



# THE WAR OF ATTRITION

**The Palestinian Authority's  
Program for Establishing  
an Arab State in Area C**

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**The Fayyad Plan, One Decade Later:  
Report on Land Status in Judea and Samaria, 2009-2019**

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**Regavim (R.A)** is a public movement dedicated to the protection of Israel's national lands and resources.

The Regavim Movement acts to prevent illegal seizure of state land, and to protect the rule of law and clean government in matters pertaining to land-use policy in the State of Israel.

The Regavim Movement is active in the public, parliamentary and judicial spheres, through publication of opinion and research papers, and through the dissemination of reports, policy and opinion papers, media communications and, when necessary, legal action.

Regavim's activities are directed toward accomplishing one mission: Restoring the Zionist vision to its primary role in the Israeli policy process.

As we see it, the Zionist vision is first and foremost an unapologetic Jewish vision, but at the same time it is a vision grounded in humanist values, justice, and morality - values expressed in strict adherence to high ethical standards and clean government.

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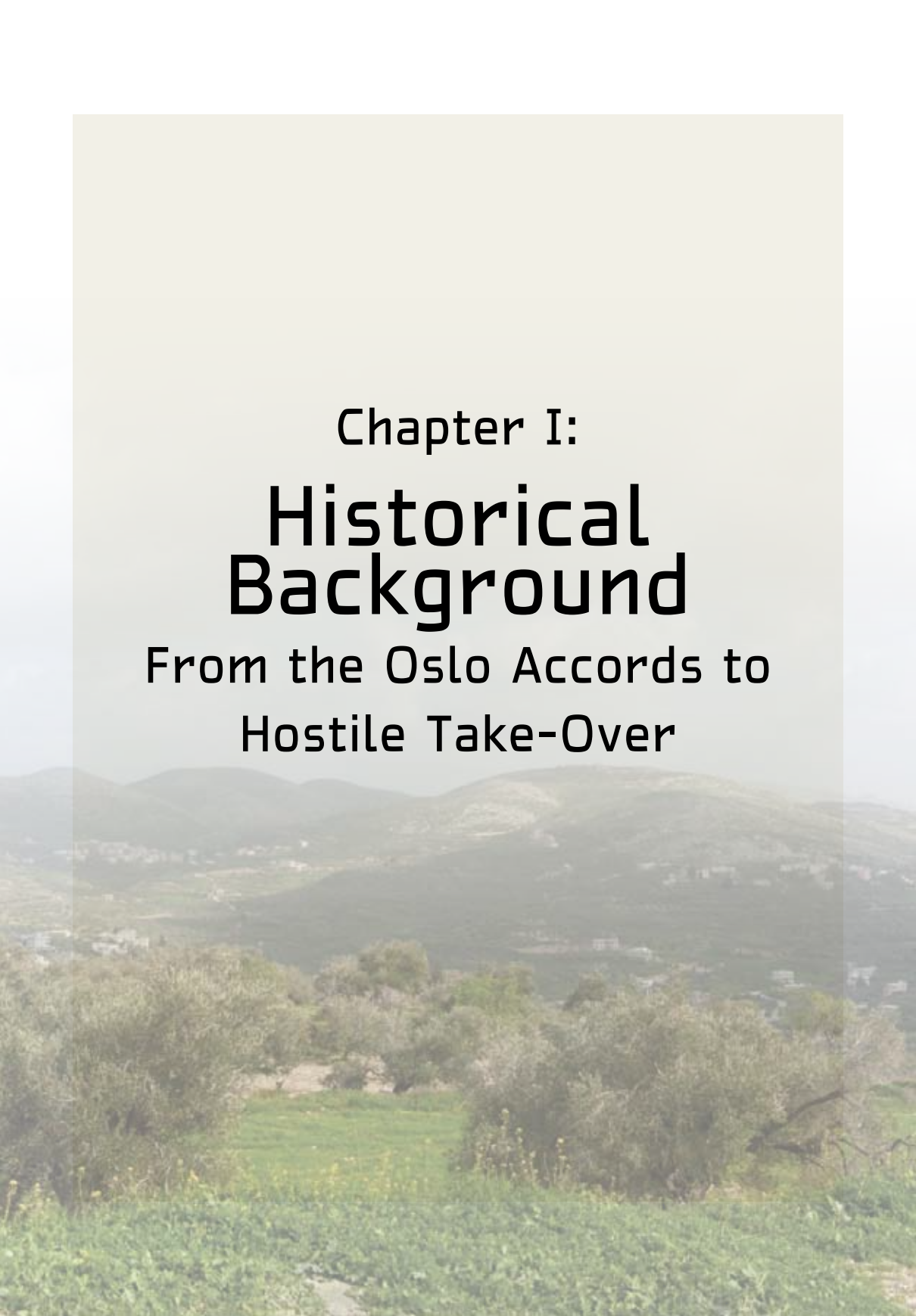
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Chapter I:

# Historical Background

From the Oslo Accords to  
Hostile Take-Over



“We have decided to take the initiative, to accelerate the end of the occupation through hard work, and to create facts on the ground that are consistent with the idea that the establishment of a state is not something that can be ignored. This is our agenda, and we intend to implement it with determination.”

(Salaam Fayyad, Prime Minister of the Palestinian Authority, 2009, in an interview with The New York Times)

# Historical Background: From the Oslo Accords to Hostile Take-Over

The brief historical synopsis that follows does not claim to provide an in-depth review of 100 years of Zionist endeavor. Rather, it presents an extremely abbreviated list of the chapters in that history that have led to the present situation in Judea and Samaria.

In 1948, as the British Mandate ended and the State of Israel was established, the Kingdom of Jordan conquered Judea and Samaria. These areas had always been a natural, uninterrupted, contiguous section of the adjacent territory, but the Jordanian occupation and the creation of an international border in the heart of the Land of Israel caused the unnatural separation of these areas from the rest of Israel and the classification of this territory as a distinct land parcel.

The defensive war that was thrust upon the State of Israel in 1967 resulted in the liberation of these areas and their return to Israeli hands. Israel's leadership extended Israeli law to greater Jerusalem, and later to the Golan Heights, which had been won from Syria, but declined to apply Israeli sovereignty to Judea and Samaria due to the disagreement within the Israeli government as to what the future of these areas and of the Arab population living there would be.

The Arabs of Judea and Samaria initiated armed conflict against the State of Israel through acts of terrorism and sabotage, in the name of "liberation of Palestine," and this struggle has been characterized by waves of violence over the years. After the outbreak of the First Intifada, in the late 1980s, negotiations between the State of Israel and the Palestine Liberation Organization (PLO) began, and in the 1990s a series of agreements were signed between the sides. These agreements became known as the Oslo Accords, and were part of a broad effort to initiate a peace process between the State of Israel and the Arabs of Judea and Samaria.

Among Israeli citizens, there was fierce disagreement over the Oslo Accords, which were ratified by the Knesset on the strength of a single vote. In the framework created by these accords, the State of Israel recognized the PLO as the official national representative of the Arabs of Judea, Samaria, and the Gaza Strip ("the Palestinians"), and transferred jurisdiction over parts of Judea, Samaria and Gaza to the PLO. The Oslo Accords were given international recognition and were ratified with the signatures of the United States and the European Union.<sup>1</sup>

The Interim Agreement divided the territory of Judea and Samaria into three categories:

- **Area A** - Comprising some 17% of the total area of Judea and Samaria, Area A includes all the cities and a portion of the countryside that were ceded to full Palestinian Authority control, both for security and civilian-municipal affairs.
- **Area B** - Comprising some 21% of the territory, Area B was placed under Palestinian Authority municipal jurisdiction, while security jurisdiction remained in the hands of

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1 "The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip." <http://bit.ly/2TDdy8b>.

the State of Israel.

- **Area C** - All of the remaining territory was placed under full security and civilian jurisdiction of the State of Israel.<sup>2</sup>

The establishment of the Palestinian Authority and the signing of the Interim Agreement were described at the time by the signatories as a “transit station” on the road to the establishment of an autonomous Palestinian entity whose borders would be determined through negotiation.

In the year 2000, the Second Intifada broke out. The State of Israel, its cities and its citizens came under a barrage of murderous acts of terror, perpetrated by all of the Palestinian terrorist groups - including organizations that were constituent members of the PLO, the very same organization that had committed to the cessation of all acts of terrorism. The Palestinian Authority (“PA”) itself provided (and continues to provide to this very day) direct and indirect assistance to terror organizations, through financing their activities, through payment of salaries to the families of terrorists imprisoned in Israeli jails, through glorification of acts of terrorism and the people who carry them out, and more.

The intifada halted negotiations between Israel and the Palestinian Authority, which thrust the PA into a deep crisis. The State of Israel resumed its battle against terrorist organizations, and the interim division of the territory created by the Oslo Accords began to take on permanence and to dictate jurisdictional divisions in practice. In the years that followed, there were a number of attempts to renew negotiations between Israel and the Palestinian Authority. Despite the failure of these attempts, Israel maintained security cooperation with the Palestinian Authority, motivated by the constant challenge posed by Hamas to PA hegemony.

The short-term security benefits of this policy created - or at the very least enabled - long-term strategic processes that are detrimental to Israel’s national interests.

The Palestinian Authority never abandoned the principle of armed resistance (despite the very superficial and half-hearted lip service it has been required to pay in exchange for legitimacy in the international arena), but a tactical decision gradually gained traction among the PA leadership to initiate a broad, non-violent national process that would lead to the de facto annexation of all of Judea and Samaria and to the creation of a de facto Palestinian state.

Under cover of the interim agreement, and in violation of Israel’s legal status, with the help of third parties, the Palestinian Authority orchestrated and took steps that aimed to embed the existence of a de facto Palestinian state in all of Judea and Samaria as an immutable fact in the consciousness of the international community, and to create geographic realities that would tie the Israeli government’s hands and force it to accept this particular reality. As the following chapters will illustrate, these moves have given rise to a security situation that endangers the State of Israel.

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2 This includes the nature reserve set aside at a later stage; see below for a full discussion of this area.





## The Fayyad Declaration

In 2009, then-Prime Minister of the Palestinian Authority Salaam Fayyad published a plan titled “Palestine: Ending the Occupation, Establishing the State.” The plan declared that it would work toward establishing “an independent Arab state with full sovereignty over all of the territory of the West Bank and Gaza Strip in the 1967 borders, with Jerusalem as its capital.”

The plan rests on three key elements: structural reform of the central and local government, rehabilitation and stabilization of the defense system (police, courts, prisons and more), and the creation of economic and physical infrastructure (banks, public and educational institutions, an electricity system, waterworks, sewage system, road system, and more).

In his plan, Fayyad described the vision and the blueprint for the de facto, unilateral creation of the Palestinian state. Basing itself on the Oslo Accords’ division of the territory and the PA’s already-established jurisdiction in Areas A and B, Fayyad explained that the establishment of the State of Palestine would be made possible by, among other things, the creation of territorial contiguity between the Arab population blocs in Area B of Judea and Samaria through massive construction and land-seizure in Area C. These projects would draw the borders of the State of Palestine as a *fait accompli*, whether these borders were agreed upon or not these borders were agreed upon.<sup>3</sup>

The Fayyad Plan did not remain a theoretical paper.

While the State of Israel stands idly by and continues to regard the situation created by the Oslo Accords to be a relatively stable status quo, the Palestinian Authority has effectively changed the land status map of Judea and Samaria, particularly over the decade since the Fayyad Plan’s launch. With the help of generous support provided by the European Union and its constituent states, as well as Arab states, the Palestinian Authority has advanced a series of national initiatives aimed at improving its position, like chess pieces on a board, through large-scale illegal construction, massive agricultural projects in strategic locations - which, when the time is right, will be used to claim de facto sovereignty on these crucial land parcels - the creation of an independent land registry, and “lawfare” activity which obstructs Israeli law enforcement against these illegal tactics.

For many years, we at Regavim have been tracking the physical outcomes of these phenomena in the field, and expressing our concerns in the Knesset, the courtroom and the media, and attempting to alert the public and its leadership to the dangers these outcomes pose for the State of Israel and all its citizens. The issue at hand is not a question of “right wing” versus “left wing” political attitudes toward the establishment of a Palestinian state; that discussion and debate may quickly become moot, as a new reality continues to take shape on the ground - and facts on the ground are stronger than any theoretical arguments.

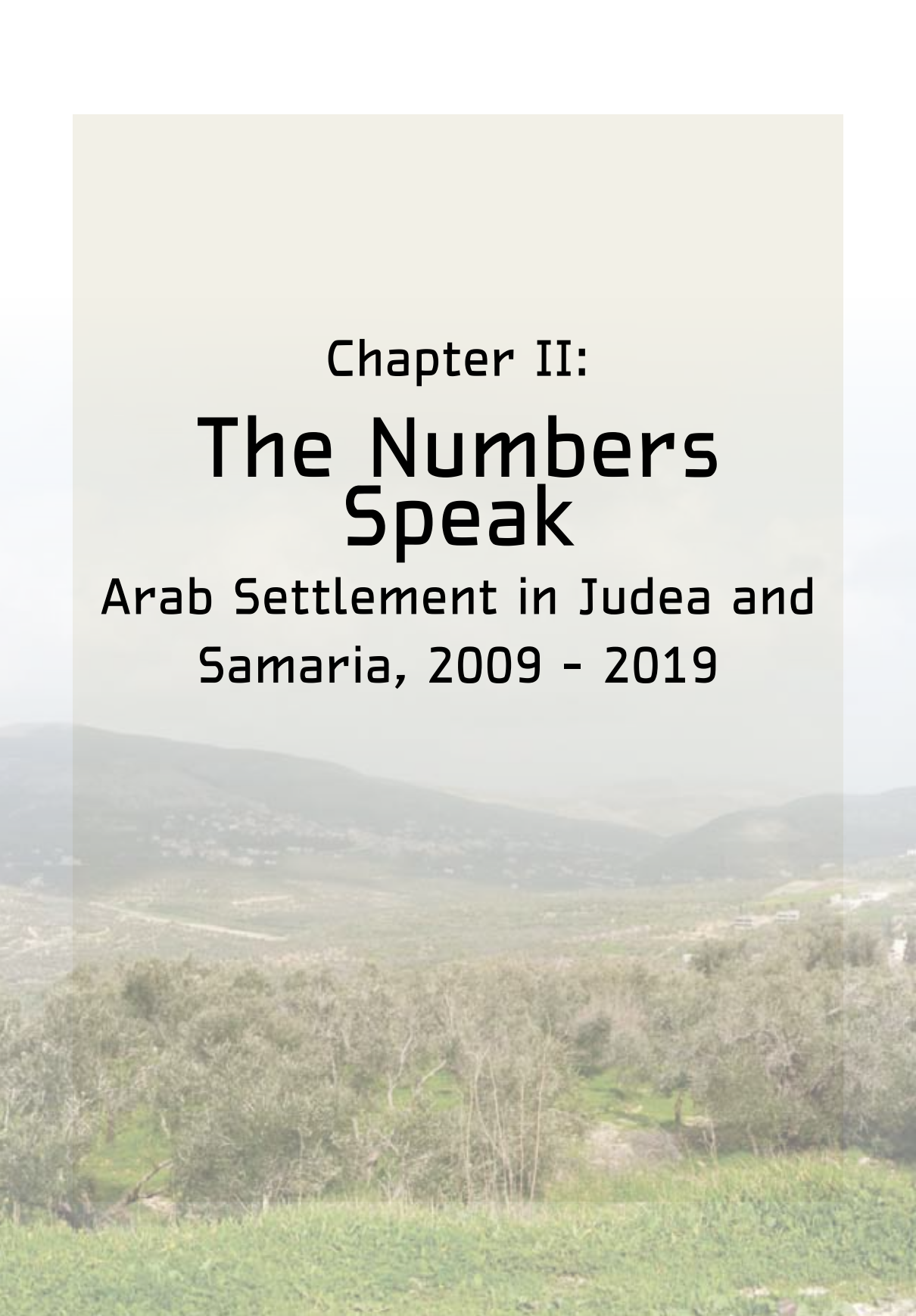
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3 Ending the Occupation, Establishing the State Program of the Thirteenth Government. August 2009. <http://bit.ly/2toTdZH> . See pp. 12,25,28, inter alia.

To mark a decade since the publication of the Fayyad Plan, we felt an urgent need to offer Israel's political and military leadership and the public at large a comprehensive analysis, based on factual, geographic data, of the changes that have occurred on the ground since 2009. In the following pages, we offer a summary of our findings and an analysis of emerging trends, and outline the ramifications for Israel's future.

In addition to the data presented in the pages that follow, which represent the findings of our in-depth research and exact mapping, we offer conclusions and recommendations. Although our findings and conclusions present a difficult, even grim picture that might lead thoughtful readers to despair, this is most certainly not our intention. We believe that a solid grasp of the facts is an essential prerequisite for correcting the situation, and there is certainly considerable leeway to do so, as we illustrate in the recommendations section.





Chapter II:  
**The Numbers  
Speak**

**Arab Settlement in Judea and  
Samaria, 2009 - 2019**

# Illegal Construction: The Method of Annexation

In recent years, Regavim has exposed the issue of illegal Palestinian construction and its gargantuan proportions. A decade after the Fayyad Plan became operational, we conducted a comprehensive mapping project, based on comparison of aerial photos documenting illegal structures on the ground in 2008, on the eve of the Fayyad Plan's launch, with current aerial photos, reflecting the changes that have occurred in the intervening decade, down to the individual structure.

Judea and Samaria are comprised of some 5,860,000 dunams (5,800 km<sup>2</sup> or 1.465 million acres). As detailed above, the Oslo Accords transferred jurisdiction over sections of Judea and Samaria to the Palestinian Authority; these were labeled Area A (with the highest Arab population density) and Area B (with moderately high Arab population density).

Areas A and B cover some 2.2 million dunams, comprising approximately 38% of the total area of Judea and Samaria, while Area C is 3.6 million dunams, some 62% of the territory. According to the agreement, the Palestinian Authority holds full jurisdiction for planning and construction, while Area C is under Israeli jurisdiction, which it exercises through the planning offices of the Civil Administration for Judea and Samaria.

Illegal construction in Judea and Samaria, as in other parts of the country, is not a new phenomenon, but through the Fayyad Plan it has become a strategic tool, used purposefully and systematically, to seize control of territory under Israeli control.

The system of creeping annexation is carried out on two parallel tracks: The first is coordinated with the Israeli authorities, through Palestinian Authority applications to the Israeli planning board for approval of projects of special importance (in most cases these initiatives' eligibility for foreign financing is contingent upon an Israeli "seal of approval"). The second track, which is far more widespread, creates facts on the ground through widespread illegal construction and development, without coordination or permission of the Israeli authorities.

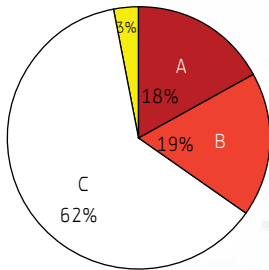
Despite its very ambitious goals, the Fayyad Plan was not camouflaged in any way, nor was it cloaked in secrecy; it has been carried out publicly and in broad daylight. Since 2009, in a well-planned and carefully executed program, there has been a surge in illegal Arab construction, specifically in Area C, despite the fact that hundreds of thousands of dunams of empty, undeveloped land reserves are available in Areas A and B.

Construction projects carried out according to the Fayyad program focus on the creation of land bridges to Area B (under Palestinian Authority jurisdiction), and, at the same time, fragmentation of Israeli 'settlement blocs' and strategic areas such as E1, the area surrounding Maaleh Adumim and Highway 1 which connects Jerusalem to the Dead Sea.<sup>4</sup> According to a 2018 Ministry of Defense estimate, there are more than 800 illegal

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<sup>4</sup> For more information on illegal construction in this area, see "The Last Colony: EU Involvement in Illegal Construction in Area C." Regavim: February 2015: <https://www.regavim.org/eu-involvement-in-illegal-building-in-area-c-position-paper/>





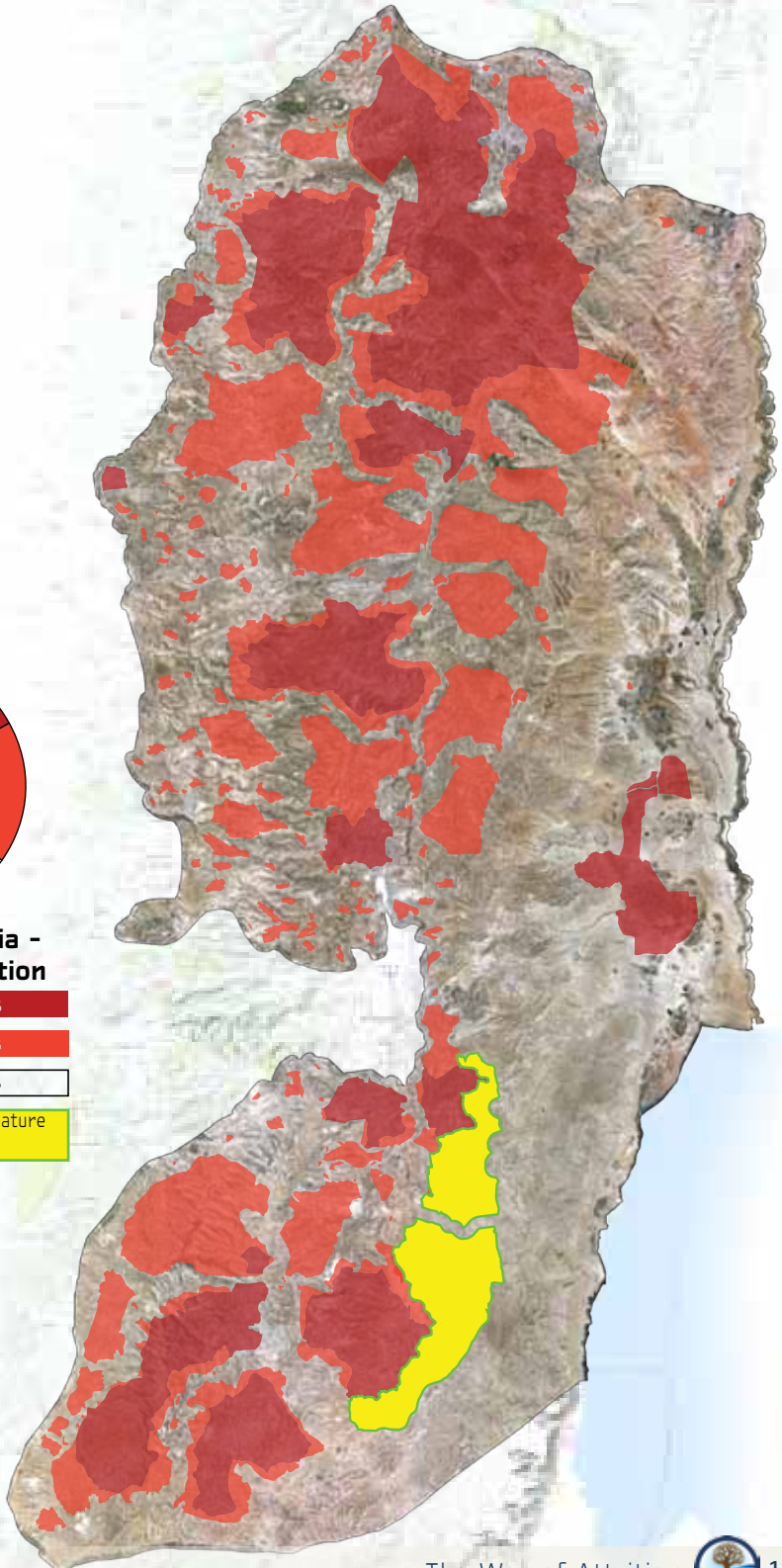
**Judea and Samaria - Area and Jurisdiction**

Area A - 1,000,000 dunams

Area B - 1,035,508 dunams

Area C - 3,653,841 dunams

Wye Plantation-designated nature reserve - 166,539 dunams



**Programmatic illegal construction in Area C, despite abundant available land reserves in Area B**



2009  
Kusrah, Eastern Samaria



2019



2009  
Brukin, Samaria



2019



2009  
Sinjil, Binyamin Region

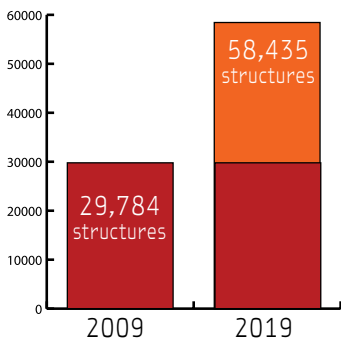


2019

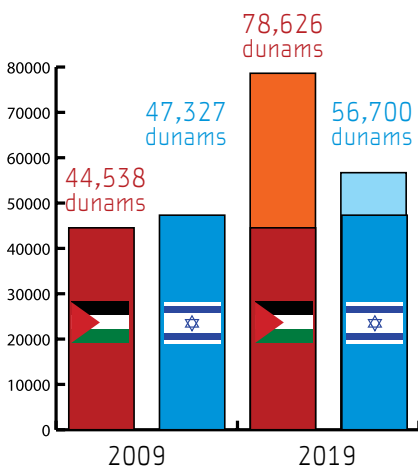
Palestinian outposts in Area C; the majority were created or became permanent after 2009 with the support of foreign funding.

The common denominator connecting the Palestinian outposts in Area C (and the most famous of these outpost, Khan al Ahmar, located near Maaleh Adumim) is the spread of land seizure by the Palestinian Authority in Area C. Although the State of Israel has not extended its sovereignty to Area C of Judea and Samaria, international law holds Israel exclusively responsible for this area and everything that happens in it. The

**Arab construction in Area C**



**Built-up area of Area C - Arab and Jewish settlements**



joint PA-EU construction projects in Area C are a violation not only of Israeli law and international law, they also violate the Oslo Accords, to which the European Union attached its own signature, as well as the accepted norms of international diplomacy. The oft-heard claim that these well-funded projects constitute humanitarian aid does not afford any exemption from the requirements of international law to apply for and receive building permits from the jurisdictional authority.

Comparison of aerial photographs indicates that over the last decade, since the Fayyad Plan's inauguration, both the area covered by Arab construction in Area C and the number of illegal structures have doubled: the number of Arab-built structures in Area C on the eve of the Fayyad Plan's launch was 29,784, the majority of which were illegal. Ten years later, 58,435 structures were counted, an additional 28,651 illegal structures - double the number counted in Area C in 2009.

The area taken up by illegal Arab construction in 2009 aerial photography studies was measured and compared to the area covered by illegal construction in 2019 aerial photos. This comparative study indicates an expansion of 77% in a decade: In 2009, developed areas accounted for 44,538 dunams, whereas in 2019 that number leaped to 78,626 dunams.

By the same token, we studied the rate of growth of Jewish settlement over the same time period. In 2009, Israeli construction covered 47,327 dunams in Area C, but ten years later that figure rose to 56,700 dunams, an increase of only 20% - one quarter of the growth rate achieved by Arab construction in Area C.



The gaps that come to light through these comparisons are reinforced by demographic data, despite the dearth of reliable and substantiated data regarding the Arab population of Area C. Israel's Central Bureau of Statistics conducted population studies and censuses until the Oslo Accords came into

effect, and since then Israel has relied on data provided by the Palestinian Authority. It has been proven that the information provided by the Palestinians is severely flawed by double-counting, and failure to remove deceased residents and émigrés from the population rolls, all of which impact the veracity of the census data.<sup>5</sup>

The precise number of Arab residents in Area C is unknown, and is a subject of dispute.<sup>6</sup> The minimalist estimates (which are, in all likelihood, inaccurate) are 50,000 people; other estimates place the number at 100,000, whereas Israel's former Minister of Defense referred to 230,000,<sup>7</sup> while maximalist estimates, based on Palestinian Bureau of Statistics figures (adopted by the UN), claim the number of Palestinians in Area C is some 300,000.<sup>8</sup>

For decades, the State of Israel has not conducted a census of Arab residents in Area C, and as a means of promoting the Fayyad Plan, the Palestinian Authority encourages populations living in areas under PA control to resettle in the network of hundreds of Arab outposts it has established in Area C, the area under Israeli jurisdiction.<sup>9</sup>

In summary, the increase in land use for the Jewish sector in Area C, home to some 450,000 souls as of 2019, is dwarfed by the extent of land seizure for the Arab population by dozens of percentage points, even though the size of the Arab population, which is purposefully exaggerated in official estimates, is far smaller than the Jewish population.

## Who Really Suffers from Overcrowding?

Any analysis of land-use trends in Area C must necessarily examine the realities in Areas A and B. For many years, it has been claimed that, on the one hand, Arabs are forced to build illegally in Area C because no available land for development remains in Areas A and B, and on the other hand, the Israeli authorities do not grant sufficient building permits in Area C.

Our research and mapping of the developed areas of Judea and Samaria prove that:

1. The population density in Arab sections of Judea and Samaria is significantly lower than the population density in Israeli areas, both within Israel proper and in Judea and Samaria.
2. Some 70% of Areas A and B are undeveloped, a fact that indicates that Arab construction in Area C is not a result of a land-reserves shortage in Areas A and B.

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5 There is a differential of more than one million Palestinian residents in Judea and Samaria between the government's data and external experts' estimates. See the Knesset Foreign Affairs and Defense Committee website: <http://bit.ly/3aaPkUA>.

6 Ibid.

7 Ex-Defense Minister Avigdor Lieberman: "We are responsible for all of Area C, which is also home to 230,000 Palestinians." Quoted in "The Battle for Qalqilya," *Yediot Aharonot* (Hebrew): <http://bit.ly/379rVVL>.

8 UNOCHA: Occupied Palestinian Territory - Profile: <https://tabsoft.co/2NIdHn8>.

9 See the response of the Civil Administration in an investigative report by Makor Rishon (Hebrew), "Combat in Developed Areas," <https://www.makorrishon.co.il/magazine/150107/>

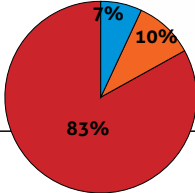




# Land Utilization in Areas A and B

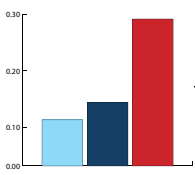
## Map Index

- Arab construction, Areas A and B
- Arab construction, Area C
- Israeli construction, Area C
- Areas A and B



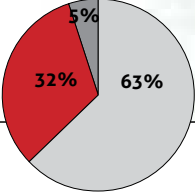
### Area covered by Israeli vs Arab Construction in Judea and Samaria

Area of Arab construction in Areas A and B	650,748 dunam (251.25 miles <sup>2</sup> )
Area of Arab construction in Area C	78,626 dunams (30.36 miles <sup>2</sup> )
Area of Israeli construction in Area C	56,700 dunams (21.89 miles <sup>2</sup> )



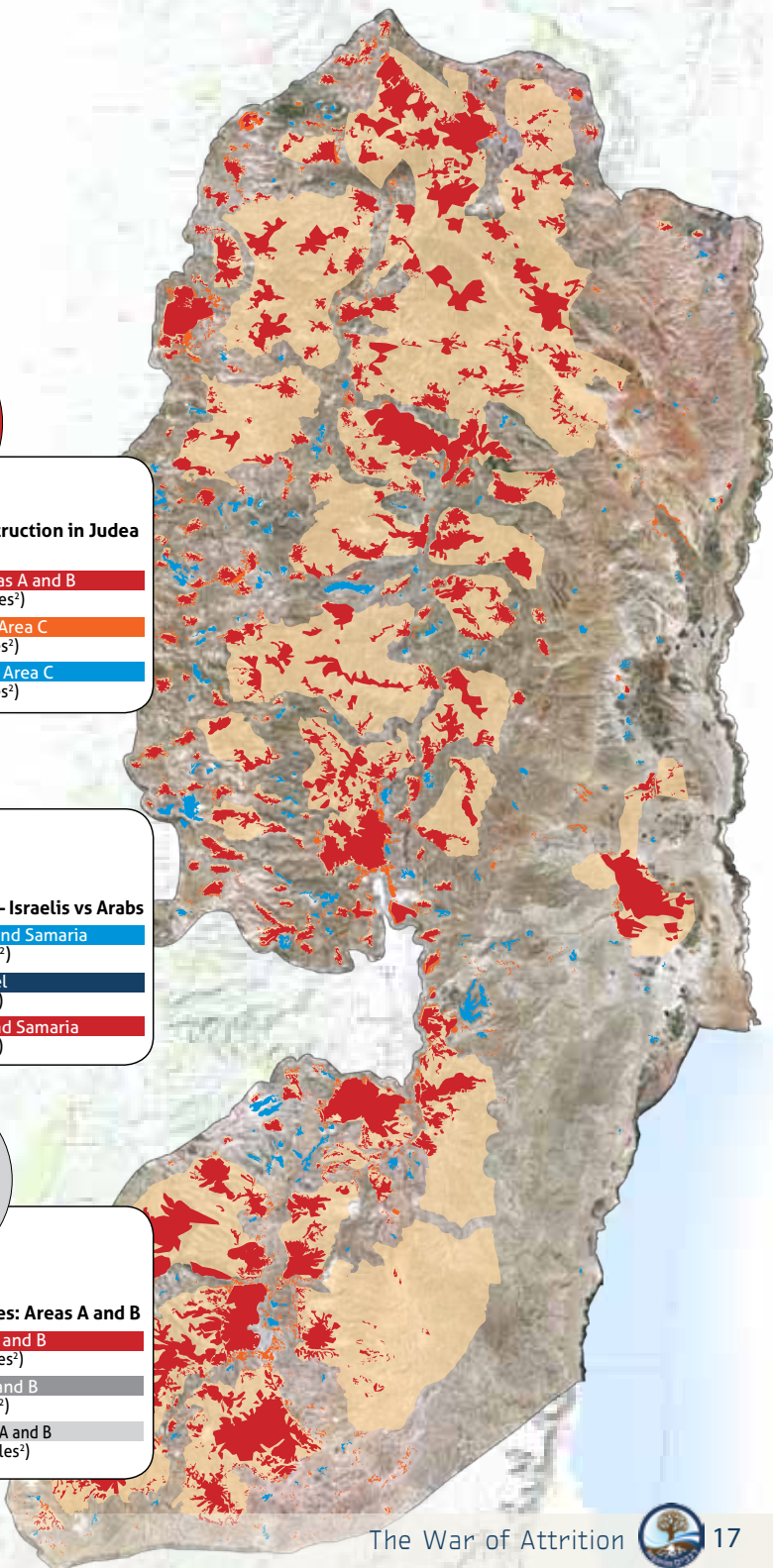
### Area per person in Judea and Samaria – Israelis vs Arabs

Meters/Jewish resident in Judea and Samaria	0.113 dunam (1216.3 ft <sup>2</sup> )
Meters/resident in Israel	0.114 dunam (1227 ft <sup>2</sup> )
Meters/Arab resident in Judea and Samaria	0.292 dunam (3143 ft <sup>2</sup> )



### Available versus utilized land reserves: Areas A and B

Utilized Arab land in Areas A and B	650,748 dunam (251.25 miles <sup>2</sup> )
Nature reserves in Areas A and B	94,039 dunam (36.3 miles <sup>2</sup> )
Available land reserves in Areas A and B	1,290,721 dunam (498.35 miles <sup>2</sup> )



## Population Density

Population density is calculated by dividing the number of residents in a defined territory by its measured area.<sup>10</sup>

With this methodology in mind, we begin by presenting data regarding the overall area of Judea and Samaria and the developed areas within this territory. We will then present population data, which will enable us to calculate population density. We will also compare this data with present and projected population density calculations for Israel and other countries.

## Area and utilization of land reserves

### Judea and Samaria

The total area of Judea and Samaria is 5,860,388 dunams (5,860.388 square kilometers or 2262.7 square miles), which equal approximately one quarter of the area of Israel (excluding Judea, Samaria and Gaza).

The interim agreements between Israel and the PLO signed in the mid-1990s, known as “The Oslo Accords,” divided jurisdiction over parts of Judea and Samaria into four distinct zones, as follows:

1. Area A, which includes Palestinian cities and some rural areas, was placed under full security, civilian and municipal jurisdiction of the Palestinian Authority. Measuring some 1,000 square kilometers (1 million dunams or 386.1 square miles), Area A accounts for approximately 17% of Judea and Samaria.
2. Area B, comprised for the most part of Palestinian villages, was placed under Palestinian Authority jurisdiction in civil matters, with security jurisdiction retained by the State of Israel. Measuring some 1,035 square kilometers (1,035,508 dunams or 399.62 square miles), Area B constitutes approximately 18% of Judea and Samaria. In total, Areas A and B measure 2,035,508 dunams (786 square miles):  
**650,748 dunams** (251.25 square miles) (32%) **is developed** (covered by structures);  
94,039 dunams (36.3 square miles) is designated under the agreements as nature reserves; and  
6,293 dunams (2.4 square miles) are both firing zones and nature reserves (totaling 5% of the territory)
3. Designated Nature Reserve - In addition to Areas A and B, a section of the Judean Desert in the Dead Sea region was ceded to the civilian jurisdiction of the Palestinian

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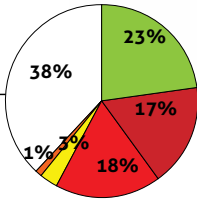
10 This methodology was adopted by the Israel’s Central Bureau of Statistics (CBS). See “Land Use in Israel,” Statistikal #173 (December 2018) (available in Hebrew only). <http://bit.ly/2RykmkB>. An alternative method divides the number of housing units by the area utilized for construction, but apparently the method that calculates per number of residents, rather than per housing unit, was recently adopted by the Planning Commission in its decision to adopt a policy of increased population density in Israeli cities, as discussed below. In order to compare the data for Judea and Samaria with data for Israel, we will measure the area taken by residential construction (as a portion of the total built-up area), the method employed by the CBS.



# land utilization in Judea and Samaria

## Map Index

- Area A
- Area B
- Nature Reserves in Areas A and B
- Area covered by Arab construction in Area C
- Israeli construction, Area C
- Firing Zones in Areas A and B
- Firing Zones in Area C
- Nature Reserves in Area C



Total Area – Judea and Samaria  
5,860,388 dunams

**Area A**

1,000,000 dunams (386.1 miles<sup>2</sup>)

**Area B**

1,035,508 dunams (399.8 miles<sup>2</sup>)

**Wye Accords designated Nature Reserve**

166,539 dunams (64.3 miles<sup>2</sup>)

**Area covered by Arab construction in Area C**

78,626 dunams (30.36 miles<sup>2</sup>)

**Area covered by Israeli construction in Area C**

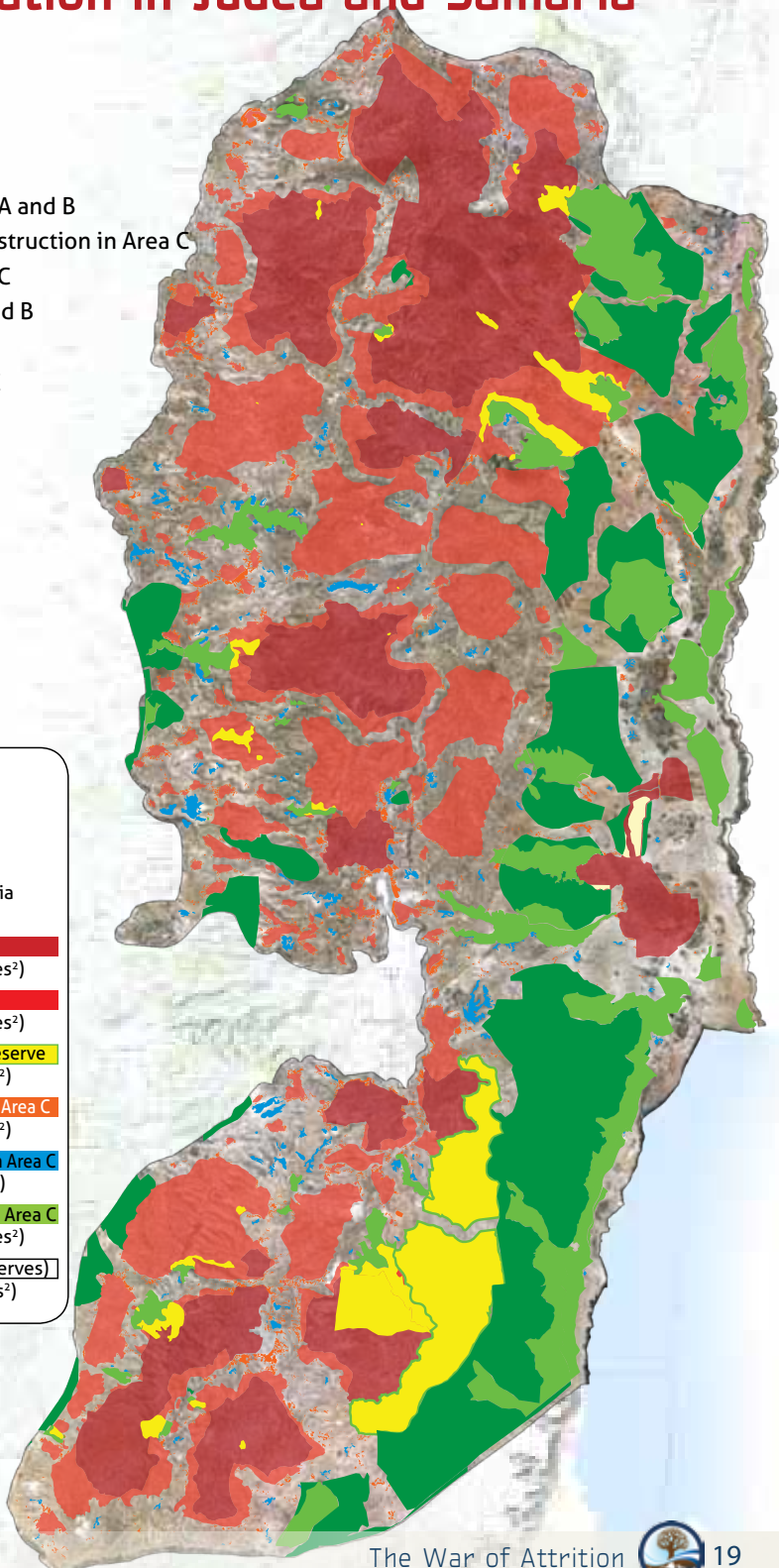
56,700 dunams (21.9 miles<sup>2</sup>)

**Firing zones and Nature Reserves in Area C**

1,327,033 dunams (512.4 miles<sup>2</sup>)

**Viable area – Area C (net land reserves)**

2,195,982 dunams (848 miles<sup>2</sup>)



Authority. The Wye Plantation Agreement stipulates that any proposed development or other disturbance of the status quo in this area requires Israeli approval. The designated nature reserve measures 166,539 dunams (64.3 square miles), some 3% of the total area of Judea and Samaria.

In clear and blatant violation of the Wye Plantation Agreement, the Palestinian Authority is building illegal structures on a massive scale in this area, decimating the ecosystem of the nature reserve and causing irreparable harm. Regavim's mapping department identified 1045 illegal structures in the nature reserve in 2018; by 2019, that number had grown to 1572 illegal structures.

4. Area C: The remainder of Judea and Samaria, including both Palestinian villages and Israeli communities, was placed under full Israeli jurisdiction. Area C measures 3,658,341 dunams (1412.5 square miles), constituting some 60% of the area of Judea and Samaria. In Area C:

**78,626 dunams** (30.36 square miles) - (2.15%) **is taken up by Palestinian construction**, including, as of 2019, some 58,435 (!) illegal Palestinian structures.

**56,700 dunams** (21.9 square miles) (1.55%) **is taken up by Israeli construction.**

1,327,033 dunams (512.37 square miles) - 36.2% of Area C, is land designated as nature reserves and firing zones: 222,576 dunams (85.93 square miles) of nature reserves, 869,112 dunams (335.57 square miles) of firing zones, 235,344 dunams (90.87 square miles) are both nature reserves and firing zones.

The total area of Judea and Samaria covered by Palestinian construction stands at 729,374 dunams (281.61 square miles), some 12.45% of the total area, as opposed to Israeli construction, which covers a mere 0.97% of the total area.

## Israel

The total area of the State of Israel (excluding Judea, Samaria, and Gaza) is 22,072 square kilometers (8522.05 square miles). Land utilization is broken down as follows:<sup>11</sup>

- Open ground, exposed bedrock, bushlands and excavated areas: 64% of the total area (14,299 square kilometers = 5520.9 square miles)
- Agricultural land (orchards, fields and agricultural service structures): 20%
- Forests, woodlands, parks: 7.3%
- Bodies of water, both naturally occurring (Lake Kinneret and the Dead Sea) and man-made (includes reservoirs and wastewater treatment plants): 2.4%
- Built-up area: 5.6% (1,228 square kilometers = 474.13 square miles)
- Residential area: 6% (810.48 square kilometers = 312.93 square miles)
- The remainder (transportation infrastructure, commercial, industrial and office spaces, and public - communal spaces): 34%

## Residential Area

There is no precise figure regarding the percentage of Palestinian construction that is residential in nature. Although Regavim's familiarity with the situation on the ground leads

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<sup>11</sup> See footnote 1, above.



us to believe that more than 66% of the built-up area is utilized for residential purposes, in order to calculate population density, we have applied the minimalist estimation that in this area, as in Israel proper, only 66% of the built-up area is residential. On the basis of this assumption, in Areas A and B, residential use accounts for 429,493 dunams (165.83 square miles), and in Area C, an additional 51,893 dunams (20.04 square miles) are residential.

As we have noted, there is no precise or reliable data regarding the number of Palestinians living in Judea and Samaria. If we accept the data of the Palestinian Authority Bureau of Statistics and the UN, we find that the density of Palestinian population for residential areas in Area C (51,89 dunams) yields a rate of 5.78 residents per dunam (5,781/km<sup>2</sup>).

Accordingly, in Areas A and B, where, according to this maximalist estimate, 2.4 million Palestinians reside, population density in residential areas (429,493 dunam) is 5.58 residents per dunam 5587/km<sup>2</sup>.

Palestinian population density in residential areas in Judea and Samaria overall (481,386) is thus calculated at 5.60 residents per dunam, or 5,608/km<sup>2</sup>.

As we have noted, this measure of population density is a maximalist calculation. According to minimalist estimates, which are based on a larger area of Palestinian residential construction in Judea and Samaria and a smaller number of Palestinian residents living in this larger area, population density is even lower.

## **The Jewish Population of Judea and Samaria**

Four hundred and fifty thousand Jews live in Judea and Samaria. According to Regavim's measurements, the area covered by Jewish construction is 56,700 dunams (21.89 square kilometers). Thus, Israeli population density in Judea and Samaria stands at 7.9 persons per dunam, some 7,936 persons per square kilometer.

## **Israel**

The overall population of Israel at the end of 2013 stood at 8,138,000 people,<sup>12</sup> who shared residential areas totaling 810.48 square kilometers (see above), making the population density of Israel at that time 10,040 persons per square kilometer (10.0 persons per dunam).

According to Central Bureau of Statistics publications,<sup>13</sup> as of 2013, population density throughout Israel ranged between 1,439 persons per square kilometer in the Savion Municipal Council to 54,075 persons per square kilometer (!) in the city of Bnei Braq, whereas the mean national population density, 6,944 persons per square kilometer, was in Mitzpeh Ramon. According to the National Planning Authority, population density in Israel's cities is considerably lower than in European and American cities, with Tel Aviv

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12 Central Bureau of Statistics, "The Population of Israel 2005-2014," in Statistikal 143, October 2015. <http://bit.ly/34Ejsb4>.

13 See footnote 3, above.



at 8,565 per square kilometer, 7,186 in Jerusalem, and 4,346 in Haifa. In comparison, average population density in Athens is double that of Jerusalem and Tel Aviv; in Paris, more than triple, and in Barcelona - a city with few hi-rise buildings - more than quadruple.<sup>14</sup>

Although Israel's current population density is not sufficiently high, on 6 August 2019 the National Council for Planning and Construction passed a unanimous decision to approve an initiative of the Planning Administration which will revise the population density standards established by Israel's National Masterplan, "Tama 35." This revision will result in a significant increase in Israel's population density.<sup>15</sup>

## Summary and Conclusions

Population density in the Palestinian residential sector in Judea and Samaria currently stands at 5,608 persons per square kilometer, according to the minimalist calculation. At the same time, population density in the Israeli residential sector in Judea and Samaria stands at 7,936 persons per square kilometer, while population density in the residential sector in Israel proper is measured at 10,040 persons per square kilometer, a figure which is expected to rise significantly in the foreseeable future.

This being the case, population density in the Palestinian residential sector in Judea and Samaria is far below the level of population density in Israel proper, and all the more so in comparison to population density in cities throughout the western world. This figure in and of itself should require an in-depth examination of the options currently available for more densely populating and development areas presently under Palestinian control before any additional territory is allotted for Palestinian expansion. This same conclusion is reinforced by Israeli policy initiatives that aim to increase population density in Israel's residential sector.

Furthermore, even after existing land reserves in areas under Palestinian jurisdiction are fully utilized, broader environmental and planning considerations dictate that before additional territory is allotted for new Palestinian construction, a long-term master plan must be created and agreed upon. The master plan must identify and clearly delineate the maximum territorial allotment for Palestinian construction within the total area of Judea and Samaria.

As we noted above, 32% of Areas A and B are developed. The Palestinian construction efforts that specifically target Area C, in keeping with the Fayyad Plan, while extensive land reserves in Areas under the PA's jurisdiction lie fallow and available for construction, prove beyond a doubt that the objective of this construction is to seize control of Area C through illegal construction.

At present, Regavim does not have access to precise data regarding overall land use in Judea and Samaria; currently, such detailed data is available only for land within Israel

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<sup>14</sup> Halit Yanai Levison, "The Crowded Era: New Plans for a Dramatic Increase in the Number of Residents per Square Kilometer in Israel's Cities is Unveiled." (Hebrew) Globes, 10 June 2019: <http://bit.ly/38UVJGM>. Also see report by Arik Mirovski, 6 August 2019: <http://bit.ly/2EAV5KX>.

<sup>15</sup> See footnote 13, above.



proper. Nonetheless, as we have noted, the territory of Judea and Samaria is replete with firing zones (comprising 18.9% of the territory), which cannot be utilized due to security considerations, as well as nature reserves, deserts, forests, and national parks. Much of this territory falls under protected status which prohibits or severely limits construction, because of these areas' crucial role in the environmental and ecological well-being of the region.

The Regavim Movement has been sounding the alarm regarding systematic, large-scale illegal Palestinian construction, as well as the Palestinian Authority's thinly veiled program of land seizure in Area C, for years. Additionally, Regavim has documented its findings, collected through intensive and ongoing fieldwork, of massive environmental and ecological damage perpetrated by the Palestinian Authority throughout Judea and Samaria. A prime - but far from isolated - example is the mass-scale illegal construction in the Wye Agreement-designated nature reserve, in blatant and unequivocal violation of the PA's commitments, which has caused extensive, and in some cases irreparable environmental damage. Other instances of serious ecological damage may be seen in the PA's responsibility for pollution of streams and aquifers, air pollution, pollution of groundwater and springs, burning and illegal dumping of trash,<sup>16</sup> illegal and unlicensed quarrying that has reached unfathomable, monstrous proportions and caused unspeakable damage. All of these environmental scourges directly affect Israel's streams, lakes and beaches, drinking water, air quality, and the health and quality of life of all residents of the region.

If we do not wish to find ourselves standing powerless in the face of environmental collapse and ecological disaster in the not-too-distant future, Regavim believes that any and all future construction in the open spaces of Judea and Samaria must proceed according to a carefully designed, environmentally sound, mutually accepted master plan that includes all territory under Palestinian jurisdiction, in which effective enforcement tools are established which will enable Israel to protect vital environmental interests and uphold signed agreements.

## **Inch by Inch: The Agricultural Conquest**

The Palestinian Authority has not relied solely on illegal construction as the means to establish its control of the territory and has employed agricultural work as an effective means of seizing control of land. The PA understood that while an illegal structure can effectively take control of hundreds of square meters of land, this method does not hold a candle to "agricultural occupation," which enables the simultaneous seizure of thousands of dunams. Agricultural land seizure as an identifiable and systematic phenomenon began to gain momentum in 2012.

The Palestinian Authority, with the direct and indirect assistance of civil society organizations and funding provided by foreign organizations, takes full advantage of a

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<sup>16</sup> See the Ministry for Environmental Protection's website: <http://bit.ly/2PFC51b>.



loophole in Ottoman Land Law, the law in force in Judea and Samaria, to achieve the goal of control on the ground.

Following the Six Day War, the State of Israel chose not to extend Israeli law to this region, and voluntarily applied the Furth Geneva Convention, which establishes a framework for the behavior of an occupying power in occupied territory. One of the tenets of this framework is the preservation of the existing legal framework by the occupier, which resulted in a system of law in Judea and Samaria that is comprised of a mixture of Ottoman, British, Jordanian and Israeli security regulations.

According to Ottoman law and the decisions of the Israeli Supreme Court based on it, undeveloped or non-arable land is the property of the sovereign, and in the case of Area C, the sovereign is the State of Israel.<sup>17</sup> By the same token, much of the land in Area C are classified as “survey land,” areas that had never been officially registered, and were never privately owned - and the State is taking the necessary steps to complete their registration as state land as per their legal status.

The Palestinian Authority takes advantage of the fact that the State of Israel has not extended Israeli property law to Judea and Samaria, and the law in force in this region (which is based on Ottoman Land Law) stipulates that continued agricultural use over a number of years creates possession rights that that may result in ownership claims for the cultivated plot.

Illegal land seizure and agricultural use may enable squatters to claim ownership or other rights to the land by force of a claim of continuous agricultural use over a number of years, and the program of targeted land seizure takes advantage of the loophole created by this regulation as the basis for large-scale agricultural land seizure projects.

Towards the end of 2018, The Regavim Movement published *The Roots of Evil*,<sup>18</sup> a comprehensive study of the extent of this agricultural land seizure, and information culled from publicly available sources regarding the organizations behind it, its methods, and its sources of funding.

This study revealed that beginning in 2012, the Palestinian Authority and its various branches undertook large-scale agricultural land seizure projects on state land and survey land that had not yet been registered as state land, totaling some 200,000 dunams. To achieve this , hundreds of kilometers of local roads and agricultural access paths that serviced these purloined land parcels were created, millions of trees were planted, and watering systems were created: Hundreds of wells were dug, hundreds of water tankers were distributed throughout the territory, cisterns and reservoirs were built, and more.<sup>19</sup>

This effort, like the program of illegal construction that preceded it, is supported by

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17 See, for example, A. Ben Shemesh, *Land Law in the State of Israel*, 27 (1953); Eyal Zamir, *State Land in Juda and Samaria - A Legal Survey* (5745), pp. 4-15.

18 Regarding illegal agricultural land-seizure in Area C, see Regavim’s report, “*The Roots of Evil*,” November 2018: <http://bit.ly/2CLa8Y8>.

19 *Ibid*.





# Agricultural land seizure 2013-2017

 **7629** dunams  
of land overtaken

**250** dunams  
locations

 **573** km  
of access roads

**181**

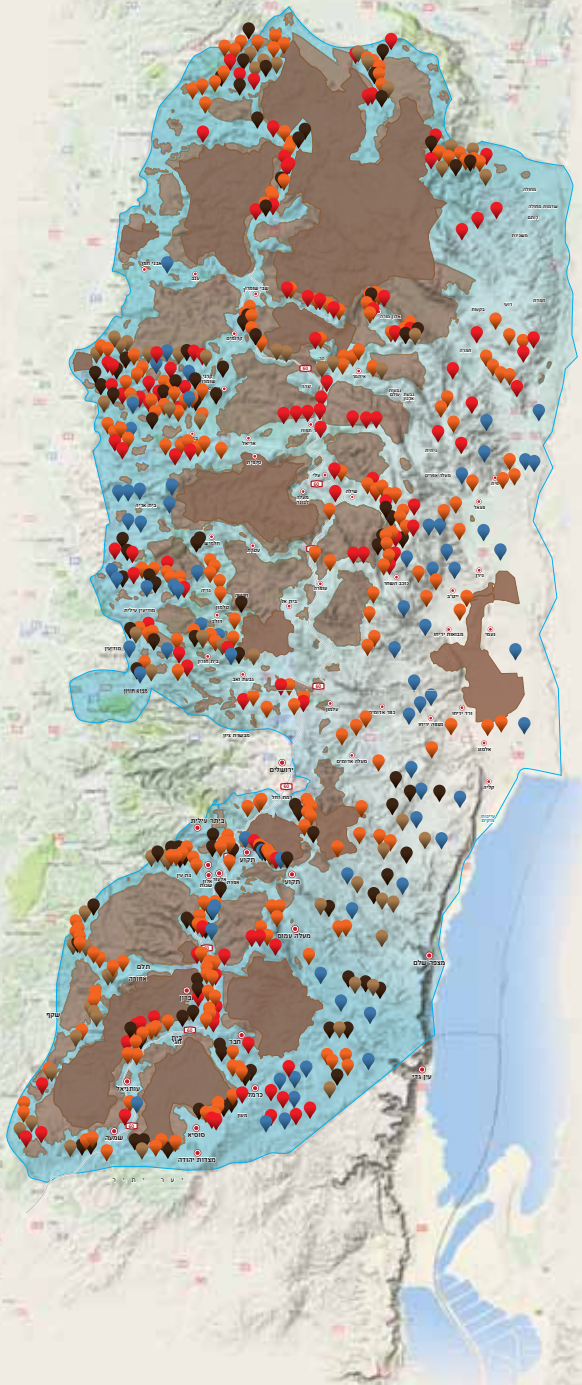
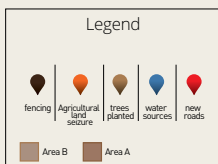
 **112,348** m<sup>2</sup>  
retaining walls and terracing

 **286**  
cisterns

**13**  
springs refurbished

**30**  
reservoirs

**819**  
water tanks



funding provided by the European Union, European and Muslim countries, UN humanitarian aid programs and a host of foreign civil society organizations.

Much of the agricultural work described above, such as construction of fences and retaining walls, excavation with heavy machinery, roadwork and paving, require permits; they are carried out illegally, under the guise of agricultural work. On the other hand, other elements of this activity do not require building permits, leaving the enforcement authorities far fewer tools for administrative oversight and enforcement against the agricultural land seizures, despite the fact that they are being used to illegally seize state land.

In the Jewish sector, the requirement to receive work permits for agricultural work is strictly enforced through military orders issued by the regional commander. These orders are enforced in all cases exclusively against the Jewish population of Area C. One such case is the use of “Delimitation Orders” that enable the authorities to carry out demolitions and other enforcement activity in a given area, without the need to obtain demolition orders for each individual structure within the defined area.<sup>20</sup> Similarly, the “Order Against Disruptive Use” allows the authorities to bar an individual from entering a specified land parcel he or she has been using for agricultural purposes if rights to the property are contested. This blanket order bars entry to the area until rights to the land can be proven and has been applied only to bar Jewish farmers from entering land parcels from the moment a complaint is filed.<sup>21</sup>



In the aftermath of the US Embassy’s relocation to Jerusalem, thousands of trees were planted (Photo: UAWC on Facebook)



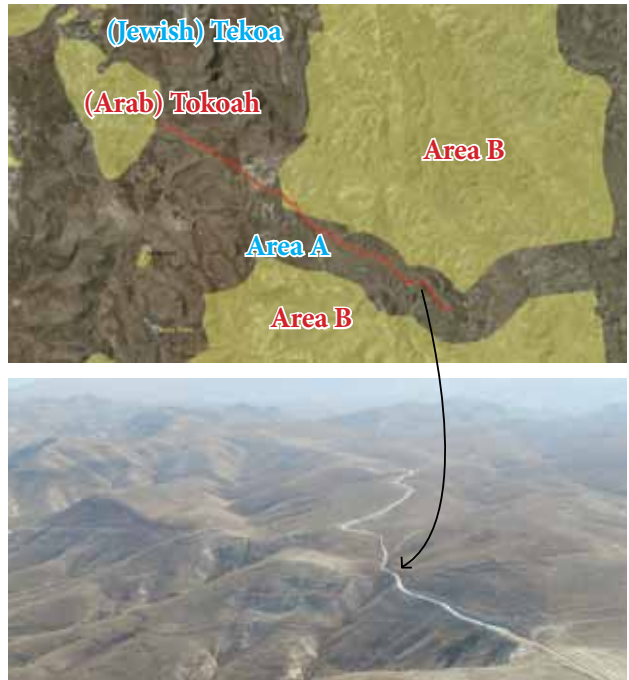
Construction of Water Network, Eastern Gush Etzion

An illustration of agricultural land seizure techniques and tactics, and the strategic implications that arise from this systematic effort, can be seen in a case that began in 2015: The Palestinian Authority began efforts to take over a strategic parcel of land in the eastern section of Gush Etzion, utilizing roadworks and agricultural projects. Heavy engineering equipment began to lay the substrata for a new road originating in the Arab town of Tokoah, heading east. Along the route of this new road, extensive excavation and improvement work was carried out on the undeveloped land, and thousands of trees were planted.

20 Order 1539 (Unlicensed structures): <http://bit.ly/2ZfgKaU>.

21 Order 1586 ((Disruptive Use of Private Land): <http://bit.ly/2ZfgKaU>.

The location was very carefully chosen: The route is situated in a narrow corridor of Area C that connects Gush Etzion to the Dead Sea. In recent years, a number of ministers in the Israeli government announced the state's intention to pave a road connecting Gush Etzion to the Dead Sea area, and this corridor is the only possible route for such a road. The width of the passage is only one kilometer. By seizing control of this strip of land, the Palestinian Authority has created a passage between two large quadrants of Area B and blocked any possibility of an Israeli road in the future. This step is fully in line with the Palestinian Authority's clearly defined strategy, outlined above.



The modus operandi in these types of projects is organized and systematic: First, create access to the targeted are by laying down or repairing roads; create a water delivery system by laying irrigation pipes and building reservoirs; take control of the land parcel through agricultural activity with the support of the Palestinian Authority or one of its agents, and provide ongoing guidance and assistance to the farmers out in the field.

## Stages and Methods of Agricultural Land Seizure:



**Road Works:** Laying agricultural service roads totaling hundreds of kilometers has created access to land for agricultural projects in Area C, particularly in the Jordan Valley, Gush Etzion, the areas of Ariel and Shomron, Har Hebron, and eastern Binyamin.



**Seizure of Water Sources:** Taking control of water sources near Jewish communities, digging and drilling networks of wells and water systems in arid areas, constructing water collection systems and run-off basins by diverting streams, laying hundreds of kilometers of water pipes, construction of reservoirs, and more.



**Land seizure through agricultural activity:** Tree planting, plowing, ground-clearing and engineering work, building terracing, fencing off land, etc.



# Land Registration and Regulation

In addition to illegal construction and agricultural land seizure, in recent years the Palestinian Authority has initiated steps for the regulation and registration of land throughout Judea and Samaria, including Area C, despite the fact that it has no jurisdiction in this area, as we have seen.<sup>22</sup> In the context of this project, the Palestinian Authority has begun investigating and registering purported ownership of the land.

Land registration and regulation is a long, complex and costly process, in which a particular piece of land is subdivided into sections and individual plots. With the help of legal, historical and geographical data, the identity of the rightful owners of each plot is established (either private ownership, state ownership, or institutional ownership, as in the case of religious trusts).

In addition to the tremendous expense of the process itself, this determines the allocation of the most precious of all resources - land resources. Therefore both on the practical and on the substantive level, the sovereign bears sole authority and responsibility for land regulation and registration.

Throughout the periods of Ottoman, British and Jordanian rule, land regulation procedures were carried out throughout the Land of Israel, including Judea and Samaria. After the establishment of the State of Israel, the land registry and regulation process was completed, save for a few small percentages<sup>23</sup> whose registration status remained unresolved, for all land within the “green line.”

In Judea and Samaria, which remained under Jordanian occupation until they were liberated in the Six Day War, the Jordanian government continued the process of registration. By 1967, some 30% of the overall area of Judea and Samaria (some 5,800 km), mostly in the northern Jordan Valley, northern Samaria, western and central Samaria and portions of Gush Etzion, had been registered.

Judea and Samaria were included in the original British Mandate that remained in force until 1948. In the course of Israel’s War of Independence, Egypt illegally seized the Gaza Strip, and Jordan seized Judea and Samaria.<sup>24</sup> In 1967 these territories, which had been intended from the start to be an integral part of the Jewish homeland under the mandatory charter, returned to Israeli control. The prevailing opinion among leading scholars of international law is that Israel has the strongest claim to sovereignty over this territory, which does not fall under the category of occupied territory under international law.<sup>25</sup>

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22 “With European Funding: The PA is Proceeding to Declare Ownership on Area C.” <http://bit.ly/25ctoWK>

23 See Regavim’s policy paper on land regulation in the Golan Heights (May 2014, Hebrew): <http://bit.ly/35KnVdu>.

24 Egypt did not claim rights of sovereignty over the Gaza Strip. Jordan boldly announced its annexation of Judea and Samaria in 1950, but Jordanian sovereignty was not recognized by the international community. Great Britain and Pakistan were the only countries who recognized Jordan’s attempt to extend its sovereignty over the territory it had occupied; the Jordanian declaration was strongly condemned by the Arab nations.

25 “The Status of Judea and Samaria and Settlement in these Territories Under International Law,” Professor Talia Einhorn, in *Land Law and International Law in Judea and Samaria*, p. 32 ff, The Adam v’Adamah Center (Bursi Publishers, 2013).



In practice, due to political and other considerations, after the war Israel extended its sovereignty only to East Jerusalem and the Old City. Judea and Samaria were classified as territory under military control, and the State of Israel did not continue the process of regulation and registration, reasoning that the situation would likely prove to be temporary and would be resolved by a political arrangement, and further argued that the state wished to avoid violating the rights of the civilian population that had fled to Jordan during the war.<sup>26</sup>

In 1969, Major General Raphael Vardi, Military Commander of Judea and Samaria, published Order No. 291, suspending the regulation and registration process. The order essentially froze all regulation activity that had been carried out up to that point.

This temporary situation has been in force for over fifty years. From that time until the present, the State of Israel’s position on the legal status of Judea and Samaria is that it does not consider these occupied territories, but disputed territories to which Israel has a preferential claim. Since these territories were not taken from any other sovereign, the Hague regulations of 1899/1907 and the Fourth Geneva Convention do not apply to these territories. Nonetheless, the Israel voluntarily applies regulations that pertain to territory captured through hostilities. For this reason, among others, Israel has not proceeded with the process of land registry and regulation.

The void created by this self-imposed classification regarding land issues has allowed the Palestinian Authority to step in and initiate ownership registry and regulation procedures throughout Judea and Samaria, with an emphasis on Area C, despite the fact that this area is under the sole and complete jurisdiction of the State of Israel.

This process has been prioritized by the Palestinian Ministry of Justice, and particularly by the Palestinian Authority’s Land Registry Authority headed by Musa Shakarna.

A report published by the Civil Administration in June 2017 noted that as early as 2015, “this phenomenon covered thousands of dunams,” and continues to be carried out “under the auspices of the Palestinian Ministry of Justice, and more specifically by the Land Authority.” The report went on to say: “According to information presented to the [Israeli] Administrator for Bethlehem and Hebron, the funding for this process is sourced in budgetary allocations from a number of European



PA Land Registrar team at work within the municipal boundaries of the Jewish community of Efrat, Gush Etzion, May 2019.

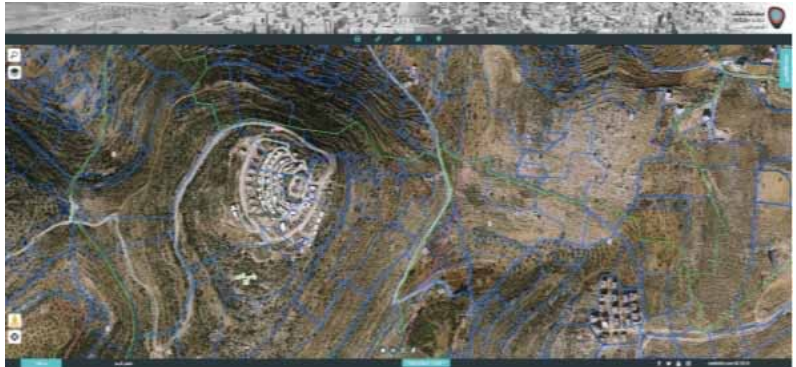
26 Report of the Committee Examining Land Registration in Judea and Samaria (Hebrew), 2004. A. Zamir, et al., p.6: <http://bit.ly/38Tz4dT>.

governments.”<sup>27</sup>

The PA Land Authority’s mission statement includes a declaration of intent: “The Land Authority ‘s mission is to establish ownership rights to the land, to protect those rights, and to complete the process of establishing settlement throughout all areas of the country.”<sup>28</sup>

In fact, the Palestinian Land Authority has assigned lot and parcel designations on land that the Israeli authorities have classified as state land and privately-owned land, as well as land within the municipal lines of Jewish communities in Judea and Samaria.

One example of land registration in Area C - land in the environs of Haresha in the Talmonim Settlement Bloc in western Binyamin. These photos are from the of the Palestinian Authority Land Registry’s official website, “Mustakashaf.”<sup>29</sup>



The regulation process is not only a vital, complex and costly one that is carried out by a recognized sovereign, it also has governance and sovereignty implications on the ground.

The PA’s regulation process should not be taken lightly, even if it has no legal standing, because the vacuum Israel imposed upon itself and this area decades ago leaves a gaping hole and the Palestinian Authority’s registry will be presented in the courts and to civil administrative bodies as the only reliable source of documentation and registry available; in the absence of any alternative registry, the Palestinian records may be adopted either in part or their entirety.

This is not an unfounded concern; in the parallel situation, regarding demographic data, the State of Israel has accepted the PA’s population statistics in their entirety, including data regarding the Arab population of Area C, which is essential to the decision-making process for the future of this area.

27 Regulation activities carried out by the Palestinian Authority, including in Area C - Summary of Hearing (Hebrew): <http://bit.ly/2Q2wSZ4>.

28 Profile: The Palestinian Authority Land Authority, <http://bit.ly/2Z6xhha>.

29 A legal term which, in the context of land registry, refers to field observation and monitoring activity.



# Lawfare - A Weapon in the Palestinian Arsenal

The Palestinian Authority supports all of the activities described above through an intricate web of “lawfare,” generously funded by foreign concerns to combat the Civil Administration’s enforcement efforts in Judea and Samaria. When the Civil Administration, the body responsible for law enforcement in Judea and Samaria, does initiate enforcement activity, these attempts are blocked by flooding the planning and enforcement systems and the courts with hundreds of appeals, applications and petitions that frustrate any possibility of efficient and systematic enforcement, rendering the judicial and enforcement systems incapable, or even worse, unmotivated.

This is how the lawfare system works: After an illegal structure is erected, the well-oiled and well-financed apparatus is set in motion in order to delay the enforcement of demolition orders. Immediately after a demolition order is served against a particular structure, an application for a building permit is submitted to the Civil Administration - even if the application has absolutely no semblance of planning logic or any connection to the reality on the ground, as in the case of a structure built on an IDF Firing Zone or on a major highway, or other similar absurd requests.

Because of the sheer volume of these requests, the standard waiting time for a hearing is some two years. In the interim, more and more new structures are built, which effectively push the original structure further and further down the list of priorities for enforcement because it is classified as “pre-existing, ‘old’ construction.” Two years after the request for a building permit was first submitted, it is denied on professional, engineering grounds.

Immediately, an appeal of the decision is submitted; this stage also takes two years or more. After this appeal is denied, a make-work petition is submitted to the High Court of Justice, requesting that the demolition order be set aside, and that enforcement be suspended until a final decision is handed down.<sup>30</sup>

Because demolition of an existing structure is considered a draconian and irreversible remedy, in the vast majority of cases the court grants this request, and until a decision is handed down a temporary injunction is issued that prevents the enforcement of the demolition order, while at the same time requires the state to respond to the petition within a specified time limit.

Because of the staggering number of these petitions, in many cases the state’s response is nothing more than a request to close the case; the state, unable to keep pace with the volume of cases to which it must respond, reaches an agreement with the petitioner that the structure will not be demolished. In other cases, the court registrar issues a warning

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30 In 2018 the Knesset passed the “Administrative Law for Judea and Samaria,” which transferred jurisdiction of the courts in matters regarding Judea and Samaria from the sole jurisdiction of the High Court of Justice to the Jerusalem Administrative Court. Only after a case is heard in the regional court can a petition be submitted to the High Court.

that the case will be closed due to inactivity, and the case is simply removed from the court's calendar, leaving the "temporary" injunction in force.

The Civil Administration pointed out the systematic pattern as long ago as 2005 in its internal annual report:

**"This year, 76 High Court petitions were submitted, involving 170 cases of illegal construction, a very high number of petitions that indicates a continuation of the trend of the past several years. High Court petitions have unfortunately become "part of the statutory process," the phenomenon was created and has grown as a result of the very slow - slow to the point of complete standstill of the Supreme Court Division of the Ministry of Justice."**

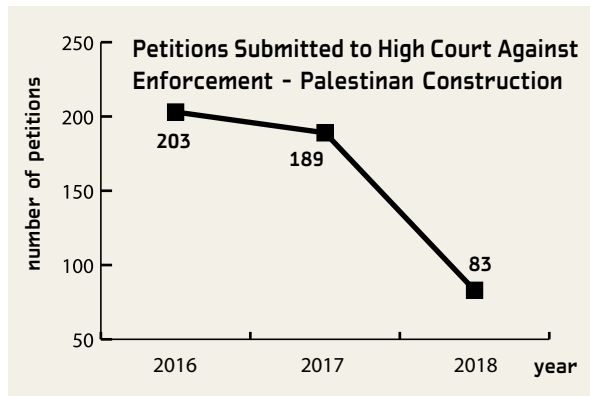
The Palestinian population engaged in illegal construction understands well that by submitting a petition to the High Court of Justice, an illegal construction case will usually end up in the archives and the chance of resuscitating it is nearly nonexistent. They take advantage of the time that passes to complete construction and to take up residence in order to make demolition more complicated and less likely.

**More than 400 cases are backlogged in the division's office, involving more than 700 cases of illegal Palestinian construction that has been frozen by the court and the attorney general. The Supreme Court Division "is less than enthusiastic," to say the least, about expediting these cases and hearing these petitions, for a host of strange reasons."**

This does not include petitions by building offenders that have been heard and decided immediately. In order to motivate the Supreme Court Division to progress on these cases, we created a list that prioritizes the cases submitted to the Division by their importance, but this effort has not yet shown the desired results."

In the years that have elapsed since this report was written, the tactic has gained ground, both in terms of its scope and in terms of its effectiveness in freezing law enforcement activity.

From a Freedom of Information request submitted by Regavim to the Civil Administration for data regarding petitions submitted to the Civil Administration involving illegal construction in the Palestinian sector from 2016-2018, we learned





the following:<sup>31</sup>

In 2016, 203 petitions were submitted to the High Court of Justice by Palestinians who had built illegally in Judea and Samaria and who sought to block enforcement procedures. In 2017, 189 petitions of this kind were submitted, and in 2018, 83 petitions regarding illegal Palestinian construction were submitted.

The sharp decrease in the rate of High Court petitions is due to the ratification by the Knesset of the “Administration Law for Judea and Samaria” in July 2018.<sup>32</sup> This law transferred the jurisdiction in cases involving Judea and Samaria to the Jerusalem Regional Court. As opposed to the earlier judicial situation, in which petitions regarding administrative issues in Judea and Samaria were under the exclusive jurisdiction of the High Court of Justice, the new law assigned petitions regarding administrative matters in Judea and Samaria to the regional court, as they are in all other parts of the country. Thus, after a judgement is handed down in the regional court, an appeal may be submitted to the High Court. The Knesset’s new legislation aimed to establish, for the first time, an appeals framework for residents of Judea and Samaria and to reduce the massive caseload of petitions to the High Court each year.

Annual reports published by the Ministry of Justice in 2016-2018 report the total number of petitions submitted to the High Court of Justice each year and the number of cases closed each year:

According to the Ministry of Justice annual report,<sup>33</sup> in 2018 some 2000 cases were concluded,<sup>34</sup> and approximately 780 petitions (39 percent) were closed before the state submitted its response to the court, due to discussion between the sides or agreement to direct the appellants to alternative actions. Some 220 of these petitions were against enforcement that involved illegal construction in Judea and Samaria, and the way these cases were cleared from the court’s docket was to instruct them to submit a building permit request or a revised permit request to the planning authorities in Judea and Samaria. In other words, the appellants were instructed to initiate a new round in the legal war of attrition described in detail above.



In 2017, some 2000 cases were cleared,<sup>35</sup> and 720 of them (36 percent) were closed before the state’s response was submitted to the court. In 2016, 1800 petitions reached a conclusion,<sup>36</sup> 684 of them (38 percent) were closed before the state’s response was submitted.

In the annual reports of the Attorney General’s office for 2016-2017, there is no

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31 Freedom of Information response of 3 Tishrei 5780, 2/10/19.

32 See: “Knesset Approves Transfer of Jurisdiction on Judea and Samaria from HCJ to Administrative Court.” (Hebrew): <http://bit.ly/34E4ykX>.

33 Summary of Activities, 2018 - State’s Attorney, p. 96 (Hebrew); <http://bit.ly/2ttT0Ur>.

34 This figure does not necessarily reflect cases that were opened in 2018.

35 Summary of Activities, 2017 -State’s Attorney (Hebrew): <http://bit.ly/2MbuAWw>.

36 Summary of Activities, 2016 -State’s Attorney (Hebrew) <http://bit.ly/2Zceg99>.



breakdown of the number of petitions regarding illegal Palestinian construction that were closed prior to submission of the state’s response as a result of agreement between the sides, but since in 2018 alone, some 200 cases involving illegal Palestinian construction were expunged in this way, and since cases of regarding Judea and Samaria constitute 22-25 percent of all petitions submitted to the HCJ, we may assume that in 2016-2017 a similar number of cases involving illegal Palestinian construction was expunged, constituting a larger percentage than in 2018.<sup>37</sup>

Year	No. of Petitions, including to HCJ	No. of Petitions regarding Judea-Samaria	Petitions - Illegal Palestinian Construction	% Petitions regarding Judea and Samaria	% Petitions - Illegal Palestinian Construction	Number of cases cleared	Cases cleared prior to State response	% Cases cleared prior to State response	Illegal Palestinian construction petitions closed prior to State’s response
2016	2,630	630	203	24%	8%	1,800	684	38%	170 (minimum estimate)
2017	2,896	724	189	25%	7%	2,000	720	36%	180 (minimum estimate)
2018	2,150	473	83	22%	4%	2,000	780	39%	200

Either way, it appears that the majority of petitions submitted by building offenders in the Palestinian sector result in the state’s complete capitulation, without any resistance whatsoever. The state’s attorney grants de facto immunity to those who violate construction and planning laws and makes a mockery of the Civil Administration’s enforcement efforts, since demolition orders are, for all intents and purposes, cancelled without any substantive hearing of the false arguments raised by the petitioners, and offenders actually improve their position and effectively receive legal protection for the structure, even though it was built in violation of the law and without the requisite permits.

37 It will be possible to analyze the full spectrum of outcomes of the Knesset’s legislation of the Administrative Law for Judea and Samaria and to compare these outcomes to the parallel indices only after a longer period of activity of the Regional Administrative Court.



# Funding the Lawfare Campaign - The Society of St. Yves

One of the central actors on the lawfare front is the Society of Saint Yves, which has been operating on behalf of the Latin Patriarchate in Jerusalem's Old City for over 25 years. The Society's mission statement is "to promote human rights in Jerusalem and in Judea and Samaria," and to this end the Society employs approximately 20 people and has an annual operating budget estimated at some NIS 5 million.

The Society's activities focus on the legal arena, submitting petitions against the Israeli authorities, particularly in matters regarding illegal Palestinian construction that enforcement bodies have slated for demolition. According to the Society's statements, each year it handles some 700 cases and represents over 2000 Palestinians in legal forums.

An analysis of the petitions submitted by the Society of St. Yves from September 2015 through September 2017 indicates that more than 90 percent of the petitions involve property (real estate) and target the IDF and the planning and construction committees of Judea and Samaria. Some 70 percent of these cases resulted in a temporary injunction issued by the court that prevented enforcement bodies from demolishing the illegal structures, explained by a variety of excuses and pretexts.

As we have explained in the preceding chapter, in the vast majority of cases "interim" or "temporary" orders becomes permanent. In practice, the St. Yves Society uses the HCJ to entrench "standard operating procedures" that thwart or preempt the executive branch's ability to prevent illegal construction in Judea and Samaria.

In the area of inter-organizational cooperation, it appears that the St. Yves Society is fully synchronized and operates in cooperation with groups and individuals that act against the State of Israel both domestically and in the international arena, and publicly state that this is their purpose and mission.

Attorney Raffoul Rofa has served as Director General of the St. Yves Society since 2008, and concurrently, since 2009, as the chairman of an organization known as World Vision, which is active in East Jerusalem, Gaza, and Judea and Samaria and has an annual budget exceeding NIS 50 million. Israel's General Security Service arrested the manager of the organization's Gaza branch office, Muhammad el Halabi, in August 2016 and charged him with transferring millions of dollars to the military arm of Hamas over the course of a decade.<sup>38</sup> As a result of el Halabi's arrest, the Society suspended its operations in Gaza and fired some 120 employees.<sup>39</sup>

The St. Yves Society also enjoys extensive partnerships with "The Jerusalem Coalition," whose mission statement declares that it fights "for international delegitimization of Israel," and with other like-minded organizations.

Attempts to inspect and analyze the budget of the St. Yves Society, a public organization

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38 See, for example, <http://bit.ly/30xrLVq>.

39 <http://bit.ly/35ICIp1>.



that it is very active in Israel and has been a major participant in legal activity in Israeli courts for decades, came up empty-handed. The St. Yves Society is not registered by Israel's Ministry of Justice in any way, nor is it registered in the Palestinian Authority's Registry of Amutot.

St. Yves presents itself as a registered non-profit (amutah) in HCJ petitions and in other contexts, but our comprehensive investigation in Ministry of Justice and Israel's Tax Authority found no legally-registered organization with amutah status bearing this name or a similar name, nor were we able to identify a company or corporation of this name. As a result, no financial reports were found, and no organized information on the organization's activities or expenditures has been submitted in recent years.

As is well known, the gates of Israel's judicial system ("legal standing") are open only to legal entities that have proven their ability to meet legal requirements and obligations.<sup>40</sup> Therefore, Regavim sent a query to the Director of the Courts at that time, Justice Michael Shpitzer, demanding that he instruct the court's secretariat not to accept any new cases in which the Society is a party or representative.

Justice Shpitzer responded to this demand: "The court administrator does not have the legal authority to instruct the secretariat not to accept or register cases or to bar any specific plaintiff from opening a case. If, in a particular case, one of the parties has specific claims regarding the legal standing of an entity to conduct legal proceedings, they may raise these claims before the court in the context of that proceeding."

In response, we submitted a request on 15 April 2018 to receive a copy of the court's requirements for opening legal proceeding and cases, including the requirements (if any) that the court must meet in terms of due diligence regarding appellants and their status as a legal entity under Israeli law. No response has been received as of this writing.

Because the St. Yves Society is not registered in Israel as a legal entity, its budget is not a matter of public record. The Society published an annual report of its activities covering 2000 through the first half of 2010<sup>41</sup> but published no such reports thereafter.

An internet search revealed that the St. Yves Society is funded by a large number of bodies, but the extent of the financial support provided by any or all of these bodies remains undisclosed. Among the sources of funding:

- Norwegian Refugee Council (NRC)
- Misereor - the official aid framework of the Catholic Church of Germany, which receives funding from the German government
- Development and Peace Caritas Canada - the official aid framework of the Catholic Church of Canada, which is supported by the Canadian government
- AGEH - a Christian aid society in Germany
- Catholic Relief Services - the official humanitarian aid organization of the Conference of Catholic Bishops of America, located in Baltimore, MD

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40 See, for example, Yehoshua Segev, "In Defense of the traditional interpretation of legal standing," The Attorney no. 48 (5766), pp. 502-504 (Hebrew): <http://bit.ly/2rVJzWT>.

41 <http://bit.ly/2Z4IqPE>.



- Diakonia - a Swedish Christian humanitarian aid society that is funded by the Swedish government, the European Union and the United Nations, among others
- The European Union
- UNDP - The United Nations Development Programme
- Trócaire - The official International Agency for Development of the Catholic Church of Ireland
- Embrace the Middle East - a British Christian aid organization
- Cesvi - an Italian aid organization

Based on the extent of the Society's activities, the nature of this activity and the number of employees in the organization, we estimate that the St Yves Society has an annual budget of NIS 5 million at the very least.

## On a Silver Platter, from Brussels: European Support for the Implementation of the Fayyad Plan

With each passing year, European Union support for the Palestinian Authority's unilateral initiatives in Area C increases. This support takes the form of extensive financial contributions as well as political support for the Palestinian Authority itself.

Each year, the European Union transfers hundreds of millions of Euros to the Palestinian Authority, both as direct payments and in more indirect funding, through various UN institutions, as well as through direct, earmarked funding for specific projects and causes.<sup>42</sup> According to EU indicators,<sup>43</sup> the total support provided by the European Union to the Palestinian Authority from 2014 to 2020 is expected to be between € 1,833,000,000 and € 2,241,000,000.

The European Union has always supported the political and policy position of the Palestinian Authority, and considers Judea and Samaria occupied territory that will be handed over to the Palestinian state that will be established at the conclusion of political negotiations. As we described at length in Chapter 1, the political negotiations between Israel and the Palestinian Authority petered out in the aftermath of the wave of armed terrorist attacks carried out by the Palestinians against Israel and Israeli citizens. On the ground, the lines drawn by the Oslo Accords began to take on permanence and to dictate a de facto division of territorial control.



42 European Union assistance for the Palestinian Authority, 2007-2013: <http://bit.ly/2RC3LF1>.

43 European Union assistance for the Palestinian Authority, 2014-2016: <http://bit.ly/36UYGFz>.



In the years that followed, EU policymakers decided to lead an active campaign in support of the Palestinian Authority’s ambitions - to deepen its grasp on Area C and to continuously change the situation on the ground in ways that would present the State of Israel with a political and geographical fait accompli.

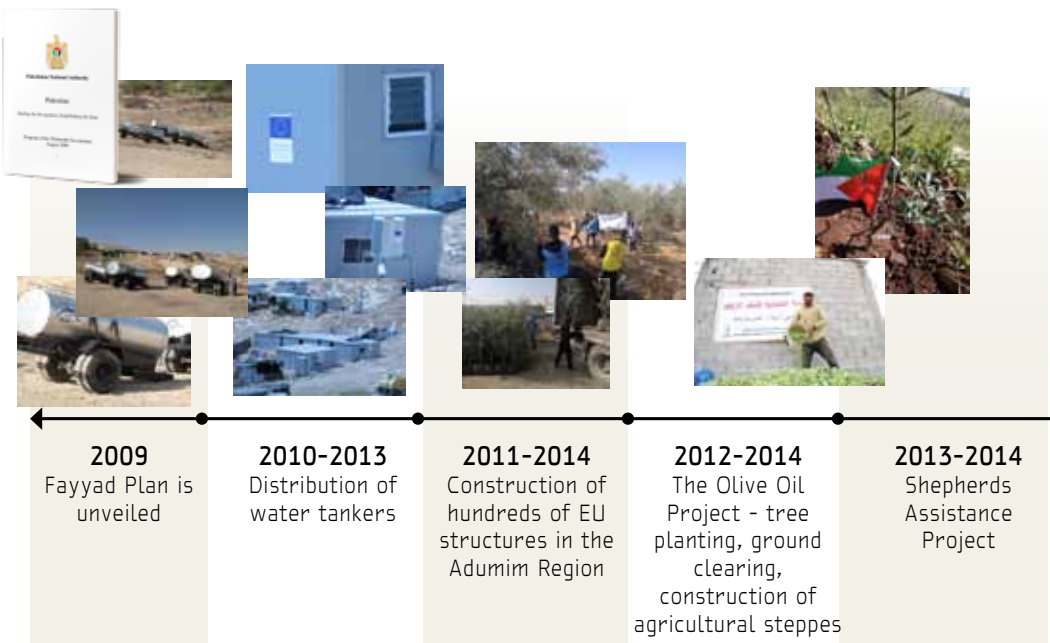
European support for the PA’s land-seizure activities is expressed both in diplomatic terms (such as pressuring the Israeli government not to enforce the law against illegal structures) and in terms of massive grants to promote and support these projects.

The European budget is divided among an enormous number of projects. Signs declaring EU support for a variety of projects are on bold display throughout Area C, including these:

- Establishing a network of Palestinian Authority outposts through construction of thousands of residential structures;
- Transforming sporadic settlement into permanent communities through construction of schools and community centers;
- Development of infrastructure - roadworks, electrical grids and water systems;
- Assistance for agricultural land-seizure projects;
- Lawfare against Israeli authorities and blocking law enforcement.

The EU contends<sup>44</sup> that the funding it provides for these and other initiatives is purely humanitarian aid and claims that “the European Union’s activities in Area C are carried out with full transparency vis a vis the relevant authorities. Financial assistance is made available in cases where the State of Israel fails to fulfill its responsibilities as an

44 See, for example: Response of the European Union to a Makor Rishon investigative report titled “Urban Combat,” (Hebrew): <http://bit.ly/2PH0zZX>.



occupying power to provide for the humanitarian needs and basic human needs such as housing, water, education, health and the right to satisfactory living conditions.”

This one-sided policy of support for Palestinian authority projects and initiatives in Area C began to gather momentum in 2012. That year, € 200 million were transferred as support for the Palestinian Authority, among them € 7 million were earmarked for “development of land and basic infrastructure in Area C” alone - a code-name for construction of thousands of illegal structures in a web of outposts established by the PA.<sup>45</sup> This network of outposts was stabilize Bedouin populations by inducing previously nomadic Bedouin to replace their tents and temporary shacks and remain in permanent settlements. The EU published a report on this activity in 2012: “New EU financial allocations provide training and expertise that will help Palestinian Authority ministries plan and create new infrastructure in Area C and enable people to improve and build the land.”<sup>46</sup>

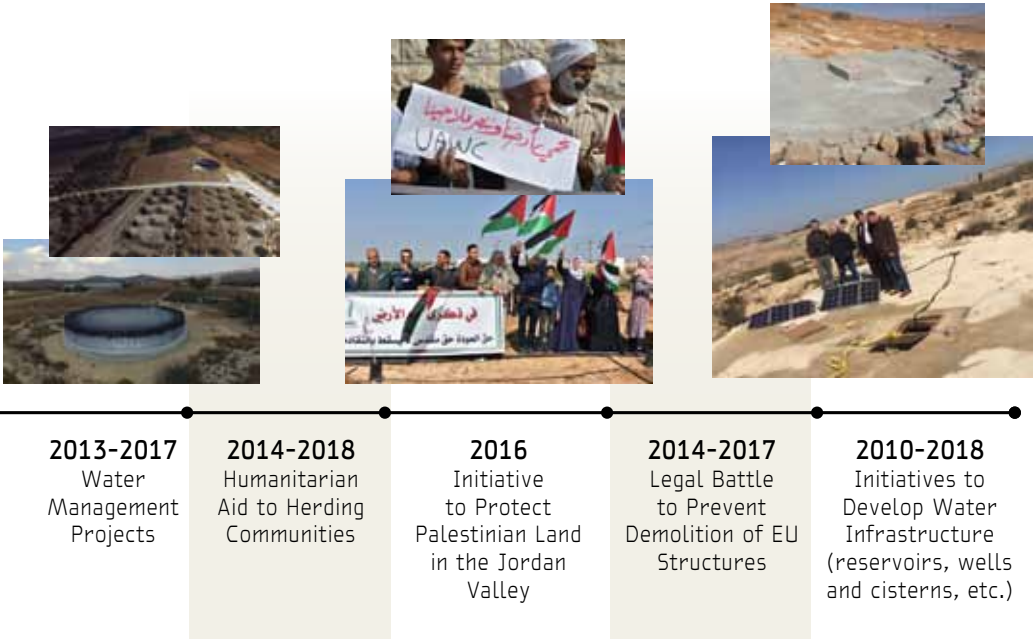
In the years following this report, the EU moved from a passive supporting role to active, growing involvement in the Palestinian takeover of Area C.

In 2014 the EU granted € 1 million to Bedouin outposts (‘herding communities’) in Area C, and a document titled “Implementation of a Humanitarian Program in the Occupied Palestinian Territories”<sup>47</sup> published that year emphasized: “The European Union and the Palestinian Authority are actively promoting planning and construction in Area C which, if successful, will pave the way toward development and expansion of Palestinian

45 “The Last Colony: European Union Support for Illegal Construction in Judea and Samaria,” The Regavim Movement, February 2015. <http://bit.ly/2TzCInY>.

46 <http://bit.ly/2Z8pjE9>.

47 <http://bit.ly/2Q55Z6H>.



Authority control over Area C. The planning and construction are intended to assist in the protection of structures in existing settlements.”

In subsequent years, hundreds of millions of Euros streamed into Palestinian authority coffers to support the active takeover of land, under a variety of budget-line descriptions and titles. Documents summarizing Area C initiatives supported by the EU from 2016-2018 alone indicate that with each passing year the flow of European funds increased.<sup>48</sup> In this two-year period, “humanitarian aid” totaling €33 million was transferred. An additional € 2.5 million were donated to support legalization of 113 illegal PA outposts in Area C. € 9.5 million were donated for infrastructure development, and agricultural projects received another € 10 million. Water infrastructure projects were granted another € 18 million.<sup>49</sup> Legal activity against law enforcement received € 20 million in 2017 alone.

In this context, we should note the effectiveness with which the authors of the report credit many of the lawfare initiatives and their success in blocking law enforcement procedures: **“Legal assistance was given to more than 2,000 households; 97.6% of those who had been served with eviction or demolition orders remain in their homes due to the legal representation, and 94% of the 1,569 humanitarian structures that have been provided thus far (EU structures in PA outposts) have been preserved.”**

The sums cited above refer only to direct support for illegal activities in Area C, and do not reflect the various forms of indirect support the EU provides for these projects, because the EU funds the operational budgets and salaries of the Palestinian Authority apparatus that is the logistical and administrative engine for these projects and for the illegal takeover of Area C.

As we have seen, all of these projects hid behind a façade of humanitarian aid, but their practical results are the deepening of PA control over Area C.

It is also worth noting that although the illegal construction of property is a flagrant violation of Israeli law, and the European involvement in these activities is also a violation of a number of diplomatic conventions that establish and enumerate the basic principles of non-intervention in policy and of a host country, when Regavim has attempted to include the European Union as a formal respondent in to petitions we have submitted on these matters, the EU consistently claimed diplomatic immunity based on the Vienna Conventions. The courts that have been required to make decisions in this matter, and Israel’s High Court of Justice foremost among them, have declined to make a determination as to the extension of diplomatic immunity to activities such as these. As the government has likewise declined to either accept or reject the claim of immunity, in the current situation, the only avenue that remains open is the diplomatic track; on the legal track, nothing can be done.

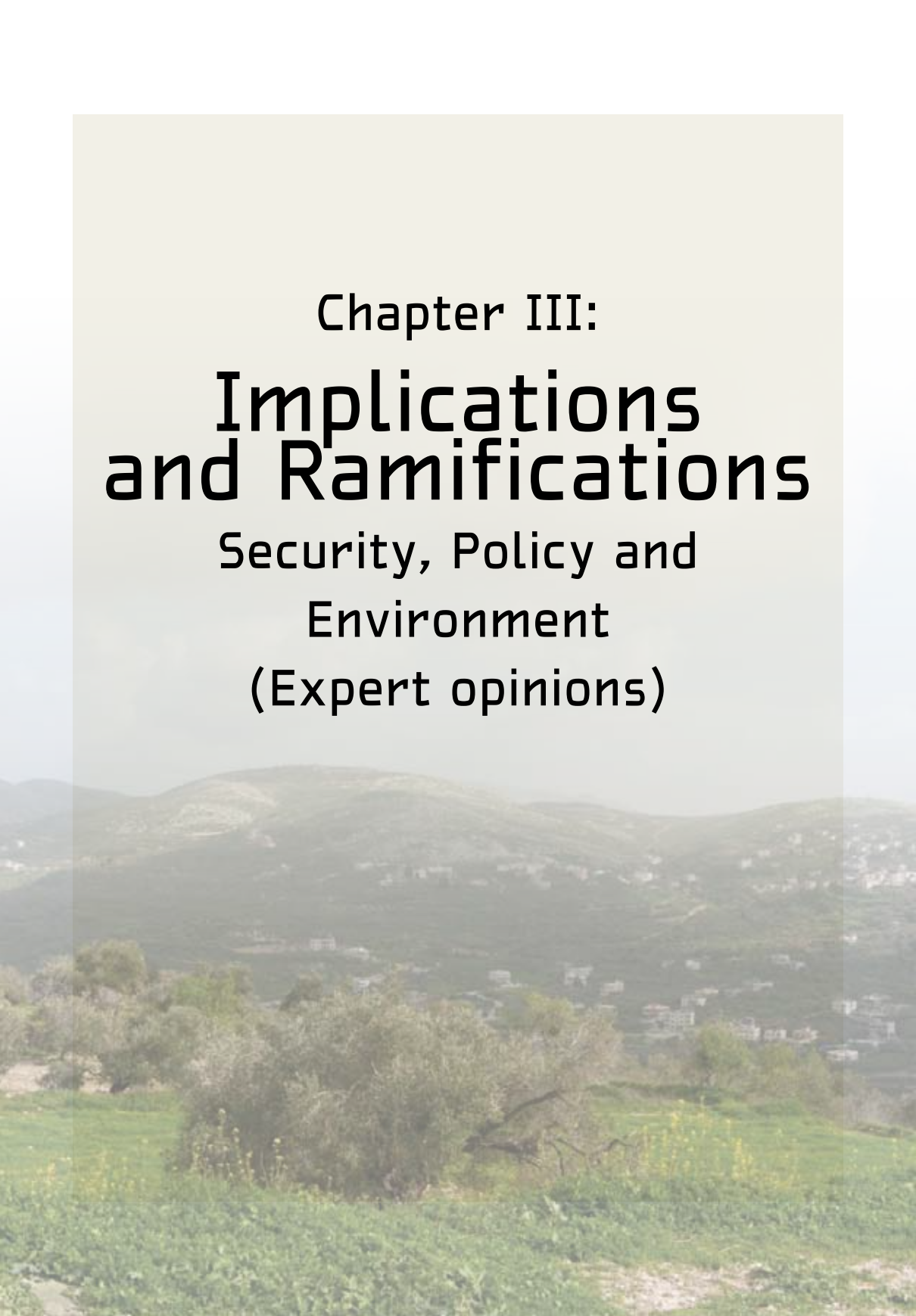
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48 <http://bit.ly/38Z37B6>.

49 The EU document reports that support for water infrastructure projects between 2006-2019 totalled € 81 million.







Chapter III:

# Implications and Ramifications

Security, Policy and  
Environment  
(Expert opinions)



## Security and Policy Implications

By Colonel Yossi Kuperwasser<sup>50</sup>

### **The Palestinian Offensive to establish Facts on the Ground in Area C - Security and Political Implications**

Since the ratification of the Oslo Accords, and more so since 2009, the Palestinians - with the support of the United Nations and the EU - have been waging a multi-dimensional offensive to create a virtually irreversible reality in Area C. In this context they have built tens of thousands of illegal structures, taken over agricultural land, paved new roads, and re-defined Israeli state land as Palestinian nature reserves, seizing areas that were designated by internationally ratified treaties as firing zones and nature reserves.

These activities are being orchestrated by the Palestinian Authority itself through institutions under the PA umbrella such as the Palestinian Ministry of Environment, the Palestinian Ministry of Agriculture, the Palestinian Ministry for Resistance to the Wall and the Settlements, as well as non-governmental organizations, especially the Union of Agricultural Work Committees, an arm of the People's Front for the Liberation of Palestine headed by Raed al Malachi, who has served for years as the Palestinian Authority's Foreign Minister and in that capacity is responsible for PA ties with the UN and the EU. (The PFLP controls the majority of Palestinian non-governmental organizations that are given funding and legitimacy by the UN and the EU. These organizations fulfill a major role in the legal and political battle against Israel, including the BDS movement, which attempts to delegitimize Israel and to bring about the eradication of the Jewish national homeland.)

Much of this activity is carried out in the framework of a systematic program known as "The Roots Project" ("Juth'ur" in Arabic) whose aim is to expand the Palestinian hold on Area C. The activity on the ground is therefore neither haphazard nor coincidental but elements of an actual program.

What brought the Palestinians to enact this program? In our estimation, there were several contributing factors:

1. Following the failure of negotiations with Prime Minister Ehud Olmert and Foreign Minister Tzipi Livni in 2008, and in light of the policy presented by Prime Minister Netanyahu in the Bar Ilan address of 2009, the Palestinians came to the realization that the chance of achieving a negotiated settlement that would meet the demands of the Palestinian leadership and enable the establishment of a territorially contiguous Palestinian state that would control almost all of the territories taken by Israel in 1967 (with limited land swaps) with Jerusalem as its capital, without the Palestinians

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<sup>50</sup> Served as Head of the Research Division of the Intelligence Division (rank: Colonel), and as Director General of the Ministry for Strategic Affairs.



being forced to recognize Israel as a Jewish nation-state and to agree to an end to the conflict and a resolution of all claims, including the 'right of return' of Palestinian refugees and their descendants - had been greatly reduced, if not completely evaporated.

2. The Palestinian Prime Minister at the time, Salaam Fayyad, initiated a plan based on this understanding (Palestine: Ending the Occupation, Establishing the State). The Fayyad Plan focused on unilateral construction of the infrastructure of the State of Palestine in the areas taken in 1967, in order to insure that the creation of a state and international recognition would not require the Palestinians to make concessions - particularly the recognition of Israel as a Jewish state and the recognition of Israel's security needs, which require long-term Israeli control of the Jordan Valley.
3. The Palestinians understood that unilateral activity of this kind might receive wide international support from members of the international system, particularly the European Union and the United Nations, as well as from members of the recently-elected Obama administration, if presented as a non-violent expression of the struggle by an oppressed (occupied) people to liberate its national land.
4. The Palestinians understood that the prevailing conditions made it difficult for Israel to take action to block this program, both because the program enjoyed international support and because it is non-violent, and particularly because the Israeli defense establishment is interested in avoiding non-essential friction with the Palestinian apparatus, and that there are many on the Israeli side who view this activity with a large degree of understanding, if not outright support (with the oft-repeated claim that Israel fails to grant building permits for Palestinian construction in Area C, leaving the Palestinians no choice but to build illegally. The failure of the Israelis to take decisive action, enabling the Palestinians to construct over 25,000 illegal structures in Area C since 2009, proves that the Palestinian's operational assumptions were correct, which encouraged and emboldened the Palestinians and their supporters to increase their activities on the ground.
5. The Palestinians feared that their own inaction in the face of Israeli moves to establish and strengthen Jewish settlement in Judea and Samaria would lead to the creation of problematic facts on their ground from the Palestinian perspective, and to a Palestinian defeat in the offensive they were waging against Israel to create facts on the ground in the absence of an agreement or in the run-up to an arrangement, although the prospects for such a resolution were slim, as we have noted.

Palestinian activity in Area C is, obviously, a violation of the Oslo Accords, which stipulate that planning and construction permits in Area C is under exclusive Israeli jurisdiction, and in the areas set aside as nature reserves all construction is forbidden. This activity is also legally problematic because in a significant number of cases, construction has not been carried out on land privately-owned by Palestinians (mullk) - even though ownership claims are often questionable - but instead are carried out on land declared as state property. Yet the Palestinians' disregard should come as no surprise. According to the treaty they are also required to fight terrorism and to halt all incitement, but in practice they encourage, incentivize and remunerate terrorism and continue to proudly incite against Zionism and Israel. It is clear that in the eyes of the Palestinians, the



agreements they signed do not require them to abandon the fight against Zionism which is, in their worldview, the defining principle of Palestinian identity.

This being the case, these are the ramifications of the Palestinian plan of action:

1. On the security plane - Illegal Palestinian construction poses a danger to Israel's most basic security interests. It is carried out alongside major, vital traffic arteries that are essential to the IDF's freedom of movement and ability to respond to emergency situations (the case of Khan al Ahmar, located on the Jerusalem-Jordan Valley highway, is a well-known example, but this principle is no less true regarding the construction of schools and residences adjacent to other vital thoroughfares). Construction in areas that lead to the Jordan Valley and its margins may endanger Israel's command of this territory when necessary; illegal construction adjacent to Jewish settlements and along the roads that serve these communities may become a threat to the freedom and safety of movement to and from these communities, and may pose a threat to the security of the communities themselves; Palestinian activities in IDF firing zones and training grounds disrupts the IDF's preparedness to fulfill its mission, and Palestinian construction in areas vital to Israel's security such as Nachal Heletz south of Jerusalem, may curtail the IDF's freedom to maneuver in defending Jerusalem and the Jewish communities of Judea and Samaria. It is clear that illegal construction is one more level of threat to the security of Israeli settlements in Judea and Samaria which has been added into the equation of the terrorism with which these communities have contended for years.
2. On the political plane - The Palestinian program was intended to illustrate that Area C is part and parcel of Palestine, and that Israel has no connection to this area. Therefore, these are not to be considered contested territories, as Israel has argued based on the Oslo Accords, but part of the Palestinian state which the UN General Assembly has already recognized. In their view, which was adopted by the international community and codified in United Nations Security Council Resolution 2334, ratified with the approval of the United States (the US abstained in the vote on this resolution), these areas are considered occupied Palestinian lands, which gives the "State of Palestine" authority to seize land in this region and to build on it as it sees fit, without the need for Israeli approval or permission.

In addition, the Palestinian plan is designed to prevent the spread of Jewish settlement, including within settlement blocs such as Gush Etzion, which are generally regarded as territory that will remain under Israeli sovereignty in any future agreement, in order to prevent Israel from exacting a territorial price from the Palestinians for their continued refusal to compromise in any way that would impinge upon any aspect of the Palestinian narrative.

Similarly, by building or establishing possession on land adjacent to Israeli communities, particularly in areas near Area B, the Palestinians hope to create a sense of threat and siege in the Israeli communities and to weaken them in this way. Construction and other land-based activities enable the Palestinian Authority and other like-minded organizations to present themselves to the internal Palestinian community as no less heroic champions of the battle against Zionism than their rivals in Hamas, but far more



efficient heroes than those who wage a battle of armed terrorism.

In summation, the flaccid response that has characterized the Israeli government's approach to this threat, which can be blamed only in part on bureaucracy, a shortage of manpower in the Civil Administration and the impossible labyrinth of protracted courtroom battles, is allowing the Palestinians to create a problematic reality on the ground that reflects their claim to all of Judea and Samaria as occupied Palestinian territory. Israeli weakness encourages the UN and the EU to continue to support and assist this Palestinian activity, even though by doing so they are violating the agreements they themselves signed and supported. This situation harms the vital security interests of the State of Israel and increases the security threats against Israeli communities in Judea and Samaria and the Israeli citizens who live in them.

Israel must concentrate its efforts and contend with this phenomenon immediately and decisively in order to turn back the clock and to make it clear that as far as Israel is concerned, the Oslo Accords remain in force, and Area C remains disputed territory in which Israel has exclusive jurisdiction for planning and construction. Should the Israeli government continue its weak policy, even after this phenomenon has come to the fore of the national agenda, the problem will become even more acute. This being said, Israel must make efforts to grant building permits in cases that will be beneficial to the Palestinian population living in and near Area C, not only because this is the right thing to do but in order to head off criticism.



## A Decade of the Fayyad Plan - Ten Years of Missed Opportunities

By Ron Prossor<sup>51</sup>

Fifty five years have passed since the founding of the PLO, twenty-five years have passed since the signing of the Oslo Accords, and fourteen years since the Israeli withdrawal from the Gaza Strip - and the Palestinians continue to cling to the same diplomatic line throughout: They have made not one constructive offer.

Their response continues to be negative. They continue to leave the table, to create an uproar, to play the victim. This has been the unsuccessful modus operandi of the Palestinian leadership for decades. It seems that ever since the “three no’s” of Khartoum, the word ‘yes’ has been removed from the Palestinian vocabulary.

The Fayyad Plan was one spark in the darkness that represented a different approach. Even those who do not subscribe to the stated vision of the plan, “a Palestinian state encompassing Gaza and all of the West Bank with its capital in Jerusalem” - and the writer of these lines is among them - cannot but respect the singular flash of Palestinian initiative that the plan represents. For one brief moment, it seemed that the Palestinians were adopting a different approach:

- Taking the initiative rather than shirking responsibility;
- Presenting a vision for the future rather than obsessively nitpicking about the past;
- Making practical steps forward rather than reverting to all-systems collapse.

Unfortunately, dreams are one thing and reality quite another. In the decade that has elapsed since the Fayyad Plan’s publication, nothing has changed: The Palestinians have not been capable of implementing even the minor elements of the plan. For the sake of this analysis, let us revisit the essential elements of the plan: A free and democratic political system, equality before the law, comprehensive government responsibility for security, education, welfare and culture, and an economic system grounded in free market principles and guided by government regulation.

A look at the sad state of the Palestinian Authority illustrates that the answer in every category is a resounding “no.” Even if we remove Gaza from the discussion, we are faced with a system plagued by corruption and bloated beyond repair; non-democratic, oppressive, characterized by inequality, and most importantly, consistent ducking of any responsibility for its own future and the future of its citizens.

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<sup>51</sup> Director of the Abba Eban Institute for International Diplomacy of IDC-Herzliya, Ron Prossor is an Israeli diplomat who served, among other positions, as Israel’s Ambassador to the United Nations, Director General of the Foreign Ministry, and Israel’s Ambassador to Great Britain.



In the ten years that have passed, the world has moved on, as have the State of Israel and a number of Arab states. The United States is a far different place, and many European countries are practically unrecognizable. But the Palestinian narrative remains petrified, frozen in its place, stuck in a reality that does not exist and is becoming less and less relevant with each passing year.

## **In the international sphere, Palestinian failure is even more glaring.**

Despite the massive support the Palestinians receive from international organizations and foreign nations, they have not learned to leverage this warm embrace into development and success.

The Palestinians have been the beneficiaries of three levels of international support over the past decade. Each of these levels holds tremendous potential for the Palestinian nation, and the opportunities presented by each of these levels has been squandered royally, as the British would say.

**The First Level: Support of International Organizations** - Time and space constraints prohibit a full discussion of the pro-Palestinian bias that taints international bodies, first and foremost among them the United Nations.

The UN's attitude toward Israel is not characterized by double standards, but by triple standards - or in plain English, by an unholy trinity of morality: One ethic is applied to dictatorships, another to democracies, and a third, very unique ethic, is exclusive to a single state among the family of nations - Israel. This ethical standard goes far beyond what is expected of any other democracy and holds Israel to a standard that is, for the most part, unattainable.

This three-tiered morality, coupled with the UN's "numbers politics," dictate to a large extent the anti-Israel, pro-Palestinian policy of the world's parliament. Some illustrative examples:

- In May 2016, the World Health Organization, which is often presented as a professional body, adopted a resolution titled, "Health conditions in the Occupied Palestinian Territories, East Jerusalem and the Occupied Syrian Golan Heights," in which Israel - and only Israel - is said to "cause disturbances of mental, physical and environmental health." This resolution was introduced and promoted by a consortium of Arab countries and the Palestinian Delegation to the UN. Votes in support of this unique condemnation of Israel were cast by Great Britain, France and Germany, who joined Iran, Venezuela, Syria and many other nations from across Europe and around the globe. Like many other anti-Israel resolutions, since it was first presented in 2016, it continues to come up for re-affirmation every year, as it did this past May, when it was supported by Spain, France, Belgium, Sweden and Switzerland, as well.
- In March 2015, the closing session of the Annual Hearing on the Status of Women, attended by thousands of people from every corner of the earth, including figures of international renown, was adjourned with a special condemnation of Israel's treatment of Palestinian women. The panel included representatives of Iran and Sudan, countries where women are completely segregated, and adultery is a crime



punishable by stoning.

- In June 2015, the UN's Committee on Non-Government Organizations, which confers official advisor status to non-government groups and organizations, chose to admit the Palestinian Return Center to its ranks. This organization denies the right to exist of a UN member-state - Israel. There is no doubt that the UN is in dire need of additional guidance regarding the anti-Israel bias advocated by this group.

In similar vein, the unwavering support for the time-worn Palestinian narrative provided by international organizations in their field activities cannot be overlooked. This support is often a particularly sharp double-edged sword.

Take, for example, the UN Relief Works Agency (UNRWA), a unique agency of the United Nations whose sole responsibility is to insure the welfare of Palestinian refugees. No mistake should be made in this regard: The UN has a very competent agency, UNHCR, responsible for the welfare of refugees around the world. Yet the UN decided that Palestinian refugees deserve special treatment, and a special agency was created just for them. The UNHCR estimates that there are currently 68,000,000 people who have been forced to leave their homes in 128 countries and who require immediate assistance, but over the years the UN has invested in UNRWA and in Palestinian refugees, at the urging of Arab states, more resources per capita than it has allocated to all and any other refugee populations in the world. How is it that the entitlement of every Palestinian refugee come to four times more financial assistance (!) than any other refugee in the world, including those who have been displaced from Pakistan, Syria, Africa or any other corner of the globe?

The terrible part of this story is that despite the fact that UNRWA is the most generously funded agency in the world, by a considerable margin, it still fails to provide for Palestinian refugees in a satisfactory manner. Instead of assisting in the resolution of the refugee problem it works to perpetuate it. Under its stewardship, the number of Palestinian refugees jumped from 700,000 to 5,700,000, and the UNRWA invests its best efforts in preserving refugee status, a status passed down from one generation to the next in a manner that is completely unique and has no parallel among other refugee populations. UNRWA education incites Palestinian children and actively prevents the Palestinian Authority from taking responsibility for its citizens.

UNRWA is the best illustration of the PA's shirking of responsibility. If the Palestinian Authority leaders were truly interested in building real foundations for their state - a state that concerns itself with civilian affairs - they would insist that UNRWA hand over authority for health and education without delay, because only those willing to take responsibility for the day-to-day affairs and the future of its citizens are capable of establishing a real and sustainable state.

Indeed, the Palestinians have failed to leverage both the physical and ideological support of the international community, to establish and develop their own economy and education system or to assume responsibility for their citizenry and their future. The opposite is true: They promote the organizations and the decisions that portray them as downtrodden and they wash their hands of responsibility and almost inexplicably refuse





to attach operative measures to policy decisions that claim to redeem the Palestinian people from their purportedly wretched circumstances.

**The second level: Support of Arab Countries** - This support has undoubtedly eroded over the years, but it still exists, particularly regarding Gaza. Here, too, international funding is passed from Arab countries to Gaza via the Palestinian Authority in suitcases and distributed to the families and friends of terrorists, or “martyrs,” as they are referred to. The amount of money invested in development, in the economy, in job creation, in education and in self-determination constitutes a minuscule portion of the financial aid supplied by Arab countries to the Palestinians.

**The third level: European Support** - This may be the most infuriating type of support, the most misplaced, and the only support that keeps the Fayyad Plan afloat - but only its negative aspects.

One particularly glaring example is Area C, which was placed under full Israeli jurisdiction under the Oslo Accords. Area C is dotted with thousands of nondescript prefabricated units, emblazoned with small white signs with small inscriptions. In English, in bold letters, just below the famous star emblem, are the words, “Donated by the European Union.” These structures were placed illegally by the European Union, in violation of the Oslo Accords and international customary law, in order establish facts on the ground for the benefit of the Palestinians, without the need for negotiation or compromise.

But there is no story more infuriating than the case of Khan al Ahmar. In this instance, European countries undermined not only decisions of the Israeli government, but decisions of Israel’s Supreme Court which were handed down after nine years of legal proceedings, greenlighting the evacuation of the illegal outpost known as Khan al Ahmar, located in Area C (under full Israeli control). The very act of undermining the legitimacy of government and Supreme Court decisions constitute a challenge by the countries of Europe to the foundations of Israeli democracy - but the European Parliament went even further, characterizing law enforcement at Khan al Ahmar as a war crime.

As I see it, the objective of European actions in the instance I have described and in other instances is to frustrate Israel’s efforts to contend with illegal Arab construction in Area C. Erecting structures is a violation of the Oslo Accords, which the EU signed as a witness, and which state that Area C shall be under full Israeli security and civil control.

The Palestinians are the beneficiaries of European “facts on the ground,” and therefore see themselves as absolved of the responsibility to initiate any international political discussion or to attempt to act independently toward real development for its citizens. The Europeans, for their part, seek to implement the Fayyad Plan, and if we have any expectations that they will implement the elements of the plan that involve democracy, the rule of law, a free economy and human rights, we are mistaken. The Europeans focus of implementing the elements that involve creeping annexation, unilateral behavior on a track that circumvents negotiation, and the attempt to force the creation of a de facto state.



## **Ten years have been wasted on missed opportunities. What will the next ten years bring?**

Regrettably, the future does not look promising. Recently, the United States held an economic workshop in Bahrain, titled “Peace to Prosperity,” where the Trump Administration unveiled an economic peace plan, a tailored assistance package for the Palestinian Authority that focuses mainly on economic issues as a first stage toward a resolution of the conflict. If nothing else, it cannot be said of the Palestinians that their reactions are unexpected.

The Palestinians behaved in the manner described by Einstein as madness: They repeated the same whining rejectionism and expected a different outcome. No other outcome is forthcoming. Once again, their refusal to negotiate or to discuss development will yield negative results - on the political level, on the level of international diplomacy, and especially on the level of their own people.

Unilaterally establishing a Palestinian state with Jerusalem as its capital is a vision as far removed from my worldview as east is from west. But the Trump “Peace to Prosperity” plan was a spark of new ideas that might possibly nourish conversation between the two peoples regarding practical issues, focusing on the economy and education, stemming from an understanding of concepts such as democracy and the rule of law.

The Palestinians themselves nipped it in the bud, simply because pragmatism and victimhood don’t mix. So long as this remains the case, and so long as the automatic international support for the Palestinian narrative remains unchanged, to my great regret it will be difficult for Israel to find a partner for dialogue and negotiation among its neighbors beyond the green line.





## The State's Responsibility for Pollution of Water Sources in Judea and Samaria

Attorney Shlomo Rabinowitz<sup>52</sup>

Examination of the environmental situation in Judea and Samaria reveals a difficult picture of environmental hazards in a number of areas, particularly smoke hazards, sewage and dumping, damage to water sources, pollution caused by petrol stations, soil pollution, illegal quarrying, harmful treatment and disposal of electronic components, and construction carried out without comprehensive planning that causes extensive environmental damage.

In the past decade, implementation of a policy of massive unsupervised construction and agricultural projects in Areas B and C have caused environmental damage that in some instances is irreparable. This paper will focus briefly on the damage caused by sewage dumping and water pollution that is harming upper runoff, groundwater, and the water provided to consumers by the State of Israel and the Palestinian Authority. Aside from the environmental damage to the groundwater and to the ecosystem in general, this environmental hazard is harming the public's health and quality of life.

Effluents and pollution of water sources in Judea and Samaria are the worst of the environmental hazards that cross the lines that separate Judea and Samaria from the State of Israel. Often, effluents contain hazardous materials, including phosphorous and nitrogen compounds, and pose severe health, sanitation and environmental hazards, pollute surface and subterranean water sources, and endanger residents of these areas and of the State of Israel, and threaten the mountain aquifer and the region as a whole.

All experts who examine the situation in Judea and Samaria agree that due to over-pumping, failure to treat effluents, and seepage of domestic and industrial waste, the mountain aquifer is in serious and increasing danger. In practice, a large number of the streams of Judea and Samaria are a pipeline - the real national carrier - for dumping of domestic and industrial effluents. Sewage does not recognize political boundaries; it crosses the green line unhindered. Thus, for example, the sewage from Shekhem and the surrounding villages and the sewage from Tulkarm and its environs flow into both the Shkhem and Alexander Streams; sewage from Jenin runs into the Kishon, and the sewage from Palestinian villages runs into the Hadera Stream; effluents from Ariel, Salfit and the surrounding area run into the Shiloh Stream; sewage from Hebron, Kiryat Arba and the surrounding villages run into Hebron Stream, and in the past flowed all the way to Beer Sheva; sewage from Ramallah runs into the Modiin Stream, and so on. People who take a dip in the Prat Stream aren't necessarily aware that they are bathing in sewage.

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These effluents harm residents and their health pollute surface water, seep into the groundwater, and harm habitats and agriculture - everything in their path and in their surroundings.

In the words of the State Comptroller (16 May 2017), “to date, the Israeli government has failed to formulate a policy of environmental management that spans the borders it shares with its neighbors, including water issues, and it has no policy regarding hazards that cross the green line or our border with the Gaza Strip. Similarly, the government has made no progress toward formulation of a comprehensive policy, nor has it appointed an oversight body to take responsibility for this issue. As a result, solutions for serious and ongoing environmental hazards have been stalled for many years, often in violation of the law and while harming public health and important national interests.”

Addressing the question of how these severe hazards were created, the State Comptroller was decisive:

**Here we have a series of operational failures and bottlenecks: suspension of the Joint Water Commission; bureaucratic blockages that prevent progress and initiatives involving international interests; poor coordination among government bodies; low levels of involvement of the political echelons in this issue and failure to make decisions on important issues; failure to coordinate activities under a masterplan that clarifies objectives and establishes timetables for addressing the various problems, and more. These failures and bureaucratic bottlenecks are directly related to the creation and the worsening of a host of hazards and environmental damage on both sides of the green line, some of the most prominent of which are the pollution of the Kidron Stream by effluents from Jerusalem; pollution of the streams of the Sharon Plain - the Alexander and Shekhem Streams; pollution of the Hebron Stream, the Mikhmas Stream, the Prat and Kelt, and pollution of the sea and its tributaries by effluents from the Gaza Strip.**

The State Comptroller’s recommendations were extremely forceful:

**Beyond the steps that must be taken by each of the bodies mentioned, our findings require systemic action toward the formulation of a plan of action that will insure a significant decrease in pollution levels and environmental hazards in the short term, and as quickly as possible. Due to the complexity of the issue and the large number of agencies involved, coordination, cooperation and streamlining will be necessary. The State Comptroller’s Office therefore recommends that the government convene an inter-ministerial committee, comprised of representatives of the relevant agencies and ministries, to be chaired by one of the ministries that will spearhead efforts regarding cross-border environmental management. This team will be tasked with formulating government policy on this issue, recommending one government body as**



**the director and overseer of this issue, and creating a framework that will address complex environmental challenges.**

In addition to massive construction in Areas B and C in the context of widespread land-clearing efforts, hundreds of kilometers of agricultural access roads were paved, wells have been dug, and extensive drilling carried out - all of which has severely damaged the mountain aquifer; water resources have been stolen and damaged, either intentionally or unintentionally.

The complaints that reach organizations like Regavim, the Shaarei Mada u'Mishpat Environmental Clinic and Green Now, deal with severe harm to quality of life, environmental and health hazards, illnesses and foul smells - but as we have noted, environmental damage is polluting water sources and harming protected species and habitats, as well.

According to the State Comptroller's report, water pollution "harms the groundwater reserves of the State of Israel and its neighbors, and public health and quality of life. Due to the geopolitical situation in Judea, Samaria and Gaza, this topic also impacts Israel's political-security situation and its international standing."

The conclusion is that the State of Israel is failing to live up to its basic responsibilities toward its citizens, other residents of the area, and the environment as a whole. Israel's government is not promoting a comprehensive planning policy. The State's failure to take decisive action on this issue is also a violation of international law, as it contradicts international agreements and treaties to which Israel is a signatory.

The operative conclusion is that steps must be taken to expose the environmental damage caused by deliberate Palestinian Authority activities and to induce the government to act. It's not too late!





A scenic landscape featuring a dirt path that winds through a grassy field. In the foreground, there are several large, cylindrical stone blocks, possibly remnants of ancient structures. The middle ground shows a mix of green grass and scattered trees. In the background, there are rolling hills and a small town or village nestled in a valley. The sky is a pale, hazy blue, suggesting a clear but slightly overcast day.

Chapter 4:

# Summary and Recommendations

# Summary

Over the past decade, the Palestinian Authority has led a carefully planned strategic program to seize control of as much land in Area C as possible. This program has been carried out on a number of fronts simultaneously, among them the construction of tens of thousands of illegal structures, seizure of hundreds of thousands of dunams of land through agricultural use, creation of a land registry, and lawfare that aims to block enforcement measures by the State of Israel's official law enforcement apparatus.

This behavior violates Israeli and international law, as well as the internationally ratified agreements signed by the PA itself. Nonetheless, this fact has not deterred international organizations and foreign governments, including the European Union, from financing the PA's unilateral, illegal activity or from applying incessant pressure on the State of Israel with the aim of limiting its law enforcement activity.

For more than fifty years, Israeli governments have avoided making a decision regarding the status of Judea and Samaria or formulating clear and cogent policy guidelines regarding this area. On the one hand, Israel's official position is that it has rights to Judea and Samaria, and that this territory is not occupied. On the other hand, the lack of clear and unequivocal policy creates a void of governability and sovereignty. This situation makes efficient law enforcement difficult if not impossible, as the PA continues its takeover of the territory.

The law enforcement apparatus, comprised of the IDF and the Civil Administration, have not confronted the reality that is taking shape on the ground, for a number of reasons:

1. The policy void - Because the political leadership has failed to formulate clear, organized operational guidelines, policy - or non-policy, as it were - is created, for all intents and purposes, by the military commanders and Civil Administration functionaries on the ground, each according to his or her personal worldview and preference. This situation makes it difficult to initiate complex processes that require a more comprehensive view of the situation.
2. Lack of organizational compatibility to the tasks at hand, and lack of resources - The Monitoring Division of the Civil Administration is designed to respond to localized violations of the Building and Planning Code and is ill-equipped to address strategic threats in a comprehensive, efficient manner. Furthermore, the Civil Administration is subject both to professional civilian oversight and to the orders of the military commander. This makes problem-solving efforts cumbersome and complicates communications with government ministries. The Civil Administration also suffers from chronic, systematic shortages of resources and manpower.
3. Deficient Legal-Legislative Infrastructure - The underlying system of law in force in Judea and Samaria is made up of many layers: Ottoman law, British mandatory statutes, Jordanian law and Israeli military regulations. This infrastructure is both anachronistic and stunted, as it fails to incorporate modern legislation of the kind in force in the State of Israel and other developed countries.





## Recommendations:

**Creation of a National Land Protection Authority:** The Israeli government must issue an order establishing a specialized division within the Ministry of Defense charged with protecting the territories that were placed under Israeli civil and security jurisdiction by the Oslo Accords. This new division must be empowered to take the steps necessary to block the Palestinian Authority's program of annexation, and to increase Israel's governance in these areas.

The Land Protection Authority will assist the Minister of Defense and the government in the areas of planning and policy formulation, and will coordinate the activities of all relevant enforcement bodies, Foreign Ministry activities, planning bodies and legal authorities, and will be equipped with a variety of tools to halt the phenomenon of Palestinian annexation, in accordance with a clearly-defined program and according to priorities dictated by the strategic importance of each area.

**Completion of Land Survey in Area C:** Strategic areas must be mapped out and the registration of "survey land" as state property must be completed, in accordance with a predetermined list of priorities. To accomplish this, additional manpower must be added to the legal team that handles registration of state land in Judea and Samaria. In the second stage of this process, the government must issue orders for the regulation and registration of land in Area C.

**Battling Illegal Construction** - The Land Protection Division will hire additional employees, who will be responsible for maintaining the status quo in the field and combatting new illegal construction, identified through comparative analysis of monthly aerial photos, and for reorganizing the list of enforcement priorities to reflect strategic imperatives. This new division will make extensive and strategic use of legal and legislative tools, including court and administrative orders, to combat illegal construction, such as expanding the application of the "new construction directive" to additional areas, and the application of "delimiting orders" against illegal outposts where alternative solutions for squatters are not called for, and will carry out legal action under the Law for Protection of Land. Particular emphasis will be placed on enforcement of security orders, including construction within 150 meters of roads, and confiscation of machinery and equipment used by repeat offenders.

**Combatting Agricultural Annexation** - The battle against illegal agricultural land seizure must be given higher priority for enforcement. The Minister of Defense must order the closure of the Union of Agricultural Work Committees in light of its support for terrorism. To prevent further deterioration of the situation on the ground, mapping and documentation of the current situation in each area should be conducted, and a "containment map" should be presented to enforcement authorities based on a comparative analysis of the agricultural land use reflected in 2010 aerial photos with those taken in 2017. If enforcement activity is to be decisive and effective, enforcement bodies must make use of all the tools at their disposal, including eviction orders and disruptive use orders in cases where squatters did not use the land for agricultural purposes for the three previous years. A new administrative order empowering authorities to remove



“new annexation activity,” modeled on the “new illegal construction” order, will be based on comparative studies of monthly aerial photography of the area. Agricultural machinery and other equipment used for illegal agricultural annexation will be impounded for extended periods of time, and will be forfeited if used in a second offense. Planning authorities will formulate an agricultural masterplan assigning water allocations for agricultural projects. Forestation projects will be promoted and carried out by the Jewish National Fund (Keren Kayemet) where necessary. Approval of construction permits for the Arab sector in Area C will be limited to residents who lived in the area prior to 2008. For this purpose, the State of Israel will conduct a comprehensive population census in Area C, as the basis of an objective map of the planning and construction needs of this population. Palestinian Authority construction projects in Area C will be rejected due to a lack of legal standing. Plans that are approved will include physical boundaries that will prevent “creeping” illegal construction and will be based on the principle that territorial contiguity that has the potential to serve the Palestinian Authority’s interests must not be approved. Planning bodies will promote comprehensive national plans that are designed to serve all residents, while placing special emphasis on planning for national infrastructure (roadworks, electricity, water and gas delivery).

**Legal Activity** - A systemic approach will be developed by the judicial system to combat the lawfare currently waged by the Palestinian Authority and foreign organizations, in order to prevent the purposeful strangulation of Israel’s judicial system with hundreds of new legal and administrative petitions. As we suggested above, the use of administrative tools such as “new construction orders” and “delimitation orders” will be more widespread.

**Political Response** - A policy will be developed by each of the relevant ministries (Foreign Ministry, Interior Ministry, Defense Ministry) to respond to foreign countries and organizations that support the Palestinian Authority’s efforts and harm Israeli interests. Specific action should be taken against key figures involved in illegal activities, project management, transfer of funds, etc. Actions will include, but will not be limited to, closure orders against organizations with ties to terrorism, first and foremost among them the UAWC, and revocation of visas issued individuals who support land seizure activity.

In the decade that has elapsed since the Fayyad Plan was launched, the Israeli government has allowed Palestinian organizations and their European enablers to create more and more facts on the ground in areas of strategic importance.

If the Israeli government does not come to its senses soon, the Palestinian Authority’s plan will create an irreversible reality.

Only a clear and decisive decision by policymakers and immediate, systemic treatment of the problem of creeping annexation will generate the necessary solutions. Policymakers must understand that Israel is facing an organized program that will have dangerous consequences. We therefore call upon the government to take initiate law enforcement and prevention measures, alongside focused legal and diplomatic activity.







“Land is conquered not by securing political rights or diplomatic considerations, but by long-term settlement activity, by laying down roots and immersing oneself in the intimate attachment to the earth itself...

Land is not given, it is conquered, and we will conquer the land by developing it.”

David Ben Gurion, 1915



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