

JEW'S Existentialism-
Yehudah Shomron
Golan old City of
Jerusalem all historical
Israel and New Israel
VS. Nations of World
who deny Jews such
right. Book 67
moshe siselsender

There exists an Agadah -a legend- that 3400 years ago God went to every nation and asked them if they wanted to accept the TORAH.

The nations asked what is written in the Torah?

God replied : “ Thou shalt not steal. THOU SHALT NOT KILL. ”

THE NATIONS ANSWERED THAT THEY WERE NOT INTERESTED.

When God heard the reply of the nations God said “Ok have it your way , you are not bound by the Torah’s

command of thou shalt not steal. THOU SHALT NOT KILL. ”

This Agadah legend is difficult to understand.

[1] All humans Jews and non Jews are mandated to observe all the Nohadite Laws of civil behavior. “Thou shalt not steal THOU SHALT NOT KILL” is the basic core of all civilizations.

How then can the Agadah state that God agreed to dispense and free the nations from the mandatory core principle of “thou shalt not steal THOU SHALT NOT KILL. ”?

[2] Furthermore , the Seven Nohadite Principles the core values of all civilizations were given at creation to Adam AND Eve. Following the great deluge when only Noah remained the Seven Laws bear Noah's name " Seven Nohadite Laws. "

Why then was it necessary for God to survey the nations if they wanted to receive a new set of laws?

The Seven Core principles are mandatory under penalty of death if one disobeys them.

The answer is that God did not take a survey of the popularity of these Core Principles of all civilized nations.

God merely asked if the nations of the world wanted to follow the interpretation give these Seven Core Principles by the Jewish Talmud ; or else prefer to give their own interpretation and flesh out these Core Principles of Civil Law Business law Criminal law marriage divorce annulments family law according to the interpretations of law and equity of each individual nation.

The nations voted to keep their own interpretation.

However God insisted that he agreed to let each nation keep their own interpretation,

Provided

That each nation fairly apply the same laws-

equally to all people

regardless of

gender

race

color of skin

religion

or from which country they or their parents originate.

The nations of the world have violated in spirit and letter thou shalt not steal not kill not bear false testimony not fornicate since the year 323 of the Common era since Constantine the Roman emperor recognized the Catholic Church as the dominant faith of the Roman empire .

A conspiracy existed between the Church and the emperors to violate all these principles. The kings enslaved and destroyed all individuality of all his subjects . The Church put the people to slumber with the preaching that they will merit the kingdom of God in the next world if they agree to slumber and

blindly obey all the edicts of the king and Church. The Church preached that the Pope and his cardinal were the only humans in the world who had a direct phone with Jesus. They were the vicars of God. Thus religion became the opium of the masses. The dark ages existed for 1000 years. The only light was the blazing fires of the inquisition that burned people alive who dared question the wisdom or truth of the Church or the king or lord.

This inquisition existed till the pious monk Martin Luther dared break the taboo. Martin Luther tried to show that he was more pious than the Catholic

Church. He tried to prove his religiosity by penning two anti Semitic books.

[1] the Jew and his lies

[2] Hashem hamefuros.

In these two books he urged his followers to steal rape and exile Jews and kill them. Hither and the Nazis always pointed to Martin Luther as justifying the holocaust against the Jews.

However Martin Luther set in motion a killing spree where millions of Catholics were killed. There was no discrimination in the killings. They killed the aged the young the men the women the infants the disabled. They showered the

Catholics with true Christian mercy. They saved their souls from the errors of Catholicism.

All to the sword.

In turn, the Catholics showered the Protestants with true Christian piety by murdering millions .

The meek Martin Luther who was never accepted as a great scholar by his peers succeeded in unleashing a carnage that lasted from 1530-1660.

No matter how corrupt some of the officials of the Catholic Church were, no one died as a result.

However, millions died as a result of Martin Luther.

Martin Luther began with his war against the Jew and ended with the murder of millions of Christians.

Martin Luther's protégé –Adolf Hitler and the Nazis began with the Jew - killed 6 million Jews and ended killing 100 million non Jews .

The Europeans were the partners in the killing of the Jews by the Nazis.

The hatred of the Europeans did not stop with the defeat of the Nazis in 1945.

The Europeans now enlist the ARABS to kill Jews. The killing of Jews is sanctified by the Europeans abrogating the Seven Noahite Principles “thou shalt not steal thou shalt not bear false witness thou shalt not kill.”

The Europeans have time and again relegated to themselves ownership of Yehudah Shomron and Old City of Jerusalem. They scream and condemn Israel for expropriating a certain area near The border with Jordan near the city of Jericho stretching to the dead sea. This area is mostly desert not habitable. The only purpose it serves is that if an

army would invade Israel this area is strategically necessary to penetrate the the heartland of Israel.

Thus THE OUTRAGE OF ALL THOSE CONDEMNING Israel is how dare Jews dare to save themselves from slaughter from their enemies.

Never mind that Yehudah Shomron Old City of Jerusalem never belonged to these critics who are outraged.

They repeat time and again their opposition any attempt by Jews to exercise ownership of the historical land of Israel . They call this illegal AGAINST INTERNATIONAL LAW.

Thou shalt not steal is interpreted differently when it comes to ownership of every country in Europe and the Americas than when applied to Jews. Every country got all its borders from conquest.

But Jews are not permitted to exercise this right. All of Israel historical and new was acquired by conquest. In addition to the right of Jews granted by God in the Bible. In addition to the right of Jews granted in the Balfour Declaration of 1920.

By international law all of historical Israel and new Israel belongs to the Jew, not the Arabs.

I AM INCLUDING THE TEXT OF THE
INTERNATIONAL LAW.

HOWEVER ALL LAWS ARE
SUBORDINATED TO THE LAWS OF THE
TORAH GOD GRANTED ALL OF ISRAEL TO
THE JEWS.

ALL ISRAEL BELONGS TO THE JEW
BECAUSE THE JEW CONQUERED ALL OF
ISRAEL.

WHEN ALL EUROPEANS RETURN THE
LAND THEY CONQUERED TO THE
ORIGINAL OWNERS THEY CAN MAKE
CLAIMS AGAINST THE JEW.

WHEN THE AMERICAS RETURN ALL
THE LAND TO THE INDIANS, THEN

OBAMA CAN OPEN HIS MOUTH AND
TELL THE JEW WHAT HE CONSIDERS AS
PART OF ISRAEL AND WHAT NOT.

SUCH A SERIES OF RETURN TO
ORIGINAL OWNERS WILL NEVER
HAPPEN.

SO TOO, IT WILL NEVER HAPPEN
THAT THE JEW WILL ABDICATE HIS
RIGHT TO YEHUDAH SHOMRON OLD
CITY OF JERUSALEM AND GOLAN.

“NETZECH ISRAEL LO ISHAKER THE
ETERNAL OF ISRAEL DOES NOT LIE.”

GOD GAVE ALL OF ISRAEL TO THE JEW
NOT THE ARAB. NO MATTER HOW
MANY TIMES THE UN THE EUROPEANS
THE OBAMAS THE KERRYS ALL THOSE
INVOKING THEIR ARTIFICIAL MANTRA
THAT IT IS ILLEGAL AGAINST
INTERNATIONAL LAW FOR JEWS TO
SETTLE IN YEHUDAH SHOMRON OLD
CITY OF JERUSALEM GOLAN.

JEWS WILL SETTLE ALL OF HISTORICAL
ISRAEL.

International law

Kohelet Ecclesiastes 1:10 Mah shehoyo hu sheyiyeh ” “What already occurred will occur again” “V’Ain Kol Chosh Tachat Hashemet ” “Nothing new under the sun ”

The 2000 year distortion misinterpretation and exploitation of the tenets of the New Testament

by Europeans is historically well documented. The motivation is the unsatiated jealousy hatred rape grand larceny murder and genocide of Europeans for each other- Christians vs. Christians -is historically well documented. That Europeans acted in the same way to black Africans Yellow Asians and Indians and red skin American Indians and Jews came as a matter of course. If they can act this way to the believers of Jesus Christ; certainly they can behave in the same fashion to those who have a different theology.

In the last 2000 years Europe became a huge cemetery. Not only Europe , but every place where these Europeans touched or trod their feet was converted to a cemetery -Africa the Middle East Asia Minor Asia North Central South America Australia.

God swore that He would not curse the world with a deluge another flood as occurred at the time of Noah. However God gave men freewill . The Europeans elected to be the curse to mankind.

In Genesis 3:1 states
“Vehanochosh hoyo orum mikol
hachayot” the snake was shrewder
than all the animals”

That sentence refers to the
Europeans. They always vindicate
their criminal behavior by
international laws that they write to
cover their crimes.

The Europeans have courts of law
whose judges are paid to interpret
the laws to vindicate their crimes
against humanity.

A perfect example is the European
mantra that Jews are prohibited to

live and build in 4000 year
historical God given Jewish Israel -
Yehudah Shomron Golan Gaza and
the old city of Jerusalem.

[1]Scriptures in the Bible that
explicitly grants historical and new
Israel to the Jews is distorted not to
apply for Jews.[2] The right of the
nation who wins territory in a
defensive war to keep the land
applies to the Europeans ;but not for
the Jews.

[3]The Europeans insist that only
international law should decide .

Well I am going to recite the English translation of the Levy report that proves beyond a shadow of a doubt that Yehudah Shomron Gaza Golan Old city of Jerusalem belong to the Jews . Period.

We will then apply the formula King David used for peopkle like the Europeans.

Samuel II Chapter 22 :26-27

Psalms 18: 26-27 “im
chosidtitchasod im g’var tomim
titamom im novor titbaror veim ikesh

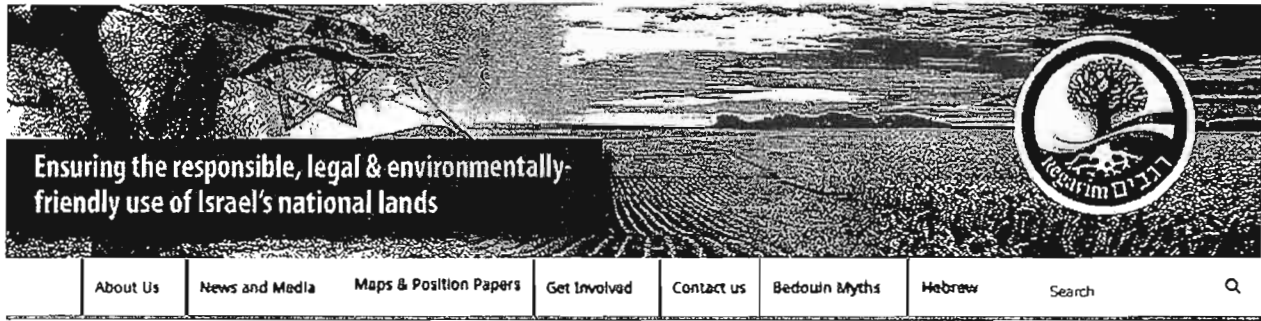
titpatol”

“Jews are to mirror toward others what they intend to do to us.

We reciprocate good and retaliate cruelty and deceit grand larceny and murder ”

A word to the wise is sufficient.

“Hakom lehorgecho hashkem” “One who arises to kill you; beat him to the punch and destroy him . ”



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Regavim is happy to announce the completion of the English translation of the Levy Commission Report. Especially in today's challenging environment and as a major contributor to the commission we felt it was important for the details of the Levy Report to be available to as wide an audience as possible. We especially want to thank publicly the anonymous donor who made it possible.



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Regavim had the pleasure of leading Ben Carson's eye on Israel tour from the air. Great guy, seemed to learn fast. Nothing better than seeing our country from the sky to understand the challenges. He also seemed to take to heart my discussion with him about the Sinai options. It was great working with The Face of Israel

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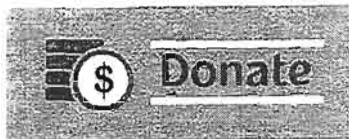


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With much gratitude, the translation of this very important report was made possible due to the donations of a very generous man whose love of Eretz Israel is without bounds.



The Levy Commission Report on the Legal Status of Building in Judea and Samaria

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The Levy Commission Report

**The Levy Commission Report on the
Legal Status of Building in Judea and
Samaria**

Jerusalem – 21 June 2012 – 1 Tammuz 5772

The Levy Commission Report

1 Tammuz 5772

(21 June 2012)

To: Benjamin Netanyahu	Yaakov Neeman
Prime Minister	Minister of Justice
Jerusalem	Jerusalem

Dear Sirs,

We have the honor of submitting this report, which sums up the work of the commission that studied the issue of building in Judea and Samaria, which was established at your instructions on 13 February 2012 (20 Shvat 5772).

Respectfully yours,

_____	_____	_____
E. E. Levy	Tehiya Shapira	Amb. Alan Baker
(Ret.) Supreme Court Justice	(Ret.) District Court Judge	Member
Chairman	Member	

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Terms of Reference

1. In proceedings before the Supreme Court on the matter of building in Judea and Samaria, the state informed the court that:

“As a rule, illegal construction situated on private land will be removed, and at the same time, the appropriate professional levels have been instructed to act towards regulating the planning status of structures located on state land; in places where such regulation will be decided upon, all this in accordance with the additional relevant considerations that apply to each and every area” (see for example the State’s reply to *HCJ 9060/08, Dar Yassin et al. v. the Minister of Def et al.*).

Pursuant to this, we have been asked by the Prime Minister and Minister of Justice to provide our recommendations on three topics (see Appendix 1):

- a. Actions to be taken where possible to legalize or remove construction – all in accordance with the aforementioned policy.
- b. To ensure the existence of a proper procedure to clarify matters related to real estate issues in the area, in accordance with the principles of justice and fairness of the Israeli judicial and administrative system, in consideration of the laws that apply in the area, including whether there is a need for changes to ensure transparency, equality, the removal of obstructions and the streamlining of processes and procedures to the extent these are required.
- c. In addition, we have been given the authority to consider and offer recommendations, at our discretion, on any other matter related to the aforementioned subjects.

2. The aforementioned tasks are extensive, and had we decided to address them all, we would have needed a very long time to do so. However, the issue that lies at the focus of the Committee’s Terms of Reference – the status of Jewish settlement in Judea and Samaria in general, and specifically, its expansion – lies at the core of a major controversy among the Israeli public and has also been the cause of international criticism. We therefore are of the view that we ought to present our recommendations to the appointing body as soon as possible. Consequently, we will deal principally with that subject.

We would like to precede our comments by clarifying that we have decided not to take any position as to the political wisdom of settlement activity as a whole, but will rather act in our capacity as legal experts whose duty it is to rule solely according to the law.

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To that end and with a view to enabling a wide range of views to be heard, we published a public call for proposals in the Hebrew, Arabic and English press (Appendix 1B), inviting all interested parties to appear before us or state their position in writing. In addition, we initiated direct appeals to various entities.

The results of this we present in this report, at the center of which is the issue of the establishment and continued existence of settlement points, which some view as new settlements, while others consider them to be “neighborhoods” of existing settlements.

These settlement points have been defined in the past as “unauthorized,” apparently due to the fact that with regard to some, their construction was not preceded by a government decision. However, some of them can also be considered to be “illegal” as they were built without approval from the planning authorities. That is the main issue that we will be pursuing here, although we will relate to other issues that we considered to be of special importance.

The Status of the Territories of Judea and Samaria According to International Law

3. In light of the different approaches in regard to the status of the State of Israel and its activities in Judea and Samaria, any examination of the issue of land and settlement thereon requires, first and foremost, clarification of the issue of the status of the territory according to international law.

Some take the view that the answer to the issue of settlements is a simple one inasmuch as it is prohibited according to international law. That is the view of Peace Now (see the letter from Hagit Ofran from 2 April 2010); B'tselem (see the letter from its Executive Director Jessica Montell from 29 March 2012, and its pamphlet *Land Grab: Israel's Settlement Policy in the West Bank*, published May 2002); Yesh Din and the Association for Civil Rights in Israel (ACRI) (see the letter from Attorney Tamar Feldman from 19 April 2012); and Adalah (see the letter from attorney Fatma Alaju from 12 June 2012).

The approach taken by these organizations is a reflection of the position taken by the Palestinian leadership and some in the international community, who view Israel's status as that of a “military occupier,” and the settlement endeavor as an entirely illegal phenomenon. This approach denies any Israeli or Jewish right to these territories. To sum up, they claim that the territories of Judea and Samaria are “occupied territory” as defined by international law in that they were captured from

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the Kingdom of Jordan in 1967. Consequently, according to this approach, the provisions of international law regarding the matter of occupation apply to Israel as a military occupier, i.e. *Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907*,¹ which govern the relationship between the occupier the occupied territory, and the Fourth *Geneva Convention Relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August (1949)*.²

According to the Hague Regulations, the occupying power, while concerning himself with the occupier's security needs, is required to care for the needs of the civilian population until the occupation is terminated. According to these regulations, it is forbidden in principle to seize personal property, although the occupying power has the right to enjoy all the advantages derivable from the use of the property of the occupied state, and public property that is not privately owned without changing its fixed nature. Moreover, according to this approach, Article 49 of the Fourth Geneva Convention prohibits the transfer of parts of the occupying power's own civilian population into the territory it occupies.³ Accordingly, in their view, the establishment of settlements carried out by Israel is in violation of this article, even without addressing the type or status of the land upon which they are built.

In this context, we were presented with an approach by some of the abovementioned organizations, whereby they do not accept the premise that the lands that do not constitute personal property are state lands. It was claimed that in the absence of orderly registration of most of the land in Judea and Samaria, and precise registration

¹ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

² <http://www.icrc.org/ihl.nsf/INTRO/380>

³ Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive. Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons does demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased. The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated. The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place. The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demands. The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

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of the rights of the local inhabitants, it is reasonable to assume that the local population is entitled to benefit from land that is neither defined nor registered as privately owned land. From this it follows that the use of land for the purpose of the establishment of Israeli settlements impinges on the rights of the local population, which is a protected population according to the Convention, and Israel, as an occupying power, is obliged to safeguard these rights and not deny them by exploiting the land for the benefit of its own population.⁴

4. If this legal approach were correct, we would, in accordance with our Terms of reference, be required to terminate the work of this Committee, since in such circumstances, we could not recommend regularizing the status of the settlements. On the contrary, we would be required to recommend that the proper authorities remove them.

However, we were also presented with another legal position, inter alia by the Regavim movement (Attorneys Bezalel Smotritz and Amit Fisher) and by the Benjamin Regional Council (the expert legal opinion of Attorneys Daniel Reisner and Harel Arnon). They are of the view that Israel is not an "Occupying Power" as determined by international law inter alia because the territories of Judea and Samaria were never a legitimate part of any Arab state, including the kingdom of Jordan. Consequently, those conventions dealing with the administration of occupied territory and an occupied populations are not applicable to Israel's presence in Judea and Samaria.

According to this approach, even if the Geneva Convention applied, Article 49 was never intended to apply to the circumstances of Israel's settlements. Article 49 was drafted by the Allies after World War II to prevent the forcible transfer of an occupied population, as was carried out by Nazi Germany, which forcibly transferred people from Germany to Poland, Hungary and Czechoslovakia with the aim of changing the demographic and cultural makeup of the population. These circumstances do not exist in the case of Israel's settlement. Other than the fundamental commitment that applies universally by virtue of international humanitarian norms to respect individual personal property rights and uphold the law that applied in the territory prior to the IDF entering it, there is no fundamental restriction to Israel's right to utilize the land and allow its citizens to settle there, as long as the property rights of the local inhabitants are not harmed and as long as no decision to the contrary is made by the government of Israel in the context of regional peace negotiations.

⁴ The position of Peace Now. See also B'tselem: *Under the Guise Of Legality: Israel's Declarations of State Land in the West Bank*, February 2012.

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5. Is Israel's status that of a "military occupier" with all that this implies in accordance with international law? In our view, the answer to this question is no.

After having considered all the approaches placed before us, the most reasonable interpretation of those provisions of international law appears to be that the accepted term "occupier" with its attending obligations, is intended to apply to brief periods of the occupation of the territory of a sovereign state pending termination of the conflict between the parties and the return of the territory or any other agreed upon arrangement. However, Israel's presence in Judea and Samaria is fundamentally different: Its control of the territory spans decades and no one can foresee when or if it will end; the territory was captured from a state (the kingdom of Jordan), whose sovereignty over the territory had never been legally and definitively affirmed, and has since renounced its claim of sovereignty; the State of Israel has a claim to sovereign right over the territory.

As for Article 49 of the Fourth Geneva Convention, many have offered interpretations, and the predominant view appears to be that that article was indeed intended to address the harsh reality dictated by certain countries during World War II when portions of their populations were forcibly deported and transferred into the territories they seized, a process that was accompanied by a substantial worsening of the status of the occupied population (see *HCJ 785/87 Affo et al. v. Commander of IDF Forces in the West Bank et al.* IsrSC 42(2) 1; and the article by Alan Baker: "The Settlements Issue: Distorting the Geneva Conventions and Oslo Accords, from January 2011.⁵

This interpretation is supported by several sources: The authoritative interpretation of the International Committee of the Red Cross (ICRC), the body entrusted with the implementation of the Fourth Geneva Convention,⁶ in which the purpose of Article 49 is stated as follows:

"It is intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories. Such transfers worsened the economic situation of the native population and endangered their separate existence as a race."

Legal scholars Prof. Eugene Rostow, Dean of Yale Law School in the US, and Prof. Julius Stone have acknowledged that Article 49 was intended to prevent the

⁵ <http://jcpa.org/article/the-settlements-issue-distorting-the-geneva-convention-and-the-oslo-accords/>

⁶ ICRC Commentary to the Fourth Geneva Convention, edited by Jean S. Pictet ,(1958) at pages 3-9.

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inhumane atrocities carried out by the Nazis, e.g. the massive transfer of people into conquered territory for the purpose of extermination, slave labor or colonization.^{7 8}

“The Convention prohibits many of the inhumane practices of the Nazis and the Soviet Union during and before the Second World War – the mass transfer of people into and out of occupied territories for purposes of extermination, slave labor or colonization, for example...The Jewish settlers in the West Bank are most emphatically volunteers. They have not been “deported” or “transferred” to the area by the Government of Israel, and their movement involves none of the atrocious purposes or harmful effects on the existing population it is the goal of the Geneva Convention to prevent.” (Rostow)

“Irony would...be pushed to the absurdity of claiming that Article 49(6) designed to prevent repetition of Nazi-type genocidal policies of rendering Nazi metropolitan territories *judenrein*, has now come to mean that...the West Bank...must be made *judenrein* and must be so maintained, if necessary by the use of force by the government of Israel against its own inhabitants. Common sense as well as correct historical and functional context excludes so tyrannical a reading of Article 49(6).” (Julius Stone)

6. We are not convinced that an analogy may be drawn between this legal provision and those who sought to settle in Judea and Samaria, who were neither forcibly “deported” nor “transferred,” but who rather chose to live there based on their ideology of settling the Land of Israel.

We have not lost sight of the views of those who believe that the Fourth Geneva Convention should be interpreted so as also to prohibit the occupying state from encouraging or supporting the transfer of parts of its population to the occupied territory, even if it did not initiate it.⁹ However, even if this interpretation is correct, we would not alter our conclusions that Article 49 of the Fourth Geneva Convention does not apply to Jewish settlement in Judea and Samaria in view of the status of the territory according to international law. On this matter, we offer a brief historical review.

7. On 2 November 1917 –17 Heshvan 5678, Lord James Balfour, the British Foreign Secretary, published a declaration saying that:

⁷ American Journal of International Law, Vol. 84, 1990, p. 719.

⁸ Phillips, "The Illegal Settlements Myth," Commentary, 2010.

⁹ On this matter, see Alan Baker's article noted above in note 5, regarding the addition of the words “directly or indirectly” to Article 8 of the Rome Statute of the International Criminal Court..

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“His Majesty's Government view with favor the establishment in Palestine of a national home for the Jewish people, and will use their best endeavors to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.”¹⁰

In this declaration, Britain acknowledged the rights of the Jewish people in the Land of Israel and expressed its willingness to promote a process that would ultimately lead to the establishment of a national home for it in this part of the world. This declaration reappeared in a different form, in the resolution of the Peace Conference in San Remo, Italy, which laid the foundations for the British Mandate over the Land of Israel and recognized the historical bond between the Jewish people and Palestine (see the preamble):

“The principal Allied powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on November 2nd, 1917, by the Government of His Britannic Majesty, and adopted by the said powers, in favor of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country. [...] Recognition has thereby been given to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country.”¹¹

It should be noted here that the mandatory instrument (like the Balfour Declaration) noted only that “the civil and religious rights” of the inhabitants of Palestine should be protected, and no mention was made of the realization of the national rights of the Arab nation. As for the practical implementation of this declaration, Article 2 of the Mandatory Instrument states:¹²

“The Mandatory shall be responsible for placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home, as laid down in the preamble,

¹⁰<http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/The+Balfour+Declaration.htm>

¹¹ <http://www.cfr.org/israel/san-remo-resolution/p15248> Link doesn't work

¹²<http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/The+Balfour+Declaration.htm>.

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and the development of self-governing institutions, and also for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion.”

And Article 6 of the Palestine Mandate states:

“The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage, in co-operation with the Jewish agency referred to in Article 4, close settlement by Jews on the land, including State lands and waste lands not required for public purposes.”

In August 1922 the League of Nations approved the mandate given to Britain, thereby recognizing, as a norm enshrined in international law, the right of the Jewish people to determine its home in the Land of Israel, its historic homeland, and establish its state therein.

To complete the picture, we would add that upon the establishment of the United Nations in 1945, Article 80 of its Charter determined the principle of recognition of the continued validity of existing rights of states and nations acquired pursuant to various mandates, including of course the right of the Jews to settle in the Land of Israel, as specified in the abovementioned documents:

Except as may be agreed upon in individual trusteeship agreements [...] nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties” (Article 80, Paragraph 1, UN Charter).

8. In November 1947, the United Nations General Assembly adopted the recommendations of the committee it had established regarding the partition of the Land of Israel west of the Jordan into two states.¹³ However, this plan was never carried out and accordingly did not secure a foothold in international law after the Arab states rejected it and launched a war to prevent both its implementation and the establishment of a Jewish state. The results of that war determined the political reality that followed: The Jewish state was established within the territory that was acquired in the war. On the other hand, the Arab state was not formed, and Egypt and Jordan controlled the territories they captured (Gaza, Judea and Samaria). Later,

¹³ www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/UN+General+Assembly+Resolution+181.htm

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the Arab countries, which refused to accept the outcome of the war, insisted that the Armistice Agreement include a declaration that under no circumstances should the armistice demarcation lines be regarded as a political or territorial border.¹⁴ Despite this, in April 1950, Jordan annexed the territories of Judea and Samaria,¹⁵ unlike Egypt, which did not demand sovereignty over the Gaza Strip. However, Jordan's annexation did not attain legal standing and was opposed even by the majority of Arab countries, until in 1988, Jordan declared that it no longer considered itself as having any status over that area (on this matter see Supreme Court President Landau's remarks in *H CJ 61/80 Haetzni v. State of Israel*, IsrSC 34(3) 595, 597; *H CJ 69/81 Bassil Abu Aita et al. v. The Regional Commander of Judea and Samaria et al.*, IsrSC 37(2) 197, 227).

This restored the legal status of the territory to its original status, i.e. territory designated to serve as the national home of the Jewish people, which retained its "right of possession" during the period of the Jordanian control, but was absent from the area for a number of years due to the war that was forced on it, but has since returned.

9. Alongside its international commitment to administer the territory and care for the rights of the local population and public order, Israel has had every right to claim sovereignty over these territories, as maintained by all Israeli governments. Despite this, they opted not to annex the territory, but rather to adopt a pragmatic approach in order to enable peace negotiations with the representatives of the Palestinian people and the Arab states. Thus, Israel has never viewed itself as an occupying power in the classic sense of the term, and subsequently, has never taken upon itself to apply the Fourth Geneva Convention to the territories of Judea, Samaria and Gaza. At this point, it should be noted that the government of Israel did indeed ratify the Convention in 1951, although it was never made part of Israeli law by way of Knesset legislation (on this matter, see *CrimA 131/67 Kamiar v. State of Israel*, 22 (2) IsrSC 85, 97; *H CJ 393/82 Jam'iat Iscan Al-Ma'almoun v. Commander of the IDF Forces in the Area of Judea and Samaria*, IsrSC 37(4) 785).

¹⁴ According to Article II (2) of the armistice agreement with Jordan: "...no provision of this Agreement shall in any way prejudice the rights, claims and positions of either Party hereto in the ultimate peaceful settlement of the Palestine question, the provisions of this Agreement being dictated exclusively by military considerations.

According to Article IV(9) of the agreement: The Armistice Demarcation Lines defined in articles V and VI of this Agreement are agreed upon by the Parties without prejudice to future territorial settlements or boundary lines or to claims of either Party relating thereto.

¹⁵ <http://www.jewishvirtuallibrary.org/jsourc/arabs/jordanresolution.html>

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Israel voluntarily chose to uphold the humanitarian provisions of the Convention (HCJ 337/71, *Christian Society for the Holy Places v. Minister of Defense*, IsrSC 26(1) 574; HCJ 256/72, *Electricity Company for Jerusalem District v. Minister of Defense et al.*, IsrSC 27(1) 124; HCJ 698/80 *Kawasme et al. v. The Minister of Defense et al.*, IsrSC 35(1) 617; HCJ 1661/05 *Hof Aza. Regional Council et al. v. Knesset of Israel et al.*, IsrSC 59(2) 481).

As a result, Israel pursued a policy that allowed Israelis to voluntarily establish their residence in the territory in accordance with the rules determined by the Israeli government and under the supervision of the Israeli legal system, subject to the fact that their continued presence would be subject to the outcome of the diplomatic negotiations.

In view of the above, we have no doubt that from the perspective of international law, the establishment of Jewish settlements in Judea and Samaria is not illegal, and consequently, we can now proceed to consider this issue from the perspective of domestic law. We will now commence with an analysis of the relevant planning and zoning laws.

The planning and zoning authorities in Judea and Samaria and the principles of the planning and construction laws

10. Pursuant to of Article 2 of the *Proclamation with Regard to the Order of Government and Law (Judea and Samaria) (2), 5727- 1967*, the law in force in June 1967 was applied in Judea and Samaria, and from this point forward was based on a number of tiers: Jordanian law, Mandatory and Ottoman law, which had been in force until June 1967, security legislation and its various amendments, and rulings of the courts. The Planning and Construction Law in force in the area from 7 June 1967 on was the Jordanian *Cities, Villages and Building Planning Law (No. 79) of 1966* (hereinafter also “the Jordanian Planning Law”). In view of the need to engage in planning and construction in the held territory, and in accordance with Israel’s international commitment to maintain public order, *Order Concerning the Planning of Cities, Villages and Buildings (Judea and Samaria) (No. 418), 5731-1971* (hereinafter: “Order 418”) was issued, which amended the provisions of the Jordanian law and adapted the planning and construction laws to the prevailing reality in Judea and Samaria.

To this we add that the Israeli law, with all its various tiers, is more advanced than the law that applies in Judea and Samaria. Although the Israeli law serves as a source for comparison, it is not a binding norm.

11. The Jordanian Planning Law created a hierarchy of three main planning levels: a Higher Planning Council, a Regional Planning Committee and a Local Planning Committee. The establishment of these institutions and the authority invested in them are governed by Articles 5, 6 and 9 of the law. Further to the aforementioned planning and zoning authorities, the Jordanian Planning Law also provides instructions for the establishment of a Central Planning Bureau, whose powers are set out in Article 7 of the law. Inter alia, the Planning Bureau is required to provide technical and professional assistance to the planning and zoning authorities, prepare district and city planning schemes for the Regional Planning Committee and draft model bylaws.

Pursuant to 2 (2) of Order 418, the structure of the planning and zoning authorities in Judea and Samaria was altered so as to be consistent with the normative regime that was in place. Inter alia, all the authority of the District Planning and Construction Committee was transferred to the Higher Planning Council (hereinafter: “the HPC”). As a result, the authority of the HPC includes both the authority granted to it by Article 6 of the Jordanian Planning Law (which defines the authority of the Higher Planning Council), as well as the authority of the District Committees specified in Article 8 of the aforementioned law. Pursuant to the provisions of Article 8 (4), the HPC, in its capacity as the District Committee, also holds all “the authority and

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functions of the Local Committee – in regard to the regional planning space and the villages situated in the district in which the said District Committee was established” (parallel authority). Nevertheless, according to the HPC, these committees have priority in the treatment of subjects under the authority of the District Committees, and consequently, intervention in building matters on the local level, by means of taking on the role of the authorized local committee, would be the exception. This mechanism may be set in motion when two cumulative conditions are present: a failure on the part of the local authority to fulfill its legal responsibility or collaboration with an action that is a breach of these responsibilities; and actual damage caused to public or private interests.

The subcommittees of the Higher Planning Council

12. Pursuant to Order 418, it was further determined that the HPC was authorized to establish subcommittees and delegate part of its authority to them. Accordingly, it was decided to establish subcommittees and transfer the authority of the district committees to them. Thus, the HPC delegates part of its authority to an Oversight Subcommittee, Settlement Subcommittee, Objections Subcommittee, Roads Subcommittee, Environment Subcommittee, Mining, Quarrying, Railroads and Airfields Subcommittee and a Planning and Permits Subcommittee.

13. In addition to the Israeli local councils established in Judea and Samaria, also established were special planning committees authorized to exercise part of the authority of the local committees in their planning space. In accordance with the legislation in force, the granting of planning authority to the special planning committees is carried out as part of a three-stage statutory scheme: declaration of the planning space, i.e. defining the geographic space that delineates the area in which the local planning committee is constituted, in accordance with Article 2 (a) of Order 418; upon completion of the aforementioned stages, the special planning committee must agree, pursuant to Article 2 (a) of Order 418 so that it can exercise its authority as defined in its terms of reference in regard to the geographic space as defined in the declaration of planning space. On 15 March 2008, the Head of the Civil Administration signed an Order Concerning the Declaration of Planning Spaces (Local Councils and Regional Councils) (Judea and Samaria) (5768-2008), which represents the most up-to-date declaration of planning spaces of the Israeli local councils in Judea and Samaria. On the same day, the Head of the Civil Administration signed the appointment of Special Planning Committees (Local and Regional Councils) (Judea and Samaria) (5768-2008), in the context of which the local councils and regional councils were appointed to serve as special planning committees in their planning spaces. Their terms of reference determined that the

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members of the special committees are all the members of the council in the relevant local authority.

Objections

14. According to Article 21 (1) of the Jordanian Planning Law, any individual, authority, official or private institution so interested may submit their proposals for or objections to the master planning scheme to the chair of the Local Planning Committee. The Local Planning Committee considers all the objections submitted to it and sends its recommendations to the Regional Planning Committee. The Regional Planning Committee considers the objections based on the recommendations and sends the subjects to the HPC for the final decision. The HPC may authorize the plan and validate it as is, or amend it based on its discretion. Should the plan be amended, it can be ordered to be re-deposited for a period of one month, if as a result of the amendment, harm may be caused to a party that would not have been caused had it not been amended. According to Order 418, objections are considered by the HPC's Objections Subcommittee.

Receiving a permit

15. One of the chief functions of the local committee is to consider requests for building permits. In broad terms, the rule in this matter is determined by Article 34 (1) of the law, which states that no work or any kind or use of the land requiring a permit may be begun until such a permit has been received. Building permits are subject to the provisions of the law, regulations, detailed master planning schemes and re-division, and they must meet the requirements of the Special Planning Committee (or licensing authority), each case on its own merits. Article 34 (2) states that no permits may be issued for an area that has been declared a planning area but for which no plan has yet been authorized, except under the temporary oversight of the district committee. This is done in order to ensure that the construction of a building does not conflict with the provisions and goals of an existing or future planning scheme.

Works requiring a permit

16. Article 34 (4) of the Jordanian Planning Law lists all the various works that require a permit, including the erection of or changes to a building, the expansion, repair or destruction of a building, earthworks and excavation deep in the earth or aboveground, the installation of sanitation appliances and elevators in high rises as well as the use of the land or the external part of the building for advertising purposes. In addition to the list of works that require a permit, the latter part of Article 34 (4) also lists the types of works that do not require a permit, including the implementation of works by the authorities to improve roads, underground infrastructure works, as well as the use of the land for agricultural purposes in the areas designated as such.

The Jordanian Planning Law contains no demand for a “completion certificate,” in the sense of Article 21 of the *Planning and Building Regulations (Application for a Permit, Terms and Fees) 5730-1970*. Nevertheless, in order to settle the matter, on 25 January 2007, Order 1584 was issued, and pursuant to this order, ordinances were enacted concerning the planning of cities, villages and buildings (connecting buildings to electricity, water and telephone). The order and ordinances enable the Local Planning and Building Committee to oversee construction from the stage of the start of implementation after a building permit has been issued until the completion of construction.

Appeals

17. Article 36 of the Jordanian Planning Law determines that any person to whom harm has been caused as the result of a permit being given to another person, or due to the refusal of the local committee to issue a permit for building or land planning or the implementation of construction work or a permit required according to an order, regulations, instructions or any terms determined in accordance with this law, or as the result of a given permit that is restricted under certain conditions, and in the view of the applicant or any other person to whom harm has been caused, the decisions of the committee violate his rights – is entitled to request that the Local Committee move the consideration of his request to the District Planning Committee, and that it must do so within one month of the day that the refusal notice was received.

Administrative Demolition

18. Article 38 (7) of the Jordanian Planning Law permits entering real estate and carrying out administrative demolition without a judicial injunction. According to Jordanian law, a demolition order can include an order to halt works as well as an order to restore a situation to its previous state. Furthermore, according to the Jordanian law, the very fact of building without a permit does not constitute a criminal offense; this is committed only after the offender has violated a work-stop order. However, Order No. 1585 issued by the Military Commander of the area on 25 January 2007 (6 Shvat 5767) (City, Village and Building Planning Order [Amendment 19] [Judea and Samaria]), determines that anyone who carries out work or construction that requires a permit according to the provisions of the law without first receiving such a permit is subject to a fine or a two-year prison sentence; and for a continuing offence – a further fine or further imprisonment. Similarly, punitive provisions were included for anyone who deviates from the building permit that was issued. It further determines that the court may order the demolition of that which had been built without or in deviation from a permit, and that a further criminal proceedings may be initiated against a person who does not comply with this order.

19. The picture as it emerges from what has been described thus far is that Judea and Samaria has planning and zoning authorities invested with the authority to initiate and consider detailed construction plans, and to validate those plans provided they meet legal requirements. These institutions have also been empowered to consider objections, grant construction permits and take action to prevent unlawful construction.

20. Unlawful construction is of course construction carried out without a permit granted by the planning authorities. In order for a permit of this kind to be granted to an individual or corporation, they must present a plan. This plan will be considered on its merits by the planning authorities after the applicant has proved that he owns the rights to the land and that the plan does not contravene the detailed plan that applies to the land. This is the law in Israel and this is (almost) the law that applies in Judea and Samaria. The main difference is due to the fact that the State of Israel has been holding onto Judea and Samaria since the Six Day War, in view of the desire of parts of the population to live there; and on the other hand, the desire and obligation on the part of the State of Israel to maintain building oversight there, settlements were established up until 1979 as a **security need**. The land designated for that purpose was seized by “military order,” with no distinction made as to whether the land was state or private land. Thus, for example, (in *H CJ 606/78 Saliman Taufiq Ayub et al. v. Defense Minister et al.*, IsrSC 33(2) 113), the High Court of Justice refrained from extending legal relief to the petitioners, the owners of the land, who opposed the seizure of their land for the purpose of building a Jewish settlement,

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because it was found that although it was a civilian settlement, it had been established due to a military need. In the late 1970s, the approach to settlement on this issue changed in wake of the ruling in the case of Elon Moreh (HCJ 390/79 *Izzat Muhammad Mustafa Duweikat et al. v. the Government of Israel et al.*, IsrSC 34(1) 1, which determined that private land belonging to Palestinians could not be seized for the purpose of building Jewish settlements, unless the seizure stemmed from a security need, and in the language of the court: “In its ruling (HCJ 606/78), this court did not provide an *a priori* legal seal of approval for all seizures of private land for the purpose of civilian settlements in Judea and Samaria, but rather each case must be examined whether military needs, as this term must be interpreted, indeed justified the seizure of private land.”

The decisions of the government related to settlement in Judea and Samaria relevant to this subject

21. In view of the complexity of the issue of Jewish settlement in Judea and Samaria, and in wake of the ruling in the case of Elon Moreh, the government passed a decision in November 1979, that stated that it was resolved: “To further the expansion of the settlement of Judea, Samaria, the Jordan Valley, Gaza District and the Golan Heights by adding population to the existing communities and by establishing new communities on state-owned land” (see Decision 145, Appendix 2). To complete the picture, we will add that on the issue of Jewish settlement in Judea and Samaria, the government made a number of further decisions over the years, some of which we will cite here:

- I. In May 1984, the Ministerial Committee for Settlement determined that: “*Expansion within the continuous area* of an existing or future settlement established following authorization from the Ministerial Settlement Committee does not require a special decision by the Committee as long as it receives professional authorizations from the Ministry of Justice in all matters related to ownership of the land; from the Ministry of Construction and Housing, the Ministry of Defense and the settling entities of the World Zionist Organization regarding all subjects related to construction (settlement and the Higher Planning committee)” (emphasis added) see Decision 640, Appendix 3).
- II. In the decision made in July 1992 (No. 13) (Appendix 4), it was determined that “The implementation of previous decisions regarding the establishment of settlements that have not yet been carried out will require renewed approval from the government.”

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III. In November 1992, it was decided to halt construction activities in the Jewish communities, with the exception of private construction of residences in existing communities based on a detailed master plan, as long as the infrastructure and construction did not involve expenditures from the state budget, as stated in Decision 360 (Appendix 5):

It has been resolved:

a. To authorize the decision of the Minister of Construction and Housing [...] regarding the halting of construction as detailed in Appendix 1 attached here, and the decision of the minister regarding the exchange of location grants with loans as specified in the [...] attached [...] appendix...

b. To authorize the halting of construction activities in the Israeli communities in the area of Judea, Samaria and the Gaza district that were carried out pursuant to prior government decisions that are retained in the government secretariat, in accordance with the said ministerial decision...

[...]

d. Private construction for residence will be permitted within the bounds of the existing Israeli communities in Judea, Samaria and the Gaza District based on detailed master plans that have been legally validated, as long as the infrastructure and construction do not involve expenditures from the state budget.

e. (1) The procedures involving master plans not yet validated up to the day when this decision was made in regard to the Israeli communities in Judea, Samaria and the Gaza District will be halted, unless a special review board decides otherwise.

[...]

f. All new planning permits (and allocations of land for construction on state land) in these areas require authorization from the said special review board.

g. The content of the previous statements will be established respectively in security legislation in Judea, Samaria and the Gaza district.

h. The enforcement of the above policy will be carried out by a supervisory unit.”

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IV. Pursuant to a decision passed in January 1995 (No. 4757), a ministerial committee was established to oversee the construction and expropriation of land in the area of Judea, Samaria and the Gaza District. A decision made in August 1996 (No. 150) (Appendix 6) determined that all construction and land allocation required the authorization of the Minister of Defense, and that his authorization would be required for consideration and validation of a master plan, and in the original:

- a. In the area of settlement in Judea, Samaria and the Gaza District [...], the government ministries will act as follows and subject to the authority granted to the defense system and Minister of Defense in this area, and in the context of the various sections of the authorized state budget – all in accordance with the instructions of the Prime Minister.
- b. Any new permit for planning and allocating land for construction on state lands in these areas will be carried out only after receipt of authorization from the Defense Minister.
- c. The Planning Committee in these areas will not consider a master plan unless it has received authorization from the Defense Minister, and will not validate such a plan, except with his authorization.

[...]

- f. Further to the above, subjects involving overall policy related to settlement, the paving of roads and proposals to establish new communities will be presented for the consideration and decision of the government.”

V) In March 1999, Decision 175 was passed, replacing Decision 640, which determined that the expansion of an existing or future community established in accordance with a government decision, or of a legally recognized community, does not require a government decision (Appendix 7). At the same time, it was determined that the abovementioned expansion of a settlement in Judea, Samaria and Gaza would require the authorization of the Defense Minister, with the knowledge of the Prime Minister. Although the words “expansion in continuous territory,” which were included in Decision 640, were omitted from this decision, in actual fact, this decision takes a stricter approach to settlement, inasmuch that from this point forward, every expansion required the authorization of both the Defense Minister and Prime Minister, whether or not it was planned on continuous area.

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VI) On May 25, 2003, the government decided to approve the Prime Minister's statement that Israel would act in the spirit of the "Road Map," and concerning settlement, it said: "There will be no involvement in issues related to the final status settlement; inter alia, there will be no consideration of settlement in Judea and Samaria (with the exception of the freeze of illegal settlements and outposts); the status of the Palestinian Authority or its institutions in Jerusalem or any other issue which is essentially a matter for the final status settlement" (see Decision 292, Appendix 8)

22. In wake of the petition to the High Court of Justice – HCJ 390/79 (the case of Elon Moreh), which, as noted, forbade the seizure of privately owned land for the purpose of establishing Jewish communities not motivated by security needs, it was necessary to identify the lands that could be declared state land. This was not difficult in those places in which land that had undergone regulatory processes was involved, and in which the property rights to them were documented in land registry books. The task was considerably more difficult when lands that had not undergone regulatory processes were involved, which was the situation for the majority of the territory of Judea and Samaria. In order to overcome this obstacle, the state authorities decided on a course of action known as a "survey process," (*seker*) which included an examination of aerial photographs in order to confirm or refute claims regarding the cultivation of land by Palestinian inhabitants (one of the ways to acquire rights to the land), a tour of the areas intended for designation together with the mukhtars of the nearby villages. The subject was made public and a date was set for the submission of objections. This survey process has not yet been completed to this day, and this is one of the vulnerabilities of quite a number of the outposts subject to examination.

At the same time, it should be emphasized that that even after a way was found to overcome the issue of property ownership in the land upon which a Jewish community was planned in Judea and Samaria, the developers still faced a number of hurdles, which Supreme Court President Barak pointed out in *HCJ 5853/04 – Amanah Gush Emunim Settlement Movement et al. v. Prime Minister et al.*, IsrSC 59(2) 289, as follows: "... The preparation of an outpost requires the completion of procedures on the political level (a government decision to establish a new community or neighborhood), the municipal level (the issuing of an order by the military commander regarding the community's municipal affiliation), and the planning level (the deposit of a master plan and its approval along with receipt of building permits from the relevant planning authorities)."

It would appear that concerning the construction we were asked to consider in our Terms of Reference these conditions were not all met, and in some cases, none of the conditions was present. Consequently, the possible conclusion is that

the construction was carried out unlawfully and without authorization. Can construction be legalized after the fact? That is a question we will try to answer in this document, but first and foremost, we will address the claim that the fact that no decision by the government or any representative of the government preceded the construction under considerations here is unassailable. Before addressing this, we will turn our attention to a legal issue that may be relevant to the subject before us here, and we are referring to an “administrative promise,” as it is interpreted by the courts.

An administrative promise

23. The accepted doctrine is that an administrative promise given by someone invested with authority with the intent that it have binding legal force, and that was understood as such by the person to whom it was given, and which is detailed and feasible, can serve to obligate the authority and as grounds for intervention by the High Court of Justice to uphold it. This is unrelated to estoppel as a result of reliance on the promise, and even without the situation of the promisee being aggravated (see Eliad Shraga and Ro'i Shahaar – *Administrative Law*, Book 3, p. 313; *H CJ 5081/91 Petrochemical Industries, Ltd. v. the State of Israel*, IsrSC 47 (2), 773, 779; *H CJ 298/70 Pollack v. Minister of Industry and Trade* IsrSC 25(2) 8, 3; *H CJ 250/78 Aviyov v. Minister of Agriculture* IsrSC 32(3) 742, 749; *H CJ 534/75 Israel Hoteliers Association v Minister of Tourism*, IsrSC 36(1) 357; *H CJ 580/83 Atlantic v. Minister of Industry and Trade*, IsrSC 39(1) 29, 35; *H CJ 4225/91 Godovitz v. Government of Israel*, IsrSC 45(5) 781; *H CJ 142/86 Dishon v. Minister of Agriculture*, IsrSC 40(4) 523, 528; *H CJ 4383/91 Shpakman et al. v. Herzliya Municipality*, IsrSC 40(1) 447; *CivA 9073/07 State of Israel – Ministry of Construction and Housing v. Apropim Shikun Veyizum (1991), Ltd.* unpublished)

H CJ 135/75, 321 Scitex v. Minister of Trade and Industry, IsrSC 30 (1) 673, stated on this subject that it is a principle of paramount importance that a public authority must act in good faith, i.e. act honestly and fairly in its dealings with the public. If on the individual level, according to Section 12(a) and 39 of the Contracts Law (General Section) 5733-1973, an individual must behave in good faith when drawing up a contract and upholding the obligations that arise from that contract, this is all the more so in the case of a public authority dealing with the public. When a promise given by a person of authority in the context of this legal authority is involved, with the intention that this promise have legal standing and which the other side accepts as such, public fairness demands that the promise be carried out in practice when the official that gave the promise has the ability to fulfill it, even if the situation of the citizen is not worsened. The credibility of the government in the eyes of the public is far more important than the possibility of being given the opportunity to change his

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mind or go back on the promise or pledge he took upon himself vis-à-vis the citizen, in the context of his legal authority and practical ability to carry it out.

In *H CJ 135/75 Aharon and Yehudit Sarig et al. v. Minister of Education and Culture, the Director-General of the Ministry of Education and Culture and the Yehuda Regional Council*, the court explained: “The abrogation of a governmental promise juxtaposes, one opposite the other, two conflicting interests, and the ability of the authority to default on a decision or deed, while defaulting on a promise to an individual or to the public, is conditional, in any given case, on the proper balance between these two conflicting interests. On the one hand, there is the need to uphold the authority of the governmental authority to rectify a mistake or aberration, which, left untouched, would be improper, or even harmful to the public; and, on the other hand is the need to ensure the stability of action of public administration, stability being one of the conditions for the normality of administrative regulations and an important guarantee for the preservation of the citizen’s trust in the governmental authority (*H CJ 799/80 Shlalam v. Licensing Clerk. Pursuant to the Shooting Law, 5709-1949, Petah Tikva District, Ministry of the Interior*, IsrSC 36(1), remarks by Supreme Court President Barak on p. 331); and *H CJ 787/86 Elgrabli et al. v. Mayor of Rehovot et al.*, IsrSC 41(1) 225, remarks by Supreme Court President Shamgar on p. 240). Indeed, an authority that changes its mind as it breaches a promise it made to an individual or to the public is in fact attesting to the fact that it did not properly consider the content and implications of its first decision in a timely manner. And a fickle authority, one that makes rash promises and hurries to break promises, does not meet the duty imposed upon it to exercise its governmental authority reasonably and in good faith, and through its own actions, undermines not only the trust of the harmed promisee but also the trust of the public as a whole.

24. The proof of the existence of a governmental promise must be clear and unambiguous, and the conditions for such a promise must be as follows:

- 1) **The promisor had the authority to make the promise** – In the ruling, the view was expressed that “When examining state authorities in their actions vis-à-vis the individual, considerable weight should be given to the fact that when the government, its behavior and actions – through one of its branches or through a party acting on its behalf – are involved, this may create a situation that is binding upon all agents of the government, no matter who they are. The individual facing the governmental, bureaucratic apparatus should not have to contend with the internal division of authority among the various office holders, and the state should not be allowed to repudiate the actions and promises of its employees, even if they were given in the absence of proper authority to do so” (*CivA 2054/98 Roichman Brothers Samaria Ltd. v. State of Israel*, IsrSC 56 (2), 433, 455).

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- 2) **The intention to give the promise binding legal validity** – The ruling that recognized the validity of an administrative promise conditioned it on terms that are essentially similar to those that underlie the validity of a contract – “firm resolve” and “specificity” (*CivA 6620/93 Ramat Gan Municipality v. Golomb* IsrSC 51 [30] 363, 370; *H CJ 4915/00 Reshet Media and Production Company [1992] Ltd. v. State of Israel*, IsrSC 54 [5] 451, 477). In other words, in order for an administrative promise to become binding, the promisor must have intended to give the promise legal validity and it must be sufficiently explicit (see also the above case of *Sci-Tex*; A. Stein, “An Administrative Promise,” *Mishpatim* 14 255 [1985]).
- 3) **The promisor has the ability to fulfill the promise** – A condition for obliging the administrative authority to fulfill a promise made by it is that it is possible to fulfill the promise (*CivA 2019/92 Ministry of Construction and Housing v. Zisser*, IsrSC 52 [3] 223, 208). From this it follows that when a promise is given that involves an overstepping of authority or a lack of legality, the administrative authority cannot be obliged to keep it (the case of *Uman Knitting Factories, Ltd.*; *CrimA 2910/94 Yefet v. State of Israel*, IsrSC 56 [2] 221, 366). On this matter, we will further clarify that an authority cannot make a promise not to fulfill its public duty or exercise its governmental authority, and nor can it waive or constrain the mandates granted to it by law.

25. An example of the application of the principles enumerated here can be found in the abovementioned H CJ 5853/04, which considered a petition against an IDF commander’s declaration of the Givat Aperia outpost in Judea and Samaria as a “defined area.” The petitioners argued that they had been given a promise that the outpost would be removed from the list of outposts designated for immediate evacuation, and that a survey process (“*seker*”) had been carried out to examine the legal status of the area on which the outpost stood. It was determined that:

“The one making the claim (that an administrative promise was made) must prove that this promise was given and that it was explicit, clear and indisputable, as required of a legal commitment that does not fall within the bounds of a declaration of intent (*H CJ 585/01 Kelachman v. Chief of Staff Lt. Gen. Shaul Mofaz*, IsrSC 58(1). 694, 706). Similarly, the promise must have been given by the organ authorized to give it (case of *Sci-Tex*, p. 676; case of *Uman Knitting Factories, Ltd.*, p. 474). In the petition before us [...], Respondents 1-2 had indeed decided (on Oct. 27, 2004) to remove the outpost from the list of outposts designated for immediate evacuation. Nevertheless, this decision, in of itself, should not be interpreted as a governmental commitment to refrain from evacuating the

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outpost. The Respondents noted, on this matter, that the reason behind the decision to remove the outpost from the list of outposts designated for immediate evacuation was the desire to reach an agreement with the petitioners regarding its voluntary evacuation. We have not been persuaded that the fact of the removal of the outpost from this list represents, as the petitioners argue, a governmental promise that the Respondents would refrain from evacuating it in the future, and certainly not that they intended to legalize it. [...] As for the commitment made by Respondents 1-2 and their employees to take action to advance planning procedures aimed at establishing a legal settlement on the area of the outpost, the petitioners learned of the existence of this promise from the start of the implementation of the land-survey process and the promises made by Respondents 1-2 and their employees to take action to legalize the outpost and make it a legal settlement. The documents the petitioners attached to their petition show that Respondent 2 had decided (on 19 February 2003) to start a land-survey procedure. Nevertheless, the factual infrastructure presented to us does not point to the existence of a governmental promise to carry out a land-survey procedure. The decision to carry out this procedure was made as part of Respondent 2's policy considerations, rather than as part of an agreement or promise made to one or more of the petitioners. [...] In any case, although the existence of a commitment to start a land-survey procedure does not point to an administrative promise to take action to establish a legal settlement on the area of the outpost [...], the survey of the outpost's land is not the same as regularizing the outpost (see and compare *H CJ 9195/03 Weinstock v. Supervisor of Government Property in the Gaza Strip* [unpublished]), while the regularization of the outpost is conditioned on the outcome of the examination of the legal status of the area of the outpost in the context of the land survey. Nevertheless, even if this examination should show that the outpost's land is owned by the state or by Israelis, this in of itself does not turn the outpost into a legal settlement. [...] Because this is the case, we have not been persuaded that the promises claimed by the petitioners are indeed based on a governmental commitment that prevents Respondent 3 from designating the outpost's area as a defined area (see and compare: *H CJ 5245/03 Laov v. State of Israel* [unpublished])."

26. However, even if the administrative promise fulfilled all of these requirements (that the promisor had the authority to give it; that there was intention to give the promise legal validity; that the promisor had the ability to fulfill it), there still remains the question of whether the authority had legal justification to renege on its promise, because then it would override the "contractual" element in the administrative promise (see H CJ 15/75 as above, 78/594 on p. 321; *Uman v. Minister*

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of Industry, Trade and Tourism, IsrSC 32 [3] 469; HCJ 480/83 as above; HCJ 142/86 as above; *HCJ 636/86 Nahlat Jabotinsky v. Ministry of Energy and Infrastructures*, IsrSC 46 [2] 806; HCJ 4383/91 as above.) Reneging on a promise made by an administrative authority involves a conflict of interests: the public interest in rectifying a wrong or aberration in the actions of the authority as it is reflected in an administrative promise, on the one hand; and the public interest in flexibility on the part of the authority and the desire not to tie its hands and prevent it from acting, on the other. However, there is a further public interest in stability and certainty regarding the actions of the administrative authority (*CivA 2019/92 Ministry of Construction and Housing v. Zisser*, IsrSC 52 [3] 208, 220; the interest in public fairness and the preservation of public trust in the governmental authorities (*HCJ 5178/04 Central Galilee College of Science and Technology v. Ministry of Education, Culture and Sports*, unpublished); the interest regarding the promisee's personal expectation and the harm to be caused to him, and in the cases in which the promisee relied on the promise – the interest of the reliance too.

27. The precise scope and limits of the boundaries governing the ability of the authority to renege on a promise given by it have not been defined (*CivA 433/80 IBM Assets in Israel Ltd. v. Director Property Tax and Compensation Fund, Tel Aviv*, IsrSC 37 [1] 337). Nevertheless, it would appear that certain guiding principles can be extracted from the ruling, based on logic and common sense. One such principle has its origins, as noted, in the public interest “not to tie the authority's hands to the extent that it is unable to carry out its functions to benefit the public as the times, circumstance and needs change” (HCJ 580/83 as above; *HCJ 840/97 Sbeit et al. v. Government of Israel*, IsrSC 57 [4] 813, 870; *HCJ 4383/91 Shpeckman v. Municipality of Herzliya*, IsrSC 46 [1] 447, 454). Another principle is that the claim of an error is not always sufficient to justify the cancellation of a decision that an authority seeks to go retreat from or rectify (*CivA 417/74 Land Betterment Taxes Director Netanya v. Pali*, IsrSC 29 [1] 681; and the High Court of Justice ruling in the case of Shlalam, as above); a further principle involves the fact that the chances that an authority's claim that an inadvertent bureaucratic error was involved will be heard are far greater than the chances that its claim that “a clerk carried out the policy of the office unwisely or wrongly, or used his discretion in an unreasonable manner” will be heard (Civil Appeal 433/80 as above, on p. 351). We will now return to the question we posed in Section 22 of this report – whether illegal construction can be legalized after the fact – and to address this question, we will first consider the process of allocating land to settlements and their construction.

The allocation of land and construction in Judea and Samaria

28. In most cases, land for the establishment of a community or rural settlement in Judea and Samaria is allocated by the Custodian of Government and Abandoned Property to the Settling Entity. The allocations were made in principle to the World Zionist Organization (WZO), which is a "settling institution" as this is defined in Section 1 of the Law of Candidates for Agricultural Settlement 5713-1953. Through its settlement division, the WZO allocates land to regional or local councils in Judea and Samaria or to rural settlements located inside the boundaries of the regional councils. Although there are other settlement entities, the WZO is the principal Settling Entity where rural settlements in Judea and Samaria are concerned. The Settling Entity is responsible for the physical establishment of the settlement, as well as for forming the settlement group, preparing plans and infrastructures, building a temporary camp, i.e. the initial residential buildings and providing the settlers with production means. For urban settlements, the Custodian allocates the land to the Ministry of Construction and Housing. In addition to these principal allocations, there are other allocations that involve allocations to a different Settling Entity, based on the government's decision, or if the entity purchased the land and it was declared government property.

29. Not everyone agrees on the scope of authority granted to a Settling Entity in regard to the expansion of settlements in Judea and Samaria, preceded by a government decision. One approach maintains that the expansion of an existing settlement through the construction of new neighborhoods does not require a further decision by the government, as long as the expansion is carried out on state land and is located within the mother community's jurisdiction and in the territory allocated by the Custodian of Government and Abandoned Property. The other approach, the one that has been put forth, inter alia, in the report on what was designated as "unauthorized outposts" submitted by Attorney Talia Sasson to Prime Minister Ariel Sharon in 2005, holds that the further construction in existing settlements is not intended, in part, to expand them by building neighborhoods, but that it is in fact used to establish new and independent settlements by bypassing the need to go back to the government to get its permission. The Sasson Report offers extensive descriptions of the involvement of settlement entities and government ministries in the expansion of settlements, without a decision being made at the political level and without any planning arrangements. Before deciding between these two approaches and in order to clarify the facts, we will present excerpts from that report