



COUNTRY REPORT

Konrad-Adenauer-Stiftung e.V.

PALESTINIAN TERRITORIES

FELIX DANE

JÖRG KNOCHA

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The Evacuation Of Migron

ISRAELI SETTLEMENT POLICIES IN THE WEST BANK AND EAST JERUSALEM

"The Court concludes that the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law."¹

This conclusion of the International Court of Justice (ICJ) from 2004 reflects the broad international consensus on the Israeli settlements in the West Bank. A substantial part of the international community recognizes Palestine as a state. Nevertheless, these settlements hinder the development of a viable Palestinian state. An increasing number of countries voice their strong criticism of what they consider as illegal Israeli constructions in the Palestinian Territories. Even in Israel the legal status of some of the settlements remains disputed. The former president of the Israeli Supreme Court, Dorit Beinisch, criticized in 2008 the attempts of the Israeli government to delay the evacuation of those settlements, which are built on privately owned Palestinian land, and violate Israeli law.² The Israeli Ministry of Housing and Construction has been financing the illegal construction of outposts in the occupied West Bank for years. Migron, one of the most cited examples of an illegal outpost, illustrates this. The archives of the Civil Administration, the Israeli governing body in charge of the West Bank,

are full with details about the establishment of Migron. Nevertheless, it took more than nine years until the Israeli Supreme Court decided in August 2011 that the state has to evacuate the illegal outpost of Migron by March 31, 2012. A compromise between the Israeli government and the Migron residents was reached to postpone the evacuation until 2015 – but the Supreme Court voted against the plan and ordered the evacuation by August 1, 2012. But Migron represents only one of about 250 Israeli settlements and outposts in the West Bank, an area that is only half as big as the Kosovo.

The Israeli Settlement of the West Bank

They carry names from the Old Testament (Eli, Shiloh, Kiryat Arba) or simple geographical designations (Point 792, Hill 857, Flag Hill): the 250 Israeli settlements in the West Bank and East Jerusalem belong from the Palestinian perspective to the most serious obstacles for an Israeli-Palestinian peace. The Palestinian president Mahmoud Abbas hesitates to return to the negotiation table with the Israelis as long as the settlement construction continues. The settlements can be roughly divided into two categories: All Jewish communities without official authorization mentioned in this report are termed "outposts" hereafter, whereas the term "settlement" refers to the officially authorized Jewish communities in the West Bank.

The start of the settlement activities dates back to the end of the Six-Day War in 1967 in which Israel seized among others

¹ International Court of Justice (ICJ), "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion", 2004, S. 52, <http://www.icj-cij.org/docket/files/131/1671.pdf> (accessed 28 March 2012).

² Cf. Peace Now, "The Migron Petition", 2006, <http://peacenow.org.il/eng/content/migron-petition> (accessed 28 March 2012).

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the West Bank, East Jerusalem and the Gaza Strip. The first Israeli settlers moved to the occupied West Bank shortly after the end of the war, but just the beginning of the 1980s brought a veritable construction boom. Thereby the political affiliation of the particular Israeli governments did not play any decisive role. Even the period after the Oslo Accords of the 1990s did not bring any significant change. The evacuation of all the 21 settlements in the Gaza Strip and four settlements in the West Bank in 2005 did not reverse the general trend in population growth. According to the Israeli Central Bureau of Statistics (ICBS) the annual population growth rate in the Israeli settlements in the West Bank reached 5.3 % in the last decade. In comparison, the growth rate of the total Israeli population reached only 1.8 %.³ Currently the West Bank is speckled with altogether 150 officially registered Israeli settlements with approximately 500.000 inhabitants.⁴ Beside the settlements, there are around 100 outposts where around 4000 settlers live and which are not registered. According to the Israeli organization Peace Now, the majority of the settlers live in the West Bank for economic reasons, whereas more than 100.000 settlers have an ideological motivation. Their ultimate goal is the settlement of *Eretz Israel*, the Biblical Land of Israel.⁵

The Legal Status of the Settlements

Though, what is the legal status of the Israeli settlements? For the United Na-

³ Cf. Peace Now, "The Humanitarian Impact of Israeli Settlement Policies", 2012, http://www.ochaopt.org/documents/ocha_opt_settlements_FactSheet_January_2012_english.pdf (accessed 28 March 2012).

⁴ Cf. United Nations Office for the Coordination of Humanitarian Affairs (OCHA), "The Humanitarian Impact of Israeli Settlement Policies", 2012, http://www.ochaopt.org/documents/ocha_opt_settlements_FactSheet_January_2012_english.pdf (accessed 28 March 2012).

⁵ Cf. Peace Now, "West Bank Settlements. Facts and Figures", 2009, <http://peacenow.org.il/eng/node/297> (accessed 28 March 2012).

tions Security Council, the European Union and the International Court of Justice (ICJ) all the settlements and outposts are regarded illegal. These international bodies refer thereby to Articles 2 and 49 of the Fourth Geneva Convention.⁶ Article 4 refers to the territories falling into the scope of the Convention. According to the findings of the ICJ, territories seized by Israel in 1967 fulfill the criteria of this article. Paragraph 6 of Article 49 forbids the occupying power to transfer its own civilian population to the occupied territory. According to the ICJ, this is happening in the Palestinian Territories.⁷

Israel recognizes the Geneva Conventions, though refuses their applicability in the Palestinian Territories. According to Israel, the situation in the Palestinian Territories does not fulfill the criteria of Article 2 and 49. According to Israel, Article 2 could not be applied since the Palestinian Territories had never been recognized as a sovereign state. Neither is article 49 relevant for Israel. Its applicability is conditioned by the population transfer with the simultaneous expulsion of the domestic population. Israel denies that this is the case in the Palestinian Territories. Israel considers at least some

⁶ Cf. Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949, <http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument> (accessed 28 March 2012).

Article 2: In addition to the provisions which shall be implemented in peace-time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Article 49 (extract): The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

⁷ Cf. International Court of Justice (ICJ), "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion", Fn. 1.

of the Jewish residents in the West Bank as descendants of the Jewish communities who inhabited the area before the creation of Israel but were driven out by the Arabs. That is why Israel refuses to consider the settler communities as new settlements. Because the Oslo Agreement of 1993 postponed the final solution of the settlement issue, Israel claims that the Palestinians have recognized at least the interim presence of the Israeli settlements as a part of this agreement. That is why, Israel states, the settlements should not be considered illegal.⁸

According to the Israeli jurisdiction, the settlement activities in the West Bank are compliant with international law. However, settlements must be authorized by the Israeli government. Simultaneously, the Israeli law stipulates that the settlements cannot be erected on privately owned Palestinian land. According to Peace Now, some settlements break Israeli law since they are partially or fully located in an area declared by the Israeli Civil Administration as private Palestinian land.⁹ Only the Knesset, the government or the Israeli Supreme Court could annul the authorization. Until now, legal reasons have not led to a single settlement evacuation. The approximately 100 outposts in the West Bank count altogether as illegal since they lack the Israeli government approval. Accordingly, even the endorsement of the settlement expansion by some Israeli ministries presents a breach of Israeli law. Some of the outposts have expanded to "Area B" of the West Bank, where – according to the Oslo II Agreement of 1995 – the Palestinian government exercises full civilian control including planning and zoning. That im-

plies that all Israeli construction activities in the area are forbidden as long as there is no approval by the Palestinians.¹⁰

As one example among many, the outpost of Migron not only breaks international but also Israeli law.

The Case of Migron and the Escalating Settler Violence

It began with a cellular antenna: For the then settler leader Pinchas Wallerstein the outbreak of the Second Intifada in September 2000 brought along possibilities to speed up settlement activities in the West Bank. As the director of the regional district of Binyamin in the central West Bank, he witnessed deadly attacks by Palestinian terrorists on streets used by Israelis. For Wallerstein, an extended mobile network system was a possibility to save lives and, at the same time, usurps more living space for the settlers. The Israeli company Pelephone agreed to establish a cellular antenna located about 10 km to the east of Ramallah. It did not last long until the first settlers came along with their containers. A new outpost was created. The Israeli Ministry of Housing and Construction took charge of the case and ignored that the land of the outpost was registered as privately owned Palestinian estate. The Israeli ministry developed an extensive plan to create up to 500 housing units even though the outpost has never been authorized by the government. Several millions of Shekel had been paid to build up an access road and infrastructure. Although the Israeli Civil Administration closely followed the illegal settlement activities from its beginnings, documented them and forwarded those documents to the political decision makers, it lasted until autumn 2004 before the general attorney began

⁸ Cf. Israel Ministry of Foreign Affairs, "Israeli Settlements and International Law", 2001, <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Israeli+Settlements+and+International+Law.htm> (accessed 28 March 2012).

⁹ Cf. Peace Now, "Breaking the Law in the West Bank. One Violation Leads to Another: Israeli Settlement Building on Private Palestinian Property", 2006, <http://peacenow.org/images/112106PNReport.pdf> (accessed 28 March 2012).

¹⁰ Cf. Akiva Eldar, „West Bank outposts spreading into Area B, in violation of Oslo Accords“, *Haaretz*, 19 February 2012, <http://www.haaretz.com/print-edition/news/west-bank-outposts-spreading-into-area-b-in-violation-of-oslo-accords-1.413655> (accessed 28 March 2012).

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an inquiry.¹¹ Another seven years passed until the Israeli Supreme Court ordered the removal of Migron in August 2011.

Nevertheless, it is still far from clear if the Court's decision will be implemented. The Israeli prime minister Benjamin Netanyahu is eager to find a compromise with the roughly 280 settlers. He is afraid that his coalition government could break up in case the outpost would be removed without a compromise. The most discussed idea is the "transfer" of Migron to a nearby area which is not registered as privately owned Palestinian land. According to the plan, Migron would become part of a nearby Israeli settlement. The settlers of Migron agreed to the idea. Left-wing political circles strongly criticized the compromise. An editorial in Haaretz called the plan "*a combination of highway robbery, contempt for Israel's highest court and disregard for international agreements.*"¹² For Peace Now, the compromise is "*a mockery of the rule of law.*"¹³ On March 25, the Supreme Court ruled that the plan violates the rule of law. The postponement of the evacuation until November 2015, as envisaged in the compromise, was not acceptable for the court. It ordered the final dismantling of the outpost until 1 August 2012. The government promised to comply with the judgment and to evacuate two other outposts, Givat Assaf and Amona, until 1 July and 31 December respectively.¹⁴ A

controversial proposal has been put forward by the right-wing Knesset member Zevulun Orlev. He introduced a bill, to legalize some of the existing outposts. According to the proposal, after four years of residence in an outpost established on private Palestinian land, settlers would be allowed to remain and compensations would be relayed to the owners.¹⁵ Prime Minister Netanyahu does not agree with the proposal, but it could gain a majority in the Knesset in case of a vote.¹⁶

But what can be expected in case Migron gets finally evacuated? In recent years the settlers began to respond to each action against their outposts with a strategy they are calling "price tag". It means revenge actions, in which the settlers send a clear message that for each measure taken against their outposts the Palestinians as well as their own army will pay a heavy price. In the words of one settler: "(F)or every act of destruction [of an outpost] in the southern Hebron hills we will set fire to Samaria [northern West Bank], and for a container destroyed near Har Bracha [settlement in Nablus area] we will exact a price in the southern Hebron hills"¹⁷

In the aftermath of the Israeli withdrawal from the Gaza Strip in 2005 fears of an Israeli civil war awoke¹⁸, but eventually

¹¹ Cf. Chaim Levinson, "Anatomy of an outpost that put Netanyahu in a bind", *Haaretz*, 25 November 2011, <http://www.haaretz.com/print-edition/news/haaretz-exclusive-anatomy-of-an-outpost-that-put-netanyahu-in-a-bind-1.397544> (accessed 28 March 2012).

¹² „Migron deal distances Israel from two-state solution“, *Haaretz*, 18 March 2012, <http://www.haaretz.com/print-edition/opinion/migron-deal-distances-israel-from-two-state-solution-1.419271> (accessed 28 March 2012).

¹³ Peace Now, „Migron Compromise - The Facts Behind the Agreement“, 2012, <http://peacenow.org.il/eng/content/migron-compromise-facts-behind-agreement> (accessed 28 March 2012).

¹⁴ Cf. Tovah Lazaroff, „Gov't: Migron relocation offer still stands“, *Jerusalem Post*, 26 March 2012, <http://www.jpost.com/DiplomacyAndPolitics/Article.aspx?id=263380> (accessed 28 March 2012).

¹⁵ Cf. Barak Ravid und Chaim Levinson, "Israeli settlers reject Netanyahu's request to evacuate largest outpost in West Bank", *Haaretz*, 23 January 2012, <http://www.haaretz.com/print-edition/news/israeli-settlers-reject-netanyahu-s-request-to-evacuate-largest-outpost-in-west-bank-1.408689> (accessed 28 March 2012).

¹⁶ Cf. Lahav Harkov, "PM halts vote on bill to stop outpost demolitions", *Jerusalem Post*, 18 December 2011, <http://www.jpost.com/DiplomacyAndPolitics/Article.aspx?id=249912> (accessed 28 March 2012).

¹⁷ United Nations Office for the Coordination of Humanitarian Affairs (OCHA), "Israeli Settler Violence and the Evacuation of Outposts", 2009, http://www.ochaopt.org/documents/ocha_opt_settler_violence_fact_sheet_2009_11_15_english.pdf (accessed 28 March 2012).

¹⁸ Cf. Chris McGreal, "Settlers warn of civil war over Gaza withdrawal", *The Guardian*, 29 March 2005, <http://www.guardian.co.uk/world/2005/mar/29/israel> (accessed 28 March 2012).

the pullout unfolded without any major incidents. The reason was that the evacuation from Gaza took place in a narrowly defined area. Several weeks before the withdrawal, the Gaza Strip had been designated a "closed military zone" by the Israeli army. This prevented the arrival of pullout opponents. In contrast, the closure of the whole West Bank is much more difficult to achieve. Moreover, in the West Bank and East Jerusalem there are more than half a million settlers who could get mobilized. These problems arose partially during the evacuation of four settlements in the northern West Bank in 2005. Around 2000 outside settlers demonstrated in part violently against the evacuation. Since the majority of the several hundred settlers voluntarily left their homes and because of the isolated location of the four settlements, the evacuation was completed without bloodshed.¹⁹ In contrast, the settlers of Migron, an outpost lying close to a number of large settlement blocs, refuse to evacuate their homes before 2015. Furthermore, since the 2005 withdrawal, the number and level of organization of the militant settlers has increased significantly.

Therefore, the case of the outpost Amona in the West Bank provides a more fitting framework for Migron than the evacuation of 25 settlements in the Gaza Strip and the West Bank. Amona was erected on privately owned Palestinian land in 1995. After Peace Now gathered and published extensive documentation, the Israeli government decided in October 2004 to demolish nine newly built permanent housing units. After repeated delays and legal objections to the evacuation, the Israeli Supreme Court confirmed the lawfulness of the decision to evacuate

the nine structures.²⁰ Around 10.000 policemen and soldiers were deployed for the evacuation. Approximately 5000 settlers came from different parts of the West Bank to prevent the implementation of the Court's decision. The results were the most serious clashes between settlers and security forces in the history of Israel. Hundreds of security forces and settlers were injured. Several nationalistic and religious Knesset members, who supported the Israeli settlement expansion in the West Bank, were among the injured.²¹ Because of the serious incidents a parliamentary committee of inquiry was set up. Which reactions can be expected if not only some individual houses, but a complete outpost will be removed?

Similar to the Amona case, not the residents but a radical minority of militant settlers across the West Bank and their enormous mobilization potential, presents the real danger. How far this minority is ready to go has been evident after the outbreak of the Second Intifada in September 2000. Since then more than 50 Palestinians in the West Bank and the Gaza Strip have been killed by people with suspected ties to the militant settler environment. Just a few of these cases happened in situations of self-defense.²² In the same period more than 250 Israeli civilians were killed by Palestinians in the West Bank and the Gaza Strip.²³ Three Palestinians were killed during clashes with settlers in 2011. Another two died during Palestinian demonstrations near settlements. Furthermore, in 2011, attacks of settlers on Palestini-

¹⁹ Cf. "Troops and Jewish protesters face off in West Bank", *The New York Times*, 23 August 2005, <http://www.nytimes.com/2005/08/23/world/af- web.0823wbank.html?pagewanted=all> (accessed 28 March 2012).

²⁰ Cf. Peace Now, "Settlements in Focus - Vol. 2, Issue 3: Amona Redux", 2006, <http://peacenow.org/entries/archive2237> (accessed 28 March 2012).

²¹ Cf. Greg Myre, "Settlers in West Bank Outpost Battle Police Who Came to Raze Houses", *The New York Times*, 02 February 2006, <http://www.nytimes.com/2006/02/02/internati- onal/middleeast/02mideast.html?scp=1&sq=a- mona&st=nyt> (accessed 28 March 2012).

²² Cf. B'Tselem, "Violence by settlers", 2011, http://www.btselem.org/settler_violence (accessed 28 March 2012).

²³ Cf. B'Tselem, "Statistics: Fatalities", 2012, <http://old.btselem.org/statistics/english/Casual- ties.asp> (accessed 28 March 2012).

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ans and their possession have increased by 144 % in comparison to 2009. Around 10.000 trees have been damaged or destroyed.²⁴ Most recently, Israeli settlers attacked Israeli military bases and Muslim or Christian sanctuaries in the West Bank and inside Israel.

Conclusion

The history of the Migron outpost exemplifies the social, legal and political discourses in Israel about the settlements. But the internal Israeli debate stands partly in stark contrast to the international debate and could soon prove to be meaningless. A majority of the international community recognizes a Palestinian state. Furthermore, an increasing number of states refuse the Israeli argumentation that the Palestinian Territories are a disputed area. The opinion of some recognized international law experts that the Palestinian Territories are not a state is shared by fewer and fewer countries. One consequence is an increasing call for the application of international law in the Palestinian Territories, including the Fourth Geneva Convention.

The argumentation of Israel is also rapidly undermined by everyday reality. The majority of the international community has an unambiguous position regarding the statehood of the Palestinian Territories and treats them already like a state. This creates facts that only allow one conclusion: Migron is just one of about 250 illegal settlements and outposts in the West Bank and East Jerusalem. That is why the evacuation order by the Israeli Supreme Court can only be a first step.

Though, there is a way out: new peace talks with the aim to reach an agreement

about a land swap between Israelis and Palestinians. The majority of the settlers would thus live in Israel, which means that they would no longer be settlers. As prerequisites for peace talks Israel would have to recognize the 1967 borders as the basis for the talks and to ensure at least a temporary freeze of all settlement activities. Otherwise new evacuations will follow and with them the danger of new price tag attacks.

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²⁴ Cf. Peace Now, "The Humanitarian Impact of Israeli Settlement Policies", Fn. 5; Peace Now, „Israeli Settler Violence in the West Bank“, 2011, http://www.ochaopt.org/documents/ocha_opt_settler_violence_FactSheet_October_2011_english.pdf (accessed 28 March 2012).