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Breaking the Israel-Palestine Status Quo

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RESETTING U.S. POLICY

After decades of on-and-off negotiations and failed peace initiatives, it is time for a shift in U.S. policy toward Israeli-Palestinian peacemaking. Jettisoning former president Donald Trump's Peace to Prosperity plan is a vital step, but it will not be enough to move beyond the status quo. Instead of reviving a moribund peace process or simply abandoning U.S. engagement, President Joe Biden's administration should place a rights-based approach at the center of its strategy.

The approach, as broadly defined here, would prioritize protecting the rights and human security of Palestinians and Israelis over maintaining a peace process and attempting short-term fixes. It would reaffirm and safeguard Israeli rights to security and peace while paying equal attention to long-neglected Palestinian rights, including freedom of movement and freedom from violence, dispossession, discrimination, and occupation—whether in the West Bank, East Jerusalem, Gaza, or, in specific ways, inside Israel.¹

Making this approach a central pillar could help change the political calculations of Palestinians and Israelis, alter the negative trajectory the parties are on, and rebuild prospects for a durable peace. It also has the benefit of being more consistent with the Biden administration's overall foreign policy posture and requires less and not more U.S. investment.²

Such an approach would require discarding policies that entrench the status quo and empower an anti-democratic trajectory among Israeli decisionmakers, as well as deepen permanent occupation. Likewise, it would require discarding policies that fuel anti-democratic trends in Palestinian governance and reduce accountability to their people. Essentially, a rights-based approach necessitates accountability for violations of people's rights and of international law. It is compatible with reviving a two-state dispensation, while being open to other alternatives; and simply recognizes that the current peace process scaffolding sustains occupation and is structurally incapable of delivering peace and human security.

This approach is offered with humility—academics, activists, and policymakers have previously discussed aspects of a rights-based approach—and it will have to emerge organically from listening to the concerns of those impacted by the conflict and in particular those without sufficient recourse to safeguard their rights, not least Palestinian refugees.

Outlined in this paper are some principal policy options that could be derived from such an approach. Over the past eighteen months, the authors consulted with experts from diverse professional and personal backgrounds to discuss prescriptions for the United States in light of the deteriorating circumstances of the conflict. Roundtable discussions were held with civil society organizations, advocacy groups, and thought leaders engaged in work to support Israeli-Palestinian peace or to uphold international law and human rights both in the United States and abroad.

The authors of this paper identified four overarching areas of focus: (1) prioritize rights and protect people, (2) roll back the Trump administration's actions and reassert international law, (3) clarify

expectations for Palestinians and Israelis, and (4) support new multilateral approaches and accountability. In furthering these objectives, the United States could take the following steps:

- Clearly assert—given ongoing Israeli actions that make achieving a sovereign and viable Palestinian state unlikely—that the United States will only support an alternative solution that guarantees full equality and enfranchisement for all those residing in the territory under Israeli control; it will not endorse two separate and unequal systems.
- Reset U.S.-Palestinian bilateral political engagement by working to reopen the Palestine Liberation Organization (PLO) Mission in Washington; separating the U.S. consulate in Jerusalem from the U.S. embassy to Israel; and affirming the U.S. intention to open an embassy to Palestine in East Jerusalem, while also taking tangible measures to preserve the Palestinian national institutional presence and collective residency in the city.
- Directly, and with other states, work to restore funding to the United Nations Relief and Works Agency (UNRWA) to ensure it is able to meet its historic commitment to Palestinian refugees until a durable solution to their statelessness is possible.
- Encourage and facilitate—even though Palestinians are responsible for their own political renewal—reconciliation between the two Palestinian parties Hamas and Fatah, conditioned on Hamas’s respect for international law and its commitment to refrain from targeting Israeli civilians. To this end, and in the interests of Palestinian political renewal and representativeness, encourage and support the holding of all three rounds of proposed Palestinian elections.
- Work with the Palestinian leadership to reform social welfare payments to Palestinian prisoners held by Israel and the families of those killed in political violence, as well as to clarify that violence against civilians is not being incentivized; facilitate the removal of congressional legislative restrictions on U.S.-Palestinian relations and assistance programs; and continue to use executive prerogatives to narrowly construe aid restrictions to Palestinians.
- Work with relevant authorities to end the Gaza blockade and the separation of the Strip from the rest of the occupied territories, and reverse U.S. policies that treat Gaza and the West Bank as separate territorial and administrative units.
- Reaffirm the U.S. position that Israeli settlements are inconsistent with international law, end policies that treat them as part of Israel, and differentiate between Israel and its illegal settlements in all bilateral treaties and cooperation programs.
- Establish mechanisms for oversight, end-use monitoring, transparency, and accountability for U.S. defense equipment transferred to Israel, and identify ways to prevent U.S. assistance from being used to facilitate annexation or human rights violations.
- Uphold international law and United Nations (UN) resolutions on the Israeli-Palestinian conflict by refraining from using U.S. vetoes at the UN Security Council and working cooperatively with UN agencies and other multilateral mechanisms in support of the recommendations outlined here.

- Avoid further fueling a regional arms race by not linking U.S. weapons transfers with Israel-Arab state normalization agreements.
- Ensure that U.S. laws, regulations, and economic agreements—as well as the management of any enterprise funds, including those that support regional economic cooperation between Israel and Arab states—comply with legal obligations, particularly UN Security Council Resolution 2334 (2016), and support the promotion of human rights in the region.

The ideas and detailed recommendations that follow should inform a practical debate on how to approach Israeli-Palestinian peacemaking and how U.S. engagement might better advance a just and enduring political solution that promotes the human dignity and security of both Israelis and Palestinians.

PRIORITIZE RIGHTS AND PROTECT PEOPLE

It is not news that the prospects for Israeli-Palestinian peace are in a parlous state. The Oslo peace process failed to transform the relationship between an occupying power and occupied people into one of state-to-state co-existence. It also failed as a tool for conflict management. There is no meeting point or consensus around alternative outcomes that have emerged and begun to gain traction in both societies. For example, the various visions many Palestinians and Israelis hold of a one-state solution remain irreconcilable—with some visions grounded in democratic equality and/or binationalism and others rooted in a sustained separate and unequal regime of dominance.

In light of this sober reality, a new U.S. approach to peacemaking is required—one that avoids returning to endgame negotiations or pursuing ambitious new peace plan initiatives. Instead, the priorities should be protecting people and their rights, taking deliberate actions that can change the political calculations of Palestinians and Israelis, and creating openings for a sustainable political solution. Not only is such an approach better placed to change the negative trajectory the parties are on, it also could, along the way, bolster the new administration's claims to support a restoration of respect for the rules-based international order.³

Elevating the protection and preservation of the rights of people does not mean abandoning a durable, just, and comprehensive political solution as a U.S. policy goal. However, negotiations that have little chance of success should not be a goal in themselves. Failed negotiations and peace proposals carry costs beyond dashed expectations; they tend to embolden hardliners and make it more difficult to create public support for renewed talks when the timing and conditions are favorable. Furthermore, negotiations should not take attention away from Israel's violations of international law, new facts on the ground, and by extension the deteriorating conditions for Palestinians.

As Israel continues to block the emergence of a sovereign and viable Palestinian state, the U.S. administration should clearly assert that the only acceptable alternative will be full equality and enfranchisement for all those living under Israel's control and jurisdiction. Because Palestinians and Israelis do not live as equals in the sliver of land between the Mediterranean Sea and the Jordan River, the United States should seek to mitigate the fundamental asymmetry of power between Israel, an occupying state, and Palestinians, an occupied people, and devise strategies to confront the enduring structural barriers to conflict resolution.

In pursuing a rights-based approach, security will have to be reimagined so that sufficient attention is given to the rights and well-being of both Palestinians and Israelis. While the security of Israelis will and should remain a U.S. policy goal, it should not come at the expense of, or be used as a pretext for, the denial of rights and security for Palestinians.

In Gaza, this means working with allies and multilateral mechanisms for a lasting ceasefire and end to the blockade, directly addressing the humanitarian and human rights situation, and securing the free movement of people and goods in and out of the Strip where over 2 million Palestinians have been cut off from the rest of the occupied territories and the world for more than a decade.⁴ In the West Bank, U.S. policy should emphasize protections for land and resource rights and support the freedom of people to organize, assemble, work, and travel and to live without threat of displacement or arbitrary arrest and detention. In occupied East Jerusalem, the United States should hold Israel to prior commitments and signed agreements, work to reopen Palestinian institutions such as the Orient House, and call on Israel to refrain from taking actions harmful to the well-being of Palestinian residents. Inside Israel, the United States, through its bilateral relationship, should encourage the government to guarantee equal protection under law for all citizens, especially in light of the basic law titled Israel: Nation State of the Jewish People.⁵

The dynamics that have made peace elusive were not created during the Trump administration. The growing dominance in Israel of a leadership that openly embraces permanent control of the occupied Palestinian territories and the steady decline of Palestinian democratic governance have been trends for decades. While the policies of all past U.S. administrations were largely ineffective in addressing these trends, what distinguished the Trump administration's approach was its wholehearted support of Israel's maximalist territorial ambitions, its narrative of rights belonging exclusively to Israelis, and its complete disregard for international law and multilateral institutions.

Even if Trump's policies are rolled back, the current trajectory is unlikely to change without a direct challenge to the enduring status quo. Israeli control will become ever more entrenched, Palestinian rights will be further encroached upon, and an eruption of violence will become increasingly likely. At a minimum, these progressions will impact the already waning prospects for a two-state outcome and generate additional momentum for an Israeli-driven alternative based on permanent inequality and disenfranchisement for Palestinians.

These trends will have implications for the United States in the region and beyond and will further draw the United States into active diplomatic engagement. Building a rights-based approach now

could help mitigate or even reverse this trajectory, creating a firmer footing for future peacebuilding and diplomacy. It also could create openings for the United States and allies to work within a framework of international law to preserve and protect the well-being and security of both Israelis and Palestinians.

Main Policy Recommendations

- Adopt a rights-based approach that prioritizes the rights and security of both Israelis and Palestinians.
- In the face of Israeli actions that impede the creation of a viable, sovereign Palestinian state, make clear that the United States will not support any dispensation that fails to guarantee full equality and enfranchisement for all those residing in the territory under Israeli control and jurisdiction.

ROLL BACK THE TRUMP ADMINISTRATION'S ACTIONS AND REASSERT INTERNATIONAL LAW

In essence, the Trump administration's Peace to Prosperity plan of January 2020 accepts permanent Israeli control over a significant part of the territories occupied by Israel since 1967, disregards international law as affirmed in UN Security Council Resolution 2334 (2016), and dismisses previous U.S. parameters on all final status issues (echoing the policy prescriptions of Israeli Prime Minister Benjamin Netanyahu). It makes the establishment of a sovereign and viable Palestinian state impossible. It does not even require Palestinian consent for the conclusion of a comprehensive political settlement.

The Biden administration should disavow Trump's plan in its entirety. In addition to the plan's specific shortcomings, as a practical matter, any efforts to reset U.S. relations with Palestinians or to create a conducive environment for a sustainable, negotiated solution will be unsuccessful so long as the Trump plan remains on the table.

This step alone, however, is not sufficient. The new administration should reverse numerous additional actions taken under Trump that damage prospects for peace. The United States should work to ensure that resources are available to the UNRWA to enable it to meet its obligations to Palestinian refugees, reestablish diplomatic representation with Palestinians, clarify the U.S. position on Jerusalem as well as settlements, and work to end the blockade of Gaza and its treatment as a separate territorial and administrative unit.

The Trump administration stopped U.S. funding to the UNRWA (which previously represented one-third of the agency’s budget) and sought to redefine who qualifies as a Palestinian refugee (see box 1). The agency was already struggling to provide essential primary healthcare, education, and micro-lending and employment opportunities to the more than 5 million refugees in the occupied Palestinian territories and in Jordan, Lebanon, and Syria.⁶

Box 1: U.S. Contributions to the UNRWA in Context

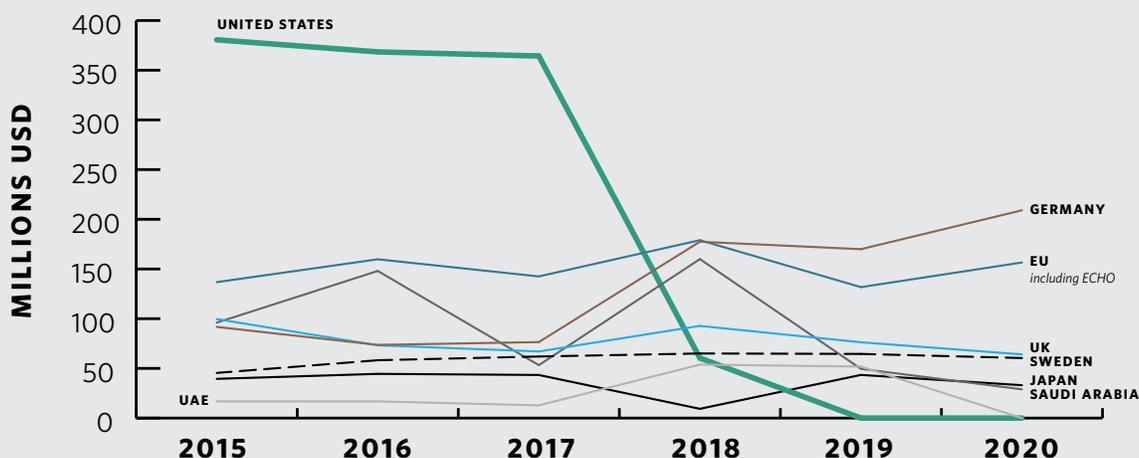
Established in 1949, the UNRWA supports essential primary healthcare, education, and employment for Palestinian refugees in the West Bank, Gaza, and East Jerusalem, as well as in Jordan, Lebanon, and Syria. Over 90 percent of its funding comes from voluntary contributions by UN member states.⁷

Today, the agency supports an estimated 5.6 million registered Palestinian refugees, defined as those “whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict,” as well as their descendants and those displaced in the ensuing 1967 conflict.⁸

At times, the United States has considered changing this definition, effectively seeking to reduce the number of refugees entitled to repatriation (denied by Israel) or resettlement and to compensation as enshrined in UN General Assembly Resolution 194. In 2018, U.S. ambassador to the United Nations, Nikki Haley, said that the United States might reinstate donations to the agency “if they actually change the number of refugees to an accurate account,” presumably referring to calls to include only those actually living during the 1948 displacement.⁹ Yet excluding the descendants of refugees would be inconsistent with international law and family unity principles and with the treatment of other UN-supported refugee populations.¹⁰ Only the UN General Assembly may change the definition of a Palestine refugee.

Select UN Member State Pledges to the UNRWA

Comparison of donors who have ranked in the top five in various years since 2015



Source: UNRWA donor total pledges, 2015-2020, https://www.unrwa.org/sites/default/files/2015-2020_top_20_rank_total_20jan.pdf.

*The EU total includes funds from the European Commission for Humanitarian Operations. Bilateral funding contributions from EU member states are recorded separately.

Though some U.S. support will be restored, the Biden administration should also publicly acknowledge the UNRWA's important work and the need for other states to continue their support for the agency until a durable solution is found to end Palestinian statelessness.

Reestablishing diplomatic representation with Palestinians should include reopening the PLO Mission in Washington, as well as decoupling the U.S. consulate in Jerusalem from the U.S. embassy to Israel per the protocols in place prior to May 2018. These important steps will help reset bilateral relations with the PLO/Palestinian Authority (PA).

Of course, this will take some time and political will. Reopening the U.S. consulate in Jerusalem requires coordination with Congress and permissions from Israel. And before reopening a mission in Washington, the PLO will want assurances that it will no longer be treated as a terrorist organization subject to the Anti-Terrorism Clarification Act (ATCA). The ATCA allows the PLO or PA to be held liable for civil damages stemming from political violence abroad if either have an official presence in the United States or are not in compliance with the Taylor Force Act (which prohibits U.S. economic assistance that benefits the PA unless, among other conditions, it ends welfare payments to Palestinian prisoners in Israel convicted of political violence).

Though Biden has the executive authority to override congressional limitations that bar the PLO from operating in the United States (should he wish to exercise it), he cannot assure the PLO or PA that they will not be liable under the current ATCA. While working on ways to restore the PLO Mission in Washington and the U.S. consulate in Jerusalem, the U.S. administration should permit a friendly foreign mission in Washington to facilitate consular services for Palestinians and those in need of validated documentation to conduct trade or business in the occupied Palestinian territories.

In addition, the new administration should signal to Israelis and Palestinians that the U.S. position on Jerusalem and Gaza remains consistent with international law and UN resolutions. Specific actions could include working with Israel to ensure that (1) PA elections may be conducted in East Jerusalem in accordance with practice during past elections, (2) Palestinian institutions closed since 2000 are allowed to reopen, and (3) evictions of Palestinian Jerusalemites and home demolitions cease. The United States should clearly renounce the Peace to Prosperity plan's attempt to delimit sovereignty over Jerusalem. The U.S. administration should reverse policies treating Gaza and the West Bank as separate territorial units and ensure that the term "occupied" is used in reference to the Palestinian territories including East Jerusalem in all government documents.¹¹

The administration should issue an unequivocal policy statement on the illegality of Israeli settlements in the West Bank, as well as differentiate between Israel and the occupied territories in all bilateral dealings as required by UN Security Council Resolution 2334 (which obligates third states to not recognize Israel's extension of sovereignty in these territories). This will ensure that the United States does not inadvertently facilitate Israeli settlements or the activities of associated businesses, nor contribute to violations of human rights including Palestinian residency revocations, evictions, land expropriations, and home demolitions.

The administration should avoid making distinctions among types of Israeli settlements, which would run counter to a long-held rules-based principle—that the acquisition of territory by force or aggression is illegal. While affirming that U.S. non-recognition of Israeli sovereignty over the West Bank should not be equated with the civil society–led Boycott, Divestment, Sanctions (BDS) movement, the administration should state that it considers such activity constitutionally protected free speech and not anti-Semitic per se.¹²

Restoring U.S. policy on settlements will also require reversing the Trump administration’s extension of U.S.-Israel bilateral agreements to the West Bank and its permitting of goods produced in Area C of the West Bank to be labeled “Made in Israel.”¹³ In the months before Trump left office, the State Department under then secretary Mike Pompeo went to extraordinary lengths to embrace settlements and U.S. trade with settlements, undermining peace efforts and established U.S. policy and international laws and norms regarding occupied territories.¹⁴ The Biden administration should bar development assistance or loans to Israeli enterprises in the West Bank and provide clear guidance to the International Development Finance Corporation administering U.S. and international funds to adhere to obligations owed under international law with regard to occupied territories. In addition, the tax-exempt status for U.S. nonprofits that fund Israeli settlements should end.¹⁵

Main Policy Recommendations

8

- Reaffirm that Israeli settlements are inconsistent with international law, and end policies that treat them as part of Israel.
- Work to reopen the PLO Mission in Washington; separate the U.S. consulate in Jerusalem from the U.S. embassy to Israel; and indicate support for the opening of a U.S. embassy to Palestine in East Jerusalem, while also taking tangible steps to preserve Palestinian national institutions and residency in Jerusalem.
- Work to ensure that a combination of resumed U.S. contributions and those of other donor countries enable the UNRWA to fully meet its obligations while also acknowledging the important role the agency plays until a durable solution is reached.
- Ensure that all federal agencies and bodies—including the United States Agency for International Development and the International Development Finance Corporation, which administer programs and provide loans and grants for Palestinian development—do not benefit Israeli businesses that profit from or facilitate the expansion of settlements in occupied territories.

CLARIFY EXPECTATIONS FOR PALESTINIANS AND ISRAELIS

The long-standing U.S. approach, which prioritized maintaining or relaunching the peace process and tinkering with territory over preserving and protecting rights, has reinforced negative trends and diminished accountability by Israeli and Palestinian leaders. Palestinian democratic governance has atrophied and fractured between Fatah in the West Bank and Hamas in the Gaza Strip, and corruption has flourished. Meanwhile, Israel's overarching control in the territories, including its blockade of Gaza, have made meaningful Palestinian political and economic management and reform extremely difficult. And this control has gone largely unchecked. The impunity accorded to Israel—as well as increased U.S. security assistance—has distorted the Israeli public debate regarding the occupied territories; Israel has rarely been subject to the transparency, end-use, and human rights standards that are frequently applied to other recipients of U.S. assistance.

The United States needs to design a set of policies that allow peace-oriented and rights-respecting politics to breathe in both societies. The absence of such an approach has had a particularly distorting effect in Israel.

U.S.-Palestinian Relations

Recalibrating the U.S. relationship with Palestinians and their national bodies should begin with supporting Palestinian elections and political renewal, good governance, and locally driven and sustainable economic development.

Palestinian Political Renewal

For too long the PLO—the internationally recognized representative body of the Palestinian people—as well as authorities in the West Bank and Gaza have neither represented the interests of their people nor been held accountable to them. PA presidential and legislative elections have not taken place since 2005 and 2006, respectively. The PLO legislative elections (for the Palestine National Council, or PNC) that took place in 2018 under an antiquated quota system lacked transparency and popular participation. And Fatah's exclusive control over Palestinian national bodies and its rule by presidential decree have stunted serious movement toward national reconciliation with Hamas. Even if outside interference and constraints are partly to blame for certain shortfalls in legitimacy in Palestinian national bodies, these significant deficits in governance nonetheless hinder the prospects for peace.

In January of this year, Palestinian President Mahmoud Abbas announced his intention to hold PA legislative elections on May 22, a presidential election on July 31, and PNC elections on August 31.¹⁶ Elections are an important step in Palestinian political renewal, and the Fatah-controlled PA and Hamas should pursue elections in an inclusive and transparent way. And the U.S. administration

should be supportive of this effort, discourage Israeli restrictions on movement and campaigning or on the voting or fielding of candidates by Jerusalemites and those opposing Fatah, and fully respect the election outcomes. U.S. engagement with a postelection Palestinian government (including various unity coalition possibilities) should be conditioned around commitments to respecting international law and to nonuse of violence against civilians (for instance, endorsing PLO principles). The three Quartet conditions (recognize Israel, respect signed agreements, and renounce violence) have failed in practical terms, constitute an obstacle to progress, preempt endgame outcomes, and ignore Israel's own negotiations with Hamas as well as Israel's refusal to accept similar commitments.

At the same time, the United States should make clear its expectation, irrespective of election outcomes, that the Palestinian government will curb corruption and manage public funds in a transparent manner.

Economic and Development Assistance

In 2018, the Taylor Force Act (TFA) called for significantly reduced U.S. bilateral assistance to Palestinians, but the Trump administration ended it completely. Resuming assistance to Palestinians will be difficult because the TFA bars all aid that “directly benefits” the PA unless the PLO and PA stop providing social welfare benefits to Palestinians convicted of political violence or to the families of those killed while committing these acts. The TFA assumes that such benefits incentivize Palestinian armed resistance and requires that social welfare be afforded on a strictly needs-based system. The PA may not be in a position to establish a purely needs-based system, however, given that half of the Palestinian population in the occupied territories currently requires humanitarian assistance.¹⁷

If and when the PA reforms this payment system, the United States should be supportive. The administration should respond to reasonable requests for financial assistance, work with Congress to facilitate such assistance, and recognize that all families in need legitimately require it. Although reforms may be warranted, it is worth noting that up until 2014, Israel and the United States accepted the system, as these types of payments are not unusual in the context of national struggles for independence and the associated political violence on all sides.¹⁸ Also notable is the ease with which Israel imprisons especially young Palestinian men as well as children, often without due process.¹⁹

A link between payments and incentivized violence has not been established and would be difficult to validate given the provocations stemming from Israel's aggressive policies in the occupied territories. That said, to help reset U.S.-Palestinian bilateral relations and for the sake of clarity, the PA should make every effort in its payment policy and in any reforms to demonstrate that its social welfare support does not incentivize violence.

While the U.S. administration works with Congress and the Palestinian leadership to resolve the challenges associated with resuming bilateral assistance, the executive branch should continue to narrowly construe what aid “directly benefits” the PA and find avenues to support Palestinian economic development through, for example, multilateral bodies. As bilateral assistance comes back online, it should be consistent with Palestinian development goals and be sustainable. Any future U.S. aid programs should encourage Palestinian democratic development and civil society

engagement and avoid inadvertently fueling authoritarian trends or securitization of the PA's relationship with its public.

Main Policy Recommendations

- The commitment to holding Palestinian elections should be followed through on, and the United States should work with Israel, the relevant local authorities in the West Bank and Gaza, and regional states such as Jordan and Egypt to ensure free and fair elections. U.S. engagement with a future and possibly unified Palestinian leadership should be conditioned solely on respect for international law and the agreement of any government (coalition or otherwise) to refrain from violence targeting Israeli civilians.
- Work with relevant authorities to end the Gaza blockade and the separation of the Strip from the rest of the occupied territories, and reverse State Department policy treating Gaza and the West Bank as separate territorial and administrative units.
- Support improvements to Palestinian governance, including greater financial transparency and accountability. As a part of this effort, work with the PLO and PA leadership to reform the social welfare benefit system for Palestinian prisoners and families of those killed during political violence.
- Until robust U.S. aid and assistance can be resumed, channel funding through multilateral bodies to support the humanitarian needs of Palestinians, as well as those related to development, democracy, human rights, and good governance. When bilateral funding comes back online, all aid should bolster Palestinian development goals and be sustainable.

U.S.-Israeli Relations

International officials have over many years repeatedly warned Israel of the long-term harm it was causing itself in its policies toward the Palestinians and of the fragility of international support if those policies continued. These warnings have not been outlandish. Israel has been acting in clear violation of international law, UN resolutions, and international consensus. It has been pursuing policies that in most other instances internationally are met with some kind of consequences; and with an economy and society well integrated into global systems, Israeli has real vulnerabilities. Yet irrespective of these warnings, Israel has largely not been held to any standards or incurred any costs; instead, in recent years, Israel's trade relations have expanded and its economy has benefited even as it has pursued ever-more egregious policies toward Palestinians. Hence, there has been a logic to continuing these policies.

There is little value in bemoaning, for instance, Israeli persistence on settlements without acknowledging the political calculations underpinning Israel's choices. Its settler population in the West Bank and East Jerusalem today totals around 667,000 (see box 2).²⁰ Israel's matrix of control and restrictions on the Palestinian population and their daily lives are integrally linked to the pattern of Israeli settlement.

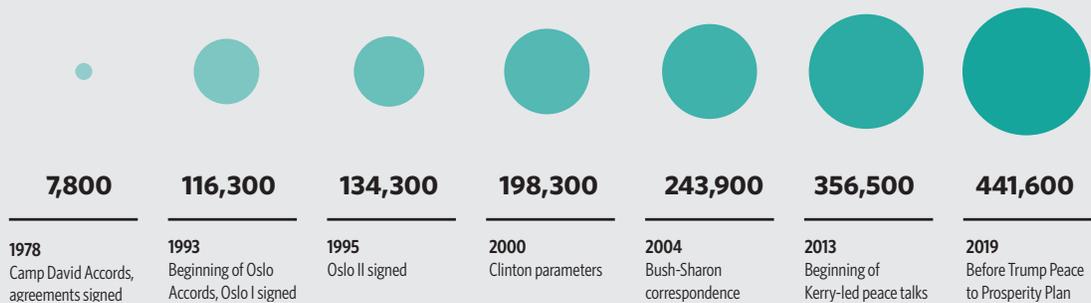
Box 2: Israeli Settlements in the West Bank and East Jerusalem

Israel began building settlements shortly after it captured Gaza and the West Bank, including East Jerusalem, in the Arab-Israel War of June 1967. Today, there are 145 settlements in the occupied West Bank and East Jerusalem,²¹ as well as 135 outposts.²²

Israeli settlements have steadily expanded over the years. On the eve of the Oslo accords in 1993, the total numbers of settlers in the West Bank stood at around 116,300.²³ As of 2019, that number is estimated to be 441,600, along with an additional 225,178 settlers in East Jerusalem for a total population of 666,778.²⁴ Israel evacuated 9,000 settlers from Gaza and a small northern West Bank enclave in 2005, while entrenching and expanding settlements elsewhere ever since.²⁵ The settlements are a clear violation of international law and have been recognized as such in many UN Security Council (UNSC) resolutions, most recently in 2016 with Security Council Resolution 2334. They also correlate with the numerous displacements, land confiscations, and restrictions to movement and basic freedoms imposed on Palestinians by Israel.

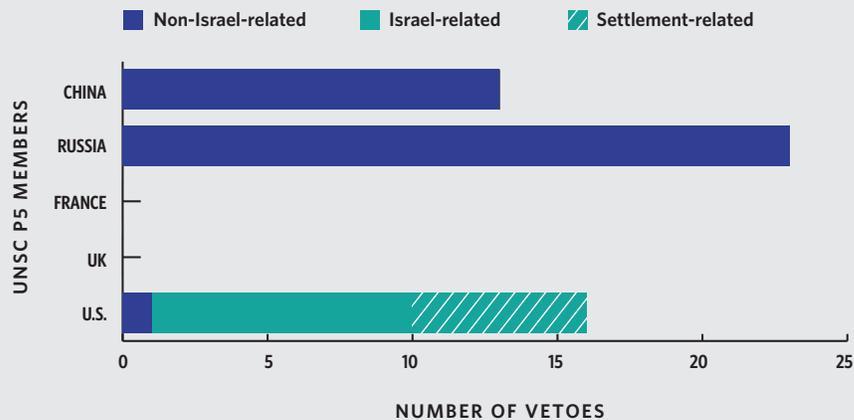
Settlement Expansion in the West Bank, 1978-2019

In 2019, the number of settlers was about fifty-seven times larger than in 1978.



Vetoes in the UN Security Council, 1995-2019

From 1995 to 2019, the United States vetoed six out of seven resolutions that condemned Israel's land expropriation, designated the settlements as illegal, and/or called for their cessation. In 2016, the administration under Barack Obama and Joe Biden abstained from voting on the seventh.



Note on settlement expansion: Numbers exclude East Jerusalem, where the settler population has grown from between 120,000 and 140,000 in 1992 (before the Oslo Accords) to 225,178 in 2019. Note on UNSC vetoes: France and the United Kingdom did not use their veto power during this period.

Sources: For West Bank data, see "Settlement Watch, Data: Population," Peace Now, <https://peacenow.org.il/en/settlements-watch/settlements-data/> population. For East Jerusalem data, see United Nations, "Israeli settlements—SecGen report (GA res.47/172)," July 8, 1993, <https://www.un.org/unispal/document/auto-insert-178776/>; and "Settlement Watch, Data: Jerusalem," Peace Now, <https://peacenow.org.il/en/settlements-watch/settlements-data/jerusalem/>. For veto data, see Security Council Report, "The Security Council Veto," Table, December 16, 2020, <https://www.securitycouncilreport.org/>.

Israel's settlement project has been pursued with the often plainly expressed intent of preventing a sovereign, viable Palestinian state. The settlements have created a sense among Israelis that achieving a two-state solution is too difficult, while continuing a cost-free occupation is easy.

And this viewpoint has never been earnestly countered, as U.S. policy has never held Israel accountable. In being the guarantor of impunity for Israel, the United States has not given Israel any reason to change its policies toward Palestinians; U.S. actions have blocked third parties and international fora from holding Israel responsible for violations of international law.

The Israeli public and its political class recalibrated their positions accordingly. Of course, other reasons for that recalibration exist—from the impact of the Palestinian second intifada to the stagnant leadership of Israel's liberal camp for at least a generation. But it is primarily the phenomenon of impunity that prevents a serious Israeli policy discussion on its future with Palestinians. Without accountability, the center of gravity of Israeli discourse shifted and peace-supporting policies were further marginalized.

It is not the role of U.S. policymakers to lead a reinvigorated opposition camp in Israel. But the United States should help create the conditions needed to shift Israeli policy toward the pursuit of a viable peace and an end to occupation. This requires the United States to change how it approaches bilateral relations—for instance, how it treats settlements—and how it acts in international fora. U.S. guarantees of Israel's security are manifested in the unparalleled security assistance provided to Israel—constituting almost 60 percent of all U.S. foreign military financing worldwide—and in the nature of the bilateral cooperation in research and development. This extraordinary level of U.S. support has helped ensure Israel's security and prosperity.²⁶ Israel should not be exempt from adhering, in practice, to standard end-use and human rights requirements such as those in the Leahy Law.²⁷

At a minimum, U.S. assistance to Israel should not contribute to or enable Palestinian displacement and human rights violations. Recently, members of both the U.S. Senate and House have called for conditioning aid to Israel should it move forward with officially annexing any part of the West Bank.²⁸ Israel has since postponed extension of its sovereignty there but continues with de facto annexation and the expansion of settlements. While restrictions on U.S. aid to Israel are not currently under consideration, oversight and monitoring mechanisms should be put in place and actions on the ground counter to U.S. law and interests and to peace should be discouraged.

The United States needs to send a clear and consistent signal to Israel that the violation of norms and the undermining of U.S. policy goals will have consequences. Absent these messages and the policies to back them up, the trajectory of Israeli policy and politics will not change and the door on peaceful conflict resolution and a two-state outcome will further close. It is an important wake-up call that a growing number of observers—legal scholars and practitioners,²⁹ expert UN bodies,³⁰ and Israel's most respected human rights organization³¹—are characterizing the status quo between Palestinians and the state of Israel as apartheid.

Main Policy Recommendations

- Reaffirm the U.S. position that Israeli settlements are inconsistent with international law, and end policies that treat them as part of Israel. Avoid making any distinctions between settlements, and avoid entering into negotiations with Israel over so-called acceptable settlement expansion.
- Differentiate between Israel and its illegal settlements in all bilateral treaties and cooperation programs. Reimpose geographical restrictions on the Israel-U.S. Binational Industrial Research and Development Foundation, U.S.-Israel Binational Science Foundation, and U.S.-Israel Agricultural Research and Development Fund.
- Support efforts by third states, the European Union (EU), or other multilateral bodies to differentiate between Israel and the occupied territories in laws and regulations.
- Establish mechanisms to monitor Israel's transparent and accountable use of U.S. defense equipment to help enforce federal statutes, and once in place, identify ways to prevent U.S. assistance from being used to facilitate annexation or human rights violations in the occupied territories.

SUPPORT NEW MULTILATERAL APPROACHES AND ACCOUNTABILITY

As the Biden administration takes action to meet transnational challenges and reimagines U.S. global engagement, it should strive to achieve a greater degree of credibility and consistency both at home and abroad. The question of Israeli-Palestinian peace will be conspicuous in this regard given its growing salience among U.S. civil society on both sides of the aisle and given continuing U.S. policy inconsistencies and failings on this issue.

Turning the page on the Trump administration's highly transactional approach should start with supporting international fora, multilateral mechanisms, and third states to reliably uphold international law and a rules-based order. U.S. diplomatic power should not be deployed to shield Israel from accountability or to prevent third states or multilateral bodies from taking measures to stem Israel's settlement enterprise—which effectively denies Palestinians a venue for redress and tools to discourage Israeli encroachment.

In the past, the United States has blocked UN resolutions with broad consensus supporting Palestinian human rights; cut off funds to the UN Educational, Scientific and Cultural Organization for admitting Palestine as a member; conditioned contributions to multilateral bodies because of activities related to positions on the Israeli-Palestinian issue or quit those bodies entirely;³² attempted to prevent the creation of a UN database of settlement enterprises;³³ and sought to discourage the EU and Ireland from labeling settlement products or prohibiting their importation. The Trump administration's imposition of sanctions against the prosecutor and judges of the International Criminal Court for targeting American or Israeli individuals accused of war crimes is the most egregious example to date of a misuse of power to prevent accountability.³⁴

While the Middle East Quartet (United States, UN, EU, and Russia) has existed for nearly twenty years, it has been largely ineffective. In exploring ways to reap greater benefits from multilateral fora, the Biden administration should consider empowering the quartet in new ways and/or creating new coalitions and structures—whether they be permanent or ad-hoc in nature. Closer cooperation with Europe is one potential avenue. A new group conspicuously established during the Trump era—the Munich Group (Germany, France, Jordan, and Egypt)—has been somewhat agile in responding to the threat of annexation.³⁵

The group's responses underscore the importance of Jordan's and Egypt's active engagement on Israeli-Palestinian affairs. Jordan has been a critical and stable U.S. partner in the region, conveying messages and maintaining a degree of trust with both Palestinians and Israelis. The Trump administration marginalized Jordan, however, because of the kingdom's refusal to support the United States' approach, including on proposals related to Jerusalem and the status of Palestinian refugees, many of whom are hosted in Jordan. Egypt, for its part, is an important actor regarding Gaza, mediating between both Hamas and Israel and Hamas and the PA.

The United States should work with Jordan and Egypt, as well as other regional actors where possible, to (1) stem de facto annexation of the West Bank and other Israeli policies violating Palestinian rights, (2) end the blockade of Gaza, and (3) encourage Palestinian political renewal and reconciliation.

While the Trump administration brokered normalization agreements between Israel and several Arab states—the United Arab Emirates (UAE),³⁶ Bahrain,³⁷ Morocco,³⁸ and Sudan³⁹—it offered various incentives that carry potential negative costs for broader peace, regional stability, and other U.S. interests. Planned sales of advanced weapons are likely to further escalate regional conflict.⁴⁰ In a region with several ongoing wars and serious human rights challenges, the new administration should help lower the risk of an accelerated arms race and encourage normative behavior by recipients of U.S. security assistance. Specific U.S. deliverables under normalization accords also threaten to undermine international law in Western Sahara, escalate conflict there, and destabilize a fragile democratic transition in Sudan.

Any U.S. support for normalization should serve to promote, rather than come at the expense of, Israeli-Palestinian peacemaking. For instance, without sufficient checks to ensure that Israeli settlement enterprises in the West Bank do not benefit from resulting agreements, initiatives—such as the U.S.-UAE-Israel Abraham Fund and the recently passed Joint Investment for Peace Initiative—could ultimately undermine Palestinians' rights and economic potential as well as respect for international law.

Main Policy Recommendations

- Reaffirm international law as a source of authority.
- Refrain from vetoing UN Security Council resolutions that aim to uphold international law or Israel's obligations as an occupying power, work cooperatively with allies and multilateral mechanisms to mitigate conflict, and prevent violence.

- Work with Congress to remove funding restrictions related to Palestinian actions at the UN or the cutting off of aid to UN bodies admitting Palestine as a member; and support the UN Human Rights Council’s ongoing work on a database of business enterprises that enable and support the establishment, expansion, and maintenance of Israeli settlements.
- Avoid further fueling a regional arms race by not linking U.S. weapons transfers with Israel-Arab state normalization agreements.
- Work with third states and Israel to ensure that any normalization agreements or enterprise funds created to support regional economic development and integration, including the Abraham Fund and the Joint Investment for Peace Initiative, comply with legal obligations and support human rights in the region.

NOTES

- 1 In pursuing a rights-based approach that endeavors to center and uphold universally recognized norms and values, sources of authority should include the International Bill of Rights, consisting of the Universal Declaration of Human Rights (adopted by the UN General Assembly in 1948, A/Res/3/217A); the International Covenant on Economic, Social and Cultural Rights (entered into force in 1976, signed by the United States in 1977); and the International Covenant on Civil and Political Rights (entered into force in 1976, signed by the United States in 1977 and ratified in 1992); and its two optional protocols. Though the United States is not a signatory to the optional protocols, many of the norms in the International Bill of Rights are also built into U.S. foreign policy by virtue of Section 502B of the Foreign Assistance Act, which provides that “a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries.” With certain exceptions, no security assistance may be transferred to a country with a record of “gross violations of internationally recognized human rights,” defined as including torture or cruel, inhuman, or degrading treatment or punishment; prolonged detention without charges and trial; and other flagrant actions that deny the right to life, liberty, or security of a person.
- 2 The White House, “Interim National Security Strategic Guidance,” March 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/03/NSC-1v2.pdf>.
- 3 Ibid.
- 4 “Indicators,” Palestinian Central Bureau of Statistics, http://www.pcbs.gov.ps/site/lang__en/881/default.aspx#Population.
- 5 For a discussion on the basic law, Israel: The Nation State of the Jewish People, see, Zaha Hassan, “Trump’s Plan for Israel and Palestine: One More Step Away From Peace,” Carnegie Endowment for International Peace, December 11, 2018, <https://carnegieendowment.org/2018/12/11/trump-s-plan-for-israel-and-palestine-one-more-step-away-from-peace-pub-77905>.
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- 9 “U.S. Envoy Haley Questions Palestinian Refugee Numbers,” Reuters, August 28, 2018, <https://www.reuters.com/article/us-usa-palestinians-un/u-s-envoy-haley-questions-palestinian-refugee-numbers-idUSKCN1LD2AA>.
- 10 UNRWA, “Frequently Asked Questions,” <https://www.unrwa.org/who-we-are/frequently-asked-questions>.
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- 13 National Archives and Records Administration, “Country of Origin Marking of Products From the West Bank and Gaza,” Federal Register, December 23, 2020, <https://www.federalregister.gov/documents/2020/12/23/2020-28547/country-of-origin-marking-of-products-from-the-west-bank-and-gaza>.

- 14 Yolande Knell, “Pompeo Makes Unprecedented Visits to Israeli Settlement in West Bank and Golan,” BBC News, November 19, 2020, <https://www.bbc.com/news/world-middle-east-54999008>.
- 15 Uri Blau, “Haaretz Investigation: U.S. Donors Gave Settlements More Than \$220 Million in Tax-exempt Funds Over Five Years,” *Haaretz*, December 7, 2015, <https://www.haaretz.com/haaretz-investigates-u-s-donors-to-israeli-settlements-1.5429739>.
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- 20 “Settlement Watch, Data: Population,” Peace Now, <https://peacenow.org.il/en/settlements-watch/settlements-data/population/>; and “Settlement Watch, Data: Jerusalem,” Peace Now, <https://peacenow.org.il/en/settlements-watch/settlements-data/jerusalem>.
- 21 There are 132 settlements in the West Bank and thirteen in East Jerusalem. See “Settlement Watch, Data: Population,” Peace Now, <https://peacenow.org.il/en/settlements-watch/settlements-data/population/>; and “Settlement Watch, Data: Jerusalem,” Peace Now, <https://peacenow.org.il/en/settlements-watch/settlements-data/jerusalem>. Israel withdrew from Gaza in 2005, relocating 9,000 settlers from twenty-one settlements. See “Gaza Disengagement—Special Envoy Periodic Report (Sept. 2005),” United Nations Information System on the Question of Palestine, September 22, 2005, [https://www.un.org/unispal/document/auto-insert-205164/#:~:text=Non%2DUN%20document-,Gaza%20disengagement%20%E2%80%93%20Special%20Envoy%20periodic%20report%20\(Sept.,2005\)%2FNon%2DUN%20document&text=The%20recent%20disengagement%20from%20the,swiftly%20and%20with%20minimal%20incident](https://www.un.org/unispal/document/auto-insert-205164/#:~:text=Non%2DUN%20document-,Gaza%20disengagement%20%E2%80%93%20Special%20Envoy%20periodic%20report%20(Sept.,2005)%2FNon%2DUN%20document&text=The%20recent%20disengagement%20from%20the,swiftly%20and%20with%20minimal%20incident;); and “Israel’s Disengagement From Gaza and Several West Bank Settlements,” Staff Trip Reports to the Senate Committee on Foreign Relations, October 2005, <https://www.govinfo.gov/content/pkg/CPRT-109SPRT23820/html/CPRT-109SPRT23820.htm>.
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