

Israeli Settlements Are Not the Obstacle To Peace

by Michael Curtis

Why are United Nations officials so oblivious to their own documents let alone to the truth? This appears to be the case with Nicolay Mladenov, the Bulgarian born UN Special Coordinator for the Middle East Process. He appears to be unaware of the crucial cornerstone document on the Process for a just and lasting peace..

This is the UN Security Council Resolution 242 of November 22, 1967. It stated the two principles that were necessary for peace in the Middle East. One was withdrawal of Israel armed forces from territories, though not all territories, occupied as a result of the 1967 Six Day War. The second was termination of all claims, and the right of every State in the area to live in peace within secure and recognized boundaries free from threats or acts of force. It said nothing about settlements. The call for negotiations to start was declared in UNSC Resolution 338 of October 22, 1973.

The forgetful Mladenov repeated the UN politically correct formula in a speech in Cairo on August 29, 2016. He was increasingly troubled by the “near daily advancement of the illegal settlement enterprise” in the “occupied West Bank, including East Jerusalem.” Interestingly, he did not speak of Israel’s right to live in peace, or the unceasing Palestinian aggression that prevents a peaceful resolution. Instead, his main concern was that “Israel’s systematic policy of expanding settlements designing land for exclusive Israeli use and preventing Palestinian social and economic development is destroying prospects for a viable Palestinian state.”

Everyone recognizes that the existence of Israeli settlements

is controversial, within Israel according to religious and political views of citizens, as well as in the international community. Indeed, Israeli Jews differ. According to recent public opinion polls, a plurality, 42% hold that they help the security of Israel, while 30 % disagree. The Dati (religious) adherents by 68% hold the first view most strongly, while only 31% of secular people believe this and 42 % think it hurts security. Politically, 62% of the right, 32% of the center, and 13% of the left, agree that settlements help security.

Though criticism of the existence and expansion of settlements is widespread and many international bodies regard them as "illegal," a number of points are relevant. The first is that settlements are not in themselves an obstacle, let alone the main obstacle to peace. Secondly they are not a violation of the 1949 Fourth Geneva Convention that forbids a state from "deporting or transferring" part of its own civilian population into the territory it occupies, since neither term is applicable to voluntary settlement. The Geneva Convention is not applicable to disputed territory.

Thirdly, honest, objective analysis would indicate that the main obstacle to peace, and to a Palestinian state is Palestinian intransigence and resort to violence. Fourthly, it is an international understanding that the settlement question is one of the issues to be resolved in the negotiations for a final status agreement. Already, Israel has shown its understanding of the issue by evacuating or dismantling settlements, 18 in the Sinai Peninsula in 1982, 21 in the Gaza Strip and 4 in the West Bank in 2005.

Fifthly, the very terminology is open to dispute. Since there has never been any internationally recognized legal sovereign in the West Bank before the 1967 War, it is arguable that the area is "disputed" territory, not "occupied" territory.

It is relevant that the League of Nations Mandate for Palestine of September 16, 1922 was instructed to favor the

establishment in Palestine of a national home for the Jewish people. Article 6 encourages close settlement by Jews on the land, including State lands and waste lands not required for public purposes. The only time that Jewish settlement was forbidden in the West Bank was during the period 1948-1967 when the area was under Jordanian rule.

The Charter of the United Nations, which replaced the League of Nations, implicitly upholds it. Article 80 states that nothing in the Charter should be construed in or of itself to alter in any way the terms of existing international instruments to which members of the United Nations may be parties.

Objective analysis should take account both of the different nature of the settlements and the various reasons for them. Following the 1967 Six Day War, the Israeli government authorized military settlements for security reasons. At that time the government was willing to return all captured territory with only minor modifications, but Arab states and Palestinians refused to negotiate. In September 1967 Kfar Etzion was set up, the first civilian settlement in the West Bank.

Later, Prime Minister Ehud Olmert in September 2008 proposed the creation of a Palestinian state and Israeli withdrawal from 94% of the West Bank. In November 2015 Mahmoud Abbas, President of the Palestinian Authority confirmed he had rejected the proposal.

At present there are 330,000 settlers in the West Bank, 200,000 in east Jerusalem, and 20,000 in the Golan Heights. They live in 314 authorized settlements and in 102 unauthorized settlements.

First, they are composed of cities, such as Beitar Illit and Ma'ale Adumim, suburbs, block settlements, such as Gush Etzion, and Hebron, military outposts, and small religious

outposts. Secondly the reasons vary. Some settlers returned to their previous homes. Some saw the outposts as early warning system: some saw settlements as demonstration of Jewish historic national and religious connection with the land; some settled for economic reasons; some were religious groups fulfilling God's plan for history.

The Israel Supreme Court has declared that the fundamental principles of international law are incorporated in the legal system of Israel. On that basis, and affirming that the Israeli presence in the West Bank is not an "occupation," it supervises settlement activity, and upholds the distinction between authorized settlements that it considers legal and consistent with international law, and unauthorized settlements.

On a number of occasions the Court has ruled that settlements cannot be built on Palestinian private lands. In 2011 it ordered the razing of Migron, the largest hilltop outpost with 50 families, because it had been built on Palestinian land. Similarly, in December 2014 it ordered the destruction of Amona that had been set up in the West Bank in 1995 as an unauthorized outpost without government permission and built on private land.

On September 1, 2016 the Court ordered 17 unauthorized homes in the Derech Ha'avot outpost of 40 families in the West Bank be removed. The Court held they were built illegally, were not authorized as an outpost and were built without permission. It is important to note that the Israeli government has respected the court's rulings.

This has not been easy. West Bank settlers are far more religious and Orthodox than other Jews. The Orthodox are less likely than other Israeli Jews to believe the Palestinian leadership is sincere in its efforts for peace, while they are more likely than other Jews to believe the Israeli government is making a sincere effort to reach peace.

It is futile for international organizations and critics of Israel to continue to insist that the settlements are the obstacle to peace. The settlement issue, like all the other disputed issues can only be resolved by peaceful negotiations. The U.S. administration should seek to induce the Palestinian leadership to come to the negotiating table.