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HIGHLIGHT: Is Israel a Jewish settlement?

April 13 has come and gone, and the Israeli military withdrawal from Jericho and the Gaza Strip that was supposed to end by that date has not yet even started. The Israel-plo accord signed September 13, 1993, seemed to confirm that the conflict between the Arabs and Jews of Palestine could be resolved through diplomacy. The old Israel-has-no-right-to-exist line, which scoffed at peace, appeared to have yielded to pragmatism and moderation. Doves, optimists and champions of peace-through-talk felt vindicated. They had contended for years that the Arab-Israeli conflict had been transformed. The essential issues now were no longer of the to-be-or-not-to-be variety, but simpler, more easily compromised questions of where to locate the borders and how to share water and ensure mutual security.

But the seven months since the White House signing ceremony have not sustained that hope. They have seen an increase in bloodshed and more promises broken than new accords sealed. Why? Perhaps it is because the brutal, old, rejectionist, anti-Zionist ideology has a firmer hold on the Palestinian Arab community--or at least the politically relevant (i.e., armed) elements of that community--than enthusiasts of September 13 appreciated.

Insight into this unhappy reality emerges from the current campaign of condemnation against Israeli settlements in the territories. In the Hebron atrocity's aftermath, the plo, although it had agreed to defer the settlements issue several years hence to the final status negotiations, brought the settlements front and center in the implementation talks. They denounced them as "illegal" intrusions on "Arab land," an impediment to peace and the source of Arab-Jewish hostility and violence. The campaign sends contradictory messages, respectively, to two important audiences.

In the West, Arab denunciations of the settlements are commonly taken to signify that the conflict is no longer about Israel's existence but only its control of the "occupied territories," relinquishment of which would displace only 120,000 or so Jewish settlers. In the Arab world, however, the attack on the legitimacy of the settlements appeals so powerfully not because its focus is narrow, but, on the contrary, because its implications are so broad and profound. To delegitimize the settlements is to attack Zionism--the framework that produced the State of Israel--at its foundation.

This is so because the legal basis for Jewish settlement in the territories is the same as the basis on which the State of Israel was declared in 1948. Asserting that the settlements are illegal is effectively, even if unwittingly, to undermine the legitimacy of Israel. That the Jewish people lack the right to settle and govern in Palestine, all of which is "Arab land," has been the position explicitly advocated by Arab opponents of Zionism since World War I. Israel's enemies, however, now confront an Israel stronger than ever militarily and impossible to defeat in a single blow. Moreover, smart rejectionists long ago grasped the need to speak to the world at large in the vocabulary of liberal democracy even

(especially) when one's aims are belligerent and illiberal. Hence, it is better to uphold the traditional rejectionist position by focusing attacks on the settlements than by employing fond, old slogans like "Drive the Jews into the Sea," which are more straightforward but generally unappealing abroad.

The foundation of Israel's legality as a state under international law is the Palestine Mandate, confirmed by the League of Nations in 1922, and the "historic connection of the Jewish people with Palestine," which the Mandate highlighted as it recognized the "grounds for the Jewish people's reconstituting their national home in that country." That is the foundation cited in Israel's May 14, 1948, declaration of independence and the basis on which the international community granted recognition to the Jewish state.

The Jewish people's rights as recognized in the Mandate, including in particular the right of "close settlement by Jews on the land," are likewise the legal justification for the Judea-Samaria settlements. Nothing since the end of the Mandate regime in 1948 has yet terminated those rights. Jordan's purported annexation of the West Bank in 1950, recognized virtually nowhere, was the fruit of aggressive war and did not terminate Jewish rights in the territory. u.n. Security Council Resolution 242 leaves all claims to the territories open for resolution through negotiations among the parties. The 1949 Fourth Geneva Convention, commonly said to prohibit Israeli settlements, does no such thing. Even on the questionable assumption of its legal applicability to the territories, the convention limits only those rights and duties Israel acquired as a result of the 1967 war, not the pre-existing, Mandate-recognized rights of the Jews to settle their ancient homeland. Until a state actually exercises recognized sovereignty there, under a peace treaty or otherwise, the rights of Mandate beneficiaries in the territories are preserved.

The legality of the settlements is a separate matter entirely from whether Israel should trade them away in negotiations. The settlements are not inherently an important issue. They are not the cause of the conflict, which raged before the settlements existed, before Israel acquired the territories in 1967, indeed before Israel came into being as a state. The settlements are an issue because the territories are important to Israel and the settlements strengthen Israel's attachment to those territories. The settlements do not preclude Israeli withdrawals. Their existence, however, raises the political costs in Israel of withdrawal.

The argument that settlements are an impediment to peace makes sense only if one presupposes that Israel should quit the territory and that it would have peace if it did so. The counterargument--that the best hope of averting war lies not in attempts to appease unappeasable opponents but in preservation of Israeli military strength, which necessitates Israel's retention of all or most of the strategically valuable territories--has nearly a century of unhappy history to bolster it.

Yasir Arafat's condemnations of Israeli settlements should not be assumed to signify that plo ambitions are now moderate and limited to the territories. They are entirely consistent with the traditional Arab view that all of Israel is an illegal Jewish settlement on Arab land. If that remains the conviction of Arafat and his constituency, Israel's exchanging territory for a peace treaty will not solve (and could even worsen) the

problem.

Douglas J. Feith served as deputy assistant secretary of defense in the Reagan administration.

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