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ISRAELI SOVEREIGNTY

IN JUDEA, SAMARIA, AND THE JORDAN VALLEY

The Importance, Procedure, and Legal Basis for Applying Israel's Legal System in Select Areas of Judea, Samaria, and the Jordan Valley

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Preface

One hundred years after the nations of the world recognized the legal, religious, and historical right of the Jewish people to the Land of Israel, the State of Israel now has the opportunity to take an additional significant step forward toward the full realization of this right by applying Israeli law to large areas of Judea, Samaria, and the Jordan Valley. It is an opportunity that may not present itself again.

Ever since the Six Day War, when the Israel Defense Forces liberated Judea, Samaria, and the Jordan Valley from Jordanian occupation, the State of Israel has spoken with two voices. While it consistently claims that the state has historical, legal, and moral rights recognized under international law to these areas, Israel has, up until now, applied military, not general Israeli, law there. This is the case despite the precedents of David Ben Gurion extending, in 1948, Israeli law to areas that were not originally included in the Partition Plan and the Knesset's passing a law, in 1967, that applied Israeli law to a united Jerusalem. On the one hand, successive Israeli governments have allowed for the establishment of a thriving settlement enterprise in the area that is now home to nearly half a million Israelis, but on the other hand, the state has refused to allow them to live their lives as do the rest of its citizens. And while all Israeli leaders make it clear that Israel's eastern border must remain the Jordan River, it is repeated with the same frequency that Israel is prepared to negotiate over these very areas. The contradiction between these voices intensified in the 1990s following the Oslo Accords, when the State of Israel allowed the establishment of an autonomous region under the Palestinian Authority in parts of Judea and Samaria where there are concentrations of Palestinians, while it continued to manage the area under its control through a temporary military administration.

This gap between the declarative and the applied, along with Israel's political irresolution on the subject, has ultimately served to erode Israel's status, both regionally as well as internationally. This debilitated status has led to a bolstering of Palestinian demands and to the emergence of a violent and uninhibited international campaign against the State of Israel. The non-application of Israeli law has additional painful price-tags: The quality of life for everyone in the area has been harmed; there is an augmented and organized Palestinian effort to occupy extensive areas in contravention of signed agreements; there has been considerable environmental, ecological, and archeological damage to the area; and an absence of sound governance and of long-term planning for the benefit of all residents of the area.

Now, the government of Israel is faced with a historic decision. The Trump Administration is the most pro-Israel US government since the advent of Zionism. After decades of unfulfilled promises, the US administration moved its embassy to Jerusalem, recognizing the ancient city as the capital of Israel; recognized Israeli

sovereignty over the Golan Heights; and stopped all funding to UNWRA.[1]

In November 2019, Secretary of State Mike Pompeo declared that the United States recognizes the Jewish people's historical, religious, and cultural rights to Judea and Samaria and the legality of Jewish settlement there; and in January 2020, with President Donald Trump's release of the "Deal of the Century," the world's leading power announced that it also supports the application of Israeli law to parts of those territories. Today, the Jewish people have the support of the United States to return to their historic homeland and apply full sovereignty in many of the places where "their spiritual, religious, and political identity was shaped, where they first attained statehood, where they created cultural values of national and universal significance, and bequeathed to the world the eternal Book of Books" (citation from the Declaration of Independence). It is now up to Israel's new government to decide on applying full sovereignty there.

This booklet offers the general public and policy makers a thorough, legal, and practical overview that facilitates understanding of the importance of the move, the broad legal basis on which it rests, and the legislative background from which it is derived. The first chapter clarifies why the immediate application of Israeli law in Judea, Samaria, and the Jordan Valley is necessary, and conversely, what are the implications of Israel's policy of continued duality in relation to these territories. The second chapter discusses precedent - how the heads of state acted in the past when seeking to expand borders - and presents the different alternatives under which Israeli law can be applied at the present time. The third chapter explains why the application of Israeli law in these territories is consonant with international law, and the fourth and final chapter answers some of the frequently asked questions about the initiative. Because we begin with the assumption that the State of Israel does not want to relinquish its right to Judea, Samaria, and the Jordan Valley, we do not present arguments from a strategic and security perspective. In addition, the booklet assumes that Palestinian autonomy will continue where it is presently extant and that the State of Israel will not apply its laws in areas densely populated by Palestinians. Its purpose, therefore, is to lay the grounds for the immediate need to apply Israeli law, principally and practically, in the areas of Judea, Samaria, and the Jordan Valley that are under Israeli control.

The booklet assumes that Palestinian autonomy will continue where it is presently extant and that the State of Israel will not apply its laws in areas densely populated by Palestinians.

Now that 53 years have passed since the Jewish people have returned to their historical homeland, the time has come to take another step forward and apply Israeli law to the Jordan Valley and to the Jewish communities in Judea and Samaria. After half a century of hesitation and vacillation, of taking one step forward and one step back, the Israeli government must seize this historic opportunity by following Ben Gurion's legacy and fulfilling the age-old dream - for the future of the country, its prosperity and security, and historical justice.

1 UNRWA is the United Nations agency intended to improve the lives of Palestinian refugees. However, under the auspices of this humanitarian activity, the organization perpetuates Palestinian refugee status and fosters the dream of return while funding terrorism and encouraging violence against the State of Israel. See Amichai Magen and Uri Aqavia, UNRWA: Assistance for Refugees or Aid to Terrorism, Position Paper 22, Jerusalem: Kohelet Policy Forum, December 2015.

Chapter 1: The Importance of Applying Israeli Law

The status of Judea and Samaria has been left undecided for over fifty years. The official position of the State of Israel is that it has a legal right over the territories, founded in its historical and religious connection to them, which is also acknowledged by the law of nations. However, Israel has chosen to leave in place the laws of foreign powers that ruled these areas in the past and functionally administer the areas through the military. On the one hand, it allows its citizens to settle there, yet on the other hand, it prevents them from living pursuant to Israeli law.

This dualistic conduct indicates indeterminate intentions, and has implications for a wide range of issues. The out-of-date legislation that currently applies in the area (such as Jordanian planning and construction laws, and Ottoman property laws) does not allow for proper management of the area, does not provide for daily life requirements, and even causes damage, in many cases irreversible, to the population, land, topography, and economy. In addition, the lack of a political determination regarding the future of Judea, Samaria, and the Jordan Valley prevents decisions on land management policies, without which the ability to develop the area and produce long-term planning is impaired. If we add to this the ambiguity that Israel projects regarding the future of these territories, a problematic reality is manifest that sabotages the ability to govern and maintain law and order.

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Israel's clouded message in regard to these areas is also damaging on the strategic political plane and impinges its international relations. In the absence of a functional expression of territorial right, even Israel's allies assume that sovereignty belongs to other countries. This assumption results in unending political pressure for territorial concessions and the portrayal of Israel, in the international arena, as a "colonialist occupier" and as a perpetual violator of international law. Moreover, hostile entities, such as the International Criminal Court's prosecutor's office, take advantage of this assumption to advance indictments against IDF soldiers for their lawful acts in these territories with the excuse that the area belongs to the "State of Palestine."

The many implications of non-application of Israeli law in Judea, Samaria, and the Jordan Valley, and the heavy prices that both the State of Israel and the region's residents pay, can be divided into five areas: **1)** an outdated legal system and the absence of up-to-date legislation; **2)** a lack of uniform policies and the absence of

a guiding hand; **3)** a lack of good governance and the absence of a constructive response to the organized and illegal Palestinian takeover of Area C; **4)** the erosion of Israel's status in the international arena; **5)** the absence of long-term planning for development of the area.

We explain each of these aspects below:

1. An Anachronistic Legal System and the Need for Up-To-Date Legislation

Failure to apply Israeli law in the areas of Judea and Samaria under Israeli control has created an impossible reality where residents of the region, Israelis and Palestinians, have lived for over fifty years under military administration and are subject to an anachronistic and inconsistent legal system.[2] This system of laws, a patchwork of Ottoman, British Mandatory, and Jordanian laws - these laws are outmoded even in their countries of origin - that is integrated into "General's Orders" (legislative instructions by the regional military commander) and recently also into primary parliamentary legislation of the Knesset, combined with the creative interpretation of the High Court of Justice and administrative tribunals - creates a legal tangle on almost every issue. This legal reality, alongside the dearth of modern legislation, precludes the possibility of meeting the life necessities of the populations and hinders the development of the region.

Here is a summary sampling of those issues in which the discrepancy between Israeli legislation and the prevailing state of the law in Judea and Samaria causes harm and creates an insufferable situation.

A. Property Law

Real estate law in Judea and Samaria relies on Ottoman, Jordanian, and Israeli military legislation, making for a very complicated, outdated, and unclear system that is difficult even for legal experts to make sense of and results in legal distortions. Examples include: **a)** Rigid restrictions on land acquisition - Israelis can only purchase land through a company registered in Judea and Samaria, and not as individuals, as is customary everywhere else under Israeli law. **b)** Unidentified ownership - Unlike a person who purchases land within the sovereign territory of the State of Israel, who can check the ownership of the land in order to make sure

2 As of 1995, areas under Israeli control refers to residents of Area C only. As is well known, in 1995, Israel signed an interim agreement with the PLO (the Oslo B Agreement), which divided Judea and Samaria into three types of territory: Area A, under Palestinian civilian and security control; Area B, under Palestinian civilian control and Israeli security control; and Area C, under full Israeli control - civilian and security. All Jewish cities, towns, and villages are in Area C, as are all joint industrial areas, IDF camps, and training areas.

that the land is not mortgaged, registered under double ownership, etc. - the buyer in Judea and Samaria may not review the land registry and therefore is precluded from attaining verified information regarding land ownership. **c)** Condominiums - The land registry of Judea and Samaria does not allow for the registration of condominiums as is customary under Israeli law. **d)** Land registration fee in Judea and Samaria - this is a percentage of the transaction price, in contrast to Israeli law, under which the fee is fixed and modest. The high fee creates a substantial barrier to business transactions and their registration. **e)** Planning laws - Jordanian and military planning laws do not allow for the planning of land development without the owner's permission and require the signature of the Defense Minister on each plan. This is an extraordinary obstacle to the development of the region for the benefit of all of its residents.

These archaic laws are incompatible with modern law and combined with the fact that most of the land in Judea and Samaria is also unregistered, they create uncertainty, making it very difficult to conduct real estate transactions and maintain proper legal records. Similarly, cumbersome procedures and unfamiliarity with the law make forgery easier. Furthermore, the authorities' de facto treatment of the area, unique to Israel as opposed to the rest of the countries of the world, as subject to international laws of occupation, results in losing the benefit of the legal solutions that modern law affords for the resolution of real estate disputes, as well as foregoing the expropriation of land for public needs.

B. Environmental Protection

As opposed to the nearly 300 pieces of Israeli legislation dealing with environmental issues - air, green construction, hazardous materials, nature and biological diversity, contaminated soil and fuels, climate change, industries and licensure, energy, wildlife protection, education and community, pests and pest control, noise, sewage, etc. - in Judea and Samaria, there are only a small number of environmental orders that deal with a limited number of fields. For the most part, they are "traditional" regulations or orders that apply within the jurisdictional confines of Israeli towns only, and not to the entire area. The pace of the area's military legislation lags far behind the pace of legislation in a modern country, and the gap is reflected in many areas.

In Judea and Samaria, there are only a small number of environmental orders that deal with a limited number of fields.

Examples of specific laws that do not apply in Judea and Samaria: **(a)** Because of the inapplicability of the Clean Air Act, it is impossible to require emissions permits nor, of course, prevent the emission of smoke and pollutants. **(b)** The rules of local municipalities that grant authority regarding sewage do not apply, giving free rein to factories to spew out sewage without oversight. **(c)** Quarrying - Israeli law does not apply, the applicable military order is only partially enforced and is easily circumvented, and consequently aggressive quarrying without oversight or remediation destroys surrounding areas. **(d)** The law regulating electronic waste disposal.

Furthermore, the law granting environmental enforcement powers to local authority inspectors does not apply, which results in serious sub-enforcement. Even in areas where legislation exists, the absence of a enforcement capability prevents proper treatment. As a practical matter, Judea, Samaria, and the Jordan Valley have become havens for polluters and environmental destruction, resulting in the population suffering from every conceivable environmental hazard, which are sometimes irreversible, such as illegal waste disposal sites, unlicensed gas stations, and more.

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C. Infrastructure and Energy

The non-application of Israeli law in the areas of Judea, Samaria, and the Jordan Valley that are under Israeli control has a profound effect on infrastructure and energy issues.

The Water Law does not apply in these areas, and the right to water that it provides, for every need and every use, does not apply to the population living there.

The Electricity Law, which regulates all activities in the electricity sector within the Green Line, does not apply in Judea, Samaria, and the Jordan Valley. Only recently, after a delay of many years, did the Israel Electric Company develop a long-term power supply plan in these areas.

The Natural Gas Sector Law also does not apply, and consequently, there is no planning for the laying of natural gas pipelines - not for towns and cities, nor for industrial parks. The survival of regional production plants depends on the creation of modern infrastructure for industrial areas in Judea and Samaria.

Without the application of infrastructure and energy laws, there will be no significant and sustained economic growth in Judea and Samaria, which is key to co-existence and a viable economy, from which both the State of Israel and the entire Palestinian population will benefit (including the Palestinians living in the autonomous areas, A and B).

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D. Archeology, Antiquities, Vandalism, and Theft

There are about ten thousand ancient sites in Judea and Samaria, most of which have not yet been excavated and explored. Among them are many sites of outstanding national importance, such as impressive fortresses of the Hasmonean and Herodian period, like the Sartaba, Kiprus, Karantal and Hurkanya, alongside sites of great importance from other historical periods. The phenomenon of archeological vandalism and looting of antiquities has gained shocking momentum in recent years. Because the Israeli Antiquities Law also does not apply in Judea and Samaria, the area suffers from severe under-enforcement in this regard. It is a lamentable fact that the theft of antiquities and the destruction of artifacts that bear testimony to the history of the Jewish people in their homeland are proceeding undisturbed.

Fortress of Hurkanya. The looters destroyed the Byzantine mosaic floor to reach the underground chambers of the fortress.

E. Legal Procedure and Jurisprudence

Identifying the legislative sources relevant to any given issue is very complex, as we noted above, and there is no official document that defines what piece of legislation applies at any given time in Judea and Samaria. The military orders are published for the most part without a consolidated and up-to-date text of the orders such that, in practice, it is impossible to know what the binding law is. While that makes it very difficult for the legal community, ordinary citizens are left completely helpless in the face of this statutory ambiguity.

2. The Absence of Consistent Policy

Failure to apply Israeli law in the area sends the message, both domestically and internationally, that Israel has not yet decided whether or not to remain in the area. This equivocation along with the duality - in which, on the one hand, Jewish settlement is allowed to expand, and on the other, the area is administered through a military administration that is self-defined as temporary - creates confusion, insecurity, and the inability to make decisions at all levels. As a result, both policymakers and bureaucrats are inconsistent and indecisive. The State of Israel has not presented a vision, clear policies, nor strategic thinking for Judea, Samaria, and the Jordan Valley, the practical outcome of which is that the state manages them from day to day without consistency and vision.

As long as Israeli law is not applied to these territories, all civilian matters in the area, including law enforcement, are handled by the Civil Administration, an agency that is subordinate to the IDF's regional military commander (the general in charge of the Central Command). In the absence of sustained guidance from elected officials and the political echelon, those who actually formulate policy are military commanders and civilian officials who are required to make day to day decisions on the ground. Without the proper guidance of the state's planning and policy institutions, effective wherever Israeli law applies, there is a considerably wide margin for bureaucrats to determine and implement policy on their own, resulting in many respects in administrative chaos.

The failure to apply Israeli law engenders significant difficulty and sometimes even an inability to solve built-in problems, preventing the development of area for the wellbeing of its residents.

Another consequence of this condition is stagnation. As a rule, the professional-clerical level tends to maintain the status quo and avoids shocking the system. The failure to apply Israeli law engenders significant difficulty and sometimes even an inability to solve built-in problems, preventing the development of the area for the wellbeing of its residents. The application of Israeli law will fully subject the bureaucratic agencies now serving as the ad hoc government in the territories to the overall governmental system and will bring the situation in Judea and Samaria on par with that customary in the rest of the State of Israel.

3. Effective Governance and Response to the Organized Palestinian Incursion to Area C

The application of Israeli law and increasing effective governance are especially necessary in view of the intensification of the Palestinian effort to take control of Area C. Israeli indecisiveness regarding its intentions in Judea and Samaria - the military administration, the anachronistic and cumbersome system of laws, and the absence of a clear vision with corresponding policy - all transmit the message to the other players in the region that there is no one in charge. In the absence of a clear sovereign - there is little effective governance and limited chance of maintaining law and order. As a result, a delinquent culture of taking the law into one's own hands and "grabbing what you can," has developed. The crown jewel of this statutory chaos is the Palestinians' organized incursion into Area C in critical violation of the Oslo Accords,[3] a move directed by the Palestinian Authority and supported by extensive European assistance.

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In 2009, then-Palestinian Prime Minister Salam Fayyad published a strategic plan to build the infrastructure for the Palestinian state. Entitled, "Ending the Occupation, Establishing a State," the plan aims to take control of Area C, focusing on areas of strategic importance (areas where Jewish settlement can be developed and areas located on major transport routes or territories that once seized will sever Israeli settlement contiguity and isolate individual settlements). It did not take long for the Fayyad plan to move to the implementation stage, and in the absence of Israeli determination to prevent its progress, it has dramatically changed the landscape over the past decade.

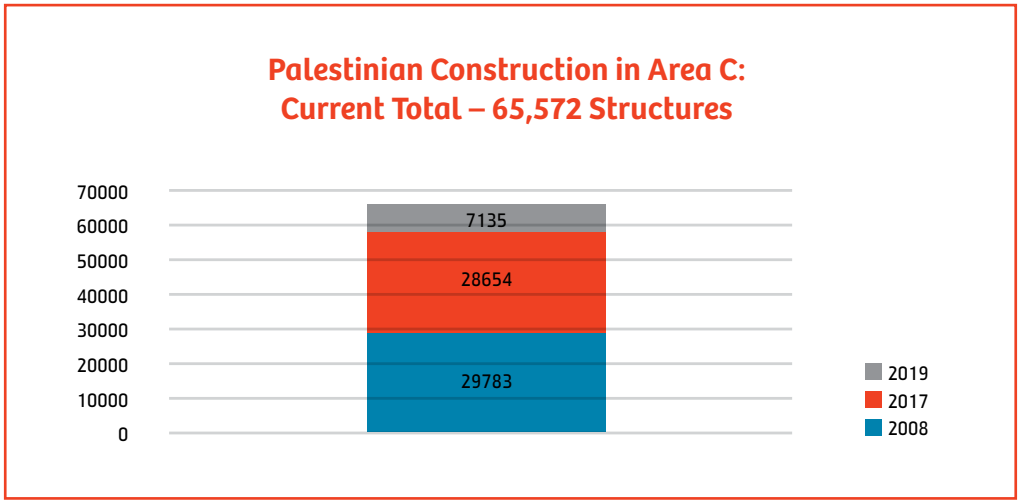
The "Fayyad Plan" includes wide-spread construction,[4] the seizure of agricultural lands (erection of terraces, extensive land cultivation, excavation of pits, and laying of irrigation equipment), the construction of quarries, development and paving of roads, and the destruction of archeological sites. In order to accelerate the program, the Palestinian Authority has established a broad organizational infrastructure, and although it is in blatant violation of the Oslo Accords, it is receiving extensive funding from the EU, individual European countries, and even the UN. Alteration of the landscape is also accompanied by significant demographic change, with massive growth of the Palestinian population in Area C. While at the time that the Oslo Accords (1993) were signed, some 80,000 Palestinians resided in Area

3 See, The Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip, Annex III – Protocal Concerning Civil Affairs, Article IV: Special Provisions concerning Area C.

4 This is not a result of natural population increase and expansion but rather strategically planned building. Similarly, the encroachment into Area C does not stem from a lack of land to build on. Additional research we conducted showed that in Areas A and B, 70% of the territory is not developed and there are large reserves of developable land.

C, estimates put today's range between 250,000 and 400,000 Palestinians. The bureaucrats of the Civil Administration were aware of the "Fayyad Plan," but whether intentionally or otherwise, allowed it to continue unabated.

According to a study by the NGO, "Regavim," on the eve of the "Fayyad" program in 2008, there were 29,783 Palestinian homes spread over 44,495 dunam in Area C.[5] A decade later, in 2019, the number of homes in Area C doubled, stands at nearly 66,000, and covers an area of 86,000 dunam.[6] By comparison, the developed areas of Jewish settlement in Judea and Samara - stands at only 1.5% of Area C.



Another recent field study conducted by the Shiloh Policy Forum in collaboration with "Ad Kan,"[7] which examined the Palestinian agricultural land-grab in Area C, reveals an even more disturbing picture. Land cultivation has become a leading method for Palestinians to take control of the land, relying on Israel's failure at enforcement and the Ottoman real estate laws that provide legal validity for prolonged possession and cultivation. According to the study, there are currently about 650,000 dunam cultivated by Palestinians in Area C, which comprises nearly a full 18% of the territory. Cultivation of land takes place without any proof of ownership and often in flagrant violation of stop work orders. Land chosen for unauthorized cultivation is usually at strategic locations: adjacent to Jewish settlement, main roads, and even in IDF training areas (firing zones). These areas also impair the IDF's operational ability and have security ramifications: Often when the military seeks to vacate the area for training, it encounters legal attacks accompanied by international pressures that force it to withdraw from its plan and seek alternate locations.

Another recent study by the Shiloh Policy Forum, in collaboration with the NGO "Shomrim al Hanetzach"[8] investigated the state of archeological sites in Area C. The study mapped 361 archeological sites (out of the 2,300 sites delineated by the Civil Administration) of special importance to Jewish history and scientific research. The study found that in 44% of the sites surveyed, there was significant site damage,

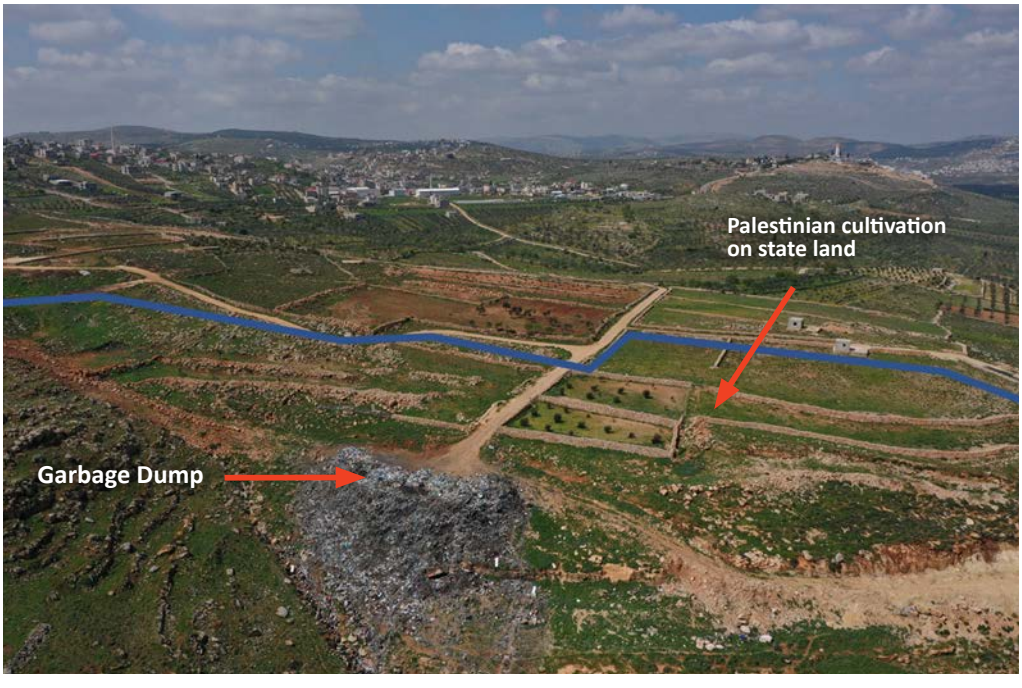
7 The study has not yet been published.

8 The study has not yet been published.

with many sites completely destroyed. In many sites where ancient buildings and walls have been identified in the past, only hills of agricultural terraces or Palestinian buildings and yards remain, and the archeological ruins have disappeared or have been destroyed. At other sites, theft by hand or with the aid of mechanical tools that affected dozens of dunam was discovered. The intensive damage destroyed - and even totally erased - central archeological tells, entire structures, walls, and palaces. The rich archeological finds that would have corroborated an historical Jewish presence were lost beyond recovery.

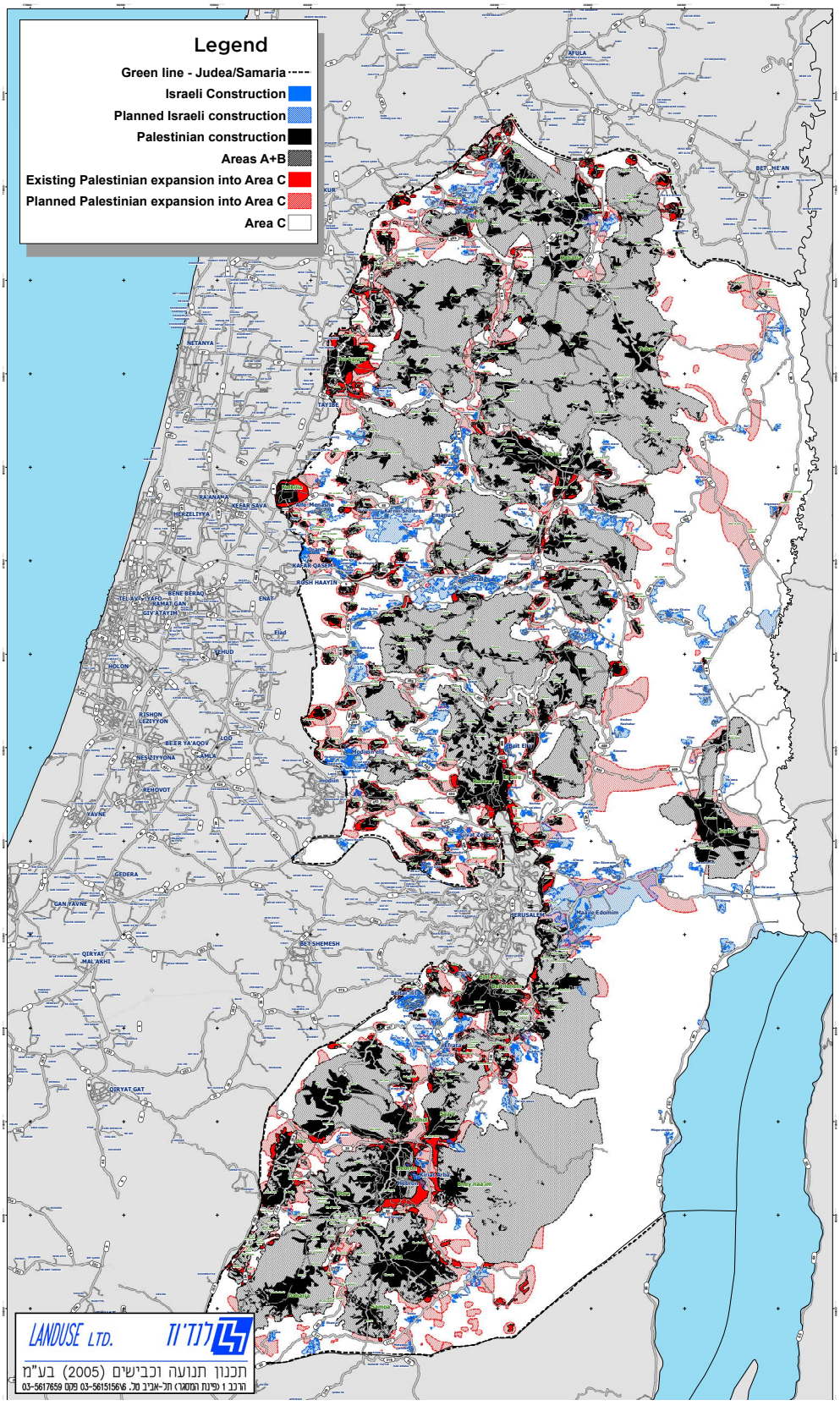
The fact that the State of Israel is not combating these takeover efforts - not through enforcement on the ground nor through political measures vis-a-vis the EU and its member states, which are goading on this illegal activity - conveys to all parties that the State of Israel is not really in charge. This message reinforces the motivation to continue to establish facts on the ground in stark contrast to and in violation of the signed Oslo Accords.

The application of Israeli law will convey a clear message to the world and to the Palestinians that the areas of Judea, Samaria, and the Jordan Valley in which the law is applied are Israeli territory in which the State of Israel is sovereign. It will sap the energy out of the delegitimization campaign being waged worldwide against the State of Israel, and it is also the only way to maintain law and order in Judea, Samaria, and the Jordan Valley and turn the region into a growing and prosperous land for both the Israelis and the Palestinians who live there.



Areas cultivated by Palestinians and a pirate landfill on state land south of the Samarian community of Migdalim (The area below the blue line is state land in Area C.).

Existing and Planned Palestinian Encroachment on Area C



4. Diminution of Israel's Status Internationally

In failing to apply Israeli law to select areas of Judea, Samaria, and the Jordan Valley, the State of Israel conveys a halting message. Israel claims its legal, historical, and moral right to the area, but does not endeavor to realize that right. The government restricts the development of Jewish settlement there, does not include the region in its long-term development plans, and allows Arab residents to seize land and build homes almost unhindered. Thus, the State of Israel hints, practically declares, that it does not believe its own rhetoric. In addition, the fact that the area has been managed for over fifty years by a system of laws, originating with foreign occupiers that are long gone, sends a message of indeterminacy, as if Israel is merely a visitor in the area. This vacillation and indecision, which have increased over the past two decades, have resulted in a continuous erosion of Israel's international status, an emboldening of the de-legitimization campaign against it, and the reinforcement of Palestinian territorial claims.

This vacillation and indecision, which have increased over the past two decades, have resulted in a continuous erosion of Israel's international status.

The application of Israeli law in the territories of Judea and Samaria will give practical and substantive ascendancy to its claim of historic and legal title to these lands and help stave off international attempts to diminish Israel's rights and status as a nation state.

5. Long-term Planning and Area Development

Although there are nearly half a million Israeli citizens living there, and the State of Israel is obliged to provide them with all relevant services, the Jordan Valley, Judea, and Samaria have still not been included in any government master plan. As far as the planning authorities are concerned, these areas are not formally included in the State of Israel, and therefore no planning has been made for them, and but few resources have been allocated for their development. The lack of systemic planning prevents proper development of the area in all respects: housing, employment options, health infrastructure, industry, roads, and the like. The planning and development that are occurring are at the initiative of local leaders - most notably the local councils and the "Amana" settlement movement - who are pushing "from below." These are usually only local efforts, and their implementation is slow. In the absence of a master

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plan and systemic view of the whole range of issues and challenges, there is no real response to the living requirements of the residents, Jews and Arabs alike. This is a reality that comes with serious economic and social consequences. Moreover, in the absence of planning, no governmental thinking is being conducted on long-term development goals, although setting such goals is necessary for economic development of the region for the benefit of all of the populations living there.

Applying Israeli law to Judea and Samaria and including them in national planning and construction programs will not only make it easier for the residents of the area but will also help the housing market in Israel dramatically. Because these areas are mostly adjacent to the major metropolitan areas, they provide the State of Israel with substantial land reserves. Applying Israeli law to them and opening them to the Israeli market will help deal with the real estate crunch in the center of the country and significantly lower housing prices.

Chapter 2: The Legal Procedure

Since the establishment of the State of Israel, the boundaries of the scope of Israeli law have been expanded three times. The legal instrument by which the law's jurisdiction was expanded was different each time. In this section, we briefly present the ways in which this was done, discuss the advantages and disadvantages of each, and then recommend the appropriate legal tool for the law to be extended in Judea, Samaria, and the Jordan Valley. Finally, we will briefly present some of the complexities involved in the transition from military jurisdiction, in place for over half a century, to full Israeli sovereignty.

1. Three Instances of Sovereignty, Historical and Legal Aspects

The first time that legal sovereignty was expanded over territory was in **1948**, immediately following the establishment of the state. Expansive territories were captured that were not originally included in the Partition Plan and were adjoined to the State of Israel through an **administrative order of the Minister of Defense**.

On September 2, 1948 (28 Av 5708), then Prime Minister and Defense Minister David Ben Gurion issued a decree on the "Israel Defense Forces Government in the Land of Israel" (Proclamation #1). The order defined all territories occupied by Israel during the War of Independence that had not been included in the United Nations Partition Plan as "Held Territories," and retroactively applied Israeli law to them, as of Friday, May 19, 1948 (6 Iyar 5708), the day after the Declaration of Independence. Regarding greater Jerusalem, which was slated to be an international city under the Partition Plan, the Minister of Defense issued a similar order on August 2, 1948 (26 Tamuz 5708). This move significantly expanded the borders of the State of Israel, which now included Acre, Nahariya, Ma'alot, Nazareth, Be'er Sheva, Ramla, Lod, Ashdod, Ashkelon, and other locales. The country grew from 16,000 to 20,250 square kilometers. Three weeks after the publication of the Minister of Defense's order, on September 26, 1948 (22 Elul 5708), the Provisional State Council (later, the Knesset) enacted the "Area of Jurisdiction and Powers Ordinance, 1948," which was also retroactively applied from May 15, 1948 (6 Iyar 5708). The order instructed that Israeli law, jurisdiction, and administration apply to any area of the Land of Israel defined by the Defense Minister as "held by the IDF," thereby giving legal authority to the new borders that were determined by the order issued by the Minister of Defense. This was made possible because the Partition Plan that the United Nations Security Council had proposed was affirmed

by the Jewish settlement in Israel, but rejected by the Arabs of Israel and the Arab states, who responded with a declaration of war, and therefore the Partition Plan had no validity in terms of international law.

[Unofficial translations of select legislation appear below]

The Area of Jurisdiction and Powers Ordinance
No. 29 for 1948

The Provisional State Council hereby enacts as follows:

Area to Which the Law Applies

1. Any law applying to the whole of the State of Israel shall be deemed to apply to the whole of the area of the State of Israel and any part of the Land of Israel which the Minister of Defense has defined by proclamation as being held by the Defense Army of Israel.

Area of Authority

2. Any person or body of persons competent by virtue of a law as aforesaid to hold office or act in the whole of the State of Israel shall be deemed to be competent to hold office or act in the whole of the area including both the area of the State of Israel and any part of the Land of Israel which the Minister of Defense had defined by proclamation as being held by the Defense Army of Israel.

Effective Date and Approval of Actions

3. This ordinance shall have effect retroactively as from the 6th Iyar, 5708 (15th May, 1948), and all acts done which,, but for the provisions of this Ordinance, would be without effect are hereby validated retroactively.

Effective Date and Approval of Actions

4. This ordinance shall be cited as the "Area of Jurisdiction and Powers Ordinance, 1948."

September 26, 1948 (12 Elul 5708)

David Ben Gurion
Prime Minister and Minister of Defense

Felix Rosenblüth
Minister of Justice

ISRAEL DEFENSE FORCES GOVERNMENT IN THE LAND OF ISRAEL

Proclamation No. 1

Whereas various territories in the Land of Israel are under the control of the Israel Defense Forces, which heeds my command;

And whereas the Israel Defense Forces must uphold the public peace and security in these territories and consider regulating law and jurisprudence;

Therefore, I, David Ben Gurion, Minister of Defense, hereby declare on behalf of the Israel Defense Forces High Command as follows:

Interpretation

1. The term, "held territories," means the territories in the Land of Israel within the boundaries demarcated in red on the map of the Land of Israel signed by me and bearing today's date, September 2, 1948, or any other map that shall replace it that shall be signed by me and similarly marked.

The Law

2. The Law of the State of Israel applies to the held territories.

Public Order and Security

3. Residents of the held territories are hereby called upon to maintain public peace and the economy and assist the Israel Defense Forces to the extent required. Anyone violating any of my instructions shall be tried before a military court that shall be established at my insistence or before a civilian court, as circumstances require.

Publication of the Proclamation

4. This proclamation shall be published to the public by all methods that I will consider as being the most efficient.

Validity of the Proclamation

5. This proclamation shall be deemed valid for all intents and purposes as of midnight, Saturday, May 15, 1948, but with regard to those portions of the held territories whose possession will have been transferred to the Israel Defense Forces at a later time, the proclamation shall only be valid as of that time.

David Ben Gurion
Prime Minister and Minister of Defense

Issued this day, September 2, 1948 (28 Av 5708).

The second time that Israeli law was applied to territories in the Land of Israel was in **1967**: Two and a half weeks after the end of the Six Day War, after the Knesset authorized it to do so, the Israeli government applied Israeli law, jurisdiction, and administration to East Jerusalem through a **government order**.

In the Six Day War, large areas that were previously held by Arab countries were liberated: the eastern part of Jerusalem, including the Old City, Judea and Samaria, the Golan Heights, the Gaza Strip, and the Sinai Peninsula. In light of the "Area of Jurisdiction and Powers Ordinance," enacted by the Provisional State Council in September 1948, then Defense Minister Moshe Dayan could have issued an order defining the territories included in Mandatory Palestine - East Jerusalem, Judea and Samaria, the Jordan Valley, and the Gaza Strip - as "Held Territories" by the IDF, and in doing so, would have automatically applied Israeli law to them. But because the government was considering negotiating for peace in exchange for these areas, or parts thereof, it eschewed the automatic application of Israeli law to the new territories. For that reason, instead of an order categorizing the new territories that were captured in the war as "Held Territories," on June 7, 1967 (28 Iyar 5727), the area commander, the General of Central Command (and not the Minister of Defense), issued two orders: one announced the "taking over of administration by the IDF"; and the second, entitled the "Proclamation Regarding Regulation of Administration and Law," announced that the law that had existed in the area until the day that the territory was captured "will remain in effect." That is to say, instead of applying Israeli law over the area, the State of Israel decided to leave in place the pre-existing system of laws, which, as explained above, comprised Ottoman, British Mandatory, and Jordanian legislation.

With this amendment, the Knesset stipulated in law that it authorizes the government to apply Israeli law, jurisdiction, and administration, to every part of the Land of Israel, leaving it with the discretion to determine the extent of the area to which the law will be applied and the timing of its application.

The only place about which the State of Israel did not hesitate was Jerusalem. About two weeks after the end of the war, on June 27, 1967, the "Regulation of Administration and Law Ordinance, 1948" was amended, and the Knesset added Article 11B, which states: "The law, jurisdiction, and administration of the state will apply in every territory of the Land of Israel that the government has determined by order." With this amendment, the Knesset stipulated in law that it authorizes the government to apply Israeli law, jurisdiction, and administration, to every part of the Land of Israel, leaving it with the discretion to determine the extent of the area to which the law will be applied and the timing of its application.

The Knesset derived the right to do so from the fact that, according to international law, the State of Israel has the right of sovereignty to the Land of Israel as it was under the British Mandate, and this is for two interrelated reasons. First is the doctrine of *Uti Possidetis Juris* that gives new states full sovereignty over all territorial units that preceded their independence. According to this doctrine, which is recognized throughout the world as an undisputed part of customary international law, from

the time the State of Israel declared its independence, it is the sovereign in all areas of the Mandate, including those designated for the Arab state that did not materialize. The second reason is the international recognition, as ensconced in the Mandate, of the right of the Jewish people to re-establish their national home in the Land of Israel, and the provision of territorial management to Britain on the condition that it help realize this mission. The League of Nations (the international body that preceded the United Nations) ratified the Mandate in 1922, and Article 80 of the UN Charter preserved the legal validity of this right of the Jewish people even after the Mandate ended, the League of Nations was dissolved, and the United Nations was established.[9]

The Regulation of Administration and Law Ordinance, 1948

(Sections 11-11B only)

No. 1 for 1948

By virtue of the power conferred upon the Provisional State Council in the Declaration of the Establishment of the State of Israel, of the 5th Iyar, 5708 (14th May, 1948) and by the Proclamation of that date, the Provisional State Council hereby enacts as follows:

Chapter 4 – The Law

The Existing Law

11. The law which existed in the Land of Israel on the 5th Iyar, 5708 (14th, May 1948) shall remain in force, insofar as there is nothing therein repugnant to this Ordinance or to the other laws which may be enacted by or on behalf of the Provisional State Council, or subject to such modifications as may result from the establishment of the State and its authorities.

Hidden Laws (Amendment No. 4) 1949

11A. (A) A hidden law has no, nor has it ever had, any effect.

(B) A "hidden law" means, in this section – a law as defined in the Interpretation Ordinance, 1945, that was intended to be enacted by the legislature between November 29, 1947 and May 15, 1948 and that was not published in the official newspaper, despite being included in the type of laws whose publication in the official newspaper was, prior to that same period of time, obligatory or customary.

Application of the Law (Amendment No. 10), 1967

11B. The law, jurisdiction, and administration of the State shall apply to any area of the Land of Israel that the Government has determined by order.

May 21, 1948 (12 Iyar 5708)

David Ben Gurion
Prime Minister and Minister of Defense

Felix Rosenblüth
Minister of Justice

9 We expand on the application of Israeli law and the compatibility with international law in Chapter 3. For more on Israel's legal right to Judea, Samaria, and the Gaza Strip, see "The Pompeo Declaration on the Legality of Jewish Settlement in Judea and Samaria," Jerusalem: Kohelet Policy Forum and the Shiloh Policy Forum, January 2020, pp. 6-9. https://www.shiloh.org.il/publications.

The Regulation of Administration and Law Order (No. 1), 1967

Pursuant to its authority under Section 11B of the Regulation of Administration and Law Ordinance, 1948, and pursuant to its other powers under any other law, the Government orders as follows:

1. **The area of the Land of Israel described in the supplement is hereby determined to be an area in which the law, jurisdiction, and administration of the State apply.**
2. **This order shall be cited as the "Regulation of Administration and Law Order (No. 1), 1967."**

June 28, 1967 (20 Sivan 5727)

Yael Uzai
Government Secretary

The Justice Minister at the time, Yaakov Shapira, explained that the State of Israel's position was that as the sovereign, it had the right to apply its laws in the IDF-controlled areas of the Land of Israel immediately, but believed it would be better to do so in the context of a government order as a "clear sovereign act."[10] In fact, as soon as the law was published and went into effect, on June 28, 1967 (20 Sivan 5727), the government of Israel issued a "Regulation of Administration and Law Order (No. 1), 1967," stating that it is applying the "law, jurisdiction, and administration" to the entire territory of East Jerusalem that was captured in the war. The fact that the drafters of the order labeled it "Order #1," indicates that they considered it the first in a series of similar orders to be issued over time. However, no further decree has been issued since. The unification of Jerusalem that was enshrined in the order garnered constitutional validity in Israel with the approval of the Basic Law: Jerusalem, the Capital of Israel, 1980, as well as the Basic Law: The State of Israel, the National Home of the Jewish People, 2018, which state that the "complete and united Jerusalem is the capital of Israel."

The third time that Israeli law was applied to territories in the Land of Israel was in 1981, when the Knesset applied Israeli "law, jurisdiction, and administration" to the Golan Heights through special legislation.

10 According to the Minister of Defense, the "The approach of the State of Israel…is based on the principle that law, jurisdiction, and administration of the State apply to the parts of the Land of Israel that are located in practice within the sovereign territory of the State… It is the Government's opinion – and its perception is consistent with international law – that, in addition to IDF control, a clear sovereign act is required on the part of the State in order for Israeli law to apply to such territory" (**Official Gazette and Bills**, Booklet 731, p. 2420, June 27, 1967 (19 Sivan 5727)).

Because the Knesset had already in 1967 authorized the government to apply Israeli law to any area of the "Land of Israel," it was also possible in this context to apply Israeli law by government decision to the Golan Heights, as was done for East Jerusalem in June 1967. The term, "Land of Israel," however, could have theoretically been interpreted not as referring to the territory that had been described in the Mandate (that had been approved by the League of Nations at the San Remo Conference) as an area designated for the establishment of the National Home for the Jewish people - which included the Golan Heights - but to the British Mandate prior to the establishment of the State, which did not include the Golan Heights. Therefore, contrary to the case of East Jerusalem, application of Israeli law in the Golan Heights was accomplished by means of new legislation of the Knesset.

On December 15, 1981 (19 Kislev 5742), the Knesset approved the Golan Heights Law, 1981, stating that "the law, jurisdiction, and administration" of the State will apply to the Golan Heights area as described in the addendum (the attached map)." Article 3 of this law empowered the Minister of Interior, upon consultation with the Minister of Justice, "to issue regulations regarding its implementation and stipulate in the regulations transitional provisions, and provisions regarding the continued validity of regulations, orders, administrative provisions, as well as rights and obligations that were in force in the Golan Heights prior to the commencement of this law."

2. Applying Israeli Law in Judea and Samaria: Policy Recommendations

In the interim agreement signed in 1995 between the State of Israel and the PLO (the Oslo B Agreements), the territories of Judea and Samaria were divided into three distinct areas: Area A - under Palestinian civilian and security control; Area B - under Palestinian civil and Israeli security control; and Area C - under Israeli civilian and security control. US President Donald Trump's recently released "Deal of the Century" recognizes Israel's right to apply Israeli law to 50% of Area C (which accounts for 30% of the entire Judea and Samaria region). Prime Minister Benjamin Netanyahu declared that he intends to promptly apply the law based on the Trump parameters and therefore it behooves Israel to examine what is the preferred method of applying Israeli law to Judea, Samaria, and the Jordan Valley.

As shown above, the legal process provides three possible ways of applying Israeli law in Judea and Samaria: **1)** an order by the Defense Minister, as in 1948; **2)** a government order, which relies on explicit Knesset approval, as in 1967 (Jerusalem); **3)** through primary legislation, as with regard to the Golan Heights (1981). All of these options exist today, and policymakers can select their preferred alternative. In what follows, we briefly present the main arguments for and against each alternative.

A. Model 1948: Minister of Defense Proclamation (not recommended)

One possible way to apply Israeli law in Judea and Samaria is for the Defense Minister to issue a proclamation that the area in question is "held by the IDF," and thus pursuant to the Area of Jurisdiction and Powers Ordinance, 1948, Israeli law will automatically apply to it.

The main advantage of this method is that it depends on only one person, the Defense Minister, and therefore it is also immediately implementable without the need for further discussion; but that is also its major disadvantage. This was fitting procedure at the time of the state's founding when the Minister of Defense David Ben Gurion was the country's undisputed leader. Such was his unlimited social and governmental credit that, just as he had successfully led the process of declaring the state's independence, despite threats and reservations at home and abroad, he was also able to determine the state's borders. At present, it is inconceivable that a move of such significance would be implemented by an act of one person alone, no matter how legally justifiable, without wide public discourse. Even in 1967, when the country's leadership sought to apply Israeli law to its capital, Jerusalem, it decided not to take this route and instead transferred to the government the authority to apply the law. Once a government decision is made, however, it prima facie can authorize the Defense Minister to issue an appropriate order; but, that step would not be necessary because, following the amendment to the law in 1967, the government has the authority to issue such an order on its own. Furthermore, it can be argued that when the Knesset passed Article 11B of the Regulation of Administration and Law Ordinance (1967), it essentially – even if not formally – stripped the Defense Minister of the authority to apply Israeli law to new territories. Accordingly, once the authority was conferred on the government, it is unreasonable to assume that a corresponding authority still rests with the Defense Minister.[11]

following the amendment to the law in 1967, the government has the authority to issue such an order on its own.

As an order of the Defense Minister is clearly not the best approach, we recommend an alternative legal method for the application of Israeli law in Judea, Samaria, and the Jordan Valley.

11 Amnon Rubenstein and Barak Medinah, "The Constitutional Law of Israel: Governmental Agencies and Citizenship" Jerusalem and Tel Aviv, Schoken, 2005, Vol 2, p. 932. For a similar approach, see Shlomo Guberman, "Sefer Uri Yadin: Book Review" Mishpatim, 21 (5751), p. 177.

B. Model 1981: Knesset Legislation (second best alternative)

A second possible way of applying Israeli law to Judea, Samaria, and the Jordan Valley is legislation by the Knesset that would determine the application of Israeli law, jurisdiction, and administration to a specific area described in the law or in an addendum to it as was the case with the Golan Heights. Indeed, in recent years, several bills have been proposed in the Knesset that seek to apply Israeli law to specific parts of Area C, for example: Ma'aleh Edumim, suburban areas of Jerusalem, the Jordan Valley, the northern Dead Sea region, Jewish settlement as a whole, and all of Area C. We believe this is the second best alternative.

Under the present circumstances, it would be totally unnecessary as Prime Minister Benjamin Netanyahu has repeatedly declared, including very recently, that he is personally committed to imminent legislation that applies Israeli law to areas in Judea and Samaria.

In general, the advantage of Knesset legislation is that any member of the Knesset can independently promote an issue that is dear to him, even if the Prime Minister opposes the legislation. While in most cases, the Knesset member will need the support of the government to reach the required majority, the independent initiative is enough to raise the issue and may even force the government's consent. This was the reason for the series of bills mentioned above. However, regarding the sensitive issue of applying Israeli law in Judea, Samaria, and the Jordan Valley, the chance that a private Knesset bill would be passed contrary to the Prime Minister's position is practically nonexistent; hence, presenting a private bill on the matter would be nothing more than declarative. Most importantly, under the present circumstances, it would be totally unnecessary as Prime Minister Benjamin Netanyahu has repeatedly declared, including very recently, that he is personally committed to imminent legislation that applies Israeli law to areas in Judea and Samaria. During the swearing-in of Israel's 36th Government on May 17, 2020, the Prime Minister said: "These lands are where the Jewish nation was born and developed. The time has come to apply Israeli law to them and write another glorious chapter in the history of Zionism … The whole issue of sovereignty has become relevant only because I personally endeavored to advance it."

A second advantage of going the route of Knesset legislation is that it appears to be the preferable way of determining a norm of such national importance as the application of Israeli law in Judea, Samaria, and the Jordan Valley. However, this would be in fact an act of redundant legislation as the Knesset has already stated through legislation that it authorizes the application of Israeli law to any area included in Mandatory Israel, and Judea and Samaria are the heart of that area. When the Knesset enacted Article 11B of the Regulation of Administration and Law Ordinance, that was precisely the goal it had in mind, and it provided the government with a legal and official tool through which it could accomplish that.

The Knesset has already stated through legislation that it authorizes the application of Israeli law to any area included in Mandatory Israel, and Judea and Samaria are the heart of that area.

A third advantage of taking this route is that within the legislative framework, all of the special legislative provisions that are required during the transition period from one legal system to another could be set forth at the outset. However, as we will explain below, transitional arrangements can also be applied immediately through a government order, and the remainder can be accomplished by regulations and subsequent orders.

An additional argument for application of the law via this method is that it lends it broad public legitimacy, thus bolstering its validity. However, popular legitimacy can also be obtained by the government bringing its decision to the Knesset for a declarative vote, as is the case, for example, after the Prime Minister's speech at the opening of a session or after he delivers a message to the Knesset.

The main disadvantage of this route is the length of time usually required for the legislative process, although, when necessary, the Knesset can expedite proceedings. The requisite three readings of the Golan Heights Law, for example, were passed in one day.

But the limited advantages of this approach suggest that it should be selected only in the absence of a better alternative.

C. Model 1967: Government Order (Recommended Method)

A third way of applying the law to Judea, Samaria, and the Jordan Valley is the issuance of a government order, under the Regulation of Administration and Law Ordinance, that would determine the area to which the law, jurisdiction, and administration of the State of Israel would apply. We believe this is the best route to take. As shown above, this is the approach that the Knesset chose in 1967 when it established in law that it gives the government the power to apply Israeli law to any part of Mandatory Israel that was liberated in the war.

The repeated use of the Regulation of Administration and Law Ordinance also affirms Israel's consistent position held throughout the years that it legally holds sovereign rights in all areas of Mandatory Israel, hence its authority to apply its laws in those areas.

The greatest advantage of this route is the flexibility given the government in determining the exact timing of the process and its conditions. Another advantage of relying on the Regulation of Administration and Law Ordinance is that based on its provisions, Israeli law has already been applied to Jerusalem's eastern, northern, and southern sections for over half a century, and using the ordinance again would appropriately serve to further acknowledge its validity as well the efficacy of the order. The repeated use of the Regulation of Administration and Law Ordinance also affirms Israel's consistent position held throughout the years that it legally holds sovereign rights in all areas of Mandatory Israel, hence its authority to apply its laws in those areas.

Additionally, the issuance of a government order under the Regulation of

Administration and Law Ordinance will immediately apply a requisite series of transitional and continuity provisions because the issuance of the order triggers the application of the Regulation of Law and Administration Law [Consolidated Version], 1970, which provides for a series of adjustment provisions and transitional regulations as well as the authority to implement regulations on specific issues. Taking this route therefore obviates the need for special legislation, with the exception of some amendments and adjustments that would be required after the issuance of the order. Because the government is subject to the Knesset's supervision and scrutiny, Israel's elected parliament may at any time deprive the government of the authority given to it under paragraph 11B by repealing or modifying the clause.

In light of all this, it is clearly the best legislative method to apply Israeli law in the relevant areas of Judea, Samaria, and the Jordan Valley.

3. Adjustment Mechanisms, Transitional Arrangements, and Continuity Provisions

The application of Israeli law in Judea, Samaria, and the Jordan Valley is expected to significantly improve the daily lives of all residents of the area as well as the functioning and management capabilities of the governmental authorities. However, in order to prevent undesirable results - for the State of Israel and the area's population - it is important to offer solutions on a range of issues. For example, the abolition of the military administration will necessarily negate the current source of authority of existing systems and institutions, such as local government and planning mechanisms, thereby raising the possibility of creating a legal vacuum that may harm residents. Applying Israeli law also means applying the laws of entry into Israel, and this may affect the freedom of movement of the Palestinian population in Judea and Samaria. It may also affect property rights and will require the transfer of internal security responsibilities from the IDF to the police. There will be a need to find the right legal solutions for these and other issues that derive from the application of Israeli law.

Practical and legal solutions to all of these issues therefore already exist and are available for use.

Unlike the previous three times when an expansion of Israeli jurisdiction coincided with or followed the expansion of the state's borders, the application of Israeli law at this time is unique in the sense that it will be applied following more than fifty years of Israeli military rule within already extant borders. During this half century, countless legal arrangements, institutions, rights, obligations, and documents, which originated with Israeli authorities, have become entrenched in Judea and Samaria. In this respect, application of the law at this time is similar to its application to the Golan Heights in 1981 because a military government had

administered that region from 1967 until the law was applied. Even though in the case of the Golan, the military administration was for a relatively short period and hence the institutions and legal arrangements were less developed, the application of Israeli law to the Golan in 1981 bears resemblance to the application of Israeli law now to selected areas of Judea, Samaria, and the Jordan Valley. The Golan case is certainly less similar to the application of Israeli law to Jerusalem in 1967, when the transition from Jordanian rule to Israeli law took place almost immediately. Either way, the legal tools created at the time of applying the law in Jerusalem and the Golan Heights can also be used now, of course with the necessary adaptations and adjustments for Judea and Samaria. Practical and legal solutions to all of these issues therefore already exist and are available for use. The power to enact the desired regulations is held, for the most part, by the Government, after it issues the order to apply Israel law and, alternatively, may be acquired by the Government through specific Knesset legislation.

there is no intention of applying Israeli law to Palestinian population centers - not in Areas A and B, nor in Area C. Not many Palestinians will become Israeli residents.

Israeli law therefore can be applied immediately without making any practical or legal impact on the Israeli and Palestinian populations, or the proper functioning of the existing authorities. The application of Israeli law will not prejudice the rights of Palestinians living in Judea and Samaria - not those living in the territory to which the law applies, nor those living in territory that will remain under military government, nor the vast majority living in the autonomous areas of the Palestinian Authority. Palestinian residents residing in the area in which the law applies will immediately be granted residency status, similar to the Palestinian residents of East Jerusalem since the Six Day War and will be eligible for Israeli citizenship in accordance with the law and the Interior Ministry's procedures. It should be emphasized that there is no intention of applying Israeli law to Palestinian population centers - not in Areas A and B, nor in Area C. Not many Palestinians will become Israeli residents. Nonetheless, it is important that a census be conducted as soon as possible in the area to which Israeli law applies.

With regard to the freedom of movement in the areas of Judea and Samaria to which Israeli law will be applied, there is no reason why it cannot remain exactly as is, with the exception that all legal arrangements will be determined by the Minister of the Interior, and not the IDF. There is no need to create barriers or divisions between the areas to which Israeli law applies and other areas. It is important to remember that until the year 2000, there were no physical buffers along the "Green Line," not even checkpoints. Similarly, there is no need to create a physical buffer within Judea and Samaria, between an area where Israeli law applies and an area where Israeli law does not apply. Land ownership rights will not be compromised, and if necessary, the matter will be settled through legislation. Freedom of movement for the IDF will remain just as it is today, while the responsibility for security will be transferred gradually from the IDF to the Israeli police.

Chapter 3: The Application of Israeli Law Under International Law

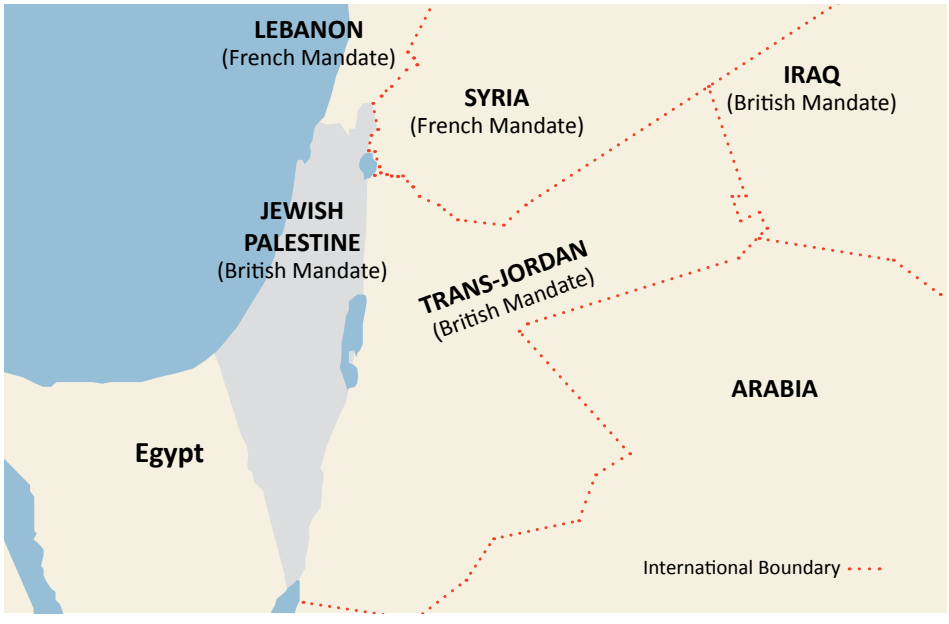
The question of the implications of international law for the application of Israeli law in Judea and Samaria consists of two separate sub-questions. One question is whether in terms of international law, there is a legal restriction on applying the law in Judea and Samaria. The second question is what are the expected implications of the application of the law. Meaning, how are the various players in the international arena likely to respond to the allegations (be they true, mistaken, or manipulative) regarding an Israeli violation of international law.

1. Israel's Status and Rights in Judea, Samaria, and the Jordan Valley under International Law

The historical, national, and religious rights of the Jewish people to the territories of the Land of Israel were clearly codified under international law many years prior to the establishment of the state. In April 1920, the victors of World War I entered into the San Remo agreement, pursuant to which Great Britain was given a mandate over the Land of Israel. The Mandates Article that the League of Nations (the predecessor to the UN) ratified in July 1922 established (Section b) that it was Great Britain's responsibility to ensure the establishment of a national home for the Jewish people in the territory of the Mandate in the Land of Israel and encourage dense Jewish settlement therein. As the introductory clauses demonstrate, that was the purpose of giving the Mandate to Great Britain. The area referenced by the Mandate Article included the Land of Israel to the west of the Jordan River and the Land of Israel to the east of it (currently, the Hashemite Kingdom of Jordan). Britain was given the option of deviating from implementing its obligation to establish the Jewish home solely with regard to those areas of the Land of Israel east of the Jordan River, but not those to the west of the river. Article 80 of the Charter of the United Nations left unchanged the validity of the rights of the Jews pursuant to the Mandate Article.

The UN General Assembly Resolution 181 (the Partition Plan) from November 1947 recommended the partitioning of the Land of Israel into a Jewish state and an Arab state. As discussed above in Chapter 2, even though the leadership of the

Final Area Designated for Establishment of a National Jewish Home - 1922



Jewish settlement in Israel agreed to the partition – on the condition that it be accepted by the other side – the Arabs of the Land of Israel rejected the resolution and launched violent attacks against the Jewish settlement and were joined by the Arab states whose goal was to destroy the Jewish state. Britain also refused to accept the partition resolution or to follow it, and the UN Security Council refrained from any action that would have given the resolution binding effect. Given the circumstances, the Partition Plan has no effect under international law, certainly not regarding borders. In this context, we must note that the Jewish settlement preceded Resolution 181, including in areas that were allocated to an Arab state, and the Jewish settlement also existed – until the War of Independence – in territories that the Transjordanian Arab Legion conquered during the course of the war.

The Arab Legion invaded the Western Land of Israel in 1948, and at the end of the war, remained an occupying force in Judea, Samaria, the Jordan Valley, and half of Jerusalem. The Jordanian conquest destroyed the entire Jewish settlement that existed in northern Jerusalem, the northern Dead Sea area, the mountains of Hebron, and in Jerusalem itself. However, the status of the Jordanian conquest was not based on any claim of legal right, and the Jordanian act of annexation – the application of Jordanian law – which occurred in 1950, was illegal and was also considered as such by almost all countries of the world (other than Britain, Iraq, and some claim Pakistan as well).

That being the case, according to the well-known international law doctrine regarding borders in the postcolonial age (*Uti Possidetis Juris*) – which establishes that the borders of a newly formed sovereign state are absolutely identical to those of the administrative entity that preceded it in that territory – the borders of Israel are those borders that it inherited from the British Mandate. In this context, it

should be noted that the 1949 Armistice Lines (the "Green Line") agreed to between Israel and Jordan at the end of the War of Independence were not established as permanent borders, and the parties expressly declared as much in the cease-fire agreements. As noted, the borders of the State of Israel were, as of the end of the War of Independence, significantly broader than those proposed by the Partition Plan, and Israeli law was applied, even during the course of the War of Independence, to all of the area that they demarcated.

During the Six Day War (1967), with the expulsion of the Jordanian army to the east bank of the Jordan River, all of those territories that had been under Jordanian occupation transferred to the State of Israel. From a legal standpoint, Israel took the above territories that did not belong to any other state entity but itself pursuant to international law. As we demonstrated in prior chapters, immediately after the war, the Knesset determined that the government had the authority to apply Israeli law and administration throughout the territories of the Land of Israel in which it maintained a temporary military regime. And indeed, the government immediately – by means of a governmental order – applied Israeli law to East, North, and South Jerusalem.

in terms of international law, the State of Israel's legal and sovereign rights apply to all areas of the Western Land of Israel and there is no legal limitation to the right of the Jewish people to settle in Judea, Samaria, and the Jordan Valley. As the state of the Jewish people, the State of Israel may apply its laws within these territories.

As a starting point, we must therefore assume that in terms of international law, the State of Israel's legal and sovereign rights apply to all areas of the Western Land of Israel and that there is no legal limitation to the right of the Jewish people to settle in Judea, Samaria, and the Jordan Valley. As the state of the Jewish people, the State of Israel may apply its laws within these territories.

2. The History of International Opposition, the Position of International Institutions, and the Position of the United States

Despite all of the above, since 1967, the nations of the world have objected to Israel's control over Judea, Samaria, the Jordan Valley, and Jerusalem, and Jewish settlement throughout these geographic regions. This opposition, as expressed in numerous UN General Assembly resolutions as well as a line of resolutions adopted by the UN Security Council (since the 1970's), is the result of intense action by the Arab League.

In a number of resolutions (that are legally nonbinding), the UN Security Council has declared that Judea, Samaria, and East Jerusalem are occupied territories, that Israel is obligated to administer them pursuant to the Fourth Geneva Convention,

and that Israeli settlement in Jerusalem outside of the Green Line, in the Jordan Valley, in Judea, and in Samaria, violates international law. The Security Council adopted the last resolution regarding the matter in 2016 (Resolution 2334) after the US government under the administration of Barack Obama, during the transition period after Donald Trump was elected, declined to use its veto power. Here we must emphasize that these resolutions have never possessed a legally binding character. Rather, they are solely declarative.

In 2004, the International Court of Justice ((ICJ), a UN body located in the Hague)) issued an advisory opinion that determined that the Fourth Geneva Convention applied to Israeli control of Judea and Samaria and further determined that Israeli settlement in these territories is unlawful. In its opinion, the Court expressly stipulated that it was refraining from making a determination on the question of sovereignty in that territory and did not address Israeli claims of right. Israel rejected this position, as decisions by Israel's High Court of Justice on the matter demonstrate.[12]

Under the administration of President Donald Trump, there has been an immense transformation in the United States' attitude toward settlement in Judea and Samaria.

In 1978, under President Jimmy Carter, the US Department of State adopted a memorandum (known as the "Hansell memo" after its author Herbert Hansell) that determined that settlement in Judea and Samaria is "inconsistent with international law." However, in the years that followed, the United States government refused to accept this interpretation of the law.[13] In 2016, after UN Security Council Resolution 2334 was adopted, then US Secretary of State, John Kerry, referenced the aforementioned memo in his declaration that Israeli settlement in Jerusalem and in Judea and Samaria is illegal.

Recently, however, under the administration of President Donald Trump, there has been an immense transformation in the United States' attitude toward settlement in Judea and Samaria. In May 2018, the United States Embassy was moved to Jerusalem, to an area that had partially been, up until 1967, outside of Israeli control. In November 2019, US Secretary of State Mike Pompeo made a public declaration establishing that the United States had changed its policy in relation to the legality of Israeli settlement in Judea and Samaria and held that "The establishment of Israeli civilian settlements in the West Bank is not per se inconsistent with international law."[14] In a letter that he later issued, he supported the position that "Israel has an unassailable legal right to establish settlements in the West Bank."[15]

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12 HCJ 7957/04 Mara'ba v. Prime Minister of Israel (September 15, 2005). We note that in July 2004, the US House of Representatives also adopted a resolution rejecting the ICJ's advisory opinion. www.govtrack.us/congress/bills/108/hres713/text/ih.

13 President Ronald Reagan for example clearly stated ''As to the West Bank, I believe the settlements there - I disagreed when the previous Administration referred to them as illegal - they're not illegal.'' Quoted in, STATE DEPARTMENT; ABOUT THE WEST BANK AND THE EMPEROR'S CLOTHES, New York Times, Bernard Gwertzman, Aug. 25, 1983.

14 For further reading on Israel's legal right to Judea, Samaria, and the Gaza Strip, see "The Pompeo Declaration," The Pompeo Declaration on the Legality of Jewish Settlement in Judea and Samaria, Jerusalem: Kohelet Policy Forum and the Shiloh Policy Forum, January 2020, p. 1. https://www.shiloh.org.il/publications.

15 "Secretary Pompeo's Response to Critics," *ibid., p.* 4.

Against this backdrop, the decisions of the International Criminal Court (ICC) at the Hague are particularly notable. Even though, throughout the years, the State of Israel was one of the states that initiated the establishment of the Court and promoted it, in the end it was forced to withdraw its signature from the Rome Treaty (signing leads to membership in the Court) after, under pressure from the Arab League, the Treaty adopted anti-Israeli articles, including one with the implication that the establishment of settlements in Judea and Samaria is a crime. We note that the United States also withdrew its signature from the Treaty. Oddly enough, even though Israel is not a party to the Rome Treaty and is not a member of the Court, and despite the fact that the Palestinian Authority is not supposed to have any status in the Court, the International Criminal Court's prosecutor recently made the determination that "Palestine" is a state that has signed the Rome convention and is a member of the Court and that "the Palestinian people" are the sovereign power in Judea, Samaria, and East Jerusalem.[16] The prosecutor further determined that the Court retains the right to investigate complaints submitted by "Palestine" regarding war crimes supposedly committed by the IDF in the "Occupied Palestinian Territories," including East Jerusalem, since June 13, 2014.[17] This decision is reflective of the Court's extreme and consistent anti-Israel bias. Thus, for example, the Court treats Israeli settlement in the Land of Israel and Israel's wars against those seeking its destruction as crimes that are more severe that those crimes that mass murderers and war criminals commit - actions that the Court refrains from dealing with. Given all of the above, it is clear that the State of Israel must act diligently in dealing with this Court (as the United States does): To prohibit by law the maintaining of any connection with the Court and its investigations, directly or indirectly, and to impose sanctions for any cooperation with such proceedings.

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It is no secret that among the nations of the world and entities in the international community, there is a prevailing position that applies a unique legal standard to Israel both regarding waging war as well as in regard to the administering of Judea and Samaria. This egregiously biased position is very likely to give rise to opposition to the implementation of Israeli law in Judea and Samaria and perhaps even to result in anti-Israel actions on the part of various entities in the international community. For this reason, Israel must strictly adhere to its positions and not cooperate with any anti-Israel initiatives. We must also remember that currently, pressure from anti-Israel and anti-Semitic entities has resulted in proceedings being commenced against the State of Israel and against members of its leadership on accusations of war crimes (including for construction in Jerusalem). This trend cannot be stopped by lowering one's head, but by standing firm. The State of Israel must strongly insist upon its legal and moral rights to its historical homeland.

16 The response to the Pretrial Chamber on the subject of the "Situation in the State of Palestine," April 30, 2020, ICC-01/18, paragraph 99. https://www.icc-cpi.int/CourtRecords/CR2020_01746.PDF.

17 June 13, 2014 is the date when the "State of Palestine" was inducted into the International Criminal Court at the Hague.

3. Israel's Legal Position in Relation to the Laws of "Occupation" in International Law

Many entities in the international community allege that Israel's status regarding its control over Judea, Samaria, and the Jordan Valley is that of a "temporary military occupier" and that therefore, it is subject to the restrictions established in the Fourth Geneva Convention. As we have noted, the State of Israel deems itself as having solid legal rights to Judea, Samaria, and the Jordan Valley and regardless, cannot be viewed as a "temporary occupier." However, even if after the Six Day War, it could have been considered an "occupier," the peace treaty it signed with Jordan in 1994 changed matters completely. According to international law, a peace treaty ends the application of the laws of war, including the laws of occupation, and therefore, it can no longer be claimed that there are legal restrictions on the State of Israel, either based on international law, the Fourth Geneva Convention, the 1907 Hague Convention, or any other customary source. While Israel has de facto taken upon itself to conduct itself in Judea and Samaria according to the humanitarian provisions set forth in the Fourth Geneva Convention, this does not impact their application de jure. Israel is therefore entitled to independently determine how to manage the territory. The laws of occupation under international law are thus irrelevant.

And indeed, as noted above, immediately after the Six Day War, the Knesset enacted an amendment to the Regulation of Administration and Law Ordinance (Section 11B), in which it empowered the government to apply Israeli law, jurisdiction, and administration to all of the territories of the Land of Israel. The next day, the government issued an order applying Israeli law to East Jerusalem, as well as to its north and south. With this act of legislation and by issuing the order, the State of Israel made it clear that from a legal standpoint, it does not deem itself as a temporary occupier without rights to the territories that the IDF captured during the Six Day War. To the contrary: In so doing, Israel announced to the world that it views itself as the sovereign over these territories, a sovereign that is entitled – as it chooses – to determine the nature of the law and administration that will apply to the territory that it possesses.

With this legislation, Israel announced to the world that it views itself as the sovereign over these territories, a sovereignty that is entitled – as it chooses – to determine the nature of the law and administration that will apply to the territory that it possesses.

As to the limitations imposed by international law on the application of Israeli law in Judea and Samaria, there simply is no prohibition under customary international law or in any convention to which Israel is a party to determining the scope of the territory over which the laws of the state will apply (in whole or in part). Every state may determine such scope independently, unless in so doing, it would harm the sovereignty of another sovereign state. Regarding the territories of Judea, Samaria, and the Jordan Valley, there is no state that can claim sovereignty over them other than Israel. As we know, a Palestinian state never existed in these

territories, and the Kingdom of Jordan - which held these territories as an occupier without rights from 1948 until 1967 - renounced all of its claims to the territories in 1988 and signed a peace treaty with Israel in 1994. The application of Israeli law thus does not violate the sovereignty of another state and therefore, does not in any way violate international law.

While it is true that in the interim agreements between Israel and the PLO (the "Oslo Accords"), Israel recognized the Palestinians' "right to self-determination," the substance of this right and its implications are quite nebulous and remain undefined under international law. Therefore, the conclusion that this right bars Israel from applying its laws in Judea and Samaria is an overreach and without precedent under international law. In addition, one must remember that the demands for self-determination by the Palestinians clash with the demands for self-determination by the Jews that had already been recognized, as previously noted, one hundred years ago and were officially anchored in international agreements, including Article 80 of the UN Charter.

There simply is no prohibition under customary international law or in any convention to which Israel is a party to determining the scope of the territory over which the laws of the state will apply (in whole or in part). Every state may determine such scope independently, unless in so doing, it would harm the sovereignty of another sovereign state.

Nothing was stipulated in the Oslo Accords that derogates from Israel's sovereign rights over these territories. In fact, it was expressly established that the two parties reserve all of their rights. Similarly, these accords do not contain any clause prohibiting the application of civilian Israeli law in the territories of Judea, Samaria, and the Jordan Valley. Rather, there is only a prohibition against changing their status until the completion of negotiations over final agreements (Chapter 5, Section XXXI[7] of the Accords). An Israeli determination regarding the nature of the law that applies to these areas does not necessitate a change in its status therein. Israel would be merely maintaining its long-held sovereignty – both de facto and de jure. As to the corresponding party, the Palestinian Authority has violated this clause of the accords on many occasions. Thus, it seems that it can no longer be claimed that Israel is bound by it. The Palestinian Authority declared itself to be a state and sought recognition by international institutions. It submitted complaints to the International Criminal Court at the Hague. It declared that as far as it was concerned, the interim accords are null and void and gave notice that it does not view itself as being bound by the division of the territory into Areas A, B, and C. Legally, it is highly questionable as to whether the Oslo Accords remain valid given the egregious violations of these accords by the Palestinians and their open declarations of their nullity.

Frequently Asked Questions

1. What in fact is sovereignty and why is it important?

"Sovereignty" is a term that has various meanings under the law. With regard to applying Israeli law, sovereignty means full control (Israel has - since 1948 - territorial sovereignty in the sense of a supreme legal right). Since the Six Day War, the Arabs of Judea and Samaria have claimed the right to control the area and argued that Israel has no right to it, while we hesitate and stutter, despite the fact that history, the law, and moral justice are on our side. On the one hand, we claim that we have rights to Judea and Samaria and rebuild our communities there, and on the other hand, we manage these territories by means of a temporary military regime. This indecision is what enabled the Palestinians to wage a dishonest smear campaign that presents us as occupiers of land that does not belong to us. In order to put an end to this delegitimization campaign and divest ourselves of the allegation of being foreign invaders, we must speak in a united voice and back our justified claims of sovereignty over Judea and Samaria with concrete legal action as well.

2. What is so important about implementing Israeli law in portions of Judea and Samaria? After all, Israel already controls them.

Immediately after the Six Day War, the State of Israel announced that it was leaving existing law in place in Judea and Samaria – meaning the Jordanian, British, and even Ottoman law that had been in place there. Only in East Jerusalem did the government apply Israeli law and turn it into an integral part of the State of Israel as a whole. In so doing, Israel signaled that the remainder of the territory is open to negotiation. As time passed, the lamentable perception took hold around the world that Israel is a temporary occupier without rights to the territory, and therefore, it must be pressured to withdraw.

The State of Israel controls Area C, but without implementing its laws in these areas, it signals to the world that this control is temporary. In so doing, Israel reinforces the false Palestinian narrative that Israel is a temporary occupier without rights to the land and draws upon itself international pressure to withdraw from it.

Implementation of Israeli law in these territories will establish a new reality in which the State of Israel is the sovereign power in these territories from both a legal as well as a practical standpoint. In so doing, Israel will remove the question mark floating above Jewish settlements in Judea and Samaria. Application of Israeli law to Jewish settlements and turning them into an integral part of the State of Israel will enable construction just like in other parts of Israel and will include these areas in national planning programs for infrastructure, transportation, health, industry, and the like. The entire area will benefit from a boom in construction and economic development.

An additional benefit to applying Israeli law to broad portions of Judea

and Samaria is that in so doing, we will significantly reduce the risk of the establishment of a dangerous Palestinian state in Judea and Samaria.

After the US government under President Donald Trump recognized the legality of Jewish settlement in Judea and Samaria and expressed its willingness in the international arena to support Israel's application of its laws to extensive portions of Judea and Samaria, an historical window of opportunity has opened. This is a conceptual reversal in which the US government has declared that the starting point is that Israel has the historical, religious, moral, and legal right to the entire Land of Israel. It is hard to overstate the importance of this change, and therefore, we must not let it pass us by.

Of course, we must be vigilant not to lose the benefits of this opportunity through its costs. We will address this in the following questions and answers.

3. Why is it not true that Judea and Samaria are "occupied territories"?

Pursuant to international law, "occupied territory" is the territory of another state that has been occupied in war and held without the consent of its lawful sovereign. This definition does not fit the case of Judea and Samaria. There are a couple of reasons for this:

A. The areas of Judea and Samaria were never under sovereign control of another state, other than the State of Israel. The Kingdom of Jordan, which invaded these territories illegally in 1948, attempted to annex them in 1950, without any claim of right. However, nearly all of the nations of the world (other than Britain, Iraq, and possibly Pakistan) rejected the Jordanian land-grab.

B. The well-known international law doctrine regarding borders in the postcolonial age *Uti Possidetis Juris* stipulates that the borders of a newly formed sovereign state are completely identical to those of the administrative entity that preceded it in that territory. In our case, the administrative authority that preceded the State of Israel was the British Mandate, and therefore, the State of Israel has full legal sovereignty over all of Judea, Samaria, the Jordan Valley, and East Jerusalem since its Declaration of Independence in 1948.

C. Even if it were possible to view Israel as a kind of "occupier" after the Six Day War, following the signing of the peace treaty with Jordan in 1994 – that led to the end of the state of war between these two countries –that view is now untenable. Under international law, after a peace agreement, there is no longer an "occupation."

D. Under international law, the Jewish people have the legal right to Judea and Samaria. This right was established in the Mandate Article that was confirmed by 51 states in the League of Nations (in 1922) and ratified by the UN Charter. To this day, the article in the UN Charter addressing the rights of the Jewish people has not been modified, and no country has objected to it.

4. Is the extension of sovereignty over Judea and Samaria coordinated with the US government?

Yes. According to the "Deal of the Century" proposed by President Donald Trump, the State of Israel is entitled to extend its sovereignty – immediately – over the Jordan Valley and extensive portions of Judea and Samaria. In November 2019, US Secretary of State Mike Pompeo declared that Jewish settlement in these areas is legal under international law.

5. Does this mean the annexation of all of the Palestinian Arabs living in Judea and Samaria and turning them into Israeli citizens?

Of course not. In 1995, in the framework of the Second Oslo Accords (Oslo II), the territories of Judea and Samaria were divided into three categories: Areas A and B (approximately 40% of all of Judea and Samaria), in which the Palestinian Authority has full civil and limited security authority, and Area C (approximately 60% of the total territory), which includes all Israeli settlements, industrial zones, military bases, and training grounds. The vast majority of the Arabs in Judea and Samaria live in Areas A and B, and only a minority lives in Area C. Those areas over which Israeli law will apply are located entirely within Area C, and according to the plan, the law will not be applied to areas with concentrations of Arab populations.

6. Does the application of Israeli law mean managing the lives of Palestinians?

Absolutely not. Since the execution of the Oslo Accords, the Palestinian Authority is the entity in charge – from a civilian standpoint – of the Arabs of Judea and Samaria living in Areas A and B, and it manages their daily lives. This arrangement will not change that in any way. Israeli law will only apply to Area C, which even now is under complete Israeli control, and to areas where there is very limited Arab population.

7. Why do groups of former members of the security establishment and other "security experts" warn against the security risk of annexing millions of Arabs into the State?

This is simply wrong. These former senior officials express a position that is more political than security related, and the title, "commander," or "expert,"

does not give them any advantage – not politically, nor in any other area in which they have no expertise. It is worth emphasizing that there are many security experts that hold a well-reasoned opposing view. Similarly, one must remember that the assessments by these former security officials who presented themselves as security "experts" regarding previous political actions were frequently found to be fundamentally wrong, as was the case with the withdrawal from the Gaza Strip. As to the annexation of the Arabs of Judea and Samaria into Israel – as noted above, in those areas where Israel plans to apply Israeli law, there are very few resident Arabs.

8. Does the application of Israeli law also reflect a security need?

Absolutely. The Jordan Valley is an essential geographical defensive line for the State of Israel – the "Israeli Security Belt" as defined under the Rabin administration. Almost all security personnel since 1967 have recognized this fact, and it has held a central place in the security outlook of the heads of the Labor Party from Levi Eshkol through Yitzhak Rabin (see the Alon Plan, for example). It should be noted that the map that appears in the Trump plan is expressly based on the security vision that Rabin presented in 1995.

This applies to the hills of Judea and Samaria, which control the Jordan Valley, and that serve as a necessary natural barrier against invasion by Arab military forces from the east and a necessary point of control over the densely populated center of Israel. Any reasonable person understands that giving these up and situating the border half a kilometer from Kfar Saba will place our country in constant danger and will put an impossible burden of responsibility on the IDF. Applying Israeli law to the Jordan Valley, from north to south, will cement the Jordan River as a border that is no longer in question. The broad significance of this step will establish that Israel's security is not subject to negotiation. Regarding domestic security and dealing with Palestinian terror as well, the maneuverability of a sovereign state vis-a-vis terror groups is far greater than that available to Israel currently, where every security or settlement action is subject to sharp and constant international criticism.

9. So the application of Israeli law to Judea and Samaria is a very important step, but if the price is a Palestinian state, then I'll forego the application of Israeli law.

The application of Israeli law to Judea and Samaria is indeed tied to the process outlined in President Donald Trump's "Deal of the Century." However, Israel is not currently required to consent to a Palestinian state, but rather only to accept the "outline" in the "Deal of the Century" and agree to commence

negotiation on the basis of that plan. Israel can expressly emphasize, together with its consent [to the outline], that it opposes a Palestinian state.

According to the "Deal of the Century," as a condition for the establishment of a Palestinian state, the Palestinians must disarm Hamas (including in the Gaza Strip), recognize the State of Israel as the national Jewish homeland with united Jerusalem as its capital, remove anti-Israeli components from its school curricula, and stop "pay for slay" payments to terrorists and their families. The "Deal of the Century" predicates the establishment of a Palestinian state on a series of additional conditions, including that security control over land, sea, and air, throughout the area between the Jordan River and the Mediterranean, remain in Israel's hands. Judging from history, these conditions immeasurably decrease the likelihood that the Palestinian leadership will enter negotiations over the establishment of a state.

To summarize, the application of Israeli law in Judea and Samaria not only does not require consenting to a Palestinian state, but it also significantly reduces the danger that such a state will ever be established.

10. The "Deal of the Century" is exactly like Oslo, Camp David, and the Roadmap. Its purpose is to establish a Palestinian state in Judea and Samaria.

That's not true. Contrary to all previous plans, the "Deal of the Century" does not make the establishment of a Palestinian state the goal of the process, but rather a possible option – if the Palestinians meet a long line of requirements that, as noted above, are conditions for such a state.

The "Deal of the Century" is the first plan since the Six Day War to recognize the Jewish people's legal and historical right to Judea and Samaria and enables Israel to apply full sovereignty over half of Area C, including all Jewish settlements in Judea and Samaria, immediately.

Contrary to all prior plans in which Israel was required to hand over territories and national assets in exchange for mere words – this time, the situation has been reversed. For the first time since Oslo, the State of Israel has an opportunity to practicably and immediately improve its status on the ground in exchange for verbal commitments, while the Palestinian side is the one that is required to take action in meeting a long line of concrete demands.

11. But if there is a less friendly president in a few months, all of these conditions will be forgotten, and only Israel's consent to a Palestinian state – from a right-wing government no less – will be remembered. Do we not disadvantage ourselves by doing this?

First, as we have noted, the government of Israel is entitled to voice its objection to a Palestinian state.

The installation of a new president in the White House might result in a withdrawal from the agreements between Israel and the United States, and we must therefore act now in order to mitigate that risk. Thus, for example, it is very important that Israel sign a memorandum of understanding with the United States that will add immutability to the United States' commitment that a Palestinian state will not be established as long as all of the conditions for its establishment have not been met. Such a memorandum of understanding will make it very difficult for a future government less favorable to Israel to change its policies.

It is impossible to completely tie the hands of a future American government. However, there is no doubt that if a less friendly administration is elected in the United States, it is better for Israel that it occurs after Israel has already applied its laws to substantial areas of Judea, Samaria, and the Jordan Valley. A situation in which the plan is on the table, but the State of Israel has still not applied Israeli law to those portions that the "Deal of the Century" allows, will be far worse if and when a less favorable US administration is in power.

12. The "Deal of the Century" sets aside 50% of Area C for a future Palestinian state and requires a construction freeze on this area for the entire period of negotiations. How long will this period last?

The amount of time allocated to the Palestinians is still open to negotiation, but according to the Prime Minister, the understanding is that it is four years. It is very important to take action in order to ensure that this period of time will be as short as possible, that no restriction be imposed on Israel in Area C as long as the Palestinians do not fulfill all of the conditions placed on them, and that at the end of this period of time, if the Palestinians have not met the conditions, these restrictions will be lifted and Israel shall be entitled to apply Israeli law on the remainder of Area C as well.

Because these items do not expressly appear in the plan, it is important to include them as well in the memorandum of understanding between Israel and the United States.

In this context, we should remember that the areas that the "Deal of the Century" seeks to retain as a "deposit" for a future Palestinian state currently

have no Jewish settlement, and as of today, there is no Israeli plan on the table seeking to start construction there such that there is no practical significance to an Israeli building freeze.

13. Is it really possible to build settlements without limitation? After all, Israeli law applies to East Jerusalem, and there is still a building freeze on part of it.

In those areas where Israeli law will be applied, Israel will be able to develop and build more easily, with far fewer legal and diplomatic obstacles. For the sake of comparison, in Jerusalem neighborhoods over the Green Line, there are currently more than 320,000 Jews living there (of which approximately 20,000 are in Har Homa, 20,000 in Ramat Shlomo, 30,000 in Gilo, and 45,000 in Pisgat Ze'ev). It is true that there are still difficulties, but the construction surge in these places is a good illustration of the difference between an area controlled by Israeli law and an area subject to a temporary military regime whose future is indeterminate.

With regard to those portions of Area C that do not contain Jewish settlement and where Israeli law will not apply (at this stage), as we noted in the previous response, to this day, we have not built there, and as of now, there is no Israeli plan to do so. Thus, there is no practical significance to a "construction freeze" in these areas. Furthermore, contrary to all of the previous plans that imposed prohibitions on construction only on Israelis, the "Deal of the Century" also prohibits the Palestinians from building in those same portions of Area C and invites the State of Israel to enforce this freeze on them as well. We must hope and insist that the government ensures this and takes strict action to prevent an organized Palestinian takeover of these areas. The United States' backing for this is substantial.

Furthermore, the "Deal of the Century" significantly improves the status of Jewish settlement relative to its current condition. As of today, there is a kind of de facto freeze in effect over all of Area C, including in Jewish settlement areas, and construction permits are issued only sparingly. As noted above, applying Israeli law will make the entirety of Jewish settlement and extensive portions of Judea and Samaria a part of the State of Israel and is expected to result in a surge in planning, construction, and development.

14. The map that is on the table in the framework of the "Deal of the Century" leaves nearly 20 Israeli towns "swallowed up" outside of the "sovereignty area," places a construction freeze on them, and prohibits them from expanding outside their current developed area.

As of now, only a conceptual map has been published. The official map is still in negotiation, and it is absolutely critical that Israel continues to insist that there not be any construction freeze in towns where Israeli law will apply. It is also vital that Israel properly define the "borders" of this developed territory.

In addition to this, we must remember a few facts:

A. As of now, almost all towns – including cities, such as Ma'ale Edumim and Ariel – are in the best of cases "swallowed up" by a future Palestinian state that is supposed to be established according to the plans currently on the table (Oslo, Camp David, Geneva, the Roadmap, Annapolis, the Kerry Plan – some of which are plans that past Israeli governments officially accepted), and a majority of these towns may end up being vacated if these plans are implemented. The "Deal of the Century" leaves only 20 of these towns in a "swallowed up" status and does not threaten the vacating of any town, not even the most remote. We must continue to insist on the widening of the roads leading to these towns and increase the area surrounding them for inclusion in the areas where Israeli law will be applied, but it is imperative that we keep our facts straight.

B. The construction freeze claim is inaccurate. Thanks to the fact that these towns will become part of the State of Israel, they will be able to build much more freely. The only thing they will not be able to do is expand the borders of the town (as opposed to developed land) beyond the area where Israeli law applies. We must remember that currently, most of them hardly benefit from construction permits at all hence the application of Israeli law represents a significant improvement.

C. [Furthermore] The claim that these towns will be "swallowed up" assumes that a Palestinian state will be established. However, as we will recall, the "Deal of the Century" requires the Palestinians to carry out a number of actions - which there is no chance they will actually perform - as a condition to the establishment of a Palestinian state. It is possible that after Israeli law is applied to these areas, Palestinian refusal to enter negotiations with Israel will increase, which will further decrease the likelihood of such a scenario materializing.

15. According to the "Deal of the Century," there will be a "disconnection of sovereignty" on key roads in Judea and Samaria, including central parts of Highway 60. How will we travel on them the "day after"?

Currently, all of the highways in Judea and Samaria, including Highway 60, are outside of the area where the laws of the State of Israel apply. This does not interfere with free travel on them.

The only change that will take place following the implementation of the "Deal of the Century" is a change for the better. If we succeed in applying Israeli law over these areas, a portion of the highways in Judea and Samaria will become part of the State of Israel, and it will be possible to expand and improve them with far greater ease. In those areas outside of the "sovereign borders," the situation will remain as it is today: The highways will be under full Israeli authority, and free travel under Israeli security will remain constant.

This will only change if a Palestinian state is established after fulfillment of the conditions required of the Palestinians as set forth above. If we do not apply Israeli law to the areas being offered to us, not only will these highways remain outside of the territories of the State of Israel, but a significant portion of Jewish towns will as well.

16. Will this course of action result in a breakdown of security cooperation with the Palestinian Authority?

Perhaps. The threat of a breakdown in cooperation, expressed or implied, has been made repeatedly, but never took on practical expression. Cooperation on matters of security between Israel and the Palestinian Authority is far more critical to Abu Mazen and his cohorts than it is to the State of Israel. As a rule, cooperation on matters of security has only existed continually since Hamas seized control of the Gaza Strip in 2007, meaning, after the leadership of the Palestinian Authority understood that cooperation with Israel is in its interests. Either way, reliance on the Palestinian Authority in order to ensure the security of the citizens of Israel amounts to reliance on a faulty railing that we can live without.

17. How will the application of Israeli law impact Israel's strategic position in the entire region?

The collaboration between Israel and the Arab states, such as Egypt and Saudi Arabia, is deeper and broader than it has ever been. Throughout the world – and in the Middle East in particular – business is only done with the strong

and the successful. Thus, strengthening diplomatic, economic, and security ties between the State of Israel and other countries is predicated on mutual interests, and not concessions. A clear example of this is the Iranian threat. The countries in the region, primarily Saudi Arabia, recognize our military, economic, and diplomatic strengths, and therefore, it is in their interest to collaborate with us in the struggle against Iran. The Prime Minister's close relationship with the President of the United States is far more important in their view than the Palestinian issue. A "Strong Israel" – from a military, economic, social, and diplomatic standpoint – is our true asset, and the process of applying sovereignty over parts of Area C will further fortify it. It is entirely possible that this process will be accompanied by background noise – as was the case for example after President Trump announced the transfer of the American embassy to Jerusalem or after he recognized our sovereignty over the Golan Heights. However, in practice, Israel's strategic position is expected to be strengthened.

18. Is the extension of sovereignty over these areas likely to damage the peace treaty with Jordan?

There is no way to know for certain, but such an eventuality is not particularly likely. The King of Jordan must publicly protest the extension of sovereignty because more than half of the residents of Jordan are Palestinian (most of whom, incidentally, moved to Jordan during the course of the Jordanian occupation of Judea and Samaria between 1948-1967), and he fears an uprising. The King's duty to object, and his desire to avoid provoking his subjects, is further reinforced by the continuing erosion of his status and the popular protests that have been going on against him for a long period of time as a result of the harsh economic conditions in the county (which has greatly worsened in light of the coronavirus pandemic). We heard similar threats from the Kingdom of Jordan after President Trump announced the transfer of the US Embassy to Jerusalem and his recognition of Jerusalem as the capital of the State of Israel. In fact, none of these threats has materialized. The Kingdom of Jordan is also dependent – on an existential level – on economic and security assistance from the United States, Israel's water sources, and cooperation with Israel on security matters. Furthermore, the Jordanian leadership knows that application of Israeli law to the Jordan Valley will facilitate accelerated economic development in the entire region – something that Jordan desires – and therefore, it is difficult to picture a situation in which it would throw out the baby with the bathwater.

19. What about the international arena? Will we not face sanctions and condemnation?

It is reasonable to assume that there will be international condemnation of this course of action, just as there was condemnation when the Israeli government unified Jerusalem, applied Israeli law to the Golan Heights, or attacked the nuclear reactor in Iraq. It is the nature of the world – and the world of international relations in particular – that over time, condemnations fade and the world accepts the facts on the ground, provided that the action is taken decisively. Furthermore, the authority to impose sanctions is in the hands of the Security Council, where the United States has veto power, and because extending sovereignty is coordinated with the United States, to the extent certain countries attempt to harm Israel by applying sanctions, an American veto is guaranteed. The State of Israel is currently an economic and scientific power and a stabilizing force in a turbulent region. Countries will not rush to harm it, particularly when the United States stands alongside it.

20. Is there urgency to this process? Why in fact apply Israeli law now?

In this booklet, we have set forth several reasons why it is necessary to apply Israeli law as soon as possible. Currently, we have a historical opportunity to do so. It is doubtful whether such a golden opportunity will ever repeat itself. There was never an administration in Washington that was as pro-Israel as the Trump Administration. Although nearly every President of the United States has promised to transfer the US Embassy to Jerusalem, only Trump delivered on his promise and recognized Jerusalem as the capital of the State of Israel. President Trump also recognized Israeli sovereignty over the Golan Heights, withdrew from the shameful Iran nuclear deal, stopped funding UNRWA, shut down the PLO offices in Washington, stopped the flow of funds to the Palestinian Authority (as long as it continues to pay terrorists and their families), clearly and unequivocally recognized the legality of Jewish settlement in Judea and Samaria, and does not demand that Israel vacate any settlement. This coming November, President Trump will end his first term, and no one knows if he will succeed in being reelected. Hence, the urgency. We have a historic opportunity before us: The opportunity to fully return to our homeland, where our national, spiritual, and religious character was molded, and from where we were exiled two thousand years ago. This window of opportunity will soon close. If we fail to take advantage of it, it will be a source of unending regret.

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The Shiloh Policy Forum is a research and policy institute established by the Kohelet Policy Forum, which aims to strengthen, develop, and expand Jewish settlement in all parts of the country.