

Israel's Tragedy Foretold By GERSHOM GORENBERG

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WITH Israel's national election approaching, each day's news emphasizes a clear political shift: the settlement enterprise has lost the support of the country's mainstream voters.

Acting Prime Minister Ehud Olmert, the front-runner in the March 28 vote, plans to evacuate more West Bank settlements unilaterally, a top figure in his party said this week. Mr. Olmert himself announced he would stop decades of investment in infrastructure for settlements. Those promises reflect a change not only in Mr. Olmert, a lifelong rightist, but in the electorate. Polls show that a strong majority supports parties ready to part with settlements.

The pattern is a familiar one from other countries. An endeavor once considered the epitome of patriotism leads to a quagmire. Sobriety and sadness replace euphoria. Arguments that once turned dissidents into pariahs now seem obvious: in this case, that to keep the West Bank will require Israel either to cease being democratic or to cease being a Jewish state. Not only settlers but national leaders have eroded the rule of law in pursuit of what they considered a patriotic goal.

As an Israeli who has pored over the documentary record of the settlement project, I know there is one more painful, familiar element to this story: the warnings were there from the start and were ignored, kept secret or explained away. Leaders deceived not only the country's citizens, but themselves. So begin national tragedies.

Here is one critical example. In early September 1967, Prime Minister Levi Eshkol was considering granting the first approval for settlements in the West Bank and Golan Heights, conquered three months earlier in the Six-Day War. An Arab summit meeting in Khartoum had rejected peacemaking. The prime minister believed that the Golan and the strip of land along the Jordan River would make Israel more defensible. He also wanted to re-establish the kibbutz of Kfar Etzion near Bethlehem, which had been lost in Israel's 1948 war of independence.

The legal counsel of the Foreign Ministry, Theodor Meron, was asked whether international law allowed settlement in the newly conquered land. In a memo marked "Top Secret," Mr. Meron wrote unequivocally, "My conclusion is that civilian settlement in the administered territories contravenes the explicit provisions of the Fourth Geneva Convention."

In the detailed opinion that accompanied that note, Mr. Meron explained that the Convention ? to which Israel was a signatory ? forbade an occupying power from moving part of its population to occupied territory. The Golan, taken from Syria, was "undoubtedly 'occupied territory,' " he wrote.

Mr. Meron took note of Israel's diplomatic argument that the West Bank was not "normal" occupied territory, because the land's status was uncertain. The prewar border with Jordan had been a mere armistice line, and Jordan had annexed the West Bank unilaterally.

But he rejected that argument for two reasons. The first was diplomatic: the international community would not accept it and would regard settlement as showing "intent to annex the West Bank to Israel." The second was legal, he wrote: "In truth, certain Israeli actions are inconsistent with the claim that the West Bank is not occupied territory." For instance, he noted, a military decree issued on the third day of the war in June said that military courts must apply the Geneva Conventions in the West Bank.

There is a subtext here. In treating the West Bank as occupied, Israel may simply have been recognizing legal reality. But doing so had practical import: if the land was occupied, the Arabs who lived there did not have to be integrated into the Israeli polity ? in contrast to Arabs within Israel, who were citizens.

Eshkol and other Israeli leaders knew that granting citizenship to the Arabs of the West Bank and Gaza Strip would quickly turn Israel into a binational state. In effect, the Meron memo told Eshkol: you cannot have it both ways. If the West Bank was "occupied" for the Arab population, then neither international law nor Israel's democratic norms permitted settling Jews there.

The memo did note, however, that settlement was permissible if done "by military bodies rather than civilian ones" in bases that were clearly temporary. A week after receiving the memo, Eshkol informed the cabinet that Kfar Etzion would be re-established ? through a branch of the army called Nahal, which created paramilitary outposts. By the end of September, settlers arrived at Kfar Etzion. Publicly they were described as "Nahal soldiers." In fact, they were civilians. The ruse acknowledged Mr. Meron's opinion. It also showed a sadly mistaken confidence that the legal, ethical and diplomatic difficulties of settlement could somehow be avoided.

Mr. Meron, it is worth noting, left Israel's foreign service a decade later to teach at New York University. A child survivor of the Holocaust, he became one of the world's leading experts on the laws of war ? and more recently, a judge on the International Criminal Tribunal for the Former Yugoslavia.

Meanwhile, it did not take long before explicitly civilian settlements were established in land occupied in 1967. Israel's diplomats and supporters reverted to the argument Mr. Meron discounted ? that the Geneva rules on occupied territory did not apply to the West Bank. Those who still use that argument are unaware of the secret Israeli legal opinion that preceded settlement.

Today a quarter-million Israelis live in the West Bank. Legal arguments cannot undo 38 years of settlement-building. And the ascent of Hamas in Palestinian politics has only made it more difficult to reach diplomatic agreement on the West Bank's future.

Yet along with international law, Israeli law was repeatedly bent or broken to allow settlement to proceed. The contradiction between keeping Palestinians under military occupation while settlers enjoy the rights of Israeli citizens has become glaring, even to the Israeli center-right. Hence the shift in Israeli politics.

Today it is clear that Israel's future as a Jewish state depends on ending its rule of the West Bank. Settlements have shackled Israel rather than served it. Thirty-eight years after the missed warning, we must find a way to untie the entanglement.