**No-Man’s Land, Judea and Samaria Version: When There’s No Enforcement Against Illegal Construction**

*While the battle for Area C is gaining public attention, the Palestinian Authority is continuing unhindered with its strategic, systematic construction efforts in Area B, near Jewish settlements in Judea and Samaria. “The State of Israel needs to define this reality as a security threat,” settlement activists warn us as we visit the area.*

***By Ayelet Kahana***

2 Nisan 5781 - March 15, 2021

The town of Ariel extends over some 30 square kilometers, a size that instills the 21,000 inhabitants of this developing locality with a sense of security. However, these feelings of safety are being threatened by a new-yet-old Palestinian Authority trend. In recent years, two kilometers from Highway 5, to the west of the Ariel area, roads have been laid between the villages of Salfit, Bani, Zeid al-Gharbia, and Bruqin, and infrastructure extended for future Palestinian construction projects, some of which have already been populated. A comparison of aerial photographs of the area taken ten years ago with recent images reveals that plans to build a large city, several times the size of Ariel, are in full swing.

Yet more aerial photographs taken to the east of Ariel reveal how, over the past decade, along the Ariel-Rehelim road and close to Highway 60, additional routes have sprung up and numerous buildings have been constructed. And these settlements, in contrast with the area to the west of Ariel, are not close to any Palestinian villages or settlements.

Over the past three years, this development has caught the attention of settlement activists. Largescale Palestinian construction around Jewish settlements is happening throughout Judea and Samaria, and this is not a new phenomenon—indeed, Israel’s battle against the Palestinian takeover of Area C is now receiving media coverage and attention, including among political and professional echelons. But in the settlements, however, there is now talk of a new battle, and that, in fact, over the past three years, there has been takeover of open land between Palestinian and Israeli built-up areas has in Area B—which, according to the Oslo Accords, is under Israeli security control but not civilian control. In other words, according to the divisions outlined in the Oslo Accords, the Civil Administration, the Israeli ruling authority on the ground, has no enforcement capabilities—unlike in Area C, which is subject to Israeli military and civilian control.

**Pressuring the corridor**

“The Oslo Accords have established a dangerous situation on the ground, where the Palestinian Authority has the civil power to do whatever it wishes in Areas A and B,” Adv. Avichai Boaran, a settlement activist and one of the frontline leaders of the battle for the Amona outpost, tells us. Following last week’s “Silent War” conference organized by Makor Rishon and the Regavim social movement, which addressed this issue, we embarked on a tour of Gush Shiloh with Boaran, well-known settlement activist Adv. Doron Nir-Zvi, and Regavim’s Adv. Boaz Arzi, to better understand the dangerous reality they claim is emerging on the ground.

As we look north from the Achiya settlement toward the village of Qusra and the settlements of Migdalim and Esh Kodesh, Boaran describes the new battle facing the State of Israel throughout Judea and Samaria.

“In the last decade, the Palestinian Authority has been exploiting the agreements that it reached with Israel, despite announcing that it has ditched them. The PA is increasingly taking control of open areas in so-called Area B, with a view to taking over these lands, and it is doing so right next to Israeli settlements.” The PA’s obvious purpose in ignoring the Oslo Accords, says Boaran, is to take over as much land as possible in Judea and Samaria, as part of its implementation of the notorious Fayyad plan formulated by the former Palestinian Prime Minister [Dr. Salam Fayyad]. “The PA is exploiting the holes in the Swiss cheese created by the Oslo Accords, as Ehud Barak dubbed them, and is challenging the security of the settlements as it builds neighborhoods and towns in Area B, at no less a pace than it is doing in Area C, and as close as possible to Israeli settlements.”

Boaran directs our gaze to the *wadi* that descends from Qusra towards Achiya, and to the large chicken coops that Qusra’s residents have erected recently alongside vineyards belonging to a residents of Esh Kodesh. Around these, a new dirt road has been dug. This expansion reduces the distance between Qusra and the Jewish settlements, and even creates a barrier between Esh Kodesh and Migdalim, something that could be dangerous.

[photos]

*[Photo caption] Aerial photographs of Palestinian construction in Area B close by the settlements of Ma’ale Levona and Itamar. Photo credit: Regavim.*

“There is a single corridor of continuous settlement throughout Judea and Samaria,” explains Boaron. “It starts out in Rosh Haayin, continues to Barkan, passes through Ariel, Rehelim, Eli, Shiloh, and Amihai, and descends to Baqa’a. The PA is well aware of what’s causing that continuous settlement bloc, and so puts pressure on it by taking over open spaces around the settlements that form it, to the north and to the south. The aim is to stick as close as possible to the Jewish settlements and to create strangleholds around them—in fact, to turn them into enclaves.”

It is easier for Palestinian construction work to go ahead in Area B than in Area C. Construction in Areа C requires submitting plans to the Civil Administration or contending with its relatively lenient enforcement against illegal construction, while in Area B there are no requirements to file plans and obtain approval. On the contrary, the Ministry for Palestinian Settlement Affairs encourages this. In contrast to Area C, which has been mapped out by the Civil Administration and settlement organizations like Regavim—which over the last decade has collected data on the extent of illegal construction—such data do not exist for Area B.

“When a settlement pops up in the middle of nowhere, and has to be connected to the water, electricity, sewage, transport, and communications infrastructures, you realize that this isn’t something that just happened all by itself,” says Boaron. “For this to happen, you need to mobilize an entire system. There is a Palestinian Ministry for Settlement Affairs that has 600 establishments and it has a branch in every village. They make thousands of olive trees available to residents, and they call on villagers to plant these as close as possible to the borders of Jewish settlements so they can occupy the area.”

Thus, for example, in a notice published on Facebook, the Qusra village council called on its residents to build or to plant olive tree seedlings in open areas. According to one announcement, residents who did not wish to build on their own land should transfer that land to someone who was willing to do so.

***Adv. Boaz Arzi of Regavim: “Israel is not participating in the battle for Area B***. ***The PA is working with all its might and creating connections to the area in strategic locations. Not just next to Israeli settlements, but also to transport arteries.”***

**The Army Is Not Relevant**

As someone who has been involved in the purchase of numerous plots throughout the settlements, Adv. Doron Ben Zvi is well-acquainted with this issue. If Israel is the military occupier of Area B, I ask him, why doesn’t the army take action to rout out the occupation of these open areas, which ultimately pose a threat to Jewish settlements?

“The army isn’t relevant here, because these lands are a civil matter, it’s a question of records, the *tabu*, real estate. So, for example, I am not able to redeem land in Area B. If I were to purchase land from an Arab in Area B, I would not have any ability to exercise my rights to it. Treating construction in open areas as a security threat is a political act that needs to be undertaken, with guidance handed down to the army accordingly.”

Boaz Arzi of Regavim, an organization that opposes illegal construction and agricultural takeover in Area C, adds that, “the battle for Area C, which began two or three years ago, led to the understanding that there’s a catastrophe happening in the territories. But the State of Israel isn’t participating in this battle. The PA is working with all its might, and creating connections to the area in strategic locations. Not just adjacent to Israeli settlements, but also to transport routes.”

“Major General Tamir Yadai of the Central Command was with us on a similar tour a couple of weeks ago, and he told me that he doesn’t have the tools to operate in Area B,” says Boaron. “The legal advisors say, if there’s a security issue, deal with it with security measures. Build a fence, erect a guard post, but the Arab has a right to build in Area B. From their point of view, as long as the Oslo Accords apply to Israel and the civil authority in Area B is Palestinian—on the face of it, Israel has no ability. You’re saying you have security requirements? Define them proportionately, so you don’t infringe on their rights.”

The case of Qusra village is repeated all over Judea and Samaria. Several kilometers from Qusra, in the Ma’ale Levona area, another large Palestinian locality is being built. Around Ofra, in an open area between the village of Taibeh and the settlement, over the past decade, roads have sprung up and a huge area has been seized—which does not have single Palestinian settlement nearby. Electricity infrastructure has been extended to the area, apparently with the aim of building a large settlement.

The British Police Intersection in Wadi al-Haramiya on Highway 60 is one of the main road junctions in Judea and Samaria. Its location in the Wadi has made it a security challenge. In recent years, intensive Palestinian construction work has been carried out on both sides of this intersection. At the end of 2019, a road leading to the hilltop summit was laid, apparently in preparation for the construction of a new settlement point that would control the intersection.

*[Photo caption] The chicken coops that residents of Qusra village have erected close to Migdalim and to vineyards belonging to a resident of Esh Kodesh. Photo credit: Saria Diamant.*

“The story of Highway 80 from the south of Hebron is another embodiment of this trend,” notes Nir-Zvi. “The PA took over the clifftop track in the Judean desert near this highway and paved internal roads there, creating projects on the ground. Actually, the PA is linking Judea and Samaria with the roads that crisscross these areas.”

The same trend is also evident around the settlement of Otniel. A comparison of aerial photographs of the settlement and the nearby village of Khirbet Karma over a ten-year period reveals how, in recent years, houses have sprung up on open areas here too. Today, these are situated just hundreds of meters from Otniel.

**Part of an Organized Policy**

From Achiya, we head to the south of Gush Shiloh. On the way, we stop and look at Shvut-Rachel and Shiloh. Between these two settlement points, there is a hill with a solitary Arab house on it. “Now take a look to your right, do you see the village of Jalud?” Boaron directs me. “There’s a dirt road leading out from it that has sprung up really recently, and they plan to link the village to that one single house. That’s their *modus operandi*.”

From the Adei Ad outpost we continue to climb to the summit of the hill, which offers a spectacular view of Amihai, Shvut-Rachel, and the Shiloh valley vineyards. Before us is a wide system of roads, only 50 meters from the edge of Amihai. In the summer of 2019, the settlement’s Military Security Coordinator spotted dozens of pennants hanging in various places around the hill. The Coordination and Liaison Administration explained that these were agricultural works that had been coordinated with them, however the rattling of the bulldozers indicated that this was largescale construction work. From conversations with Arab workers, concerned Amihai residents understood that a new Arab settlement was planned for the site. According to the site foreman, everything had been coordinated with the Coordination and Liaison Administration headquarters.

*[Photo caption] Boaron. Photo credit: Saria Diamant.*

The move also surprised Nadav Padan, the former commander of the Central Command, who also toured the area. The venture, whose plots have already begun to be sold for $30,000 each, is managed by the TABO real-estate project, which operates under the auspices of Union Construction and Investment (UCI), one of the largest real estate companies in the Palestinian Authority. UCI is led by Khaled Al Sabawi, a Canadian-Palestinian entrepreneur. The way the company operates is extremely simple: it identifies and purchases land that has not been registered as state land and allows Palestinians from Eretz Israel and around the world to purchase plots. The company deals with the bureaucratic process of purchase from those it identifies as heirs to the land and is concerned about environmental development.

In the wake of allegations by the company that settlers were harassing their construction workers in the field, the company filed a petition with the High Court of Justice, asking the Court to order the IDF to secure their sites. After the IDF had increased its presence near the sites, the High Court of Justice ruled that, in light of this, it had fully addressed the petition. In an affidavit attached to the petition, Al Sabawi again revealed that this project is part of an organized policy by the Palestinian Authority to take over as much land as possible. As part of the project, Al Sabawi stated, “the company acquires extensive and mostly unregistered lands in Areas A and B and turns them into registered plots with titles of ownership.” He further wrote that, “construction works are being carried out in accordance with permits issued by the Palestinian Authority, which, according to the interim agreements, is authorized to regulate planning and construction in Area B.”

“The State of Israel has no control over anything that happens in Judea and Samaria, it’s all smoke and mirrors,” complains Nir Zvi. “The settlements in Judea and Samaria are living under a whitepaper. In the 23 years that I’ve been working with the Civil Administration as a lawyer, the situation has just gotten worse and worse, where the basic assumption—also on the part of Israel—is that we are something temporary on the ground. The Arabs are doing what they need to do, and are operating as an “Ishmael National Fund,” something we knew how to do a century ago. We need to go complain to the rightwing government, which instead of just tossing the Talia Sasson report into the trash and adopting the Edmund Levy report that completely turns the tables and repeals all kinds of orders like the Interfering Use Order—the Sasson Report still exists and the judiciary of Judea and Samaria is going along with it.”

*[Photo caption] Nir-Zvi. Photo credit: Saria Diamant*

Arzi agrees with Nir-Zvi that all this stems from a mindset of impermanence toward Judea and Samaria, a perception that is projected by certain elements in Israel. “There are basic things that those in power do on the ground. When the British came to Eretz Israel they enacted land agreements. The State of Israel has been on the ground for 54 years already and we are terrified of even hearing this term.”

According to Arzi, “We need to stop talking about Areas A, B, and C and start talking about open areas and built-up areas. If we don’t deal with this now, in the future we’re going to wind up in a catastrophic crisis. Right now, the situation on the ground is a danger to the State of Israel, not just the settlements. We are losing land in favor of the PA, which is undermining the Oslo Accords and altering the reality on the ground. When people come to examine the area in the future, they are going to look at what is actually there, that is, where the Palestinian settlements are and where the Jewish settlements are, and that’s the basis on which a future agreement is going to be made. I just don’t see a situation where a settlement that’s stuck in the middle of a ring of Palestinian buildings or farms is going to last.”

“We’re already several years too late in dealing with this situation,” Arazi adds. “We need to recoup places that we’ve taken over and prevent any activity in the future. The State of Israel has to see the situation in Judea and Samaria as a ‘war between the wars’ and define this reality as a security threat so that it can justify any action to put a stop to it.”

**Right-wing Slumber**

MK Nir Barkat of Likud, who toured the area, and other rightwing politicians agree with this viewpoint. “There has been a slight awakening at a political level,” praises Boaron.

“We need to insist on symmetrical behavior on the ground from the Palestinian Authority,” says MK Barkat. “That means that they have to keep to populated areas and avoid green areas. There are plenty of areas in Areas A and B, they can stick to building in these, as is customary in the wider world. I acted on the same principle when I was Mayor of Jerusalem, in the Sur Baher neighborhood, for example. We were given the opportunity to build higher. The Palestinians should keep to populated areas, build higher, and build close together. Just like Israeli construction.”

*[Photo caption] Arzi. Photo credit: Elad Davidi*

**Have rightwing governments closed their eyes to the phenomenon over the past decade?**

“There are always challenges ahead of us, and we haven’t solved all the problems. Not everything is perfect. We don’t need to be afraid to undertake reforms on this issue. One of the principles that the European Union advocates is the preservation of green spaces. We need to go to the countries that are funding a considerable amount of the construction in those areas and argue that they need to act to preserve all the open spaces in Eretz Israel. This isn’t just a freeze for the situation on the ground, but it’s an international rationale.”

**You also suggest looking at the territory differently, and not in terms of A, B, and C. Has the time come for Israel, like the PA, to stop recognizing the Oslo Accords as well?**

“I agree that we need to look at the territories differently. There is a certain fixation in [people’s] thinking here. As someone who tends to think outside the box and who takes from my experience in Jerusalem regarding the reforms and changes that need to happen, one of these is a different way of thinking about our relationship with the Palestinians.”

“For twenty years, rightwing governments have been in a kind of total slumber, a state of indifference, that has led the Palestinian side to occupy and occupy, and now they are too close to the settlement fences,” Boaron, Nir-Zvi, and Arzi conclude. “The State of Israel has to act, and as quickly as possible.”

The response from the Central Command and Civil Administration: “The security services and the Civil Administration act against illegal construction solely in Area C. Regarding construction in Area B, enforcement is carried out only when there is a security requirement. The IDF will continue in its mission to protect residents, alongside law enforcement in the area.”