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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.

Freeze Failure

- Moving Beyond a Settlement Freeze 184
Semiannual Report on Settlement Construction, by Peace Now (excerpts) 186

Support for Settlers

- Influential Israeli Army Judge Says West Bank Land Belongs to Jews,
by Meron Rapoport (excerpts) 187
Israel May Retroactively Legalize Settlement Construction, by Chaim Levinson 188
U.S. Group Invests Tax-free Millions in East Jerusalem Land,
by Uri Blau (excerpts). 189

FREEZE FAILURE

MOVING BEYOND A SETTLEMENT FREEZE

From Settlement Report, September-October 2009

The administration of Barack Obama is setting the stage for the resumption of talks, if not necessarily formal negotiations, between Israeli and Palestinian leaders. Washington hopes that a tripartite fall meeting of Pres. Barack Obama, Israeli prime minister Benjamin Netanyahu, and PLO chairman Mahmud Abbas will mark the inauguration of a new phase in Obama's Middle East policy.

If Obama succeeds, the negotiations may be headlined by an Annapolis-like summit conference that Russia and others are vying to host, leading to a resumption of bilateral talks aimed, according to U.S. officials, at "advancing a two-state solution where Israelis and Palestinians can live side by side in their own states with peace and security." To embark on this effort, however, Obama must move beyond the diplomatic effort led during the last three months by his special envoy George

Mitchell to win from Israel the imposition of a complete cessation of settlement expansion in the West Bank, including East Jerusalem and tangible demonstrations of normalization with Israel from the Arab world.

It was Obama's decision to place settlements at the heart of his administration's opening diplomatic effort. Highlighting settlements and Arab confidence building measures as the twin points of engagement was understood by the Obama team as the policy option most likely to impress upon Israelis and Palestinians, as well as the international community, the intention and the ability of the new American leadership to end occupation, create a Palestinian state, and normalize Israel's place in the region. Obama seized the policy initiative by declaring in Cairo "the illegitimacy of continued Israeli settlements" (see Doc. D2 in *JPS* 153). Washington's demand for a settlement freeze overshadowed Netanyahu's effort to focus on "economic peace" and the interwoven crises between Israel and Hamas in Gaza that dominated the agenda before Obama's inauguration. The new

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president won a quick affirmation from Netanyahu in support of the principle (if not the content) of a two-state solution and boosted Palestinian confidence that recognition of their oft-repeated demand for imposition of a settlement freeze was at last in sight.

Netanyahu's anticipated response to U.S. demands will not meet this test. Israel is prepared, at most, to impose a temporary moratorium on certain types of settlement expansion, an action similar to restrictions agreed to by Menachem Begin in 1977. It will complete more than 3,000 new dwellings in West Bank settlements, enough to increase the settler population of 500,000 by 12,000, and exclude East Jerusalem from any building limitations. Such an outcome, after months of high-powered U.S. diplomacy, risks being seen as conferring an ambiguous U.S. "stamp of approval" and further evidence of the inability of diplomacy to challenge the settlement enterprise. Despite the failure to win a credible suspension of all settlement activity, Obama still commands the international arena and he retains a powerful ability and interest in setting the terms of Arab-Israeli diplomacy. A vigorous American effort that supersedes the spurned demand for a comprehensive settlement freeze appears to be the White House's next move.

The Unrequited Demand for a Settlement Freeze

The complete cessation of all facets of settlement activity everywhere, defined by Secy. of State Hillary Rodham Clinton as "a stop to the settlements. Not some settlements, not outposts, not natural growth exceptions," remains Washington's stated policy. This demand is the standard for success against which Obama's settlement policies are being judged, by those who wish the new president well and by others who want to empty Obama's two-state vision, and the necessity of massive settlement evacuation, of real content.

Leading Arab commentator Abdul Rahman al-Rashed noted in *al-Sharq al-Awsat* on 8 July 2009:

The battle to stop the [Israeli] construction of settlements is a personal battle for Obama, and one that will reveal whether the U.S. president is capable of dealing with the larger issues, such as [Israeli Palestinian] negotiations over territory, borders,

Jerusalem, refugees and disarmament. This will also clarify whether Obama will be able to force the parties to follow through on whatever agreement they make. Everybody is monitoring the battle with regards to the Israeli settlements, and construction is ongoing. So long as settlement building continues under the pretext of expansion and vertical construction, nobody in the region will believe that Obama is capable of handling these weighty issues.

Obama is proving no more successful than his predecessors in winning a complete freeze, and he has been stung by Netanyahu's ability to reframe Washington's demand as a challenge to Israel's presence in East Jerusalem. By the end of July, Washington found itself engaged in detailed discussions of the minutiae of settlement construction and expansion. U.S. negotiators asserted that the talks were aimed at closing settlement expansion "loopholes." Israeli leaders, initially stunned by Obama's demands, were also confident. They had concluded that Obama's "bark was worse than his bite." The potential for a crisis in relations over settlements had been averted and the evolving terms of a limited settlement moratorium were well within manageable limits. In a reflection of this cold-blooded Israeli view, Israeli columnist Nahum Barnea wrote on 14 August, "Defense Minister Ehud Barak was the honey trap and special envoy George Mitchell took the bait. . . . He is now negotiating over the [settlement moratorium's] timetable, the conditions, the numbers and the exit points."

Arab visitors to Washington from Egypt, Jordan, and Saudi Arabia offered equally insistent advice about the shortcomings of the administration's pursuit of a settlement freeze, calling for renewed diplomacy on ending the occupation and creating a Palestinian state. In a 31 July press conference with Clinton, Saudi foreign minister Prince Saud al-Faisal stated:

Incrementalism and a step by step approach has not and we believe will not achieve peace. Temporary security, confidence building measures will also not bring peace. What is required is a comprehensive approach that defines the final outcome at the outset and launches into negotiations over final status issues: borders, Jerusalem, water, refugees, and security.

As the summer wore on, Obama himself grew visibly impatient with seemingly interminable discussions on a settlement freeze that were now delaying the opening

of much anticipated negotiations. Having declared the status quo “unsustainable,” Obama was anxious to move off what he himself acknowledged was “the rut that we’re in currently.”

Beyond a Settlement Freeze

A meeting with Netanyahu and Abbas would be Washington’s first achievement in moving beyond a narrow discussion of a settlement freeze to Obama’s strategic objective of a final status agreement in which settlement evacuation stands to feature prominently. Israel’s leaders are well aware that they will face this challenge. To meet it, they are continuing efforts begun by Prime Minister Ehud Olmert to reach bilateral understandings with Washington on Israel’s long-term security requirements in the West Bank and elsewhere. To this end, Netanyahu and Barak have presented their six-point political-security agenda: recognition of the state of Israel, resolution of the refugee problem outside Israel, an end to Palestinian and Arab claims as part of the end to the conflict, effective demilitarization, and international recognition of the demilitarization arrangements. “As long as we unite behind these conditions,” declared Netanyahu on 28 July, “the chance of implementing them increases, because the international community respects a clear, solid, logical and just stance.”

Alone among the participants, Abbas is conditioning a renewal of diplomatic contacts on a complete cessation of settlement expansion. He has asserted control over both the fractious Fatah movement and the moribund PLO and looks to polls that show improvement in the contest with Hamas. Now more than ever, Washington and Abu Mazin believe that a “strengthened” Abu Mazin, without Hamas, is the key to effective Palestinian representation.

Nevertheless, Gaza’s continuing instability and the associated failure to reconcile Hamas and Fatah loom large as obstacles to Obama’s goal of a two-state agreement within two years. Even though Gaza has been overshadowed by Washington’s diplomatic effort to win a settlement freeze, it remains the key focus of the Palestinian conflict with Israel, and the Hamas-Fatah split undermines Abbas’s ability to negotiate effectively on behalf of all Palestinians. As the Obama administration moves from the issue of a freeze to broader talks on final status issues, it would do well

to complement this process by promoting policies that address the unsustainable humanitarian and economic crisis in Gaza and encourage Palestinian political reconciliation.

SEMIANNUAL REPORT ON SETTLEMENT CONSTRUCTION (EXCERPTS)

This report by Peace Now was published in August 2009 and details methods through which the settlement freeze is being circumvented.

According to a Peace Now inspection, construction within the “settlement blocs” continues as usual, with no freeze to be seen on the ground. Conversely, construction at isolated settlements continues through various settlement-freeze “bypass” tracks:

a. Actualizing Old Plans

Some of the new construction seen in the last months, especially in the isolated settlements, is construction based on old plans that were approved years ago. This is meant to bypass the “settlement freeze,” without needing to approve a new plan that must receive the defense minister’s approval. It is important to explain that it is within the power of the government to prevent construction that was approved in the past. However, it is politically easier for the government to allow the construction while turning a blind eye, with direct or indirect encouragement, and continue claiming there is a “settlement freeze,” when it comes to actualizing an old plan.

Presently, new neighborhoods are under construction on the basis of old plans in Kochav HaShachar (plan from 1995), Matiyahu (plan from 1984), Ma’ale Mikhmas (plan from 1999), Tekoa (plan from 1997), Elkana (plan from 2001), Na’ale (plan from 1999), Kefar Etzion (plan from 1993), and Barqan (plan from 2003).

According to the Spiegel Report, an official report by the Defense Ministry, there are more than 40,000 housing units in plans that were approved in the past but have not yet been actualized. Some of those plans are not relevant or need further approvals before being implemented. Theoretically, it is possible to double the number of settlers in the settlements without approving a single new plan. A real settlement freeze must include a freeze on actualizing construction and not only on planning procedures.

b. Illegal Construction

Another way to bypass the freeze is by building illegally. Some of the new construction is illegal, sometimes based on old plans that did not go through all of the licensing processes and sometimes without any plans. Examples are Halamish, Kiryat Netefim, Kochav Ya'acov, and Kedar. (In Kedar there is construction in the area of an approved plan but based on the provisions of a new plan [that] has not yet been approved.) The government is showing no determination to stop the illegal construction despite warnings made to the law enforcement agencies.

The Main Findings

General (in settlements, outposts, and industrial areas):

- The building of 596 new structures began in the first half of 2009, of which 96 were in outposts.
- 35% of the structures were built east of the route of the separation fence (208 structures) while 65% (388 structures) started to be built west of the fence.
- A rise in the number of permanent structures and a drop in the number of caravans. The number of permanent structures that started to be built rose 8% in the first half of 2009 (372 compared to 344 new structures in the second half of 2008), and the number of caravans dropped 43% (204 compared to 361 new caravans). Most of the decline was recorded in the settlements and outposts east of the route of the separation fence (a 35% drop in the general number of structures compared to only a 6% decline in construction west of the fence).

In settlements (without outposts and industrial areas)

- The construction of 492 new structures began in settlements, including 351 permanent structures, 131 caravans, and 10 industrial structures. 124 structures were built east of the separation fence route and 368 west of it.
- In addition, groundwork began for at least another 60 structures.

In outposts

- Not a single real outpost was evacuated.

- At least 96 new structures were built, including 73 caravans, 19 permanent structures, and 4 agricultural/industrial structures.
- 15 structures were built in outposts west of the fence route compared to 81 in outposts east of it (85%).
- Additionally, groundwork was undertaken for the construction of at least 20 new structures in the outposts.
- In 60 outposts there was some kind of construction.
- In 10 of the 23 outposts slated for immediate evacuation according to the Defense Ministry list there was construction and expansion. . . .

SUPPORT FOR SETTLERS

INFLUENTIAL ISRAELI ARMY JUDGE SAYS WEST BANK LAND BELONGS TO JEWS (EXCERPTS)

This article by Ha'Aretz reporter Meron Rapoport was published by the Guardian on 26 October 2009.

Major Adrian Agassi did not make the connection between the Bible, the land, and the Jews when, fresh out of university, he left England for Israel in search of his roots. He was not even a practicing Jew.

But over the past quarter of a century, the Israeli army lawyer and then military judge at the forefront of arguably the most significant battle in the occupied West Bank—the confiscation of Palestinian land for the construction of Jewish settlements—has come to see himself as in service of a higher duty.

In an unusually frank interview, which offers insights into the melding of religion, politics, and law that underpins land seizures in the occupied territories, Agassi has laid out his belief that Israel has a biblical claim to territory beyond its borders and that he, even as an immigrant, has a right to live on it when those born there do not.

“When we [Israelis] say that this is a political conflict, then we lose the battle,” he told the *Guardian*, adding that it should be remembered that the ancient land of Israel is “given to us by the Bible, not by some United Nations.”

Agassi, one of the most important officials in the military courts wielding authority over large parts of the West Bank, says settling Jews on lands that made up ancient Israel stands above all other biblical

commandments and only when it is done can they have “a promised land and a promised life.”

“You say that these lands ‘passed into Jewish hands’. Others would say that they came back into Jewish hands. Others would say that they are obviously ours, inherently,” he said. It was, he claims, a mistake to call it the State of Israel. “If we would have named it the State of Jews, the Arabs would have understood that this land belongs to the Jews.”

Agassi served in the legal department that oversaw the confiscation of land in the West Bank to build Jewish settlements and was then appointed to the military court that decided Palestinian appeals against the seizure of their property. The Palestinians almost never won. His court also ruled on legal disputes between Jewish settlers and Palestinians.

Agassi denies his credo affected his legal judgments, but his court was considered so biased by some critics that on one occasion the military prosecution, in an unusual step, appealed against Agassi’s ruling in favor of settlers to Israel’s High Court. . . .

Agassi says a peace agreement with the Palestinians “goes against nature” because as far as he can see nothing had changed in the last 4,000 years in the land of Israel, and that back to biblical times Arabs and Jews were at each other’s throats.

Agassi uses the term Arabs because he claims Palestinians do not exist. He came to this conclusion over the past decade while serving as a special judge for administrative arrest. Based on confidential intelligence reports, without trial, Agassi sent several hundred Palestinians—deemed to be terrorists or security threats—to prison for six months or more.

“You read the raw intelligence material and you see that most of them are moved by religious doctrine, not by a political one. They use religion in order to justify killing as many Jews as possible. Is this not a religious war?”

ISRAEL MAY RETROACTIVELY LEGALIZE SETTLEMENT CONSTRUCTION

This article by Chaim Levinson was published in Ha’Aretz on 3 September 2009.

The state prosecutor’s representative twice hinted that construction in West Bank settlements might be retroactively

legalized Wednesday [2 September 2009], seemingly representing a major policy turnaround. The two responses are a departure from the state’s usual response that the structures are illegal and are expected to be demolished.

The responses, coming three weeks after Deputy Premier and Strategic Affairs Minister Moshe Ya’alon said that the state prosecutor is not faithfully representing the current government’s view on settlements, seem to signal a change in policy.

In several past cases, including construction in the settlements of Harsha, Hayovel, Neve Tzuf, Netiv Haavot, and Amana, the state told the court the structures were illegal and were due to be destroyed in keeping with the priorities of the defense establishment.

The first of the two cases Wednesday was a petition by Peace Now with a request to issue a demolition order for 12 new structures in the settlement of Kiryat Netefim. The state responded that “while the work is illegal, a detailed master plan had been published in the past with the aim of arranging the planning status of the settlement. This situation requires a deep scrutiny of the issue by the government.” The state also told the court it opposed an interim order against populating the structures, another unusual move.

The second petition, submitted by Yesh Din, sought the demolition of 12 mobile homes in the settlement of Kochav Ya’acov, which was built on Palestinian land.

Unusually, the state’s response ignored the issue of the ownership of the land, which the settlers say belongs to the state, but rather said orders to stop work have been issued and that the settlers “have been summoned to a meeting of the oversight subcommittee to discuss the matter of demolition orders. It goes without saying that after these meetings and in keeping with the outcome, we will act according to priorities.”

Peace Now secretary general Yariv Oppenheimer wrote Wednesday to Attorney General Menachem Mazuz that political pressure coming from senior ministers was behind the change in the state’s responses. “We ask you to instruct the High Court petitions department to ignore any hint of political pressure. Surrender to pressure, as manifest in the two responses of the state, will lead to the crumbling of the rule of law,” he wrote.

The head of the Gush Etzion Regional Council, Shaul Goldstein, who had protested to Prime Minister Benjamin Netanyahu over the state prosecution's responses to the High Court, said Wednesday that he was pleased with the state's responses. "The whole issue of construction is a political issue, not a legal issue," Goldstein said.

U.S. GROUP INVESTS TAX-FREE MILLIONS IN EAST JERUSALEM LAND (EXCERPTS)

This article by Uri Blau was published in Ha'Aretz on 17 August 2009.

American Friends of Ateret Cohanim, a nonprofit organization that sends millions of shekels worth of donations to Israel every year for clearly political purposes, such as buying Arab properties in East Jerusalem, is registered in the United States as an organization that funds educational institutes in Israel.

The U.S. tax code enables nonprofits to receive tax-exempt status if they engage in educational, charitable, religious, or scientific activity. However, such organizations are forbidden to engage in any political activity. The latter is broadly defined as any action, even the promotion of certain ideas, that could have a political impact.

Financing land purchases in East Jerusalem would, therefore, seem to violate the organization's tax-exempt status. Daniel Luria, chief fundraiser for Ateret Cohanim in Israel, told *Ha'Aretz* that the American organization's registration as an educational entity stemmed from tax considerations.

"We are an umbrella organization that engages in redeeming land," he said. "Our [fundraising] activity in New York goes solely toward land redemption."

Although Ateret Cohanim also operates a yeshiva, Ateret Yerushalayim, in the Muslim Quarter of Jerusalem's Old City, fundraising for the yeshiva is handled by a different organization: American Friends of Yeshivat Ateret Yerushalayim.

American Friends of Ateret Cohanim was founded in New York in 1987. Like all tax-exempt organizations, it must file detailed annual returns with the U.S. Internal Revenue Service. An examination of them reveals that the organization describes its "primary exempt purpose" as "[to] provide funding for higher educational institutes in Israel."

"That's because of the tax issue," Luria said, explaining that due to American law, the American Friends organization "has to be connected in some fashion with educational matters."

He also estimated that 60 percent of Ateret Cohanim's money is raised in the U.S.

The Friends organization's most recent return, filed in 2008 for fiscal 2007, shows that it raised \$2.1 million in donations that year. Of this, \$1.6 million was transferred to Ateret Cohanim in Israel. The remainder was used to cover administrative overhead, including fund-raising expenses and an \$80,000 salary for Shoshana Hikind, the American organization's vice president and de facto director, whose husband Dov is a New York state assemblyman and well-known supporter of the Israeli right. The organization also raised substantial sums in previous years: \$1.3 million in 2006, \$900,000 in 2005, and about \$2 million in 2004. By comparison, American Friends of Yeshivat Ateret Yerushalayim raised only \$189,000 in 2007.

In its IRS returns, American Friends of Ateret Cohanim said its purpose is to "promote," "publicize," and "raise funds for" Ateret Cohanim institutions in Israel. These institutions, it continued, "encourage and promote study and observance of Jewish religious traditions and culture."

In reality, Ateret Cohanim in Israel focuses mainly on purchasing Arab property in East Jerusalem. Since its founding in the 1970s, it has bought dozens of Arab buildings for Jews to reside in. Just this April, for instance, it moved Jewish families into an Arab house it purchased in the Muslim Quarter.

One noteworthy donor to its Friends organization is casino magnate Irving Moskowitz, a well-known supporter of rightist causes, who also owns the Shepherd Hotel in East Jerusalem. That hotel made headlines recently when Moskowitz obtained a permit to build 20 apartments for Jews there, sparking angry protests from the U.S. government.

In response, Ateret Cohanim chairman Mati Dan insisted that the Friends organization "is an independent organization that decides for itself whom to fund." Moreover, he added, "we engage in education constantly . . . I don't know what Daniel Luria told you, but we are active in the field of [educational] institutions." . . .