

# Israel's Brewing Settlements Law Could Stir Problems in Washington

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Brief Analysis

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**Although the Israeli political tussle over settlement outposts may have no real domestic legal impact in the end, it could spur President Obama to take UN action during his last days in office.**

**A** unique set of circumstances has led Israel to press forward on a bill that could legalize an unprecedented seventy-five settlement outposts outside the West Bank security barrier. While the legislation passed a preliminary reading in the Knesset on November 16, Israel's Supreme Court is expected to challenge it, and Attorney General Avichai Mandelblit has publicly declared that he will not defend it, arguing that it would be contrary to international law as it seeks to retroactively enable construction on private Palestinian land.

For his part, Prime Minister Binyamin Netanyahu seems concerned that passing the law would spur the Obama administration to introduce a settlements resolution at the UN Security Council. Yet he is even more fearful of being outflanked politically by his coalition rivals on the right, namely, the Jewish Home Party, which is spearheading the bill. Averting a policy clash with the United States while covering his right flank at home is an urgent priority for Netanyahu.

So far, the White House -- consumed by postelection transition issues -- is not indicating whether it will head to the UN on this issue. Yet while many observers doubt that President Obama will push for a separate, full-fledged Security Council resolution laying out parameters for all aspects of the Israeli-Palestinian conflict, lesser steps should not be ruled out.

## LEGISLATION TRIGGERED BY AMONA OUTPOST

Israel has said that it is not building new settlements, but there are currently around 100 settlement outposts in the

West Bank that are illegal under Israeli law, according to a report the Prime Minister's Office issued in 2005. Typically, these outposts have only a few dozen homes; although they are established in a makeshift fashion at first, many of them are eventually granted military protection and hooked up to Israeli gas and water grids.

In 2003, Prime Minister Ariel Sharon told President George W. Bush that the outposts would be demolished, but Israel never came close to fully implementing this commitment. A few outposts were removed here and there, but settlers clashed with the army in 2006 when the Supreme Court ordered Prime Minister Ehud Olmert to demolish some homes in the largest outpost, Amona, located north of Ramallah. Although the demolitions were carried out, thousands of protestors hindered the operation and over 200 people were injured. Afterward, Olmert decided that it would be politically easier to resolve the outposts issue as part of an overall negotiated peace agreement with the Palestinian Authority.

Netanyahu, whose coalitions have been sharply to the right of Olmert, has not prioritized outpost evacuation during his tenure. In 2008, the Supreme Court ordered the state to provide a timetable for demolishing all homes in Amona, and in 2011, the Netanyahu government agreed to complete all demolitions by the end of 2012. He reneged on that pledge, however, asking the court in 2013 to reject the petition on the basis that it would harm Israel's diplomatic interests. The government also stated that it would demolish only individual structures in Amona, not the entire outpost.

In December 2014, the court agreed to give the government two years to evacuate, which would allow time for making resettlement plans. On November 14, 2016, the court said it would countenance no more delays beyond the December 25 deadline.

## NETANYAHU AND BENNETT'S CALCULUS

**N**etanyahu's governing majority depends on support from the Jewish Home Party and other settler sympathizers within his own Likud Party. Education Minister Naftali Bennett, the leader of Jewish Home, has declared that the only way to preempt the court's deadline is to transform illegal outposts into legal settlements -- hence his party's bill to legalize all remaining outposts, many of them built on private Palestinian land.

Around 19 of the estimated 100 outposts in the West Bank have already been retroactively legalized apart from the new bill, and another twelve are in the process of legalization, according to U.S. government statements. The current legislation could affect 75 other outposts located outside the security barrier, plus a handful within the barrier. The residents of these outposts, often called non-bloc settlers, tend to vote for Bennett's party and support its opposition to a Palestinian state in any geographic configuration.

Netanyahu is most identified with Israeli settlement construction in the existing blocs located inside the security barrier, where an estimated 77 percent of settlers live. But under his government, there has also been growth outside the barrier. Of the estimated 370,000 total West Bank settlers, roughly 285,000 live inside the barrier and close to urban centers in sovereign Israel. A **July report (<http://www.washingtoninstitute.org/policy-analysis/view/the-quartet-report-part-1-defining-the-settlement-challenge>)** issued by the Middle East Quartet (i.e., the United States, EU, Russia, and the UN secretary-general) indicated that around 85,000 settlers live outside the barrier. If all of the settlers were inside the barrier, Israel's settlement policy could still be reconciled with efforts to achieve an eventual two-state solution, but this is not a viable approach so long as settlements persist outside the barrier, where many of Bennett's voters reside.

Netanyahu is no doubt well aware of this problem, but he also apparently fears that opposing Bennett on the outpost bill could make him look weak in the eyes of all settlers. Indeed, Bennett counted on this perception when he secured the prime minister's support.

Netanyahu's current calculus seems twofold. First, he is likely maneuvering to forestall criticism from the right and

avoid an open fight with Bennett. At the same time, he is apparently taking quiet steps to prevent the subsequent three Knesset readings that would make the bill a law. He has multiple means of achieving this end. For example, he can ask Finance Minister Moshe Kahlon to make sure that Kahlon's Kulanu party does not support subsequent votes on the bill. Kahlon was apparently the one who instructed Likud coalition chairman David Bitan to announce yesterday that the bill could not forestall the planned evacuation of forty Amona families, citing remarks by Mandelblit.

Second, if current speculation holds true, Netanyahu may have already told Washington that implementation will be delayed while the Supreme Court studies the law further. For example, he may emphasize to President Obama that Mandelblit is questioning the legality of retroactively approving outposts on private Palestinian land, so the law may soon be invalidated even if it passes the Knesset. In other words, Bennett may win politically if the bill passes, and Israel may lose face internationally, but it is possible that not much will actually change under Israeli law. Perhaps in a bid to cool tensions with Washington after the preliminary Knesset reading, Defense Minister Avigdor Liberman announced that he now favors freezing settlements beyond the security barrier in return for flexibility within the blocs.

## THE UN FACTOR

On October 20, before the proposed outpost law became public, the Palestinian Authority urged the Security Council to draft a resolution on settlements, arguing that there needed to be consequences after almost fifty years of Israeli control in the West Bank. Not content with the standard General Assembly condemnations, the Palestinians seem to prefer a Security Council resolution that could set the precedent for future international sanctions. They are also aware that the Obama administration is particularly exercised over the settlements issue given the State Department's relentless statements to that effect. In 2011, the administration vetoed a Security Council settlements resolution, but it did so very reluctantly. Today, the Palestinians likely believe that Israel's unprecedented move to legalize all outposts will create such a backlash that it may clinch U.S. approval of a new resolution.

Any such resolution would likely include language similar to the one vetoed in 2011, which declared all settlement activity "illegal." Israel contends that the West Bank was not captured from the Palestinians, and that issues like settlements and borders should be decided through direct negotiations. Netanyahu and other officials also insist that the focus on settlements is an excuse, since Arab enmity toward Israel predates the 1967 war. Thus, one can assume that Israel would not only oppose a resolution in principle, but also depict it as being inconsistent with the July 2016 Quartet Report, which made clear that Palestinian incitement and violence from the Gaza Strip were just as much an impediment to peace as Israeli settlements.

In response, the United States could try to reach a more balanced resolution incorporating the Quartet's conclusions. Alternatively, it could ask a European ally to do so on its behalf and then abstain from the final vote, allowing Washington to avoid endorsing or vetoing a resolution critical of Israel.

## TRUMP COMPLICATIONS

Given the domestic political complexities, President Obama made it known that he did not want to even consider UN action on Arab-Israeli issues until after the election. Now that Donald Trump has won, Obama may be more likely to raise the political costs of Israeli settlement activity, believing that his successor will avoid any such action.

Yet what if Trump indicates that he is open to a more nuanced view on settlements as the campaign dust clears -- one closer to President Bush's 2004 letter to Sharon suggesting that a future border may well incorporate settlement blocs? Would a Security Council vote make it more difficult to negotiate such geographical nuances down the road if all settlements are lumped together? More broadly, a resolution could lead to a collision with Trump at the very time

that Obama is publicly calling for close cooperation during the transition.

The president will therefore need to weigh his options carefully during his lame-duck period. In addition to -- or instead of -- a resolution that focuses on settlements and other impediments, he may seek to put forward broader parameters for a final peace deal, whether at the Security Council or via public remarks. Israel would be most nervous about the UN option, since establishing final-status parameters there could set the predicate for sanctions. The Palestinians likewise seem to oppose a parameters resolution, since it would no doubt call for compromises on refugees and recognition of Israel as a Jewish state.

## CONCLUSION

Netanyahu recently told settlers that the most sensitive moment in the United States is the period between a presidential election and an inauguration. He therefore urged them to avoid provocative steps for fear of triggering U.S. steps at the Security Council. Yet a unique set of circumstances has led his rival Bennett to put forward sweeping legislation that is bound to anger the White House and force Netanyahu's hand in the process. Ironically, dovish NGOs have seemingly been unable to achieve what a right-wing leader's outpost bill is poised to do: make it very difficult for the White House to look away from the settlements issue in its waning days.

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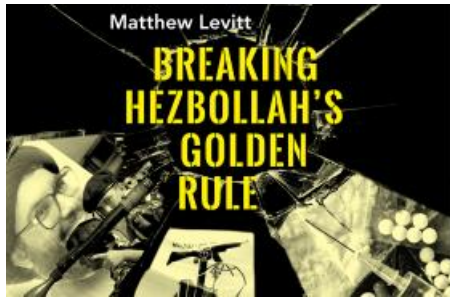
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