The Regulation Law and Peace in the Middle East

by Michael Curtis

Critics of Israel persist in the contention that the existence of Israeli settlements is a core, even the main, impediment to peace and to a two state solution of the Israeli-Palestinian dispute. Once again in the UN Security Council Resolution 2334 of December 23, 2016 which was passed by a vote of 14-0 with the U.S. abstaining and therefore allowing it to pass, the settlements were held to be illegal. They have been held innumerable times, though incorrectly, in international forums to be violations of the Fourth Geneva Convention, Article 49, and The Hague Convention of 1907.

Ignoring the refusal of Palestinians to enter into peace negotiations from 1949 to the present, and their provocative proclamations to exterminate the State of Israel, international declaration declare the settlements to be the

obstacle to peace, as well contrary to international law.

With the passage of an Israeli law on Monday, February 6, 2017, there is an opportunity to examine the complicated problem of the settlements in objective fashion. On that day the Israeli Parliament, the Knesset, by a vote of 60 to 52 passed the Regulation Law, Hok Hahasdara, sponsored by the Jewish Home Party, the religious nationalist party, led by Naftali Bennett and generally regarded as right wing, and by some members of the Likud Party.

The controversial Regulation Law appears to break the traditional official attitude to the settlements built in the disputed territories. Since the settlements began after the 1967 Six Day War the numbers have expanded. Today, there are 121 officially recognized Israeli settlements containing 400,000 settlers in the West Bank, and 375,000 in east Jerusalem. Under both Labor and Likud governments there was agreement that settlements were built on state or public land, and largely for reasons of security, not on private land, with some exceptions.

There were however unauthorized settlements, built for a variety of reasons, religious, nationalistic, and economic. At once problems arose regarding both sets of settlements. One was that some private land, later claimed to be Palestinian owned, was unregistered according to Ottoman land laws, and therefore the ownership was uncertain .Another was that genuine mapping mistakes were made by Israeli authorities. A third was deliberate avoidance since the Oslo Accords of the rules regarding settlements for religious and economic reasons.

The Israeli Supreme Court (High Court) has approved settlements on land that is publicly owned. It has allowed expropriation of privately owned Palestinian land for security purposes, or for building roads. It did not allow Israeli expropriation of privately owned Palestinian land in order

that a settlement be established.

The context for the Regulation Law has to be seen in the events of the Amona issue. In that city, a hilltop near Mount Baal Hatzor the highest peak in the West Bank, 40 Jewish families lived since the 1990s as unauthorized settlers. Amona was the largest of the more than 100 unauthorized outposts built in the West Bank, but tolerated by the governments to avoid internal political crises that might bring down the fragile political coalitions.

In 2006 Israeli police demolished a number of homes in Amona causing a number of injuries, but other homes remained. Amona took on symbolic significance as representative of the settlement movement. The Israeli High Court ruled in 2014 that the homes were built on private Palestinian land and must be demobilized. After some initial governmental hesitation, Israel forces took down the water and electric infrastructure before demolishing the homes of Amona. The settlers, who were joined by outside protestors, were evacuated from the outpost, causing considerable injuries but no fatalities.

The Regulation Law is relevant to and may be the response to those events. Regulation of the housing units in the settlements is thought necessary because of the possibility of violence. The Law retroactively allows residents of about 4,000 housing units in outposts and settlements built on privately owned land in the West Bank the right to live there, provided the settlers did not know the land was privately owned and the landowner is compensated..

According to one calculation the Regulation Act might mean legalizing 55 outposts now considered to be in violation of Israeli law, including 797 housing units and 3,000 dunams of Palestinian private owned land. It would also allow for the legalization of more than 3,000 housing units in established settlements, and for expropriating 5,000 dunams of private land.

The problem arises that Israeli law is being applied to the disputed territories where Israel does not have sovereignty. Under the Oslo II Accords of 1995, the West Bank was divided into three areas, A, B, C. The last is under Israeli administration, and has 400,000 Israeli inhabitants. Israel may have claims to the area, the disputed territories, but they are not under Israeli sovereignty.

A number of problems arise. First is whether the Regulation Act can be considered legal. This problem is akin to that of the concept of "adverse possession," coming from Roman law and the Napoleonic code. This common law concept, that has had a role in the history of English land and property law, as well as in the US, is relevant to occupation of land belonging to another person, and denotes a way of obtaining title to land through use.

Already there are strong differences of opinion, in which legal issues and political objectives intertwine, within Israel itself as well as outside.

The Israeli Attorney General, Avichai Mandelblit, called the Law a breach of local and international law, unconstitutional, though Israel does not yet have a written constitution, and refuses to defend it before the Supreme court .Labor Party leader Isaac Herzog regards it as national suicide. Indeed, as some argue, the Supreme Court will strike it down if it hears a case. Other commentators, and politicians, fear Israel may be brought to the ICC, International Criminal Court.

The most controversial political issue is whether the Law regulating property is in essence an unprecedented and troubling step toward Israeli annexation of West Bank territory and sovereignty over it. The cry is that the Law crosses a red line

The Supreme Court has ruled that Israel is present in the West

Bank under the international law of belligerent occupation based on military need of security, rather than for political reasons.It holds that settlements can exist on public or state land, and that privately owned land can be used for security or public purposes. But the Supreme Court has not previously allowed Israel to use privately owned Palestine land to establish a settlement, except in an unusual situation.

Do the settlement constitute an obstacle to peace? The facts illustrate the reality. Following the 1979 Israeli-Egypian peace treaty, Israel evacuated 18 settlements in the Sinai Peninsula and 21 in the Gaza Strip. No peace from the Palestinians. Prime Minister Netanyahu for ten months, November 2009-September 2010, stopped all settlement construction. Again, Palestinian leader Mahmoud Abbas did not come to the peace table. The answer is clear. Despite all the fulminations at international conferences, the settlements are not the obstacle to peace. Nor are they the core issue in the dispute. Nor are they war crimes.

Irrespective of the answers to the legal issues involved, the Regulation Law provides a unique opportunity for a serious conversation between the parties about the territories and land, and might be the spur that persuades the Palestinians to come to the negotiating table.