Settlers-rights and/or wrongs-another look

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Update#2: The Obama administration attacked Israel on Friday Sept. 4,2009 for giving the green light to the building of hundreds of new homes in the occupied West Bank even as the two sides negotiate a freeze on settlement construction.

Update: A new settlement is scheduled to be built in the Jordan Valley, for the first time in 26 years. To be called Maskiot, it will be established on the ruins of a settlement abandoned years ago.

At the same time we are seeing this: Four years ago, as part of the expulsion from Gush Katif, there were four communities in northern Samaria that were demolished as well. One of those was Homesh.

Last week, in a demonstration approved by the IDF, 1,500 people returned to the site of Homesh; they are working towards the re-building of the community.[7]

While this is going on, President Obama announced (yesterday) that Israel must stop building settlements and the media rejoiced in this news as they flooded their sites with the report. Israel has yet to respond-actually, its silence is a response.

It is interesting how one uses the term "settlers" and/or settlements. Seems that at one time or another every part of this world was "settled" by humans. In what is now the USA our first "settlers" arrived from Asia-so say the scientists. Moving along in history we realize that our country was also comprised of Native American peoples-they settled everywhere in North America.

There were hundreds of different American Indian tribes. **Each tribe had its own Territory.** Tribes had different languages and customs, too. They also had land and territory battles, not much different than today's human beings. If we examine the history of the USA settlers you discover:

In 1492, Genoese explorer Christopher Columbus, under contract to the Spanish crown, reached several Caribbean islands, making first contact with the indigenous population. 1

 In the early 1500's French fur traders established outposts of New France around the Great Lakes; France eventually claimed much of the North American interior as far south as the Gulf of Mexico.

 The first successful English settlements were the Virginia Colony in Jamestown in 1607 and the Pilgrims' Plymouth Colony in 1620. The 1628 chartering of the

Massachusetts Bay Colony resulted in a wave of migration; by 1634, New England had been settled by some 10,000 Puritans. Between the late 1610s and the American Revolution, an estimated 50,000 convicts were shipped to
England's, and later Great Britain's, American colonies.2

 Americans went West and "settled" what is now known as the land west of the Mississippi. This was at the expense of our North American Americans.

 This was followed by: The Louisiana Purchase; a series of U.S. military incursions into Florida led Spain to cede it and other Gulf Coast territory in 1819;
The country annexed the Republic of Texas in 1845.

 The concept of Manifest Destiny was popularized during this time.3

The 1846 Oregon Treaty with Britain led to U.S. control of the present-day American Northwest; followed by the U.S. victory in the Mexican-American War resulted in the 1848 cession of California and much of the present-day American Southwest.
Yes, peoples arrived, fought, worked together, settled if you will over a long period. The new USA government who encouraged their citizens to "Go West young man, go west" sponsored much of the Western development. We are not alone in this kind of history. As you study history and examine the modern world you find there has been and is currently a shifting of populations (in the millions) around our planet.
It almost seems that it is man's nature to do so.

However the term "settler" takes on a different meaning given the historical moment and/or geographical location of people today-take for example Israel. Our current political situation and how people and organizations choose to portray those who are "settlers" adds new meaning to the term. **It seems that a new standard has been developed to describe Israeli settlers.** Simply stated there have been two types of settlers here: those who came prior to 1967 to create the state of Israel and those who were asked by the Israeli government after 1967 to inhabit the disputed territories of Judea and Samaria. **Neither group was received with open arms nor was either group supported and endorsed by the entire international community-to this day**.

Mention the words "settler or settlements" here in Israel and you will definitely spark some kind of reaction. So much has been written about them why address the topic now? We have an entire new generation of young people who may or may not understand the concerns imbedded within these words. Once again politicians on all sides are using the terms to promote their agenda. Policy decisions that may influence millions of peoples' lives are based upon revisionist history, intentionally distorted facts and ignorance. Therefore, the continuous need to set the record, as we believe it to be.

Who and what are we discussing? **Settlers are Israeli citizens choosing to live inside the disputed territories of Judea and Samaria (J&S).** We no longer live in the other disputed territory known as Gaza. Israel, founded and recognized as a legal country in

1948, has engaged in multiple wars since its inception. Jordan illegally "annexed" J&S shortly thereafter and held control until we defeated them during the 6-DayWar in 1967.

There are two conceptual bases for territory entitlement: biblical or international law. Yes, of course, use of force is a third method for countries to secure more land-this is not what I am addressing in this paper. Let us focus upon International law as it attempts to sort out what happened after June 10,1967. Israel had seized the Gaza Strip, the Sinai Peninsula, the West Bank of the Jordan River (including East Jerusalem), and the Golan Heights. The Arab nations were beaten in just 6 days. So what happened "on the ground" in these areas?

 Jerusalem city borders were "expanded" to include the "old City". Residents could choose between Israeli citizenship or permanent residence (allowing individuals to retain Jordanian citizenship)
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 The Sinai, Gaza Strip, and West Bank were put under Israeli military occupation-they were not offered citizenship but were granted work permits.

 Israel left Sinai beginning in 1978, took many years to conclude this process and the Sinai returned to the country that attacked us-Egypt.
 In 1980, the Knesset passed the Jerusalem Law making it the eternal and indivisible capitol of Israel.

 The Golan Heights Law passed in 1981 granted permanent residence, citizenship, and ID cards to the residents. The GH was not annexed by Israel.

 August 2005, Israel left Gaza by forcibly evacuating all Israeli settlements. Four sites in the "West Bank" were also evacuated by Israel.

Post 6-Day War, International Law in the form of UN 242 was generated by the United Nations. This resolution, although only a Chapter VI Security Council document, has been the basis for both sides of a 51-year debate. Note the language:
1. *Affirms* that the fulfillment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:
(i) Withdrawal of Israel armed forces **from territories occupied in the recent conflict**;
(ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;
2. *Affirms further* the necessity
(a) For guaranteeing freedom of navigation through international waterways in the area;
(b) For achieving **a just settlement of the refugee problem;**

We argue that “from territories occupied” does not mean ALL of the territory enabling us to retain some of the land. The other side does not agree - of course not. We also argue that “a just settlement of the refugee problem” means to also include the 800,000 Jews who were dismissed from the Arab countries in which they resided. Furthermore, note that neither mention nor identification of “Palestinian People” is provided in this UN resolution.

As to be expected this resolved nothing. It did however precede another war by the Arabs in 1973 on Yom Kippur, the highest religious day in the Jewish calendar. Yet another UN resolution, this time 338. Over the next 20 years Israeli’s enemies would attempt to generate more “law” against these so-called settlements, e.g., Resolutions 446,452,465,471 to identify but a few. One should be aware that these resolutions were made under Chapter VI of the United Nations Charter, which relates to the "Pacific Settlement of Disputes" between parties, and as such have no enforcement mechanisms and are generally considered to have no binding force under international law.4
Allow me to be blunt and to the point. If you choose to use International Law as the standard upon which you determine Israel or the Palestinians innocent or guilty, be advised:

 Arabs and Jews lived in this disputed land (before sovereign states were organized) for many, many years-immigration of Jews from around the world began in earnest in the late 1890’s and early 1900’s

 In May 1948, Israel declared itself a nation and was so recognized. However Arabs living within Israel chose to leave or flee-some decided to stay when multiple Arab nations attacked Israel. These Arabs were part of clans (they had no nationality)-they dispersed to a variety of Arab countries-many ended up in Jordan (Transjordan). Most of these Arabs were not granted citizenship in the Arab countries to which they fled-a notable exception was Jordan. The Arabs who remained in Israel were granted Israel citizenship-they and they children have all the same rights, as do other Israeli citizens.

 Judea and Samaria (West Bank) was an area of land belonging **to no one** after 1948. However, the newly formed country of Jordan (Transjordan) annexed (illegally) this area and East Jerusalem from 1950-1967

 After the 6-day war in June 1967, UN 242 began the first of many UN resolutions to try to resolve the aftermath of this event. So began the use of “International Law” to justify positions. To use these as evidence of International law is a stretch. These Resolutions, for the most part, came from Chapter 6 of the United Nations charter. Translation: these are advisory in nature and have no “legal” standing in the international community

In perspective
For thousands of years people settled here in the Israeli area. At the very beginning of the 20th Century immigration of Jews from around the world brought even more people

settling the land. Although no sovereign borders existed, the primary European powers, England and France, controlled the area after the fall of the Turkish Empire. The International community, in conjunction with England, created the country of Israel. This was disputed then and to this day by our Arab neighbors. Another state for Arabs was proposed at the same time, but the Arabs decided no thank you. Both sides of this argument offer historical and biblical evidence that each is entitled to the land. Well, herein lies the rub!

So, do you rely upon historical/biblical data or International law to determine what land belongs to whom? The truth of humankind prior to these dates is the stronger party usually took the land and held onto it as long as possible. It is only as we moved into the 20th century did mankind attempt to "civilize" these war transgressions. From the League of Nations to the Geneva Convention to the UN and its resolutions, we have done our best to develop a system of equality for all. The basic assumption that this will work is that all people have the same human beliefs and desire to enact agreed upon laws-we know differently.

The unspoken truth in today's politically correct world is that possession is still nine tenths of the law. Thus Israel finds itself in June of 1967,having been attacked by multiple Arab countries, with newly acquired land, in need of protecting itself. **We began a project to create an outer band of community protection-we asked our citizens to move to Judea and Samaria**. This was not a new phenomenon, so many others engaged in the same practice over the past 2,000 years.

"Since the 1967 Arab - Israel War, successive Israeli governments have promoted the settlement (colonization) of the West Bank and Gaza Strip by Israeli citizens. By 2007, there were in excess of 250,000 settlers residing in a number of villages and townships throughout those areas and at least the same number in the suburbs of east Jerusalem. "The first phase in West Bank settlement activity took place under the Labor governments that remained in power until 1977. Known as the Allon Plan, after its initiator Deputy Prime Minister Yigal Allon, the settlement blueprint was a minimalist one aimed at constructing a line of agricultural settlements along the new eastern border in the Jordan valley. **This was part of a concept that assumed that civilian settlements contributed to the defensive posture of the country and that it was necessary to ensure defensible borders between Israel and Jordan.** The Allon Plan also proposed the establishment of additional settlements around Jerusalem and in close proximity to the Green Line border as a means of ensuring future territorial changes in favor of Israel. The rest of the West Bank region was deemed unsuitable for settlement because of the dense concentration of Palestinian population, unlike the Jordan valley, which was sparsely populated. Allon envisaged a situation in which the rest of the West Bank would eventually be part of an autonomous area under Jordanian administration and linked to the Kingdom of Jordan by means of a territorial corridor running from Ramallah via Jericho (the only major Palestinian population center in the Jordan Valley) to the border crossings on the Jordan River."5

Changes after yet another Arab Attack in 1973

The Israeli government encouraged and assisted Israeli citizens to move to the territory know as Judea or Samaria. This was done for the greater good of Israel and not unlike those who traveled to Israel some 20-30 years earlier to help create a new Jewish state, these citizens eagerly took on the challenge. Also gone unspoken all these years is the sense of "security" those citizens living inside Israel proper really began to feel. However, this sense began to shift after the Yom Kippur attack in 1973. Israelis, once again victorious, realized their need for an outer security perimeter.

"Following the Arab - Israel War of October 1973, a new religious nationalist movement, Gush Emunim ("Bloc of the Faithful"), was established with the objective of promoting settlement throughout the West Bank and Gaza. They saw this as a means of extending Israeli control over the whole of the historic Greater Israel ("Eretz Yisrael ha-Shelemah").

They criticized the Allon plan for being minimalist and too compromising in its territorial claims. Their settlement blueprint was rejected by the Rabin government of the time, but was later accepted in 1977 following the rise to power of Israel's first right-wing Likud government under the leadership of Menachem Begin."6

Curiously these new communities, several of city size, retained the term settlements and those Israeli citizens courageous enough to move to them were forever more called settlers. Once this "settlement movement" moved from secular to religious and secular the terms were retained for political reasons. In the 1980's this movement took off-all restrictions and planning regulations were lifted. This allowed suburban communities to be formed apart from the agricultural and socially controlled smaller communities. Advertisements for proximity to Tel Aviv and Jerusalem Israelis indicated that Israelis were now able to build detached houses on large land plots which they received at a low cost and, at the same time, retain their places of employment in the Tel Aviv and Jerusalem metropolitan centers. During the 1980s and 1990s, the road and transportation infrastructure linking Israel to the West Bank was improved, thus enhancing the appeal of the region for many Israelis who were attracted to settle there for economic rather than ideological or political reasons. This was all done with the good wishes of our government. Of course, our enemies did not see it this way and more trouble began.

This is not a treatise any singular event, person, situation or circumstance. Rather, my intention is to suggest that up to a certain historical timeline, even the Israeli government promoted the development of communities on land it felt it was entitled to build. It is also quite accurate to indicate that certain Israelis, public and private figures all did not agree with this expansion. The arguments continue to this day.

However, for a multitude of reasons, beyond the scope of this piece, I am in support of much of the community building. Based upon historical/biblical facts coupled with careful analysis of the International laws being used to justify our actions, I conclude that we are entitled to some of this disputed territory. There is an urgent need to resolve the problems and continuing to use the same strategies will not work. Perhaps this is precisely what the leaders want. As a citizen, I say let's try another way. Furthermore I suggest we stop referring to Israeli citizens living in these disputed territories as settlers-

the description no longer fits. The truth is they are Israeli citizens who choose to be residents in the disputed territories. To continue using the term “settler” is clearly an attempt to separate them from Israeli proper-it represents a particular political agenda. Finally, in the name of fairness and equity, we do not call new Arabs to this area “settlers” so the same courtesy should be afforded our own citizens.

Obama’s fallacies: It is President Obama and his team of ME “experts” who have ramped up the “settlement issue”. He began the arguments even before becoming President-from a political point of view it was a “winning tactic” initially. Remember, some 8-12 months ago he was considered above reproach and no one vetted his statements and the media supported most everything he said and then they both admonished those of us who dared criticize the messiah. To strike favor with the Arab world and the entire Muslim world he found a message that resonated throughout their communities-identify a root cause for the ME problems, make sure that a chorus of collegial international leaders and peace groups sang the same refrain over and over again and place all blame upon Israel. This was the CHANGE Obama promised and he was initially rewarded by the international community. The Israeli leadership did not see this tactic coming and then they were slow to respond. To this day the Israeli government has chosen the incorrect PR strategies thus enabling the message to continue to resonate in the entire international community. The result is “successful” political pressure and therefore poor Israeli policy.

However, Obama et al are incorrect and morally wrong with their approach. “President Obama defines "settlements" as the root cause of Arab hostility toward the Jewish State. However, the Arab-Palestinian offensive against the Jewish State was not ignited by "settlements." In fact, "settlements" were established in Judea and Samaria after the wars of 1967, 1956 and 1948, after the sustained 1949-1967 campaign of Arab terrorism, after the 1964 establishment of the PLO, after the 1929 slaughter of the Hebron Jewish community and the 1929 expulsion of the Gaza Jewish community, after the 1920s, 1930s and 1940s slaughter of the Jewish community of Gush Etzion, etc. But, Obama regards "settlements" as a critical obstacle to peace….”[8]

Let us assume you are not moved by these facts, simple truths. Examine Obama’s logical thinking process-it is also faulty beyond reproach. For example: “President Obama considers the 300,000 Jews (17%), who reside among Judea and Samaria's 1.5 million Arabs, an obstacle to peace. **Why would he, then, view the 1.4 million Arabs (20%), who reside among pre-1967 Israel's 6 million Jews, as an example of peaceful coexistence?!**

Obama urges the uprooting of Jewish communities from Judea and Samaria, in order to supposedly advance peace and human rights. **Would he, therefore, urge the uprooting of Arab communities from pre-1967 Israel?!”**[8]

One can see the convoluted thinking demonstrated within Obama’s arguments. He has “hung his proverbial persuasion argument” on, at best, a specious set of statements. I for

one question both his so-called intellect and those "thinkers" he has chosen as his "experts". Do we really believe these kinds of beliefs are good for our security-how faulty are their other justifications for actions taken and to be taken? Obama's own words and actions bring into question his real understanding and knowledge of the ME. Again Ettinger offers: "Since Obama tolerates Arab opposition to any Jewish presence in Judea and Samaria – even under Arab rule - would he tolerate Jewish opposition to any Arab presence in pre-1967 Israel?! While any attempt by Jews to reside in Palestinian Authority-controlled areas would trigger a lynching attempt, Arabs have peacefully resided within Israeli-controlled areas in Judea and Samaria and in pre-1967 Israel. Does such a reality alert President Obama to the nature of Arab intentions and the real obstacle to peace?! But, Obama regards "settlements" as a critical obstacle to peace…."[8]

Finally, is it not fair to ask, shouldn't Obama demand a similar freeze of Palestinian construction in Judea and Samaria, which is 30 times larger than Jewish construction?! It is also time to change the lexicon. The truth is we are talking about Israeli citizens who chose to live in the disputed territories of Judea and Samaria!!

Summary

It is past time to live cooperatively here in the region surrounding Israel. All sides have justifications for the use of this land. Let's redesign what "winning and loosing is" in this conflict. I disagree that we need outside intervention to resolve our arguments; rather I suggest that all outsiders retreat for 6 months. At the same time, a group of leaders from Israel and Fatah commit to solving this by starting all over again-no pre-conditions are in place. Next, agree to use International Law to determine the land entities while using historical/biblical information for best-case boundaries. An expansion on this subject will appear in my next paper on this subject. May creative thinkers feel free to share their ideas-think outside the box.

End Notes

1. Wikipedia-Settlers of North America
2. "British Convicts Shipped to American Colonies". *American Historical Review 2*. Smithsonian Institution, National Museum of Natural History (October 1896). Retrieved on 2007-06-21.
3. Morrison, Michael A. (1999). *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War*. Chapel Hill: University of North Carolina Press, pp. 13–21. ISBN 0807847968.
4.From Wikipedia: **No binding force under international law**
o "Some analysts have pointed out that Security Council resolutions condemning or criticizing Israel have been passed under Chapter VI of the U.N. Charter, which are different from the Chapter VII resolutions against Iraq." Ayoob, Mohammad. "The war against Iraq: normative and strategic implications", in Robinson, Mary & Weiss, Thomas G. & Crahan, Margaret E. & Goering, John (eds). *Wars on Terrorism and Iraq: human rights, unilateralism, and U.S. foreign policy*, Routledge (UK), May 1, 2004, p. 164.

o "Additionally it may be noted that the Security Council cannot adopt binding decisions under Chapter VI of the Charter." De Hoogh, Andre. *Obligations Erga Omnes and International Crimes*, Martinus Nijhoff Publishers, Jan 1, 1996, p. 371.
o "Council recommendations under Chapter VI are generally accepted as not being legally binding." Magliveras, Konstantinos D. *Exclusion from Participation in International Organisations*, Martinus Nijhoff Publishers, Jan 1, 1999, p. 113.
o "Within the framework of Chapter VI the SC has at its disposal an 'escalation ladder' composed of several 'rungs' of wielding influence on the conflicting parties in order to move them toward a pacific solution... however, the pressure exerted by the Council in the context of this Chapter is restricted to non-binding recommendations." Neuhold, Hanspeter. "The United Nations System for the Peaceful Settlement of International Disputes", in Cede, Franz & Sucharipa-Behrmann, Lilly. *The United Nations*, Martinus Nijhoff Publishers, Jan 1, 2001, p. 66.
o "The responsibility of the Council with regard to international peace and security is specified in Chapters VI and VII. Chapter VI, entitled 'Pacific Settlements of Disputes', provides for action by the Council in case of international disputes or situations which do not (yet) post a threat to international peace and security. Herein its powers generally confined to making recommendations, the Council can generally not issue binding decisions under Chapter VI." Schweigman, David. *The Authority of the Security Council Under Chapter VII of the UN Charter*, Martinus Nijhoff Publishers, Jan 1, 2001, p. 33.
o "Under Chapter VI, the Security Council may only make recommendations but not binding decisions on United Nations members". Wallace-Bruce, Nii Lante. *The Settlement of International Disputes*, Martinus Nijhoff Publishers, Jan 1, 1998, pp. 47-48.
o "First, it may issue non-binding resolutions under Chapter VI of the Charter expressing its opinion on the abuses and their resolution." Mertus, Julie. *The United Nations And Human Rights: A Guide For A New Era*, Routledge, 2005, ISBN 0415343380, p. 120.
o "Under Chapter VI the Security Council can only make non-binding recommendations. However, if the Security Council determines that the continuance of the dispute constitutes a threat to the peace, or that the situation involves a breach of the peace or act of aggression it can take action under Chapter VII of the Charter. Chapter VII gives the Security Council the power to make decisions which are binding on member states, once it has determined the existence of a threat to the peace, breach of the peace, or act of aggression." Hillier, Timothy, Taylor & Francis Group. *Sourcebook on Public International Law*, Cavendish Publishing, ISBN 1843143801, 1998, p. 568.
o "Nor is the disenchanting performance due to the fact that under Chapter VI the SC may only address non-binding resolutions to the conflicting parties." Cede, Franz, and Sucharipa-Behrmann, Lilly. *The United Nations: Law and Practice*, Martinus Nijhoff Publishers, 2001, ISBN 9041115633, p. 70.
o "This clause does *not* apply to decisions under Chapter VII (including the use of armed force), which are binding on all member states (unlike those adopted

under Chapter VI which are of a non-binding nature)." K□chler, Hans. *The Concept of Humanitarian Intervention in the Context of Modern Power*, International Progress Organization, 2001, ISBN 3900704201, p. 21.
o "The impact of these flaws inherent to Resolution 731 (1992) was softened by the fact that it was a non-binding resolution in terms of Chapter VI of the Charter. Consquently Libya was not bound to give effect to it. However, the situation was different with respect to Resolution 748 of 31 March 1992, as it was adopted under Chapter VII of the Charter." De Wet, Erika, "The Security Council as a Law Maker: The Adopion of (Quasi)-Judicial Decisions", in Wolfrum, R□diger and R□ben, Volker. *Developments of International Law in Treaty Making*, Springer, 2005, ISBN 3540252991, p. 203.
o "There are two limitations on the Security Council when it is acting under Chapter VI. Firstly, recommendations of the Council under Chapter VI are not binding on states." Werksman, Jacob. *Greening International Institutions*, Earthscan, 1996, ISBN 1853832448, p. 14.
o "Chapter VI exhorts members to settle such claims peacefully and submit them for mediation and arbitration to the United Nations. Chapter VI, however, is not binding - in other owrds, there is no power to compel states to submit their disputes for arbitration or mediation by the United Nations." Matthews, Ken. *The Gulf Conflict and International Relations*, Routledge, 1993, ISBN 041507519X, p. 130.
o "One final point must be noted in connection with Chapter VI, and that is that the powers of the Security Council are to make "recommendations." These are not binding on the states to whom they are addressed, for Article 25 relates only to "decisions." Philippe Sands, Pierre Klein, D. W. Bowett. *Bowett's Law of International Institutions*, Sweet & Maxwell, 2001, ISBN 042153690X, p. 46.
o "Article 2, para. 6, must be linked, first of all, to the use of these kinds of pressure that have no mandatory effect. Both the General Assembly and the Council have the power to make recommendations to the States, that is, resolutions that do not bind the States (see section 89)). Worthy of mention from this point of view are the provisions of Article 11, para. 2 ("The General Assembly may discuss any questions relating to the maintenance of international peace and security... and... may make recommendations with regard to any such question to the State or States concerned") and the various provisions of Chapter VI, particularly Article 33, para. 2, Article 36, and Article 37, para. 2, which give the Security Council the power to recommend settlement of disputes likely to endanger the peace." Conforti, Benedetto. *The Law and Practice of the United Nations*, Martinus Nijhoff Publishers, 2005, ISBN 9004143084, p. 127.
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6. Newman, David. "The Evolution of a Political Landscape: Geographical and Territorial Implications of Jewish Colonization in the West Bank." *Middle Eastern Studies* 21, no. 2 (1985), 192 - 205.
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8. But, Settlements Obstruct Peace…Yoram Ettinger, Ynet, June 14, 2009