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Settlement Monitor

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SETTLEMENT MONITOR

Edited by Geoffrey Aronson

This section covers items—reprinted articles, statistics, and maps—pertaining to Israeli settlement activities in the Gaza Strip and the West Bank, including East Jerusalem, and the Golan Heights. Unless otherwise stated, the items have been written by Geoffrey Aronson for this section or drawn from material written by him for Report on Israeli Settlement in the Occupied Territories (hereinafter Settlement Report), a Washington-based bimonthly newsletter published by the Foundation for Middle East Peace. JPS is grateful to the foundation for permission to draw on its material.

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THE SETTLEMENT FREEZE AND ITS ANTECEDENTS

SETTLEMENT FREEZE REDUX (EXCERPTS)

From Settlement Report, May-June 2009.

Israel’s ever-expanding network of civilian settlements in the occupied territories is viewed by its partisans and opponents alike as the most significant obstacle to the creation of a viable, sovereign Palestinian state. Palestinian Authority (PA) chairman Mahmud Abbas is conditioning a renewal of discussions with Israel on an Israeli commitment to freeze all settlement, echoing a demand originally made in 1992 during the pre-Oslo Washington talks. . . .

Yet, for more than three decades, on-again off-again promotion of a settlement freeze by the United States has failed to slow settlement expansion, thereby undermining the credibility of U.S. diplomacy. More often than not, attempts to establish a freeze resulted in U.S. support for settlement expansion, most notably the Clinton administration’s endorsement of the “nat-

ural growth” of settlements. Settlements must be evacuated as part of a final status plan that establishes Palestinian sovereignty and enhances Israeli security, but to do so will require a degree of commitment—not to a freeze in settlements but to their removal—that neither Israel nor the international community has yet been able or willing to muster.

The administration of Pres. Barack Obama is considering resurrecting the freeze idea as a key element of its policy. Israeli prime minister Benjamin Netanyahu has signaled his opposition, noting that “if Israelis cannot build houses in the West Bank, Palestinians do not need to build either.”

U.S. officials believe that despite the failure of all previous attempts to freeze settlements, the idea still has merit. But achieving the goal of peace and security for both Israelis and Palestinians requires a strategy rooted in historical experience and the vital requirements of both peoples. A settlement freeze falls short of this standard. Settlement evacuation, not a freeze, is a more credible and necessary objective, more closely attuned to the essential long-term

interests of both parties and firmly rooted in past Israeli practice, most recently in Gaza. Placing a freeze at the center of a U.S. diplomatic effort that calls for confidence-building measures from all parties invites failure and risks eroding the credibility of a much-anticipated U.S. effort to end the conflict. The only context in which a freeze could be implemented is as a consequence of an Israeli decision to remove settlements and the Israeli army from occupied territory. The history of the last forty years suggests that if Israel makes such a momentous decision, freezing settlements becomes moot. . . .

Evacuation, Not a Freeze

It is important to recognize that, as Haydar 'Abd al-Shafi warned in 1992, not only was the credibility of the Oslo process undermined by the working assumption of the United States and Israel that peace and settlement expansion were compatible, but it also suffered because Israel refused to meet even modest U.S. benchmarks regarding settlement expansion and removal of new settlements, and it received no penalty for its failure to do so.

The re-creation of a diplomatic process based in part on an Israeli commitment to a freeze would be undermined if Israel failed to comply. Moreover, Israelis may well believe that a renewed U.S. initiative that centers on a freeze can, like all previous efforts, be exploited to consolidate settlements and the occupation rather than progress toward an agreement requiring settlement evacuation. Were Israel to engage Washington in negotiations on the parameters of a freeze, it could signify a prescription for stalemate rather than an expression of goodwill.

The Begin-Carter Settlement Freeze

The freeze idea was born at a time when settlement expansion was in its infancy. Israel had occupied the West Bank for hardly a decade, and with the exception of East Jerusalem, settlements claimed only small numbers of inhabitants; most had yet to shed an air of impermanence. There were less than 5,000 Israelis living in less than 30 West Bank settlements. The settler population in East Jerusalem numbered 50,000. Administration of all settlement-related activities in the West Bank and Gaza Strip was largely controlled by the Israel Defense Forces (IDF), and the integration of settlements and settlers into the routine bureaucratic life of Israel's civilian ministries was still some years off. In this era, marked by the elec-

tion of Menachem Begin in 1977, there was a legitimate basis to view a cessation of settlement as a confidence-building measure.

In a letter to Pres. Jimmy Carter delivered after the September 1977 Camp David summit, Begin offered a three-month moratorium on establishing new settlements rather than the longer moratorium preferred by Washington. Restrictions on the expansion of existing settlements had been dropped at Israel's insistence. On the face of it, Begin's agreement to halt new settlement creation for even three months was a bold and surprising concession. Yet, and not for the last time, Israel's commitment to a moratorium did not constrain settlement but rather established categories of expansion implicitly endorsed by Washington. The temporary moratorium on new settlements notwithstanding, the Begin government continued to "thicken" and "strengthen" settlements, at times establishing new sites kilometers away from existing colonies during the three-month period. Carter administration officials were frustrated by Israel's actions, but acquiesced.

In contrast to Begin's agreement to the partial, temporary, and ineffective restrictions on Israeli settlement actions in the West Bank and Gaza—East Jerusalem was excluded implicitly—the peace treaty with Egypt signified a strategic Israeli decision to trade territory for new security mechanisms that required Israel's evacuation of all settlements in territory returned to Egyptian sovereignty. Only in the context of an Israeli decision to withdraw from Egyptian territory was it possible for Israel, through its complete evacuation of the Sinai Peninsula, to adopt and enforce an effective halt to settlement expansion. Indeed Israeli settlement activity in Sinai *increased* in the months before evacuation until the IDF forcibly removed the Sinai settlers. Settlement activity undertaken within the strategic context of imminent evacuation proved to be irrelevant.

Baker-Bush I

The emigration of Jews to Israel after the implosion of the Soviet Union, and the Madrid diplomatic process that followed the 1991 U.S. victory in the Gulf War, returned the issue of a settlement freeze to the U.S.-Israeli diplomatic agenda. The freeze idea was raised by Pres. George H. W. Bush without success in the context of a U.S. agreement to provide loan guarantees to Israel during the 1990-92 period.

The idea was also prominent among the confidence-building measures sought by Palestinians before and after the Madrid conference. In neither context was the concept incorporated into subsequent agreements, nor did its appearance as an issue on the negotiating and bilateral Israeli-U.S. agenda prove an effective instrument for formally or informally constraining settlement expansion.

The Bush administration called on Israel to stop construction in new or existing settlements with increasing frequency after the beginning of Secretary of State James Baker's diplomatic initiative in March 1991. Presaging ideas currently being considered by the Obama administration, Baker at one point suggested that a settlement freeze would be reciprocated by a cessation of the Arab economic boycott of Israel. During the October 1991 Madrid conference, Baker broadened the proposal to include an end to the Palestinian intifada as well as U.S. provision of the loan guarantees in return for a temporary settlement freeze.

The Baker offer reflected a lack of U.S. understanding of two issues vital to the proposed deal. First, the boycott of Israel, both primary and secondary was, by that time, ineffectual. Second, and more important, the offer illustrated Baker's failure to comprehend the centrality of the settlement enterprise to the Shamir government. "Once the government of Israel accepts any kind of freeze," explained Shamir aide Yossi Ben Aharon, "it violates a very basic principle in its policy—the right of Jews to live in any part of this land west of the River Jordan."

If Israel were to concede what in effect it considers its national birthright, it would demand a quid pro quo far more substantial than an end to the feeble boycott or even, as the Palestinians suggested, an end to the intifada. The offers of such a lopsided bargain—and they weren't the last ones—invited rejection. Shamir did not take the U.S. proposal to stop settlement seriously. It was, he remarked, "merely the expression of a wish."

A similar conceptual disconnect is apparent in the road map. The plan's sequencing suggests that the major penalty to be paid by Israel for failing to freeze settlements—the elements of which remain undefined—is to postpone the creation of a Palestinian state with provisional borders. This is a "penalty" the current government of Israel would welcome.

Rabin Builds

In the wake of the 1992 election of Yitzhak Rabin, the Bush administration's demands for a settlement freeze were transformed into a two-tiered and somewhat contradictory policy of exacting decreasing and largely illusory financial penalties for settlement expansion—associated with the provision of \$10 billion in loan guarantees—while formally acknowledging, for the first time, Israel's right to *expand* settlements, according to the undefined requirements of their "natural growth."

In the wake of his August 1992 agreement with President Bush to expand settlements according to this standard, Rabin sought to dispel the impression that the agreement with Washington meant that Israel had imposed a settlement "freeze":

Look, I do not know what you mean when you say settlement freeze, when we are talking of the continued construction of 11,000 units in the territories. . . . Let us keep things in proportion. I am not happy with the situation, but I found . . . that we cannot practically cancel the construction of more than 6,000 to 7,000 housing units that were planned before, and for some of which initial ground-breaking work had begun. The construction of 11,000 units continues, nonetheless. Is this a freeze?

Soon thereafter, the Bush administration proposed legislation to grant Israel \$10 billion in loan guarantees over five years. Absent was any reference to earlier demands for a cessation of settlement. In its stead, the president was empowered, beginning with the second annual disbursement of guarantees, to impose a dollar-for-dollar penalty "for activities which the president determines are inconsistent with the objectives of this section [resettling immigrants, infrastructure, housing, and 'other purposes'] or understandings reached between the U.S. government and the government of Israel." As a consequence of this legislation, Israeli expenditures for civilian settlement expansion were deducted in progressively smaller amounts from the loan guarantees made available by Washington.

These sanctions failed to produce a meaningful change in settlement expansion or to prompt a change in Israeli settlement policy. U.S. support for the "natural growth" of settlements became official policy, further eroding Washington's longstanding opposition to settlements as an obstacle to peace. Loan guarantees were provided, and the mechanism employed to determine Israeli expenditures on settlements segregated large parts of Israel's settlement

budget from penalty. The principles established by this process were not related in any fashion to an effective cessation of settlement but rather centered on (virtual) financial penalties exacted for some settlement-related investments. With the exception of the establishment of new settlements, which Rabin opposed for his own reasons, settlement expansion continued apace. Beginning in 1996, the establishment of new settlements—euphemistically known as “outposts”—was renewed.

During the rest of the decade the freeze idea became on various occasions an element of bilateral discussions between Jerusalem and Washington. The United States engaged in fruitless discussions with the first Netanyahu government to establish that there would be “no substantial expansion” of settlements. Prime Minister Ehud Barak rebuffed criticism of his expansion efforts, explaining that the imminent conclusion of a final status agreement with the Palestinians would resolve the issue.

The Mitchell Committee

The settlement freeze and evacuation recommendations made in 2001 by the Sharm al-Shaykh Fact-Finding Committee (Mitchell Committee) challenged a number of assumptions at the heart of Israel’s settlement strategy. By establishing a cessation of all settlement activity, including the provision for natural growth agreed to by the Clinton administration, as a key element in constructing a viable diplomatic process, George Mitchell contested Israel’s power to define the terms under which diplomacy would be conducted. In a letter to Pres. George W. Bush opposing a settlement freeze and its linkage to the second Palestinian intifada, Prime Minister Ariel Sharon wrote that it would be impossible to grant to PA chairman Yasir Arafat, as a consequence of violence, a prize that he failed to receive from any Israeli government during a decade of negotiations.

The Mitchell recommendations repudiated a key assumption of the Oslo process—namely, that settlement expansion and progress toward peace could proceed in tandem. The committee acknowledged a key Palestinian claim that settlement growth undermines the prospects for Palestinian sovereignty. As the Palestinians had long argued, it viewed an effective settlement freeze as a necessary confidence-building measure required from the outset of nego-

tiations, even those conducted during the interim period before final status talks began.

Furthermore, the committee sought to disaggregate Israeli security from settlement expansion. Implicit in this suggestion, at odds with Israeli security doctrine, was a challenge to Israel’s ability to unilaterally determine its security requirements in the occupied territories. Indeed, it suggested that settlement expansion endangered Israeli security. Mitchell also called upon Israel to consider evacuation of some settlements. Within the committee there was minority support for the evacuation of all settlements in Gaza.

Israel deflected Mitchell’s call for a freeze. In a 15 May 2001 official comment on the report, Sharon noted,

The question of the settlements is a matter that, together with, principally, Jerusalem, refugees, and borders, has specifically been agreed by Israel and the Palestinian side as one for treatment in the permanent status negotiations. There is nothing in the bilateral agreements between the two sides that suggests that the question of settlements is to be regarded as one that could be separated from the others and unrelated to the overall solution of those other problems. Indeed, the committee itself noted that the issue of settlements is one of the core issues to be negotiated between the sides. The outcome of such negotiations, in which each side has legitimate positions and claims, should not be prejudged. On the substance, it must be recalled that it is already part of the policy of the government of Israel not to establish new settlements. At the same time, the current and everyday needs of the development of such communities must be taken into account.

Foreign Minister Shimon Peres went a step further, explaining shortly after the publication of the Mitchell report,

A freeze is already in effect. Actually, a freeze is only the third stage of the Mitchell plan—first comes a cease-fire, then a cooling-off period, then confidence-building measures, such as freezing settlements—such that there is nothing to even talk about regarding such a freeze until six weeks after it begins. But in practice, the coalition negotiations stipulate that there be no new settlements, and we also agreed that there would be no land expropriations to expand existing settlements, and then we added a third thing, to which the government, Mr. Sharon, agreed, and that is that there be no new construction outside the built-up areas within the existing towns—such that in practice, there is a freeze on construction in Yesha.

The Mitchell Commission’s call for a settlement freeze was ambiguous and incomplete. There were no details about the elements of a freeze—its geographic scope, duration, methodology, oversight,

monitoring and assessment mechanisms, or penalties for infractions. Discussion on some of these issues was considered by the Bush administration and the Sharon government—centering on defining approved (by Washington) buildable areas for each settlement—but never initiated.

Mitchell's call for a freeze was incorporated in the 2003 road map, which also called for the evacuation of new settlements created after (but not before) March 2001, now numbering around fifty. Israel endorsed the road map, including the freeze and outpost provisions, noting however, that "there will be no involvement with issues pertaining to the final settlement. Among issues not to be discussed: settlement in Judea, Samaria, and Gaza (excluding a settlement freeze and illegal outposts)."

On 12 May 2003, it was reported that Prime Minister Sharon had rejected a settlement freeze as "impossible" due to the need for settlers to build new houses and start families. Sharon famously challenged Secretary of State Colin Powell, saying, "What do you want, for a pregnant woman to have an abortion just because she is a settler?"

Gaza Evacuation

Sharon's bold decision in 2004 to "re-deploy" from the Gaza Strip, removing all permanently stationed IDF forces, and evacuating all 7,500 settlers, like the Sinai evacuation 25 years earlier, reaffirmed the notion that settlement evacuation rather than a freeze can be a more effective alternative to occupation. The decision to evacuate Gaza's 17 settlements was made in the context of a new Israeli security paradigm for Gaza. Sharon believed that Israeli security could be *enhanced* through withdrawal, redeployment, and settlement evacuation. Freezing settlements simply had no place in the new policy. Indeed, settlements continued to be expanded, often with government support, almost until the day of evacuation.

Facing the Future

If the Obama administration pursues a settlement freeze, will it want to undertake the onerous task of negotiating with Israel the mechanisms required to define, implement, police, evaluate, and, if necessary, impose sanctions for infractions? To avoid this, Washington, echoing the Mitchell Committee recommendations, might opt for a declaration that Israel cease settling without engaging Israel in defining a freeze. The United States may even impose sanctions

more severe than those associated with the loan guarantees in response to an Israeli failure to heed Washington's demand. There is a seductive appeal to these policy options. They build upon past efforts and they have an intuitive appeal. After all, if settlements are a problem, does it not make sense to stop building and expanding them? Even in the unlikely event that a freeze succeeds, settlements will remain. The urgency of the situation and the failure of all previous efforts to freeze settlements point to the conclusion that U.S. policy should focus, for the first time, on removing settlements, defining the border between the states of Israel and Palestine, creating new security mechanisms, and ending the conflict.

"I can see a freeze for three or six months, maybe, for the duration of the talks," explained Israel Harel, a founder of the settlement movement and a resident of Ofra near Ramallah. "It won't be implemented, but sabotaged. In Ofra we won't stop [building], well maybe for a week or two."

A FOCUS ON EAST JERUSALEM

THE VERY EYE OF THE STORM (EXCERPTS)

These excerpts are from an article written by Akiva Eldar and published in Ha'Aretz on 2 April 2009.

Jawad Siam pulled out a brochure issued by the Jerusalem municipality heralding development plans for his place of residence, the village of Silwan in East Jerusalem. He pointed to the map in the brochure, where the neighborhood's streets were marked. "You see this, Hashiloah Road?" he asked. "All these years, it was called 'Ayn Silwan Street. 'Ma'alot Ir David' Street? That was Wadi Hilwa Street. The street next to it, 'Malkitzedek,' used to be al-Mistar Street."

From two small rooms, not far from the Old City walls, Siam and his colleagues in Silwan's 'Ayn al-Hilwa neighborhood committee, as well as a small group of Jewish friends, are waging a tenacious struggle on one of the world's most volatile battlefields. As he sees it, the "conversion" of the street names, the settling of Jews there with the encouragement of rightist organizations, and the municipality's intention to demolish dozens of buildings in the neighborhood, are merely a prelude to an eventual transfer plan. The real goal, he believes, is the expulsion of 'Ayn al-Hilwa's five thousand residents, part of a goal of reducing the Palestinian presence in the area.

Silwan, which the Israeli authorities call the City of David or Kefar Hashiloah, lies in the heart of the "holy basin" surrounding the Old City. Here is where Jewish-Palestinian struggles over houses, religion, and culture are steadily multiplying: right-wing organizations keep taking over yet another building and another site, sometimes with the municipality's assistance; straw men tempt Palestinians into selling their homes; petitions to the High Court come on the heels of allegations of libel; archaeologists clash over these organizations' control of antiquities sites in the area; and the police try to undermine every official Palestinian activity, including cultural ones. According to the so-called Clinton initiative, presented during the 2000 Israeli-Palestinian negotiations, Silwan was supposed to become part of the future Palestinian capital. . . .

For years, this balance was preserved by a moderate mayor (Teddy Kollek) and cautious governments (like that of Yitzhak Rabin). In September 1996, the combination of a right-wing prime minister, Benjamin Netanyahu, and a right-wing mayor, Ehud Olmert, led to the opening of the Western Wall tunnel. This "festive" event culminated with bloody disturbances in the territories, in which sixteen Israeli soldiers and more than sixty Palestinians were killed.

The current blend of the old-new prime minister, Benjamin Netanyahu, and Jerusalem's relatively untried mayor, Nir Barkat, as well as the fact that several government ministries (infrastructure, construction, and housing) are in the hands of right-wing parties, may herald an increase in the level of tension in the city as a whole and in the holy basin in particular. Last year, before the local elections, Barkat took a well-publicized tour of Jerusalem's Palestinian neighborhoods, accompanied by activists from right-wing organizations, including David Barry, the head of the Elad organization, which promotes Jewish settlement in the city's eastern part. As mayor, one of his first acts was to resume the construction of 230 apartments for Jews in Abu Dis (Kidmat Zion). He also issued demolition orders for dozens of illegal buildings in Silwan that house hundreds of Palestinian residents.

In the meantime, due in part to U.S. pressure, the municipality has frozen the plan to demolish the buildings in the area it calls Gan Hamelekh (David's Garden). "The mayor's approach to upholding and enforcing the law has nothing to do with city residents' national identity," city hall said in a state-

ment two days ago. "He intends to continue upholding the law in the west and east of the city without bias. The enforcement policy in the Gan Hamelekh area was examined by the courts, which found nothing wrong."

The Hand of God?

In an article published on the Arutz Sheva Web site, Matti Dan, chairman of the Ateret Cohanim organization, was quoted as saying, "God promised Jerusalem to us. Our generation is responsible for fulfilling the victory of the Six-Day War and strengthening settlement in Jerusalem."

The article tells of 43 sites that Dan and his friends have "redeemed" from Palestinians in the Old City's Muslim and Christian quarters. About a decade ago, Ateret Cohanim began expanding its activity outside the Old City walls, by taking over abandoned properties—both buildings and land—that belonged to Jews before 1948. Thus Jews settled in Silwan, the Mount of Olives (Beit Orot), Shaykh Jarrah (Shimon Hatzadik), Ras al-Amud (Ma'ale Zeitim), Abu Dis, and al-Tur. According to data from the Ir Amim organization for an equitable and stable Jerusalem, about 2,500 Israelis now live in the holy basin and the Old City (not including the Jewish Quarter), about 400 of them in the City of David and a similar number in Ras al-Amud.

"The hand of God is clearly visible here," Dan boasted. "The Saudis and the Europeans are investing millions in East Jerusalem in order to stop us, and we're standing up to them alone." The same article quotes Ateret Cohanim sources as saying that, "There is a consensus about Jerusalem . . . also in the highest places, even if this is somewhat obscured. We receive full backing that isn't reported in the newspapers. Even those who say otherwise in the media open their doors to us when it's about building Jerusalem."

City engineer Uri Sheerit first gave the order to demolish the illegal buildings in Silwan in 2004, explaining that the reasons had nothing to do with urban planning. "Jerusalem's beginnings lie in the City of David tel [hill]. These remnants have much international and national value and give the city its standing as one of the world's most important cities," he said. "Emek Hamelekh—together with the City of David tel—constitutes a complete archaeological unit." The experience of recent years shows that Jews will settle in places that Palestinians have been forced to leave.

These kinds of declarations infuriate attorney Daniel Seidemann of Ir Amim. In a recent opinion, he wrote that the planning and building laws have become the main means for reducing Palestinian living space in East Jerusalem: since 1967, Israel has appropriated 35 percent of the land in East Jerusalem in order to build 50,000 apartments for Jews; at the same time, not a single new neighborhood has been built for the Palestinians, despite the fact that their population in East Jerusalem has nearly quadrupled. During all those years, only 600 apartments were built with government support in the existing Palestinian neighborhoods. The Palestinians' natural growth rate in the city means that 1,500 new apartments are needed every year.

According to Seidemann, most of the lands still in Palestinian possession cannot be built upon due to bureaucratic delays heaped on by Israel. The construction potential within the Palestinian neighborhoods has been practically exhausted. Even Palestinians who live in an area for which there is an approved master plan end up so frustrated by the legal, economic, and bureaucratic obstacles that they eventually resort to the risk of building without a license. East Jerusalem is the only place in Israel where a unit from the Interior Ministry, rather than the local authority, operates for the purpose of enforcing building laws (*vis-à-vis* the Palestinians, that is). Thus, even when the municipality freezes the house demolitions, they are still carried out by order of the Interior Ministry.

Archaeological Takeover

In addition to staking their claim in the residential neighborhoods in and around the Old City, the organizations Elad and Ateret Cohanim have begun taking over the numerous archaeological sites scattered throughout the area. The City of David national park lies south of the Old City. "Today, 70 percent of the hill in the City of David is in Jewish hands, and the idea is to acquire buildings on the Mount Zion hill next to it, in order to create a continuum with the Jewish Quarter," Elad founder Barry said in a recent interview.

In 1998, the Environmental Protection Ministry ordered the Israel Nature and Parks Authority (INPA) to place the park's management in the hands of Elad, which argued that it had acquired a majority of the lands there. The order was issued in defiance of protest from the Antiquities Authority,

which was upset about the idea of a sensitive archaeological site being run by a politically motivated organization. To this day, it is not clear why the ministry decided to act as it did. Dalia Itzik, who was the environment minister at the time, said this week that she does not recall the matter. The INPA says its standard practice is to transfer sites located on private lands to the landowners' management. However, last year, then construction and housing minister Ze'ev Boim wrote that the territory of the park given to Elad is not owned by it, but instead belongs to the state and the Jewish National Fund.

At the end of 2000, the national park was returned to the INPA's jurisdiction. The state prosecutor informed the High Court that it had not been proper to grant authorization to Elad, and so it was annulled. But in 2002, the INPA once again transferred most of the park's assets to the control of Elad, including the Herodian tunnel beneath the Armon Hanatziv ridge and the visitors' center in Ya'ar Hashalom (the Peace Forest). The INPA could not provide an explanation for this decision.

The registrar of nonprofit organizations says the symbiotic relationship between Elad and the INPA is also evident in the fact that Elad's Evyatar Cohen, the director of the visitors' center, is also the director of the INPA's Jerusalem district. An INPA spokeswoman responded that Cohen first went through a "cooling-off" period after his activity in the Elad organization. The symbols of both bodies also appeared not long ago on a sign announcing the construction of a new information center on the Mount of Olives, outside the bounds of the national park. Following an inquiry from Peace Now, the INPA's symbol was removed. . . .

According to the High Court petition recently filed by Peace Now, at least, Elad is building a shopping center and events hall within the bounds of the park, under cover of the archaeological excavations in the area of the park known as Henyon Givati. In the wake of the petition, the court has ordered all work on the site suspended, apart from the excavations. Elad claims that "Henyon Givati is a private area and the rights to it are registered in the land registry." In response to a request from Meretz city council member Pepe Alalo, Yossi Havilio, the Jerusalem municipality's legal counsel, said this week that he has asked the official in charge of municipal assets to confirm whether city hall, which leased

the lot for thirty years (until 2006), had indeed transferred the rights elsewhere and why. . . .

TURKISH DOCUMENTS PROVE ARABS OWN EAST JERUSALEM BUILDING (EXCERPTS)

These excerpts are from an article written by Nir Hasson and published in Ha'Aretz on 19 March 2009.

A document recently uncovered in Ottoman archives in Ankara confirms that Palestinians are the owners of disputed land and houses in East Jerusalem. If an Israeli court accepts the document's validity, Palestinian families could be saved from eviction from their homes. Turkish officials recently helped to trace the document, which could end a thirty-year-old dispute over the ownership of around thirty buildings in the Shaykh Jarrah neighborhood. The Palestinians' attorneys said they were granted access to the archives following the recent souring of the relations between Israel and Turkey. "Until half a year ago the Turks didn't want to spoil their relations with Israel and were unhelpful," attorney Hatam Abu Ahmed said. "They would put us off with all kinds of excuses. Today their attitude has changed. We felt this change especially after the Gaza operation. Now senior Turkish officials are helping us." In January, attorney Salah Abu Husayn traveled to Turkey and with the help of local officials found a document proving that the Jews demanding the Palestinians' eviction are not the compound's rightful owners.

The present residents had lived in West Jerusalem before the 1948 war and after becoming refugees were moved to Shaykh Jarrah. In the 1970s, the Sephardic Leadership in Jerusalem claimed they had purchased the land before the war and produced Turkish documents to that effect. The courts eventually recognized the Sephardic Leadership's ownership but granted the Palestinians protected tenants' status. However, the Sephardic Leadership and a group of settlers who moved into the nearby compound have been demanding the Palestinians' eviction, claiming they violated their rental terms. Over the years, several Palestinian families were evicted and other families moved into their houses. The last eviction took place in November 2008 when the al-Kurd family was evicted from its home and moved into a protest tent near its sealed house. Shortly afterward the father, Muhammad al-Kurd, died of an illness.

Throughout the years, the Palestinians claimed that the Jews' ownership documents were forged, but due to the Turks' lack of cooperation they could not prove this and the courts rejected their suits. Now the attorneys say the Ottoman document proves that the Sephardic Leadership never purchased the compound but only rented it. Another Ottoman document confirms that the document presented by the Jewish party is not authentic. "There is no trace of the Jewish document in the archive," said Abu Husayn.

The attorneys asked the court to withhold eviction procedures against two Palestinian families, on the basis of the Turkish document. The about-face in Turkish policy could have far-reaching implications regarding lands in Israel. "Now it will be possible to issue ownership deeds. The Turks are very well organized and helpful," Abu Ahmed said. Attorney Ilan Shemer, who represents the Sephardic Leadership, dismissed the Palestinian attorneys' claims regarding Palestinian ownership of the land. "It's usually the other side that uses false documents. The document we have is the only authentic ownership deed. Since the hearings began, fifty to sixty judges have heard the case and they all ruled that their claims are false." . . .

THE PLANNING CRISIS IN EAST JERUSALEM: UNDERSTANDING THE PHENOMENON OF "ILLEGAL" CONSTRUCTION (EXCERPTS)

This 22-page report on "illegal" Palestinian construction in East Jerusalem by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) was released in April 2009. Footnotes were omitted for space considerations. The full report can be accessed at www.ochaopt.org.

Continuing Demolitions in East Jerusalem

Since 1967, the Israeli authorities have demolished thousands of Palestinian-owned structures in the occupied Palestinian territory, including an estimated 2,000 houses in East Jerusalem. According to official statistics, between 2000 and 2008 alone, the Israeli authorities demolished more than 670 Palestinian-owned structures in East Jerusalem due to lack of permit. Of these, approximately 90 structures were demolished

in 2008, displacing some 400 Palestinians. In 2009, OCHA has recorded the demolition of 19 Palestinian-owned structures in East Jerusalem, including 11 inhabited residential structures, due to lack of permit. As a result, some 109 Palestinians, including 60 children, were displaced.

Of particular concern are areas in East Jerusalem that face the prospect of mass demolitions. For example, the execution of pending demolition orders in the Tal al-Ful area in Bayt Hanina, Khillat al-'Ayn in al-Tur, al-Abbasiya in al-Thuri, and Wadi Yasul between Jabal Mukabir and al-Thuri, affect a combined total of more than 3,600 persons. In the Bustan area of the Silwan neighborhood, which has received considerable media attention, some 90 houses are threatened with demolition, potentially displacing a further 1,000 Palestinians. In addition, some 500 residents of the Shaykh Jarrah neighborhood potentially face eviction as their homes are located on land whose ownership is contested by Israeli settlers. . . .

Building Conditions in East Jerusalem

In 1967, Israel occupied the West Bank and unilaterally annexed to its territory 70.5 km² of the occupied area, which were subsequently integrated within the Jerusalem municipality and are now referred to as "East Jerusalem." This annexation contravenes international law and was not recognized by the UN Security Council or UN member states.

Of this land, 35 percent (24.5 km²) has been expropriated for Israeli settlements, in spite of the international humanitarian law prohibition on the transfer of the occupying power's civilians into occupied territory. According to the Israeli human rights organization B'Tselem, most of this expropriated land was privately owned Arab property. Over 195,000 Israeli settlers now live in settlements in East Jerusalem.

Of the 70.5 km², 35 percent (24.7 km²) has master plans that have been approved by the Jerusalem District Committee. The remaining 30 percent (21.3 km²) has remained unplanned since 1967 (planning is under way in some areas, but not yet approved).

Of the 24.7 km² that are planned, approximately 15.5 km² (63 percent) are designated as "green areas," where no construction is allowed, or for public purposes, such as roads and other infrastructure. This leaves only 9.2 km² (13 percent of the total East

Jerusalem area) available for Palestinian construction, and much of this is built up already. Even in these areas, Palestinians face difficulties that hinder their ability to obtain a permit.

First, before construction can begin on a vacant piece of land included within the 24.7 km² that have master plans, a detailed plan of the area must be developed and approved. This plan must show which parts will be allocated for public use (roads and other infrastructure), green areas, and private Palestinian construction.

While the need to designate part of the land for green or public areas is a normal planning requirement, the nature of land ownership in East Jerusalem makes completing this task difficult: most of the lands are held in small, privately held plots that must be first united in order to ensure the equitable allocation of public and green areas. An inability to resolve these land ownership issues has delayed the development of detailed plans for years in many areas of East Jerusalem.

Second, if public infrastructure (i.e., roads, sewerage, water) does not exist in an area where a detailed plan has been approved, then construction permits will not be granted. According to the 1965 Israeli Planning and Building Law, no construction is permitted in areas with insufficient public infrastructure. The development of public infrastructure remains the responsibility of the Jerusalem municipality; however, very few resources have been allocated for this purpose in East Jerusalem. As a result, new construction in neighborhoods lacking public infrastructure is prohibited.

Third, strict zoning in Palestinian areas of East Jerusalem limits construction density, thereby reducing the number and size of structures that may be built on any given plot of land. In many cases, the density (known as plot ratio) permitted is half (or, in some cases, much less than half) of that found in neighboring Israeli settlements in East Jerusalem, or in West Jerusalem.

In addition to the difficulties outlined above, the financial cost of obtaining a permit is a significant obstacle. The fees for permit applications are the same for all residential construction in both East and West Jerusalem and are calculated on both the size of the proposed building and the size of the plot. The fees are considerable, and for many Palestinians, are prohibitive. For example, the fees for a permit to construct

a small 100 m² building on a 500 m² plot of land will amount to approximately NIS 74,000 (USD 17,620).

Unlike in West Jerusalem or Israeli settlements in East Jerusalem, however, building by Palestinians in East Jerusalem is generally small scale, carried out by individual families or a few together, rather than larger-scale housing projects. Also, plot ratio restrictions applicable in Palestinian neighborhoods mean that there are fewer housing units in the proposed construction, compared with Israeli areas where the plot ratio (and, thus, number of inhabitants) is higher. As a result, there are fewer people among whom permit costs can be shared. Furthermore, because of the way the fees are structured, applications for permits for smaller buildings (which are symptomatic of East Jerusalem) have higher per-square-meter fees than larger buildings. For example, the fees for a permit to construct a building four times as large as the previous example, 400 m², on the same plot size will only be roughly twice as expensive, about NIS 157,000 (USD 37,380).

The permit application process can take several years, and applying for a permit does not guarantee that one will be granted. According to information provided to OCHA by the Jerusalem municipality, the number of permit applications more than doubled between 2003 and 2007 (138 to 283); however, the number of permits granted

remained relatively the same, ranging between 100 and 150. Because of the fees, the long delays, and the uncertainty associated with the permit application process, many Palestinians build houses on their own private land, without first obtaining building permits.

The phenomenon of “illegal” construction is not limited to the 13 percent of East Jerusalem where Palestinians are actually able to apply for a permit. For example, in most of the densely populated neighborhoods around the Old City of Jerusalem, such as Silwan and al-Thuri, the natural expansion area of Palestinian communities has been designated as a green area, where no construction is allowed. In these cases, affected residents must incur the high cost of developing new plans to try and change the status of an area from “green” to “residential” before applying for a permit is even a possibility. A similar situation exists in areas of East Jerusalem that are not yet planned.

Palestinians who build without permits face the risk of home demolition and other penalties, including steep fines, confiscation of building equipment, and possible prison sentences. Between 2001 and 2006, the Jerusalem municipality collected an average of NIS 25.5 million per year (USD 6.07 million) in related fines. None of these penalties exempt a house owner from the need to obtain a building permit for the structure. . . .



An Israeli soldier walks through an outpost set up by Jewish settlers on a hilltop near Hebron, 25 April 2009. (Hazem Bader/AFP/Getty Images)