existing 60 units, and permitting the construction of an additional 240 units, thus catering to the ‘natural growth’ needs of 200 settler families of Talmon for what should be at least two generations. It should be noted that some of the existing units were built in part on Palestinian private land and that approving the plan will bar the residents of the neighbouring Palestinian village from access to their land.

## Visible consequences

The crudest, material embodiment of the separation principle is the separation barrier. Costing \$3.5 billion, it is the most expensive project Israel has ever under-

taken, a testament to the centrality of the Separation Policy. At over 700 km in length, the planned route of the barrier is twice the length of the Green Line between Israel and the West Bank (OCHA, 2006). The reason for this disparity becomes obvious when the Jewish settlements are taken into account. The barrier resolves the incongruence between Israel's geographic and demographic aspirations by following the Green Line along only 20% of the route, and surrounding 69 Jewish settlements where 182,000 settlers reside (Bimkom, 2006; Gordon, 2008, 215–16).

However, the convoluted route of the barrier also created a dilemma for those wishing to implement a policy of separation. For around the Jewish settlements, the barrier creates a 'seam zone' of 530,000 dunams. Insofar as the separation principle is concerned, these Palestinians are on the 'wrong' side of the separation barrier. The physical barriers had, therefore, to be supplemented with legal instruments in the form of a permit regime, a 'despotic administrative rule' (Dayan, 2009, 298) that applies only to the 8000 Palestinians (and not to the settlers) in the 21 villages caught in the seam zone, between the barrier and the Green Line. Those Palestinians require permits to reside in their own village. Such a permit is temporary, and needs to be renewed (normally every two years). If they wish to exit their village, attend school or travel for medical care, Palestinian residents need to obtain another permit, that includes information regarding destination, exit gate, purpose of travel and hours of the day for which the permit is valid.

The residents' ability to visit to or receive visits from friends and family in the West Bank lies at the discretion of the military commanders. Thus, for example, residents of Barta'a a-Sharqiya, who rely on the Jenin hospitals for medical care, are now restricted by the erratic opening hours of the gate, and have to take into account extensive security checks in their travel. Of course, access to Israeli hospitals in Hadera and Afula is out of the question, because Palestinians are not permitted access to Israel. They are, therefore, caught between the wall and the Green Line.

The difficulties in the implementation of the separation principle do not end there. Some Palestinian towns and villages, such as Qalqiliya (population 44,700), are east of the barrier, and yet their distance from major settlements (in this case Alfei Menashe, population 5700) was determined to be too close for comfort. The physical solution to this predicament was to surround these villages with a barrier on three sides, and a physical obstruction (normally a main highway) on the fourth side. A gate controls the entry and exit to the rest of the West Bank. The creation of 13 internal enclaves, covering over 50 Palestinian villages, where 244,000 Palestinians reside, thus lived up to Ariel Sharon's instruction to the settlers: 'don't build fences around your settlements. If you put up a fence, you put a limit to your expansion ... [w]e should place the fences around the Palestinians and not around our places' (cited in Weizman, 2007, 133).

The Bir Nabala enclave also demonstrates this policy. Five Palestinian villages, and

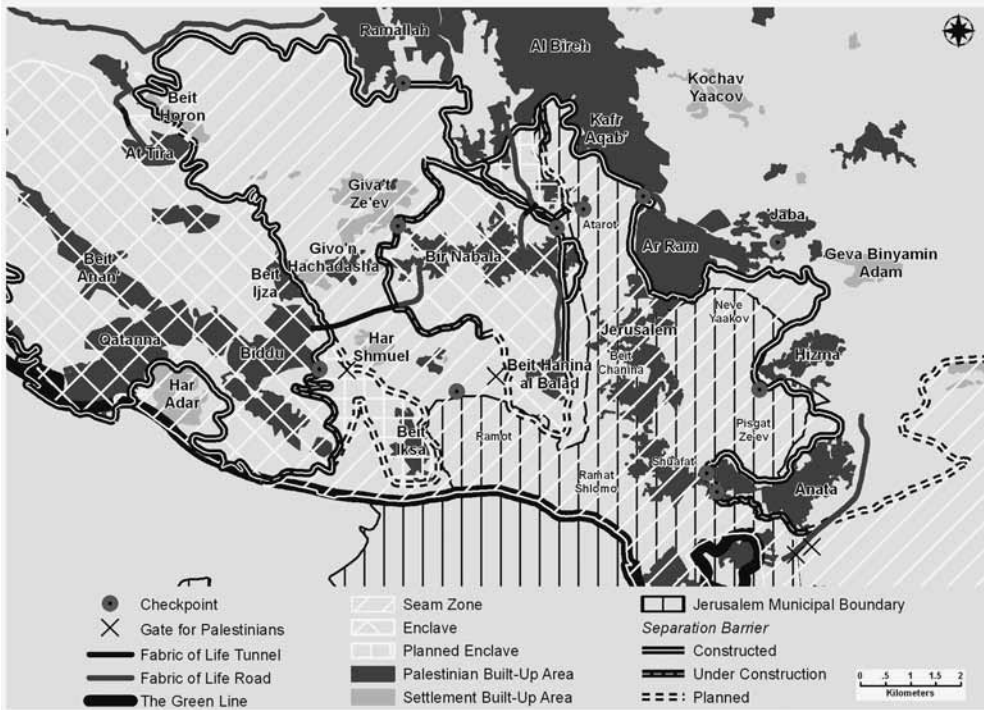


Figure 4 The confinement of Palestinian villages within the Separation Barrier

20,000 people, are trapped within an enclave created by the barrier, which surrounds them on all sides. The barrier prevents the villagers the functional, urban connection that they enjoyed with Jerusalem and creates an artificial connection, through a tunnel, with Ramallah. Another tunnel connects Bir Nabala with the 50,000 residents of a second enclave (Biddu; see Figure 4). This peculiar structure, of two enclaves and two tunnels, was motivated by Israel’s aim to keep the roads that cover Palestinian lands for the exclusive use of Israelis.

Indeed, another physical manifestation of the separation principle is the distinction between roads for Israelis and roads for Palestinians. The use of sovereign power to control movements domestically is rare, and has taken ‘unique and unprecedented dimensions [in the West Bank], especially since the early 1990s’ (Dayan, 2009, 283). This practice, which most closely resembles South African apartheid (B’Tselem, 2004), is highly disruptive to Palestinian social life and economy. Some of these roads are ‘sterile roads’, where Palestinian access is completely prohibited. In others, Palestinians may travel only if they have special permits issued by the Civil Administration or if they have proof that they reside in villages entirely dependent on the road on which they are travelling. Israel continues to develop new roads that serve the settlements.

Framing the explanation for the construction in international law terminology, Israel justifies the need for the road by declaring that it will benefit the Palestinian population. At a later stage, as the central Route 443 (to Jerusalem, through the West Bank) case exhibits, the road is declared off-limits for Palestinians.

Finally, there is the matter of house demolitions. In contradistinction to its settlement planning policy, Israel's brazen circumvention of the letter and spirit of the relevant plans and applicable law is much less obvious when those plans enable the demolition of Palestinian structures. As noted, demarcation of the SPOPs' boundaries is tightly drawn around the main built-up area of the community, thus restricting to a minimum the possibility of future development and expansion (OCHA, 2009).

Israel has made use of the power to demolish houses with increased vigilance over the past decade (Bimkom, 2008). In fact, a recent report notes that in June 2009, OCHA recorded the single highest monthly total of Area C demolitions since it developed its database, in 2005. The demolition of a house is a dramatic affair, and one that creates significant emotional and physical despair. And yet, it should be noted not only that the concrete cases of house demolitions are but a natural extension of the general land and planning policy, but also that, due to this policy, many houses are, so to speak, demolished even before they are constructed. As the percentage of rejections increases, Palestinians lose hope that they will succeed in obtaining one, and apply for permits only as a stop-gap measure when demolition orders to existing structures have been published.

## Conclusion

Israel's occupation of the West Bank, and its effective control over the Gaza Strip, has passed the 40 year mark. Currently, it is the longest standing occupation in the world. Within this significant time frame, Palestinian civil society is controlled by a foreign power not only in security-related aspects that seem highly related to a situation of occupation, such as bearing arms. Increasingly, Israel has implemented measures shaping civilian aspects of life, such as employment, freedom to travel and planning and development.

The surge of the settlement project over the past 15 years has raised the stakes insofar as Israel's interests are concerned, leading to a change in planning policy for Palestinians and for Israelis. Through land and planning policy, Palestinians' development and movement are restricted and separated from Israelis and from Jewish settlers.

The consequences of this policy were not detailed in this paper, but they are abundantly clear: housing and community development opportunities are restricted. Family life is impaired. Access to workplaces, agricultural land, education, medical services and places of worship is restricted. Economic prosperity is severely impeded.

The World Bank, for example, has noted that Israel's control over planning and construction 'has become an increasingly severe constraint to economic activity' (World Bank, 2008, iv). There are even broader, political consequences such as the Palestinian Authority's lack of control over the physical development of the region, in a manner that undermines its political credibility and its ability to reach a final agreement.

In summary, land policy and planning measures are serving a very clear purpose in this region, and that one that should be brought to light.

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Naomi Carmon

Policy Forum

## *Comment: Israel's occupation of the West Bank*

Amir Paz-Fuchs and Alon Cohen-Lifsitz, as members of Bimkom – Planners for Planning Rights, present a strong indictment against the Israeli occupation of the Palestinian territories in the West Bank. They discuss planning and its results in these areas as the ‘long hand’ of Israeli politics. They deal with land policy and regulations and with Israeli construction that arrest and constrain the development of Palestinian towns and villages. They present a map of some 120 Israeli settlements and 100 Israeli outposts in these territories. While there are some inaccuracies and debatable issues with their presentation, I concur that their paper does reflect an untenable reality.

Rather than dealing with these points, I would like to address three questions that arise from their work and require greater attention.

- Who stands behind the policy that they describe and who opposes it?
- What do Israeli planners do regarding the Israeli–Palestinian conflict?
- Most important: where do we go from here? In light of the current situation, what is a desirable and possible solution?

### **Who stands behind Israel's occupation policy (and who doesn't)?**

Paz-Fuchs and Cohen-Lifsitz (PF & CL) do not present the historical or political context in which the occupation exists. Although I personally disagree with the Israeli rationale for continuing the occupation and all that it entails, it is important that the reader is aware of it. A significant proportion of the Israeli electorate and a lobby of about 40 (out of 120) members of the Knesset, the Israeli Parliament, favours continued occupation of the West Bank. Their reasons are diverse, ranging from the religious (biblical justification for a Jewish national presence; the land is ‘rightfully’ ours) to the security-oriented (relinquishing the West Bank would leave Israel in an untenable and dangerous situation *vis-à-vis* national security). Some believe that their survival is under very serious threat, and hence, support the existence of Israeli settlements that can closely watch the Palestinians' steps. Further, not a small number of citizens would prefer to leave the West Bank, but see no tenable exit plan that would not leave behind a power vacuum that may – like Gaza – be filled by militant fundamentalists.

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What about the fate of the Arab-Palestinians according to this standpoint? They can live under Israeli government, or join the Kingdom of Jordan on the other side of the river (today close to half of the Jordanians are of Palestinian origin), or remain where they had already settled in one of the 20 Arab States in the Middle East. When the State of Israel was established in 1948, about 700,000 Jews were driven away from the Arab countries and a very similar number of Palestinians left or were made to leave the new Israeli State. The Jewish refugees do not require a return to the Arab countries they had lived in for many generations, and, so the argument goes, the Palestinian refugees should not require the lands they left.

The elected governments of Israel seem to believe in all or parts of this rationale and they promulgate the policy described by PF & CL. Indeed, some of the settlements and outposts were initiated, planned and constructed by small groups of extremists, but most of them were either established or approved by the governments or at least constructed with their tacit approval. These governments were elected through democratic and free elections, in which all citizens of Israel took part, including the 20% that are Arab-Palestinian.

Ironically, however, several reliable polls have shown that the majority of Israelis would prefer to end the occupation and leave the West Bank. These are not only members of organisations like B'tzelem (the data collected by B'tzelem were used extensively by PF & CL) and Shalom Achshav (Peace Now), which vociferously criticise the Israeli government, both in Israel and abroad, or members of the Israeli Arab parties and the leftist party of Meretz. Beyond these, within all the large political parties in Israel, especially the Israeli Labor Party and Kadima (the party established by Ariel Sharon to fill the centre between left and right), but also in the Likud (Bibi Netanyahu's party), a not insignificant proportion of voters and their elected representatives oppose the government's policy in the West Bank. Even within the government, and certainly within the public service, there are voices against this policy. An example is the Sasson report, commissioned by the Prime Minister and submitted (2005) by Adv. Talia Sasson from the State Attorney General's office. It deals with the 100 outposts in the West Bank, states clearly that the government and public authorities contravened the laws and regulations they themselves issued, and are obligated by Israeli High Court decisions to evacuate outposts.

How could the governments continue this policy, in spite of the persistent opposition? That is likely explained by a mix of ideology and coalition politics. A coalition between national-religious Jews (~10% of the population) and the sizeable groups of those who are deeply convinced that unless Israel controls the occupied territories the Arabs will put an end to their state and kill or deport them, has enabled the adoption of this policy in its first 20–25 years. In the early 1990s, during what is now called 'The Oslo Period', it seemed that there might have been light at the end of the tunnel, when two unrelated major events changed the scene: Yitzhak Rabin was murdered

and Israel received a large wave of immigrants from former USSR; about 1.2 million immigrants were added to a population of 5 million. They included a large proportion of highly educated people who assisted Israel's economy, yet also brought many who strongly believed (and believe) that military power and other demonstrations of power are the only shield for protecting Israel. They gathered significant political power within a few years of their arrival. Today, their representatives (headed by Avigdor Lieberman) constitute the third largest party in the Knesset and are prominent members of the ruling coalition with Prime Minister Netanyahu's Likud party.

In addition, the politics of fear took centre stage in Israel of the early 2000s, and, ironically, it serves both ends. Many Israelis are afraid of the Muslim fundamentalistic belligerence from Arab and Muslim states and para-military organisations. They are afraid also of Muslim demography; the rate of natural increase in the occupied territories is very high; total fertility is 5.8 per woman in the West Bank and 7.8 in Gaza, probably the highest in the world (Pedersen et al., 2001). The very same facts of demography are those that convince a growing number of Israelis, from right wing parties as well, including the Kadima party and its heads (counting Ehud Olmert, former Prime minister of Israel), to relinquish the occupied West Bank in order to preserve the Jewish, democratic nature of Israel. This same idea has recently (February 2010) been expressed by former US State Secretary and White House Chief of Staff James Baker; he stated that 'Israel will be unable to maintain its Jewish and democratic character while occupying the West Bank'.

My aim in this section was not to justify the occupation nor the policies that ensue, but rather to provide crucial context to the reality outlined by PF & CL. As of 2010, following so many disappointments on all sides, what may save us are probably not beautiful dreams of a happy, peaceful future but the growing fears on both sides. The Palestinian fear from the deteriorating situation and the out-migration of young persons of the West Bank (especially the more educated, Christians and also Muslims), while the Jewish Israelis fear from losing the Jewish and democratic nature of their country (for ethnic democracy see Smootha, 2002, and if you want, Wikipedia as well). These forces may encourage the leaders on both sides to create an agreement that ends the occupation and allows each side to focus on development and quality of life.

## **Israeli planners and the Israeli-Palestinian conflict**

No referendum regarding this subject has ever been conducted among Israeli urban and regional planners. Yet, because their number is small, with only approximately 1000 professionals in the entire country, and many of them are graduates of our school (the only school in Israel accredited to grant degrees in urban and regional planning), I can estimate trends that are common among them. To the best of my knowledge, only a small minority among Israeli planners supports the government's

policy in the West Bank, and even fewer take an active part in implementing it. The majority can be divided into three groups.

- Planners who are intensively involved in studying, writing, lecturing and demonstrating against the occupation – some of them in Bimkom, the organisation that the two authors, PF & CL, are part of. Others are active in Ir Amim (City of Peoples) and other NGOs with similar goals. A considerable number of colleagues devote their career to analysing the conflict between the Palestinians and the Israelis. In their writings and lectures, to which many of the readers of the TPR have probably been exposed, one usually finds detailed reports of all injustices created by the Israeli occupation (with little if any criticism of the Palestinians).
- A large group of individuals who frequently speak against the government policy towards the Palestinians, who sign petitions from time to time, but who otherwise are not involved due to distractions of career and family.
- An especially large group of planners whose contribution towards addressing the Israeli–Palestinian issue is to work towards advancing the status of Palestinian–Arabs within Israel, both for itself, for the sake of promoting just and equitable society, and for the hope that they can build a bridge of peace between the two nations. These planners work for equality in allocation of resources, in education and employment, they jointly prepare alternative plans for neighbourhoods, villages and towns, and they often participate in mutual Israeli–Palestinian activities related to the environment. Sikkuy (‘opportunity’ in Hebrew) is an example of a country-wide NGO that develops and implements projects to advance equality between Arab and Jewish citizens of Israel in government budgets, resource allocation, hiring policy, land usage, and access to government services. Shchenim (neighbours), an organisation of Israeli Jewish and Arab planners, prepares plans for the Galilee area that are intended to benefit its Arab and Jewish residents. These are two of several dozens civil society organisations of this type.

## **Where do we go from here?**

The most important question is where do we want to go and where can we go from here? There are three main (albeit simplified) alternatives: one, to leave things as they are, i.e. to continue the occupation for at least another few decades; second, ‘Two States for Two Nations’ through the withdrawal of Israel from the West Bank and the establishment of an independent Palestinian state here and in Gaza; and third, a single bi-national state for Jews and Arabs in the area between the Mediterranean Sea and the Jordan River. The first alternative is popular primarily with the very right end of the political spectrum. The third alternative has the support of a small eclectic group on the right and left fringes of the Israeli political spectrum. Meron

Benvenisti, an Israeli political scientist who was Deputy Mayor of Jerusalem in the 1970s and since then has been a critic of Israel's policy towards the Palestinians, is one of the more prominent spokespeople for the bi-national state option. He published an op-ed in Israel's prestigious *HaAretz* newspaper (often compared to the *New York Times*) in January 2010, in which he leads the reader to an unequivocal conclusion: the economic dependence and the geographical picture that the State of Israel has created in the West Bank (see the map in PF & CL's document) allows only for the bi-national state option. I will devote this last section of my response to support of the second alternative, 'Two States for Two Nations', and explain why this option is both possible and desirable from the points of view of the Israelis and the Palestinians.

- The most basic argument is that *both sides have a just claim on land between the Mediterranean and the Jordan River*. From the point of view of most Israeli Jews, their just claim is related to the fact that Jewish people have had a strong attachment to this piece of land, which has been carried from generation to generation since the days of King David in Jerusalem, about 3000 years ago, an attachment that has been known to Christians and Muslims alike. Second, they base their claim on the modern right of self-determination that has received wide international recognition; the right of Jews to establish their 'national home' in the debated area was recognised by the League of Nations in 1922, by the UN in 1947 and numerous times thereafter (Yakobson and Rubinstein, 2009). From the Arab/Palestinian point of view, the just claim is based on residing in the region since the Muslim occupation some 1300 years ago, and on the requirement for self-determination that followed the development of their national identity in the twentieth century (probably as a response to meeting the Jewish nationality). In spite of the many differences, the bottom line is that each side can justify its claim for self-determination on this land, including the right to exercise its language and culture in its place.
- An important argument is that *the situation in the West Bank is reversible*. Indeed, over 100 Israeli outposts are scattered throughout the area, but there are just 5–15 persons in each, and most frequently, not more than 1–2 permanent buildings. In about 120 Israeli settlements there are many more inhabitants (all combined about 300,000), but most of the settlers are located in clusters that are very close to the Green Line (the pre-1967 border that is expected to also be the border between the two states in accordance with the UN resolutions, with certain modifications). Hence, what is needed in order to reverse the situation are: (a) a strong political will to vacate those outposts, all or most of which have been deemed illegal by the report commissioned by the Prime Minister's Office mentioned above; (b) an agreement on land exchange: Israel will annex the lands which encompass the few large settlement clusters and will give the Palestinians an equal amount and quality of land within the Green Line; (c) a joint declaration by the two states

that there is no need to evacuate the scattered Israeli settlements (unlike outposts) that are outside the big clusters. Israelis who want to continue living in the West Bank may do so and become citizens of the Palestinian State, as do a million and a quarter Palestinian Arabs who currently live in the State of Israel (this idea was raised and is supported by Salam Fayyad, Prime Minister of the Palestinian National Authority). There are many indications for believing that as soon as the settlers are convinced that Israel is serious in its intention to leave the West Bank, almost all of them will leave the settlements and return to Israel (unlike the Israeli Palestinians who have declared in several reliable polls that they want to stay in Israel even if a Palestinian State is established next door).

- *Unification between Israel and Palestine is doomed to fail because of the enormous differences between the two societies.* The history of the twentieth century has taught us that political connection between different religious and ethnic groups frequently fails, even where there was a joint history and other common denominators. In the Palestinian–Israeli case there are very large differences in every important aspect of society, culture, politics and governance. It is not only a matter of different languages, Hebrew and Arabic, and different religions, Judaism and Islam, but a very different level of religiousness: about 8% of the Jews in Israel are ultra orthodox compared to 87% of 1200 interviewees<sup>1</sup> in the occupied territories who said that they ‘agree to a large extent’ with the statement that ‘religion should guide our deeds’ (even if this is not a representative sample of the relevant population, this large sample does provide an indication of a very different mode of life). The status of women in the two societies is extremely different and so is the attitude to democracy and freedom of press. We have to add to these the pain and the open wounds created on both sides by long decades of conflict. Under these conditions, it does not make sense to force these two peoples into one state and hope that something good comes out of it.
- *Unification between Israel and Palestine is against the will of the majority of the two peoples.* The solution of Two States for Two Nations is not only the one that is declared as preferable by President Obama, the heads of the European Union and several Arab states, including Egypt and Jordan, but this is the solution that the majority on both sides of the conflict prefer. Indeed, unlike the situation several years ago, currently many in our region are skeptical regarding the attainment of peace agreement in the near future. Yet, in a survey conducted in June 2009 by Ford Foundation (Cairo) and the Konrad Adenauer Foundation (Jerusalem and Ramallah), administered by Israeli and Palestinian scientists, it was found that in spite of the general pessimism, 63% of the Israelis and 61% of the Palestinians support the two state solution.

<sup>1</sup> Interviews were conducted as part of a Ph.D. dissertation by my student Yosef Jabareen.

In conclusion, the current situation is bad, morally and practically. The way ahead is to promote a solution that satisfies the national vision of the two nations and takes into consideration the deepest interests of both sides. One cannot live in the Middle East without having hope for a better future. As I said beforehand, I hope and believe that the solution of Two States for Two Nations is not only desirable, but also possible.

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## Acknowledgements

The author wishes to thank Daniel Orenstein and Emily Silverman for useful comments on an early draft of this document. The author alone is responsible for the views expressed above.

Peter Marcuse

## Policy Forum

# *Comment: ethical issues confronting planners in the West Bank*

Amir Paz-Fuchs and Alon Cohen-Lifshitz's Lead Paper in this Policy Forum is a very troublesome paper – not troublesome because it is unclear, weakly documented, off-puttingly partisan; it is none of these. It is a straightforward, calm, coherent factual description of certain planning policies, without the emotional tone and self-righteousness that so often appear in discussions about Israel and Palestine. In fact, it is troublesome precisely because it recounts so clearly a pattern of actions and a set of consequences about whose reality it is hard to argue, but whose implications raise very difficult questions, some of international relations, others about the planning profession.

The Lead Paper describes a set of policies adopted by Israel to control what happens in the West Bank, the area of Palestine between the Jordan river and the green truce line established between Israel and its neighbours after the 1948 War. They include policies to harden the line of separation between Israel and the Palestinian West Bank, to limit the growth, both physically and economically, of Palestinian villages in that area, to occupy increasing portions of the area for Israeli settlements, with roads among them strategically separating Palestinian parts of the territory, and finally to demolish houses and farms undesired by Israel and/or wanted for Israeli use. The most visible aspect of the policy is perhaps the construction of the separation barrier between Israel and the West Bank, expected to cost \$3.5 billion, the largest public works project Israel has ever undertaken. I have visited the region several times, followed the discussions and do not believe there is much doubt about the accuracy of the picture Paz-Fuchs and Cohen-Lifshitz paint, although there might be some smaller disagreements about interpretation, e.g. of legal decisions.

Nonetheless, the Lead Paper raises extremely troublesome questions, on two counts: what does international law say about such developments; and, what role did and what role should planners play in it? On the first, I do not have any particular expertise, and no specific answer. The problem is this: Israeli policies are essentially based on the need to protect the population of the State of Israel, within its formally recognised boundaries, from attacks from Palestinians outside those boundaries. The right of a state to protect its residents from outside attack can hardly be questioned, nor can the reality of some threat be completely discounted. Yet I assume there are limits to what a state can do, even in self-defence. Are pre-emptive strikes permitted? Are any weapons at all permitted; could an atomic bomb be used? Is the pre-emptive

long-term and unilateral occupation of foreign territory allowable? There are rules against imposing civilian casualties; how many are tolerable, how is the limit determined? What level of risk justifies what level of pre-emptive action? What alternative means for providing a state's security need to be considered before pre-emptive action is justified? What is the appropriate role for international agencies, for international law, international courts?

These are troublesome questions, which the Lead Paper does not attempt to answer, but the material it provides should certainly be seriously considered in any debate around them.

The questions implied by Paz-Fuchs and Cohen-Lifshitz about the role of planning and planners are different ones, with which I have in fact grappled in the past.<sup>1</sup> Planning as a profession has, in its code of ethics in most countries, generally used some formulation similar to that in the United States' Code of Ethics: 'planning (planners) must serve the public interest'. The threshold question is whether such a requirement should be enforceable, and if so, how. In the US, my own view is that the profession has backed away from a stronger earlier commitment in its latest revision, which considers such a requirement an aspiration rather than a rule of practice. Even at that, to what did the planners who laid out the roads in the West Bank for the military or planned the location of Israeli settlements in the manner described in the Lead Paper aspire? Did they raise, among themselves or in public, any of the questions listed above as 'international'? Even if they would not be required to question overall military judgments on security, should they not deal with the issue of collateral damage, of alternate layouts of roads with alternate consequences, of alternate routes for a separation barrier, of the pros and cons of demolishing particular houses in particular locations and building other units in other locations? Such weighing of alternates is the bread and butter of planning; does not avoiding it raise ethical issues for planners?

One possible way of avoiding the question is to say that the planners involved have a client – the Israeli military, the Israeli government. Perhaps, in terms of a code of ethics, the public interest they served was identical with the interest of the Israeli public; but is that an ethically permissible position? Is there no obligation on the part of planners to consider the interests of all those affected by their recommendations? Could we in the US defend policies segregating whites from blacks on the grounds that we were hired by a white government to serve the interests of their white constituency? Presumably we would not want a planner for a developer to respond to questions about the impact of the development on a community by saying, well, our client is the developer and the public we serve is the public of developers;

1 'Policy whistleblowing and the ethics of the planning profession: Lessons from South Africa, Israel, and our own history', paper presented to the 2000 conference of the Association of Collegiate Schools of Planning; not yet submitted for publication because the author is not entirely satisfied, but available on request as a draft.

too bad for everyone else. Even legal jurisdictional boundaries would not normally permit a planner to declare, 'I will serve only the interests of the public on one side of this boundary, not those of any neighbouring jurisdiction'. Is the case not even more extreme when the public is defined as those one side of an ethnic or racial divide? Granted that the interests of different publics may conflict, is the planner at liberty to say: the interests conflict, I will just serve one and ignore the other?

These are difficult questions, and certainly more difficult in practice than in theory. Many planners in Israel, in my experience, are troubled by them; some of them have even decided to confront them directly, and at least bring to bear on demonstrably one-sided planning decisions the arguments for introducing broader considerations of equity and justice to all, including those most adversely affected and with the least power of resistance. Bimkom, the organisation with which the authors of this Lead Paper are affiliated, is one group of such planners, and they describe in considered tones the conditions with which they are confronted. Planners elsewhere should take heed, lend support when they think it just and be aware that the issues with which Israeli and Palestinian planners must deal are complex and difficult, that planners asked to implement military and related governmental policies face sharp issues of professional ethics, and should lend support when they think it just. In some ways ethical problems of Israeli planners are only removed in degree rather than in nature.

## Policy Forum

### *A response to the comments*

The comments on our Lead Paper, by Peter Marcuse and Naomi Carmon, are simultaneously natural and surprising. They are natural because, unlike the Lead Paper, they address the bigger picture: the political and historical background to the occupation, the legal structure that enables it and the dire future in store for all parties if it continues. Indeed, these elements are the herd of elephants in the room, insofar as the occupation is concerned, but that is precisely the reason why we did not mention them and why we believe our paper should open up a different discussion altogether.

For far too long, Israel's occupation has changed the physical reality of the West Bank while being discussed and criticised mainly by lawyers (Benvenisti, 1992; Kretzmer, 2002; Ben-Neftali et al., 2005), political scientists (Gordon, 2008) and scholars of the humanities in general (see Ophir et al., 2009). Actions, however, spoke much louder than words, and the separation of occupation's practice and the scholars' theory allowed the former to continue uninhibited. Our Lead Paper and the organisation we are affiliated with seek to bridge the gaps between research and policy in the field of planning. We are happy to accept Marcuse's description of our paper as a 'straightforward, calm [and] coherent factual description of certain planning policies, without the emotional tone and self-righteousness that so often appear in discussions about Israel and Palestine'. That was precisely our purpose: to show how common, routine planning practices – such as the initiating and approving detailed outline plans, declaration of lands as state lands or as natural reserves and the bureaucratic interpretation of the permissible building – can and are used to advance intolerable (in our view) ends.

The comments received are somewhat surprising because, by focusing on the bigger picture and not on the contribution of the planning profession to the situation, they reinforce, to an extent, the separation between politics and practice in the field of planning. Since our paper combines the effort of a lawyer and a planner, we feel that we stand on secure ground when claiming that the study of planning is where the study of law was situated about 80 years ago. It was then that the realist movement in America began to question the 'neutrality' of law, and the role of class, race and gender in its design and implementation. The growth of the realist movement led to a significant change in law school's curricula, through an expansion of 'Law and ...' courses, such as law, history, economics, literature, etc., and a considerable presence offered to human rights discourse.

In recent years, scholarship and curriculum in the built environment realm (e.g. architecture and town planning) are making their first steps in this direction. The number of scholars who acknowledge that their profession can and is employed to advance problematic aims is expanding and critical thinking in these fields is

becoming more common. We think, therefore, that it would benefit this positive trend if we address the political and legal comments that are less related to the planning profession rather briefly and expand more on the fascinating matter of the professional ethics of planners.

Peter Marcuse's queries regarding the uneasy relationship of law and the occupation cannot be addressed adequately in this context. Indeed, the role that law holds in the enabling of the occupation is the subject of growing attention in Israel and abroad (see the UN Human Rights Council, 2009). Suffice to say that, first, there is a near consensus among international law scholars in Israel and abroad that the settlements themselves along with the security barrier constitute a violation of international law (International Court of Justice, 2004) and that the disparate treatment of Jews and Palestinians in a variety of realms in the occupied territories comes dangerously close to apartheid (UN, 2007).

Second is the query that the issues discussed in our paper have nothing to do with security-related matters. The expansion of settlements on Palestinian land, the restriction of Palestinian construction to (less than) a bare minimum and the manipulation of the planning bureaucracy in a manner that serves Jews and oppresses Palestinians – all these are quite separate from legitimate and difficult security issues such as self defence. Indeed, even the celebrated (for some) security barrier sacrificed security objectives to enable settlement expansion (Sfard and Arieli, 2008).

Third, and closest to our current focus of inquiry: the law as an institution, like the planning profession, has arguably been instrumental in maintaining the occupation in its current form and allowing its expansion. The willingness of the Israeli Supreme Court to accept legal challenges to highly contentious practices such as house demolitions or targeted killings grants them an air of much-needed legitimacy. Naomi Carmon's commentary begins with an analysis of the political background to the occupation. While this aspect is of obvious relevance, her analysis is one that we find difficult to accept. Carmon is obviously right to clarify that most of the settlements and outposts were established or at least approved by Israeli governments, whether led by the Likud or Labour, but this does not necessarily lead to the conclusion that they cannot be the object of severe criticism – morally, legally, or even politically. For a variety of reasons, Israel's political process has been notoriously hijacked by the settler lobby, that exerts much greater political influence than its numbers justify (Eldar and Zartal, 2004; Gordon, 2008). Indeed, Carmon is right to highlight the Sasson report (2005), which concluded that over a hundred outposts that exist in the West Bank violate Israeli domestic law and were erected with the support of a democratically elected government, but she omits to mention that, despite Supreme Court rulings, the report's recommendations were never implemented – a testimony to the breakdown of the rule of law and to stronghold of the settler lobby if there ever was one.

Ironically, Carmon's musing that 'what may save us are probably not beautiful dreams of a happy, peaceful future but the growing fears on both sides' figures in nicely (although this is probably the wrong choice of wording in this case) with one of our central assertions. It is worth repeating, We argued that the 'separation principle has become a governing policy of Israel's control of the West Bank'. Carmon's assertion is highly problematic, not least because it is the reigning ideology of the centre-left in Israel in recent years. It suggests a support for the peace process for the wrong reasons – not for the preservation of human rights or because some things are just not done, but as an effort to build walls (physically, emotionally, and cognitively) between two peoples that share the same piece of land. The most physical manifestation of this state of mind is, of course, the separation barrier, but the fact that it is becoming entrenched in the psyche of the Israeli planning profession is, to us, part of the problem, and not part of the solution.

We turn, then, to a matter that was central in both comments – that of planning profession. We are not as confident as Carmon that there is an 'especially large group of planners who work for Israeli–Palestinian peace and equality, in Israel and in the West Bank'. Although Bimkom, with which we are both affiliated, has indeed gained a sizeable following within the profession and respect among other professional realms, it is the only human rights organisation in Israel that serves as a natural point of call for planners interested in advancing such goals. In fact, much like lawyers who operate under the shadow of the occupation, as if the breakdown of the rule of law in the West Bank is not their concern, the majority of planners who 'have nothing to say' (or, alternatively, who simply say nothing) regarding the use and abuse of their profession for contentious ends assume at their peril that the planning regime practiced in the West Bank will not have deleterious consequences within Israel proper. The experience with the legal system has shown this hope to lack foundation.

In all fairness, it should be noted that the two professions differ in at least one significant aspect: the vast majority of lawyers do not depend on the state for their livelihood. Indeed, defence lawyers and human rights lawyers may expand their clientele by seeming to be exceedingly belligerent in the war they wage against their own government. Contrariwise, the vast majority of planners cannot function professionally without constant and positive interaction with state authorities for projects (as clients) or permits (for other clients). The risks they take when criticising, let alone acting against, the government, are much more significant. The job description for lawyers is quite different, as they are adversaries who 'act for by acting against' (Applbaum, 1999, 4). While a lawyer's commitment to her client is part and parcel of her professional ethics, planners should have a wider perspective. Somewhat like medical practitioners, they should take into account interests beyond those presented by the client or patient, as the case may be. This is true in concrete decisions, and even more so – with respect to the professional associations who have, at present, remained exceptionally quiet.

Another difference between lawyers and planners stems from Marcuse's interesting reference to the US Code of Ethics, according to which planners 'must serve the public interest'. In Israel, the Planners' Association published the 'Planners Convention' (IPA, 2005), which included, as a primary concern, the planner's obligation to society, to the community and to all men and women as equals. The Convention offered, in further detail, the planner's obligation to 'every person impacted by the planning act even if he or she holds a different opinion or is a member of a minority' (second paragraph). Seen in the light of the spatial and physical reality in the West Bank, it is difficult not to detect a clear violation of the ethical code by planners operating in the West Bank.

The route of the separation barrier, for example, exhibits an utter disregard for the lives of the Palestinians living in the region. The amendments to the route, which serve as a bare minimum, were imposed on the planners by the Supreme Court. And even they include some absurd solutions to an absurd situation, such as the dark tunnels connecting the 20,000 Palestinian residents of the Bir Naballa enclave who wish to commute to urban centres. Such planning can hardly be viewed as adhering to an ethical code.

Even the seemingly positive planning efforts, such as the Special Partial Outline Plans (SPOPs) for Palestinian villages, prepared by the Civil Administration, do not live up to ethical standards. As noted in our paper, the SPOPs to all villages are, in essence, a duplication of one standard plan, with little to no detail, and an aim to restrict and limit building in Palestinian villages, thus serving those outside the Plans' jurisdiction, namely the settlers. Moreover, the planning practice in the West Bank leaves much to be desired insofar as ethical planning is concerned. The planning principles in the West Bank guide the planner to reduce the plan's area in a manner that would make construction in the Palestinian village as difficult and as limited as possible.

We find that planners employed by the Civil Administration and the Ministry of Defence operate in the context of a one-dimensional paradigm that lacks the values that real and true planning should adhere to. Even if a planner wishes to stay true to such norms, it is probably exceptionally difficult in this context.

Lastly, even independent planners who choose to operate with Israel's planning system in the West Bank face a reality where the ethical code is selective, and serves only one population. The decades of occupation have obliterated the reservations that were apparent where civilian operations in the West Bank are concerned. At present, one may find notable architects and firms planning settlements that infringe on the rights of Palestinians in the area, while seemingly upholding the ethical code in conferences such as one held recently in Jerusalem (IPA, 2009). This split personality is also apparent in the work of architects who assist Palestinians in one case, but are instrumental in planning schools in settlements, in another case.

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