ACPR POLICY PAPER NO. 77

A PETITION TO ANNUL THE INTERIM AGREEMENT

Howard Grief[1]

Executive Summary

It was beyond belief: those directing the affairs of the Government of Israel one day lost their senses.[2]* They decided voluntarily, secretly and anti-democratically to make an agreement with an illegal, criminal organization representing a fictitious nation, non-existent in anyone's imagination prior to this century. They ceded parts of the heritage of every Jew living in the Land of Israel as well as those outside the country who identify with the aims of Zionism. Before Israel's envoys actually met with PLO members on a regular basis under the auspices of the Government of Norway, such developments were beyond the scope of imagination. The heritage ceded relates to Judea, Samaria and Gaza, where the kingdoms of Judah and Israel once thrived and which had always been considered core, inalienable parts of the Land of Israel, belonging to the Jewish People, exclusively and eternally. Yet, the Government of Israel and its top leaders, acting illegally and unconstitutionally, agreed to forfeit this precious Jewish heritage. They did so when they signed the Declaration of Principles at Oslo on August 20, 1993, re-signed it at Washington on September 13, 1993, and then hastily concluded the terrible Interim Agreement signed at Washington on September 28, 1995.

In light of the gross illegal nature of the Israel-PLO Agreements, it was natural for Israeli citizens to seek redress in the Supreme Court of Israel by submitting a Petition to its august judges for a ruling on the legality of what was done in their name by their Government. To make it easier for the Court to adjudicate such a portentous matter, viz., that of the alleged illegality of the Interim Agreement, the Petition was carefully drafted and arranged to make the Court see clearly, without any blinkers or hesitation, the violations which the Government of Israel committed under both constitutional and criminal law, the laws of the State which the Court is bound to enforce. This was also done to prevent the Court from evading its judicial duty to discuss on the merits the alleged violations of the laws cited in the Petition. The Petition presents no less than fourteen breaches of legislative enactments and principles of law which are found in the Interim Agreement. The Petition focuses attention most of all on three primary constitutional violations concerning Section 11B of the Law and Administration Ordinance, Section 1 of the Area of Jurisdiction and Powers Ordinance and the Law of Return, all of which absolutely prohibit in their converse sense the voluntary cession of any part of the Land of Israel in the possession of the State, apart from minor boundary adjustments. "Possession" here means under Israel's *de facto* sovereignty in conformity with the inherent meaning of these three laws, which assume that the People of Israel are and always have been the *de jure* sovereign over all parts of the Land of Israel since the time of the Patriarchal Covenants. Moreover, these constitutional laws are buttressed by criminal sanctions, rendering the Government of Israel – including all of its cabinet ministers and officials, both past and present, who initiated, participated in or endorsed the idea of giving up Israel's territorial possessions to the PLO – liable for prosecution under the relevant provisions of the Penal Code of

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[1] **Howard Grief** served as a legal advisor to Professor Yuval Ne'eman at the Ministry of Energy and Infrastructure in matters of international law pertaining to the Land of Israel and Jewish rights thereto. He was the first person to point out the illegality of the Israeli-PLO Agreements under Israeli law and their non-applicability under international law. Several feature articles of his have appeared in the pages of ***Nativ***. He is now a Jerusalem-based attorney and notary, as well as a specialist in Israeli constitutional law. © ACPR Publishers – January 1999

[2] "A government that has lost its senses," are the exact words used by Prime Minister Netanyahu, then Leader of the Opposition, in his published statement reacting to the Mutual Recognition Agreement between Israel and the PLO (see **Yediot Aharonot**, September 10, 1993, page 4).

Israel with regard to treason. The Petition also clarifies the Rule of Law as it applies to the Interim Agreement and the three separate branches of Government. In this respect, the Knesset has no right to validate an illegal agreement by passing laws which are contrary to the norms of the Jewish State, one of which is the prohibition of territorial withdrawal from the Land of Israel.

The Petition stands on its own as an historical document by providing the substantive grounds under Israeli constitutional and criminal law for the illegality of the Interim Agreement and all other Israel-PLO agreements. The straightforward, convincing logic of the Petition was not enough to overcome the fearful reluctance of the Supreme Court to deal with the legal arguments contained in the Petition. Instead, the Court extricated itself from having to decide the legal issues on the merits by the expedient of calling the Petition "a political position", thus automatically placing it outside its purview. However, any serious reading and study of the Petition will show that the exact opposite is the case. Another conclusion is that the Court itself, including its President, Justice Aharon Barak, to whom an application was made for a Further Hearing, ignominiously violated the law of Israel by deliberately refusing to adjudicate apparent violations of State laws duly brought to their attention for adjudication■

Supreme Court of Israel,
HC 3414/96 Jerusalem, sitting as the
High Court of Justice

Petitioners:

1 Professor Hillel Weiss, Elkana;

2 Moshe Shamir, Author, Tel Aviv;

3 Ephraim Ben Haim, Farmer, Former Ambassador, Givat Haim Meuhad;

4 Professor Israel Hanukoglu, Rishon LeZion;

5 Professor Yair Parag, Maccabim;

6 Professor Tsvi Ophir, Jerusalem;

7 Professor Shaul Gutman, MK, Kiryat Motzkin;

8 Professor Arieh Zaritsky, Beer Sheva;

All of the foregoing represented by:
Attorney Howard Grief of 13/2 David Goitein Street,
Pisgat Ze'ev Mizrah, Jerusalem 97782;
Telephone: 02-6560085,
and/or Attorney David Heimowitz,
117 Weizmann Street, Kfar Sava 44225;
Home Telephone: 09-7673842,
Office Telephone: 03-5601994,
Fax Number: 03-5605356

Versus

Respondents

1 The Government of Israel, represented by the Attorney General of the Government of Israel, Ministry of Justice, Salah-a-din Street 29, Jerusalem 91010;

2 The Attorney General of the Government of Israel, Ministry of Justice, Salah-a-din Street 29, Jerusalem 91010;

3 Knesset of Israel, represented by the Legal Adviser of the Knesset of Israel, Knesset Building, Jerusalem (Formal Respondent);

5 Israel Lands Administration, represented by the Director of Administration, Jerusalem (Formal Respondent).

PETITION FOR THE ISSUANCE OF AN ORDER NISI

The Petitioners request this Honorable Court to issue an order nisi against the Respondents to appear before it on the date it prescribes to show cause why it should not issue the following orders and declaratory judgments:

1) A specific order to the Attorney General of the Government of Israel to advise and instruct the Government of Israel as well as a direct order to the Government of Israel itself to cease forthwith all of the violations of Laws and principles of law which it is committing or evinces a resolve to commit, in particular in regard to the following provisions of constitutional law, criminal law and public law, namely:

   1 Section 11B of the Law and Administration Ordinance of 1948, as amended on June 28, 1967;

   2 Section 8A(a) of the Municipalities Ordinance of 1964, as amended on June 28,1967;

   3 Basic Law: Jerusalem, Capital of Israel, 5740- 1980; the Law and Administration Order (Number 1) of June 28,1967 and the Jerusalem Proclamation (Extension of Municipal Boundaries) of June 28, 1967;

   4 Sections 1 and 4 of the Protection of Holy Places Law of June 28, 1967;

   5 Section 1 of the Area of Jurisdiction and Powers Ordinance of September 22, 1948;

   6 Proclamation Number 1 of the Israel Defense Forces Government in the Land of Israel, dated September 2, 1948 (hereinafter the Land of Israel Proclamation);

   7 Section 1 of the Basic Law: Israel Lands, 5720-1960;

   8 Section 5(b) of the State Property Law, 5711-1951;

   9 Section 1 of the Law of Return, 5710-1950;

   10 Sections 1, 2(a), 2(b)(4), 6(e), 8(b) and 14(c) of the Nationality Law, 5712-1952;

   11 The supreme value of the State of Israel as a Jewish State, a principle of law affirmed in several Knesset laws and the Proclamation of Independence;

   12 Sections 97, 99 and 100 of the Penal Law, 5737-1977;

   13 The Antiquities Law, 5738-1978;

   14 The value of the State of Israel as a democratic state governed by the Rule of Law, a principle of law affirmed in several Knesset Laws and the Proclamation of Independence and established in the case-law.

And in the event such violations continue to occur, to order, within a specified delay, the dismissal of the present Government and/or such other remedies as may be appropriate;

2) A specific order to the Attorney General of the Government of Israel to advise and instruct the Government of Israel as well as a direct order to the Government of Israel itself to cease and refrain from any further implementation of the "Israeli-Palestinian Interim Agreement on the "West Bank" and the Gaza Strip" (hereinafter the Interim Agreement) and in particular not to make any further transfer of authority, specifically of powers and responsibilities to the "Palestinian Council" in civil and criminal affairs because these fields of jurisdiction come within the constitutional legislative authority of the Knesset of Israel under section 11B of the Law and Administration Ordinance of 1948, as amended in 1967, which the Government of Israel has violated;

3) A specific order to the Attorney General of the Government of Israel to advise and instruct the Government of Israel as well as a direct order to the Government of Israel itself not to carry out any further redeployments from Judea, Samaria and Gaza nor to cede or surrender any more territories of the Land of Israel to the "Palestinian Council" which is contrary to the supreme value of the State of

Israel as a Jewish State, as defined by Jewish religious law, Jewish history and Zionism, as well as being contrary to all of the constitutional and penal legislation specifically enumerated in paragraph (1) above;

4) A specific order to the Attorney General of the Government of Israel to advise and instruct the Government of Israel as well as a direct order to the Government of Israel itself not to conduct "permanent status negotiations" with the "Palestinian Council" on the specific issues of Jerusalem, settlements and borders, as well as on all the other issues, since this is contrary to the Basic Law: Jerusalem, Capital of Israel, Law and Administration Order (Number 1) of June 28, 1967, and the Jerusalem Proclamation (Extension of Municipal Boundaries) of June 28, 1967, the Protection of Holy Places Law, the Law of Return, the Nationality Law, the supreme value of Israel as a Jewish State, as defined by Jewish religious law, Jewish history and Zionism and sections 97, 99 and 100 of the Penal Law;

5) A specific order to the Attorney General of the Government of Israel to advise and instruct the Government of Israel as well as a direct order to the Government of Israel itself to apply the law of the State of Israel, instead of international law, to all parts of the Land of Israel, in Judea, Samaria and Gaza, still remaining under the de facto military sovereignty of the State, which have not yet been ceded or surrendered to the "Palestinian Council", under the Interim Agreement; such orders to both the Attorney-General of the Government of Israel and the Government of Israel should be in accordance with section 1 of the Area of Jurisdiction and Powers Ordinance, which was not applied as constitutionally required during the time of the Six-Day War, when IDF commanders, acting as surrogates of the Minister of Defense, issued proclamations announcing the assumption of power of the IDF and the establishment of military government, based on the principles of international law, instead of introducing the law of the State, in the regions of Judea, Samaria and Gaza, on June 6, June 7 and June 8, 1967;

6) A specific order to the Attorney General of the Government of Israel to advise and instruct the Government of Israel as well as a direct order to the Government of Israel itself to prohibit any further transfer of religious and archaeological sites in Judea, Samaria and Gaza to the "Palestinian Council" and also to prohibit the transfer of archaeological records and artifacts found in the Land of Israel since 1967, the whole being contrary to the Protection of Holy Places Law, the Law of Antiquities and sections 97, 99 and 100 of the Penal Law;

7) A declaratory judgment that it is illegal and unconstitutional for the Knesset to pass legislation to implement the Interim Agreement, since that is a violation of the central value of the State of Israel as a democratic state, governed by the Rule of Law, in light of the numerous violations of existing constitutional, public and criminal laws, detailed in this Petition, as well as being a violation of the supreme value of the State of Israel as a Jewish State;

8) A declaratory judgment that the "Palestine Liberation Organization", commonly referred to as the PLO, is presently and has always been an illegal and criminal organization under the laws of Israel, as well as an enemy at war with Israel, in virtue of section 91 of the Penal Law and that in consequence of this finding, all agreements made with it by the Government of Israel, presently and in the past are illegal and a violation of sections 91, 97, 99 and 100 of the Penal Law;

9) In addition to the foregoing remedies sought for the widespread violations of law and principles of law contained in the Interim Agreement concluded with the PLO, the Petitioners ask for a specific order from this Honorable Court to declare the entire Interim Agreement null and void, ab initio.

10) The Petitioners ask that the order nisi that may be issued by this Honorable Court be made absolute and permanent.

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The grounds of this Petition are fully discussed in nine separate parts of the Petition, as follows:

Part 1: Violations of law related to the legal edifice constructed by the Knesset's enactment of three Laws on June 27, 1967 and promulgated on June 28, 1967, namely section 11B of the Law and Administration Ordinance, Section 8A(a) of the Municipalities Ordinance and the Protection of Holy Places Law.

Part 2: Violations of law related to the Area of Jurisdiction and Powers Ordinance of September 22, 1948, the Jerusalem Proclamation of August 2, 1948 and the Land of Israel Proclamation of September 2, 1948;

Part 3: Violations of law related to the Basic Law: Israel Lands, 5720-1960 and the State Property Law, 5711-1951;

Part 4: Violations of law related to the Law of Return, 5710- 1950 and the Nationality Law, 5712-1952;

Part 5: Violations of the principle of law related to the supreme legal value of the State of Israel as a Jewish State;

Part 6: Violations of law relating to Treason as defined in the Penal Law, 5737-1977, Chapter 7, Articles 1 and 2, Sections 91, 97, 99 and 100;

Part 7: Violations of the principle of law related to the central value of the State of Israel as a democratic state, governed by the Rule of Law;

Part 8: Notification to the Attorney-General of the Government of Israel about violations of law and principles of law contained in the Interim Agreement about to be signed by the Government of Israel with the PLO and the Letter of Reply from the Deputy Attorney-General;

Part 9: Conclusion.

Part 1
Violations of law related to the legal edifice constructed by the Knesset's enactment of three Laws on June 27, 1967 and promulgated on June 28, 1967, namely section 11B of the Law and Administration Ordinance, section 8A(a) of the Municipalities Ordinance and the Protection of Holy Places Law.

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Division A:

Section 11B of the Law and Administration Ordinance

Chapter 1: Introduction

The very first law of the State of Israel which was enacted by the original legislature, the Provisional Council of State was the Law and Administration Ordinance, passed on May 19, 1948, four days after the State came into existence on May 15, 1948, but given retroactive effect to that date. It is the most basic constitutional law of the State, even though that designation is not officially affixed to it. The eleventh amendment of this Ordinance was enacted on June 27, 1967 and became law the following day. Its enactment was a consequence of the capture by the IDF of Judea and Samaria from Jordan, Gaza and Sinai from Egypt and the Golan Heights from Syria. The addition of section 11B ranks as one of the most important laws of the State. It deals with the question of the State's borders - both actual and theoretical, as well as the question of sovereignty - both de jure and de facto in relation to the Land of Israel. It is first and foremost a law of annexation, which prescribes a specific method to bring it about. It is also an enabling statute since it empowers the Government to effect the method of annexation. Its ultimate purpose is to make the de facto borders of the State coincide or be identical with the de jure borders of the State.

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Chapter 2: Powers of the Knesset and Powers of the Government of Israel Contained in Section 11B

> Although section 11B contains very few words, their meaning and implications are far reaching. It reads as follows:
>
> "The law, jurisdiction and administration of the State shall extend to any area of Eretz Israel designated by the Government by order."

On analysis, it can be seen that section 11B is dealing with two different kinds of powers, namely, those powers which the Knesset apportions to itself and are not delegated to any other authority and secondly, those powers it originally holds but which it decided to delegate to the Government of Israel.

These two kinds of powers are actually inter-connected in the Law. The Knesset's powers cannot be used until the Government uses its delegated powers. Hence, the powers which the Knesset gave itself are really in a state of suspense until such time as the Government will act to bring them to life. This is done through a government-issued order, "an application of law" order which transforms the Knesset's theoretical and legal powers into living reality.

The order under section 11B activates these Knesset powers but does not create them. They pre-exist the order. These powers apply to the areas of the Land of Israel which lie outside the State's de facto civilian borders and which are in the possession of the IDF, as confirmed by the several military proclamations that were issued during the Six-Day War in June 1967. These powers which the Knesset exercises upon the issuance of an "application of law" order are the powers of legislation, jurisdiction and administration.

> A different set of powers contained in section 11B are the three powers delegated by the Knesset to the Government of Israel. These powers are the following: first, the power to make the "application of law" order at its discretion, second, the power to choose the date or time when the order shall be issued and third, the power to choose which specific area or areas of the Land of Israel will be annexed to the State's de facto civilian borders.

The Knesset did not have to delegate these three powers to the Government of Israel. It could have directly annexed the areas of the Land of Israel in the possession of the IDF which were captured in the Six-Day War without the need for a Government-issued order. But the Government in 1967 wanted the option of delay for the purpose of possible peace negotiations with Jordan, Egypt and Syria and therefore the Knesset did not directly issue the order itself. This delay however was not consonant with another basic constitutional law, the Area of Jurisdiction and Powers Ordinance of 1948 which shall be discussed in Part II of this Petition.

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Chapter 3: Extent of the Powers Granted to the Government under Section 11B

> As soon as the Government of Israel issues an "application of law" order under section 11B, the order is deemed to be a regulation within the meaning of the Interpretation Ordinance (New Version) and the Interpretation Law. The power of the Government to make the order or regulation implies that it also has the power to revoke such order or regulation, under section 15 of the Interpretation Law, unless it can be shown by analysis that this would contradict the intention of what the Law (i.e. section 11B) seeks to accomplish.
>
> The relevant provisions of law which apply to the power of the Government to make Regulations are section 15 of the Interpretation Law and section 16(4) of the Interpretation Ordinance (New Version), which read as follows:

Section 15, Interpretation Law:

> Any empowerment to make regulations or to issue an administrative direction implies empowerment to amend, vary, suspend or revoke them or it in the same manner in which they or it are or is made or issued.

Section 16(4), Interpretation Ordinance:

Where the law confers power on any authority to make regulations, the following provisions shall, unless the contrary intention appears, have effect with reference to the making and operation of such regulations:

1-3) ...

4) no regulations shall be inconsistent with the provision of any Law

The purpose of section 11B is to apply the law, jurisdiction and administration of the State of Israel to any area of the Land of Israel lying outside the State of Israel which automatically annexes the designated area to the State. If such an order is issued and the purpose of the Law is thereby accomplished, it would make little or no sense to also empower the Government to abolish the order, since that would evidently be contrary to what the Law is seeking to do in section 11B. The conclusion must therefore be that the Government is not empowered to revoke an order it has issued because the resulting revocation would be inconsistent with section 11B and hence invalid under section 16(4) of the Interpretation Ordinance (New Version).

This conclusion is further supported by the fact that once an "application of law" order is issued, the dormant powers of the Knesset in section 11B spring to life, namely the powers of legislation, jurisdiction and administration in regard to the designated area of the Land of Israel. If the Government was then able to abolish the order it issued, it would in effect be abolishing the powers of the Knesset, which it cannot do, since in law, as distinct from practice, the Government is subservient to the Knesset and therefore cannot take away its powers which in any case would violate the doctrine of separation of powers. Section 15 of the Interpretation Law therefore does not confer on the Government the power to revoke an "application of law" order issued under section 11B.

Moreover, if the Government had the power to revoke an order under section 11B, it could then withdraw land from the sovereignty of the State that had been duly annexed by virtue of the order it had issued. But such withdrawal is forbidden under both constitutional and penal laws, particularly section 1 of the Basic Law: Israel Lands and section 97(b) of the Penal Law. The Government therefore does not enjoy the power of revocation under section 11B.

The Law (i.e. section 11B) gives the Government the right to issue an order or abstain from doing so, in conformity with its discretionary power. It may fix a specific date to issue this order or not. It may designate a specific area of the Land of Israel for inclusion in the State or not. It can exercise any of these powers or do the opposite, which simply means not to exercise them. But once it has exercised its powers, it cannot revoke or undo what it has done, because this is outside the scope of its powers conferred by this particular Law.

As a concrete example of what the Government can and cannot do under section 11B, we can look at the "application of law" order that was issued to annex eastern Jerusalem on June 28, 1967. This order is officially called the Law and Administration Order (Number 1).

The Government had the right either to issue or not issue an order designating eastern Jerusalem as an official part of the State of Israel where the law, jurisdiction and administration of the State would apply. But once the order was made, the Government could not thereafter backtrack and revoke the order, since that was outside the scope of its powers received under the Law. Similarly, if the Government had invoked section 11B for any other area of the Land of Israel, it could not subsequently have revoked its act of annexation.

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Chapter 4: Meaning of the Phrase "Any Area of the Land of Israel" as Used in Section 11B

The words "any area of the Land of Israel" (b'kol shetah shel Eretz Israel) as used in section 11B can only apply, according to its context or internal meaning, to those parts of the Land of Israel where the law, jurisdiction and administration of the State have not hitherto been extended and where it is also possible in practice to extend them. This automatically excludes from the application of section 11B those areas of the Land of Israel which are included either in the State of Israel or in a foreign state, such as Jordan, where it would be impossible in practice to enforce the law, jurisdiction and administration of the State.

The context or internal meaning of section 11B makes it applicable only to those areas of the Land of Israel which lie outside the de facto civilian borders of the State, which have been captured in war by the IDF and remain in its possession until the annexation of those areas. Section 11B needs to be read in conjunction with several military proclamations issued during the progress of the Six-Day War between June 6 to June 10,

1967 which confirmed the effective possession of the IDF over various areas of the Land of Israel that were until then under foreign rule. These proclamations related to the territories of Judea, Samaria, Gaza, Sinai and the Golan Heights.

Judea, Samaria and Gaza are definitely considered to be an integral part of the Land of Israel by any criterion, whether it is the law of the Mandate, Jewish law, Jewish history, Zionism or geography. As regards Sinai and the Golan Heights, there are opposing schools of thought. What counts though is what the legislator thought when he enacted section 11B to see if it was meant to include both of these territories in the definition of the Land of Israel, which is not totally synonymous with how that term was defined in the Mandate. From the words used by the Minister of Justice who introduced this law in the Knesset, Yaacov Shimshon Shapiro, it is possible to deduce that this was his intention. He said on that occasion:

> What needs to be determined...is that the IDF has liberated from the yoke of foreigners, considerable parts of the Land of Israel, though not exactly contiguous, [which are now] under the control of the IDF, since more than two weeks. (Knesset Proceedings, Sitting 188 of the Sixth Knesset, June 27, 1967, p. 2420)

It is quite likely that the Minister of Justice included in his statement the Golan Heights and Sinai, not merely Judea, Samaria and Gaza because first he did not distinguish between any of the territories which he said were "liberated from the yoke of foreigners" and second, because he described these territories as "considerable" and "non-contiguous". During the debate, MK Uri Avneri, representing Ha'olam Hazeh, Ko'ah Hadash Party, wondered if the Land of Israel also comprised the Sinai Peninsula and what he called the "Syrian Heights". (ibid. p. 2426) The Minister of Justice spoke immediately afterwards but did not allude to what Avneri had said. His silence may be indicative of the fact that he thought all the territories "liberated from the yoke of foreigners" had the same status as parts of the Land of Israel which were subject to the specific method of annexation contained in section 11B. Had he thought a difference really existed between any of the territories or that some of them would not be subject to the new Law he was proposing he would have surely answered Avneri's conjecture.

However, doubt still persisted which carried over to the time of enactment of the Golan Heights Law on December 15, 1981. This Law used similar language as section 11B when it declared that the law, jurisdiction and administration of the State shall apply to the area of the Golan Heights as delineated on an accompanying map. The very fact that section 11B was not used to annex the Golan Heights, which required the enactment of a new Law for this purpose, shows an assumption by the Knesset and the Government which introduced the bill that the area fell outside the definition of the Land of Israel as used in section 11B. However, this assumption is not conclusive, but rather rebuttable and it remains open to prove that the Golan Heights are an integral part of the Land of Israel according to the criteria of Jewish law, Jewish history, Zionism and geography.

Moreover, it is likely that the part of Southern Lebanon, which is today held by the IDF is subject to section 11B. That would certainly be the case, if a legal determination were made that this area constitutes a part of the Land of Israel, as appears from the fact that geographically, it is an extension of Upper Galilee. In this respect, it should be recalled that Southern Lebanon, up to the Litani River, was the object of an intense Zionist effort to get it included in the Jewish National Home. There was persistent pleading by Haim Weizmann with the British Government of David Lloyd-George, in the year before the northern boundary of Palestine was determined in the Franco-British Convention of December 23, 1920.

There was also the remarkable telegraph, sent by the US State Department to its Ambassador in Paris on February 10, 1920, when the question of boundaries was being settled by the parties concerned. The telegraph was destined for the British Government and it expressed strong support by President Woodrow Wilson for the Zionist claim to obtain what he called "rational boundaries for Palestine in the north and east". (Documents on British Foreign Policy, 1919-1939, Third Series, Volume IV, Entry Number 425, page 634). President Wilson was advised on this question by Supreme Court Justice, Louis Dembitz Brandeis, who took an active role in Zionist affairs at this particular time. Based on Brandeis' counsel, President Wilson, instructed his Ambassador to inform the British Government that he believed Palestine's northern boundary

should extend to the Litani River and also include the watershed of the Hermon and the Golan, which was in accordance with the true meaning of the Balfour Declaration.

In the end, the British and French Governments ignored American advice and Zionist aspirations and opted instead to secure their own imperial interests. However, now that a part of Southern Lebanon is finally in Israel's hands, as Weizmann, Wilson and Brandeis all demanded in 1920, it is within the Government's theoretical power, to apply section 11B to this area of the Land of Israel. This Law therefore has a much wider territorial breadth than generally realized. It may be extended to any IDF acquisition of the Land of Israel, not just the areas acquired in 1967.

Theoretically, also, the areas of the Land of Israel which comprise the State of Jordan could become subject to section 11B, if any portion of them ever came into the effective possession of the IDF, unlikely as that prospect may now seem.

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Chapter 5: Sovereignty, Borders, Annexation and Section 11B

Nowhere does section 11B mention the words sovereignty, borders or annexation, but that is exactly what this Law concerns.

The Government's delegated power to issue an order to designate which areas of the Land of Israel shall be subject to the law, jurisdiction and administration of the State is based on the premise that the Land of Israel in its totality is the sovereign possession of the Jewish People, under its de jure and legal sovereignty, otherwise the order could not be conceived of or issued in the first place. As pointed out by the Deputy Attorney General of the Government of Israel, Shlomo Guberman, in an article he wrote in 1970, (Israel Law Review, No. 1, 1970, page 132),

> ...the ability to impose law, jurisdiction and administration traditionally denotes and is identified with full sovereignty.

The premise of sovereignty of the Jewish People over the Land of Israel is also contained in the Proclamation of Independence which states in part:

> We extend our hand to all neighboring states and their peoples in an offer of peace and good neighborliness and appeal to them to establish bonds of cooperation and mutual help with the **sovereign Jewish people settled in its own land...**

Though the word actually used in the Proclamation in front of the phrase "Jewish People" is literally translated from Hebrew as "independent", the latter has the same meaning as "sovereign" when juxtaposed to the word "people or nation". This premise of sovereignty derives from the historical connection of the Jewish People with the Land of Israel and this connection is the precise reason why the Balfour Declaration names Palestine as the country where the Jewish National Home would be established. The Balfour Declaration became part of international law when it was accepted by the Principal Allied Powers at their conference at San Remo on April 25, 1920 and it was the exclusive basis of the Mandate for Palestine which was intended to implement the Declaration's promise to the Jewish People. These two international acts recognized the national and political rights of the Jewish People over the Land of Israel, which were in essence rights of sovereignty placed temporarily in the hands of a mandatory or trustee, the British Government, until the Jewish People would one day be capable of exercising its legal sovereignty over the Land of Israel.

De jure or legal sovereignty can exist independently of de facto or practical sovereignty, but then it is only theoretical or nominal, without any reality. De jure sovereignty becomes real or actual only when it co-exists with de facto sovereignty where there is effective possession of the territory concerned. However, the matter of sovereignty is further complicated by the fact that de facto sovereignty may exist in two ways, military and civilian. In either case, where military or civilian sovereignty exists in a de facto way, it would be inaccurate to speak of de facto sovereignty, unless there is also de jure sovereignty pre-existing it or inherent in it. Where there is no pre-existing de jure sovereignty, there can only be "occupation", rather than de facto sovereignty. In the case of Judea, Samaria and Gaza, all the various aspects of sovereignty (de jure, de facto,

de facto military and de facto civilian) are intermingled, which makes the legal situation very intricate or messy.

From the viewpoint of its own constitutional law, regardless of the divergence of opinion that may exist on the same point in international law, Israel had prior to the Six-Day War of June 1967, de jure sovereignty over Judea, Samaria and Gaza, but not de facto sovereignty, since these lands were not in Israel's effective possession, but ruled by Jordan and Egypt respectively. That is why the Minister of Justice, Ya`acov Shimshon Shapiro could say in the Knesset debate on section 11B that they had been "liberated from the yoke of foreigners" in the war which had just concluded more than two weeks earlier. As a result of the war, Israel gained de facto sovereignty over those lands but chose to exercise its power of sovereignty through a military government it created under the laws of war determined by international law, instead of directly extending the civilian rule and laws of the State of Israel or alternatively, doing what was done in 1948, when a military government was proclaimed which had to apply the civil laws of the State of Israel to the newly captured areas of the Land of Israel outside the boundaries of the State fixed in the Partition Plan. By voluntarily imposing the laws of war under international law during and after the Six-Day War instead of implementing its own constitutional law as it was required to do, the Government of Israel at the time succeeded in shrouding in a mist of deep fog the State's true legal status in the lands being held by the IDF at the conclusion of the War. Putting into force military rule under international law rather than putting into force civilian rule under Israeli law gave the false impression that Israel was an occupier under international law of another state's sovereign territory rather than being the liberator of the patrimony of the Jewish People, as recognized at San Remo. To make up slightly for this egregious error of judgment and misapplication of law, Israel enacted section 11B, which allowed an opportunity at some later date to replace the military government by a civilian government that would apply Israeli law, jurisdiction and administration instead of international law. But except in the case of eastern Jerusalem, this prospect never materialized and Judea, Samaria and Gaza were left with a cumbersome and unnecessary Military Government that endured to haunt its progenitors and wreck havoc on Israel's sovereign rights to these parts of the Jewish homeland.

The question of sovereignty is intimately linked with the question of borders. Since the State of Israel has both de jure and de facto sovereignty wherever it rules in the Land of Israel in accordance with the assumption made by Israeli constitutional law on the matter, it also has de jure and de facto borders. The de jure borders of Israel must perforce coincide with its de jure sovereignty over the entire Land of Israel. The de jure borders of the State of Israel are therefore the same as those that comprise the Land of Israel, however that term may be defined in Jewish law, Jewish history, Zionism and geography. Just as the de jure sovereignty of the Jewish People, a phrase which includes the State of Israel, never changes in relation to the Land of Israel, the de jure borders likewise remain constant, even if specific areas of the Land of Israel fall under foreign rule or occupation, whether for a short or long period of time. What does change are the State of Israel's de facto borders and this in turn also depends on whether Israel has acquired military possession over areas of the Land of Israel that lie outside the de facto civilian borders of the State.

Israel's military possession of Judea, Samaria and Gaza in 1967 gave it the practical possibility for the first time since 1949 to expand its de facto civilian borders to include other parts of the Land of Israel that came under its de facto military sovereignty. This expansion of de facto civilian borders is implemented by using the method of an "application of law" order to the designated part of the Land of Israel in the possession of the IDF. This order is an act of annexation and statehood, because where the civilian law, jurisdiction and administration of the State are in force, there is no legal difference between any of the constituent areas or parts of the State.

An order issued under section 11B in relation to a designated area of the Land of Israel would only be declaratory of Israel's pre-existing de jure sovereignty over that area as well as being declaratory of its de facto military sovereignty exercised by the IDF, as made clear by the Minister of Justice in the Knesset debate on section 11B. However, if such an order had ever been issued for all of Judea, Samaria and Gaza, the effect would have been to replace the existing military government with the civilian government of

Israel. In this sense, an "application of law" order would then also be constitutive of Israel's de facto **civilian** sovereignty in the designated areas that were subject to the order.

In relation to Judea, Samaria and Gaza as a whole, it may seem strange that Israel can hold both de jure sovereignty and de facto military sovereignty over territories which are not at the same time included in the de facto civilian borders of the State. But there are many precedents for this kind of situation in other countries.

In the United States, most of the states except for the original Thirteen Colonies were defined as "territories" belonging to the United States, before they were accepted by the US Congress as full-fledged states of the Union. Though they were not an official part of the State, when they were only "territories", they were indeed part of its national domain and under its de jure and de facto civilian sovereignty. This was the case for Alaska and Hawaii before they became states, as it was for the majority of the other states that are now part of the United States. Puerto Rico was once a "territory" and has now evolved to become a self-governing "commonwealth", which is still under American sovereignty without enjoying the status of US statehood. Other "territories" that exist today which are under United States sovereignty but not part of the State include the Virgin Islands, Guam and American Samoa.

A similar situation occurred in British history, as regards the colonies or dependencies which became independent states. During the entire time the colonies existed as colonies, they were under the de jure and de facto sovereignty of the United Kingdom, but were never part of the State of the United Kingdom. Among these colonies that had this legal status were the original Thirteen Colonies of the United States, Canada, Australia and New Zealand.

In the same general manner, but not identical in details or facts, Judea, Samaria and Gaza have been under the de jure and de facto **military** sovereignty of the State of Israel, without being an actual part of the State.

Section 11B was the method chosen by the Knesset to annex those territories to the State if and when a Government decision were finally taken to do so. The Minister of Justice at the time perfectly described the principle involved in this method that applies when the IDF has conquered areas of the Land of Israel laying outside the de facto civilian borders of the State, as seen in the following extract from his speech:

> The legal view of the State of Israel, which has always been an organic view, in conformity with the actual political facts, was based on the principle that the law, jurisdiction and administration of the State shall apply to the parts of the Land of Israel **which are under the de facto sovereignty of the State**. (Ibid. p. 2420)

What the Justice Minister meant was that the liberated areas of Judea, Samaria and Gaza as well as Sinai and the Golan Heights could not be annexed to the State until Israel had first acquired de facto military sovereignty over them, which had then occurred more than two weeks earlier in the Six-Day War.

It is significant that the Minister of Justice used the words "de facto sovereignty" which accurately described Israel's legal status in those territories following the Six-Day War. As already noted, there can only be de facto sovereignty in the legal sense where there is also pre-existing de jure sovereignty, otherwise it is only "occupation" and not "sovereignty". Hence, if there is no de jure sovereignty to begin with, then Israel would have had the status of occupier under international law, rather than liberator of the patrimony of the Jewish People and the term "de facto sovereignty" could not have been used by the Minister of Justice.

He correctly stated the Israeli constitutional practice that had always prevailed until that time, but then he unwittingly proposed a change in the practice, by declaring that additional steps were needed to perfect Israel's sovereignty:

> It is the opinion of the Government which is consistent with international law, that in addition to IDF control, a clear act of sovereignty is required by the state in order that Israeli law shall apply to the territory of this kind. From both a practical and political point of view, no such act of sovereignty can be made without a number of preceding conditions if one wishes to ensure the perfection of the act and its effectiveness. (Ibid. p. 2420)

Perhaps without realizing the contradiction he was making at the time, the Minister of Justice and the Government he spoke for were creating a new constitutional practice alongside the existing one he had so

well enunciated in the preceding paragraph of his speech. The constitutional practice as it then existed and which was applied in 1948 did not require any of the "preceding conditions" he was now proposing, namely a Government-issued order and other administrative action taken under the Municipalities Ordinance.

Any order issued under section 11B would certainly have been a clear act of sovereignty, as was the very enactment of the Law itself, which prescribed such an order, but it would have been unnecessary had the previous constitutional practice been followed which automatically applied the law, jurisdiction and administration of the State upon the publication of a proclamation which specifically defined the areas of the Land of Israel in the possession of the IDF, as set out in the Area of Jurisdiction and Powers Ordinance, which is discussed in Part 2 of this Petition.

The new constitutional practice introduced by section 11B gave the Government of Israel a discretionary authority which allowed for a delay as to whether or not to apply the law, jurisdiction and administration of the State to the newly liberated areas of the Land of Israel, that is to say, whether or not to annex or grant statehood to those areas. The delay was desired because of Israel's hope to enter into peace negotiations with the Arab countries it had just defeated in the Six-Day War. That seems to be the only logical reason to explain the apparent contradiction in the words of the Minister of Justice, when he first correctly stated the existing constitutional practice and then deviated from it in introducing section 11B.

*** * ***

Chapter 6: Section 11B and the Interim Agreement: Glaring Violations of Law

There is a complete irreconcilability between the Law of section 11B and the Interim Agreement, made by the Government of Israel with the PLO. To show this disharmony, a brief resume of the main points of the Agreement needs to be given and then compared to the purposes of section 11 B.

The essence of the Interim Agreement can be summarized as follows. Powers and responsibilities of the Israeli Military Government and its Civil Administration in 40 separate fields of civil jurisdiction, as well as its criminal jurisdiction, are being or will be transferred to and assumed by the "Palestinian Authority" which is to become transformed into an elected, democratic body called the "Palestinian Council" after the elections held to choose 88 representatives and the Ra'ees (Chairman) of the Executive Authority of the Council. The Council shall possess legislative, executive and judicial powers and its jurisdiction shall be territorial, functional and personal, over all of Judea, Samaria and Gaza, except for Jerusalem, settlements and specified military locations, which are issues to be discussed in the permanent status negotiations. The Council's jurisdiction in the interim period will also not include Israelis, refugees, borders and foreign relations, nor any residual powers and responsibilities not transferred to it.

At the same time as this transfer of authority takes place, Israel will conduct an extensive redeployment and withdrawal of its military forces from most of Judea and Samaria, which has been divided for this purpose into three distinct areas. The redeployment and withdrawal will be carried out in four phases, beginning with a pull-back from seven Arab populated cities designated as Area A (except for Hebron which has been given a special designation), followed by a series of three consecutive further redeployments spread out over a period of 18 months from the date of the inauguration of the Council, at six month intervals, from areas B and C respectively, first of Arab populated towns and villages and then of unpopulated areas. When this process is completed, Israel's de facto military sovereignty will have ceased to exist in the three specified areas, A, B and C and an effective cession of territory will have occurred from the State of Israel to the PLO or from the Jewish People to the so-called "Palestinian People".

The practical effect of the Interim Agreement is to vest the "Palestinian Council" with the theoretical but seldom used sovereign powers of the Knesset under section 11B to legislate for, exercise jurisdiction over and administer Judea, Samaria and Gaza, which will be turned over to the rule of the "Palestinian Council" except for the issues to be discussed in the permanent status negotiations. The legal status of the "Palestinian Council" will not be one of a sovereign exercising de facto sovereignty, because de jure sovereignty remains vested only in the hands of Israel and de facto sovereignty cannot exist by itself without the former. Hence, the Council will in effect be an illegal occupier and ruler of Judea, Samaria and Gaza, but with the consent

and approval of the Government of Israel, which permitted the creation of the Council contrary to section 11B.

The powers of legislation, jurisdiction and administration which section 11B confers on the Knesset were in the absence of any government-issued "application of law" order, exercised by the Israeli Military Government and its Civil Administration under a delegation of power, approved by the Government of Israel. But this was to a large extent a pretense and fiction. The Military Government and its Civil Administration, never existed as true independent bodies, but merely carried out the directives and policies of the Government of Israel which ruled the Arab population of Judea, Samaria and Gaza through the guise of the Military Government. By contrast, the Jewish residents of the areas were essentially governed by the civilian laws of Israel that were filtered through the aegis of the Military Government.

The text of the Interim Agreement preserves the fiction that it is the Military Government and its Civil Administration which is transferring the powers and responsibilities to the "Palestinian Council" when in reality it is really the Government of Israel that is doing so, as confirmed by the fact that it is the Government of Israel and not the Military Government which is the official party to the Interim Agreement with the PLO.

The transfer of the Knesset's powers to the Council, by the Government of Israel, is a blatant violation of section 11B, which totally ignores its legislative purposes. Instead of the Knesset passing laws for Judea, Samaria and Gaza as intended by section 11B, the Council will do so. Instead of the law of the State being extended to these areas, the laws enacted and promulgated by a foreign entity will be extended. Instead of the jurisdiction of the State of Israel existing there, it will be the jurisdiction of the Council. Instead of having Israeli civil administration and government, there will be a foreign civil administration and government. Instead of those areas becoming a de facto civilian part of Israel, they will become a de facto civilian part of a foreign entity, likely to become an independent state.

By depriving the Knesset of its powers of legislation, jurisdiction and administration, the Government of Israel has for all intents and purposes repealed section 11B or rendered it useless for most of Judea, Samaria and Gaza. It remains in force only for the areas of the settlements and special military locations. In this sense, the Government of Israel has illegally usurped the Knesset's constitutional authority in violation of the separation of powers doctrine and transferred that authority, without legal right, to a foreign body it itself created.

It makes no difference that the Knesset under the guiding hand of the Government approved what was done through a vote of confidence. This approval had no legal effect since it was contrary to an existing constitutional Law. Even the passage of a Knesset Law would not have changed the situation since it too would have violated the pre-existing Law of section 11B, as well as other constitutional legislation and principles, as discussed below, in Part 7 of the Petition. The same thing may be said about the proclamation recently issued by the Military Government in Judea, Samaria and Gaza, which purports to do exactly what Knesset legislation could not have legally done, namely, to incorporate the provisions of the Interim Agreement into the domestic law, allowing for territorial withdrawal from the Land of Israel.

In the Interim Agreement, not only did the Government of Israel illegally usurp and transfer the Knesset's powers which it never possessed, it also illegally abolished its own delegated powers under section 11B, which as a consequence prevents any future Government of Israel from ever exercising these powers again, as intended by the Law. Hence, it will no longer be possible for any future Government of Israel to annex to the State or extend its de facto civilian borders to include any of those areas of the Land of Israel given up to the "Palestinian Council".

However, section 11B is still the law of the land and it makes the entire Interim Agreement with the PLO illegal and unconstitutional, null and void ab initio. This means that every action which the Government of Israel has already taken under that agreement or will take in the future is likewise illegal and unconstitutional and so is everything to be done by the Council or that was done by its predecessor on the soil of the Jewish homeland. The constitutional law of Israel is in disarray and is being violated on a continuous and daily basis. The Government has become the biggest lawbreaker in the country and this fact cannot be covered up

by any explanation that the law must yield to the greater value of peace, for the Rule of Law in a democratic state must always take precedence.

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Division B

Section 8A(a), Municipalities Ordinance, Amendment Number 6 enacted June 27, 1967, promulgated June 28, 1967

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Chapter 1: Purpose of the Law

What section 11B was intended to accomplish on the national level to enlarge the de facto civilian borders of the State, section 8A(a) of the Municipalities Ordinance was intended to accomplish on the local level, by extending the borders of a particular municipality. Section 8A(a) was an addition to the law that was introduced at the same time as section 11B, as part of a unified legal structure to perfect or complete the process of Israel's assumption of civilian sovereignty that began when a specific area of the Land of Israel was annexed to the State under section 11B, by a government-issued "application of law" order. Section 8A(a) took the process a step further by providing for a proclamation to be issued by the Minister of Interior to annex the same area to a particular municipality. An act of annexation on the national level was therefore followed by an act of annexation on the municipal level. How this was done is shown in the case of Jerusalem, where this procedure was actually adopted.

The Government of Israel first issued an order under section 11B to annex to the State that area of old Jerusalem not previously included in the de facto civilian borders of the State. This area of Jerusalem was described in technical detail using map co-ordinates in an appendix to the order, which was called the Law and Administration Order (Number 1), dated June 28, 1967. It reads as follows:

> The area of the Land of Israel which is described in the appendix, is hereby designated as an area in which the law, jurisdiction and administration of the State shall apply.

Law and Administration Order (Number 1) was then followed immediately by a Proclamation issued by the Minister of Interior, Haim Moshe Shapira, which was called the Jerusalem Proclamation (Extension of Municipal Boundaries). It reads as follows:

> The municipal boundaries of Jerusalem will be enlarged by the inclusion of an area which is specified in the appendix.

The area specified in the appendix was exactly the same area described in the Law and Administration Order (Number 1), namely, that part of Jerusalem, commonly called "East Jerusalem", which had previously been under the rule of the State of Jordan.

* * *

Chapter 2: Section 8A(a) and the Interim Agreement: Violation of Law

Apart from the areas of the existing settlements and specified military locations, section 8A(a) will cease to have any effect in Judea, Samaria and Gaza. It will no longer be possible to enlarge the boundaries of a particular municipality in regard to most of the land located in Judea, Samaria and Gaza by the same method that was followed in the case of East Jerusalem. The Interim Agreement repeats the same violations of law in relation to section 8A(a), as it does for section 11B.

* * *

Chapter 3: The Basic Law: Jerusalem, Capital of Israel and Permanent Status Negotiations

The Law and Administration Order (Number 1) dated June 28, 1967 issued under Section 11B, combined with the Jerusalem Proclamation issued on the same day under section 8A(a) were sufficient by themselves as legal measures to annex the old part of the city of Jerusalem to the State of Israel and establish de facto

civilian sovereignty of the State over that hallowed area of the Land of Israel. No other legal action was necessary to perfect Israel's annexation and civilian sovereignty which was moreover confirmed by the case-law. However, to stress the special importance of Jerusalem to the Jewish People and to remove even a scintilla of doubt about Israel's sovereignty over the entire city, caused by international leaders who repeatedly said that the question of sovereignty was still to be decided, the Knesset combined the order, proclamation and case-law into a Basic Law: Jerusalem, Capital of Israel.

The new law on Jerusalem was therefore declaratory of the existing constitutional law in force since June 28, 1967 in regard to Israel's civilian sovereignty over its unified capital city. It even reproduced certain provisions of law already included in other constitutional legislation. However, this law was not merely declaratory nor superfluous, as some of its critics charged. It did add a new dimension to the existing statutory law that was missing before. For the first time, Jerusalem in its entirety, was declared unequivocally to be the capital city of Israel, which moreover was granted special priority for its development and prosperity in economic and other matters.

This point was made amply clear in the Knesset speech of Geula Cohen who was the author and moving spirit behind the bill presented on behalf of the Tehiya Party. She explained its purpose in the following extracts:

> It is a proposal which seeks to fill a legal gap and determine the status of united Jerusalem as the capital of Israel, not only de facto, but also de jure, through a Basic Law. (Knesset Proceedings, Sitting 360 of the Ninth Knesset, July 23, 1980, p. 4037).

Later, she added these clarifying remarks:

> As will be remembered, in 1967 Israeli law, jurisdiction and administration were imposed on united Jerusalem, but to this day, no law has stated explicitly and certainly not in a Basic Law that Jerusalem is the capital of the State of Israel. That was certainly stated in an official Knesset resolution, but not in law. It is true that not all the capitals of the world have their status anchored in law, but no other capital is like Jerusalem, whose position as Israel's capital is called into question by almost all the capitals of the world... It is therefore strange to hear from certain quarters that the Jerusalem Law is superfluous... (ad loc).

The bill passed the Knesset on July 30, 1980 and was promulgated as law on August 5, 1980. As a result of this law, Jerusalem's status is constitutionally unique, because it has been singled out for special treatment in a basic law. As a rule, the Government of Israel has no power to tamper with the status or sovereignty of any of the constituent parts of the State and this rule of territorial inviolability now applies with even greater force to Jerusalem. Despite this constitutional prohibition, which is reinforced by the criminal law of the State, the Government has agreed to negotiate the "permanent status" of Jerusalem with the PLO (Articles 17(1)(a) and 31(5) of the Interim Agreement).

What this agreement signifies is that Jerusalem's present status or sovereignty is still not permanent as the basic law of 1980 assumes it to be, but may be open to change, either territorial or administrative. This premise is directly counter to the premise of Israeli law, which has determined that Jerusalem is irrevocably governed by the law, jurisdiction and administration of the State of Israel, as the capital and seat of its three branches of government.

The Government's commitment to open the question of Jerusalem's sovereignty to negotiations in the final status talks is a clear violation of Israeli law.

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Division C:

Protection of Holy Places Law

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Chapter 1: Purpose of the Law

Upon the liberation of the old city of Jerusalem on June 7, 1967 all of the Jewish and non-Jewish holy places and religious sites came under the de facto sovereignty of Israel for the first time since the establishment of the State. To calm any foreign fears that were especially prevalent in Christian Churches after Israel's unification of Jerusalem, the Government sent special emissaries to meet with the leaders of the various religious communities to reassure them that no harm would come to their sacred places because Israel would suitably guard and ensure free access to them for all members of the different religions. True to this promise, the Knesset shortly afterwards enacted the Protection of Holy Places Law to put this policy into legal effect.

This Law was part of the same legislative package as section 11B and section 8A(a). All three enactments constituted one legal edifice constructed by the Knesset for all of the liberated territories of the Land of Israel that came under Israel's de facto sovereignty after the Six-Day War. The Protection of Holy Places Law was moreover a specific illustration of what was intended to be done by section 11B and section 8A(a) but which was never accomplished except for Jerusalem in that the Law protecting the Holy Places was made applicable immediately to Judea, Samaria and Gaza. There was no need to wait for an intermediate step in the form of a government-issued order or ministerial proclamation before the law, jurisdiction and administration of the State applied. This Law is an example of the Knesset's broad powers to legislate directly for the liberated territories. It was put into effect immediately because of the special and urgent circumstances surrounding the holy places, which aroused worldwide attention and interest.

To confirm that this Law applied to all of the Land of Israel under Israel's de facto civilian sovereignty, despite the fact that the Law itself does not expressly say so, it is sufficient to quote the words of the Minister of Religious Affairs, Zerah Wahrhaftig, when he introduced the bill in the Knesset. He said:

> **The Land of Israel** is the Holy Land and contains sites which are sacred to all the monotheistic religions in the world. In the land of our forefathers, the holy places for Judaism, for Jews it is the whole land which is holy, though indeed there are degrees of holiness and there are holy places that are more particularly holy than others. Ten measures of holiness, the Mishna says, descended on the Land of Israel. Jerusalem received eight of them. And at its center is the Western Wall, which from the statements of our sages, of blessed memory, is the wall from which the Divine Presence never departed. It stands behind the wall.
>
> **In the Land of Israel**, there are also holy places for Christianity, for all the Christian Churches.
>
> **In the Land of Israel**, there are also holy places for Islam. (Knesset Proceedings, June 27, 1967, p. 2421).

* * *

Chapter 2: The Interim Agreement: Violations of the Protection of the Holy Places Law

Sections 1 and 4 of the Protection of the Holy Places Law make the Government of Israel responsible for the administration of all Holy Places in the Land of Israel, under its de facto civilian sovereignty for the benefit of all the various religions and for ensuring freedom of access to them. Section 1 of this Law is repeated verbatim in section 3 of the Basic Law: Jerusalem, Capital of Israel. The Government of Israel holds this administrative responsibility under a delegated power, which means that it cannot transfer its authority to a third party, particularly a foreign entity that is not answerable to the Knesset. Yet that is exactly what it has done in the Interim Agreement. It has given up its legal responsibility over Jewish, Christian, Samaritan and Moslem religious sites in Judea, Samaria and Gaza to the "Palestinian Council" and its police force. Instead of Israel ensuring the protection of Holy Places in the liberated territories as well as free access and freedom of worship, as required by sections 1 and 4 of the Law, the Government of Israel illegally transferred its administrative responsibility conferred on it in this matter to the Council. This is a blatant violation of the Protection of the Holy Places Law which was never authorized by the Knesset. Moreover, it is scandalous and irrational that the Government of Israel has surrendered to the PLO, an illegal and criminal organization under the laws of Israel, (as discussed more fully in Part 6 of this Petition), the sovereign authority of the State over sacred religious sites of the Jewish People which link it to its glorious past in the Land of Israel and provide proof of its precious historical connection.

By transferring its delegated power to the "Palestinian Council" in this matter, the Government of Israel has abolished the legislative authority of the Knesset over the Holy Places that are located in those areas of the Land of Israel which have already or will subsequently come under the jurisdiction of the "Palestinian Council". While it is true that the Law is not repealed altogether, it can no longer be applied to those areas ruled by the Council, as originally intended. The Government of Israel has therefore overstepped the bounds of its lawful authority by infringing on the Knesset's legislative power to determine for itself the extent of its own territorial jurisdiction. Moreover, it has shattered the legal edifice that was carefully constructed in 1967 for the sole purpose to extend Israel's law, jurisdiction and administration to all of Judea, Samaria and Gaza as well as the Golan and Sinai as illustrated in practice by the Protection of the Holy Places Law.

Part 2

Violations of law related to the Area of Jurisdiction and Powers Ordinance of September 22, 1948, the Jerusalem Proclamation of August 2, 1948 and the Land of Israel Proclamation of September 2, 1948.

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Chapter 1: Area of Jurisdiction and Powers Ordinance

Purpose of the Law

The Area of Jurisdiction and Powers Ordinance was enacted for the purpose to clarify the muddled legal status of the areas of the Land of Israel that were not included in the Jewish State under the UN Partition Plan of November 29, 1947, but were conquered in the War of Independence which began on November 30, 1947 and ended officially on July 20, 1949 with the signing of the last Armistice Agreement with Syria. These areas of the Land of Israel lying outside the UN line were conquered both before and after the State of Israel was established on May 15, 1948.

It was necessary to enact such a law because the Proclamation of Independence which was issued the day before the State was established by the People's Council was based explicitly on the UN frontiers.

The acceptance of these frontiers was given in the two following passages of the Proclamation of Independence:

> ACCORDINGLY WE, MEMBERS OF THE PEOPLE'S COUNCIL, REPRESENTATIVES OF THE JEWISH COMMUNITY OF ERETZ-ISRAEL AND OF THE ZIONIST MOVEMENT ARE HERE ASSEMBLED ON THE DAY OF THE TERMINATION OF THE BRITISH MANDATE OVER ERETZ-ISRAEL AND, BY VIRTUE OF OUR NATURAL AND HISTORIC RIGHT AND ON THE STRENGTH OF THE RESOLUTION OF THE UNITED NATIONS GENERAL ASSEMBLY, HEREBY DECLARE THE ESTABLISHMENT OF A JEWISH STATE IN ERETZ-ISRAEL, TO BE KNOWN AS THE STATE OF ISRAEL.

*** * ***

The State of Israel is prepared to cooperate with the agencies and representatives of the United Nations in implementing the resolution of the General Assembly of the 29th November, 1947 and will take steps to bring about the economic union of the whole of Eretz-Israel.

The People's Council which accepted these UN frontiers was a body set up jointly on April 6, 1948 by the Zionist General Council and the Va'ad Leumi, the former, representing world Jewry and the latter, the organized Jewish community of Mandated Palestine, in anticipation of the British withdrawal from Palestine and the end of the Mandate. It had 37 members from various parties and factions and acted as a temporary and unofficial legislative authority for the projected Jewish State in accordance with the UN Partition Plan.

When the UN Partition Plan was unanimously rejected by the local Arab leadership as well as by the neighboring Arab states, the reborn State of Israel was free to retract the acceptance of the plan originally given by the Jewish Agency for Palestine on October 2, 1947 with regard to the frontiers proposed for the Jewish State under the Plan. But on the day of the Proclamation of Independence, the People's Council which had received its original instructions from the Jewish Agency, still officially abided by these frontiers, although even then it was realized that territorial additions would need to be made especially by an enlarged

corridor for Jerusalem and by the takeover of Western Galilee. This produced confusion about the legal status of those parts of the Land of Israel that were conquered initially by Jewish military forces and after May 31, 1948, by the newly-created IDF, which were not included in the Partition Plan frontiers of the Jewish State.

Looking at the situation from the perspective of the acceptance of the Partition Plan by the Jewish Agency and by the People's Council, the new State of Israel did not officially include in its borders the new city of Jerusalem nor Jaffa, despite the fact that both cities were in the effective possession or under the de facto sovereignty of the State on the day of its establishment. By contrast, Eilat was officially included, although it was not in the effective possession of the State until March 10, 1949.

It was not until August 2, 1948 that Israel, under its own constitutional law, discarded the frontiers laid out in the Partition Plan when the Minister of Defense of Israel published a proclamation on Jerusalem, followed by a second proclamation on September 2, 1948 for the rest of the Land of Israel, which gave a new legal status to all areas of the Land of Israel where the State had effective possession or de facto sovereignty outside the Partition Plan frontiers. The final step taken to settle the legal status of those areas came when the Provisional Council of State enacted the Area of Jurisdiction and Powers Ordinance on September 16, 1948 which became law on September 22, 1948. This new body had replaced the People's Council as the temporary legislative authority when the Proclamation of Independence was issued on May 14, 1948 and became the official legislature of the state on the following day when the state was officially established. The new Law covered all acquisitions of territory in the Land of Israel acquired before May 15, 1948 as well as those acquired from that date to September 22, 1948 when the Law was promulgated and just as important, it covered all acquisitions made afterwards.

The effect of the Law and the two proclamations associated with it, was that Israel no longer considered itself bound by the Partition Plan and its deformed borders. This was further confirmed more than a year after the passing of the Law by the Prime Minister's Statement in the Knesset on December 5, 1949 in speaking about Jerusalem and the Holy Places, when he said:

> We are not setting ourselves up as judges of the United Nations, which did not lift a finger when other States, members of the United Nations, openly made war on the decision adopted by the General Assembly on 29 November 1947, and tried by armed force to prevent the establishment of the State of Israel, to blot out the Jews living in the Holy Land and to destroy Jerusalem, the Holy City. But for our successful stand against aggressors acting in defiance of the United Nations, Jewish Jerusalem would have been wiped off the face of the earth. The whole Jewish population would have been annihilated and the State of Israel would never have arisen. We cannot today regard the decision of November 29, 1947 as being possessed of any further moral force since the United Nations did not succeed in implementing its own decisions. In our view, the decision of 29 November about Jerusalem is null and void.

Territorial Meaning of the Law

To understand how the Area of Jurisdiction and Powers Ordinance settled the legal status of acquisitions of the Land of Israel acquired outside the frontiers of the Jewish State conceived in the Partition Plan, it is necessary to take a closer look at its chief provisions.

The heart of the Law is section 1 which reads as follows:

Area of application of law: Any law applying to the whole of the State of Israel shall be deemed to apply to **the whole of the area** including both the area of the State of Israel and any part of Palestine which the Minister of Defense has defined by proclamation as being held by the Defense Army of Israel.

Section 1 of the Law actually deals with three separate kinds of territories of the Land of Israel, which it describes as follows:

1. "The whole of the State of Israel" or "*Medinat Israel koola*";
2. "**Any part** of Palestine which the Minister of Defense has **defined** by proclamation as **being held** by the Defense Army of Israel" which can be broken down into either the defined area (*shetah hugdar*),

or alternatively the possessed area (*shetah muhzak*); both terms are synonymous and refer to acquisitions of territory made by the State in the War of Independence.

3. The composite or unified territory comprising the "defined area" or the "possessed area" which is added to or joined to the area of the State of Israel, producing what the Law terms "**the whole of the area**" or "*kol ha shetah hakollel*".

In regard to the first kind of territory, "the whole of the State of Israel" referred only to the parts of the Land of Israel that were officially included in the State of Israel on May 15, 1948, which coincided exactly with the Partition Plan frontiers recommended for the Jewish State by the UN General Assembly on November 29, 1947 whether or not all the allocated parts were in the effective possession of the State and whether or not it contained additional territory acquired by conquest or appropriation. This definition of the State of Israel therefore excluded all of the city of Jerusalem which was supposed to be an international zone under the Partition Plan, as well as Jaffa and Nahariya which were part of the proposed Arab State, even though Israel had de facto sovereignty over them on May 15, 1948, except for the old city of Jerusalem. This definition also excluded other places or towns that had not yet come under the de facto sovereignty of the State on May 15, 1948 but would shortly gain that status in the following months, prior to the enactment of the Law. These places or towns included Acco, captured on May 17,1948, Lod on July 11, 1948, Ramle, on July 12, 1948 and Nazareth on July 16, 1948.

The second kind of territory dealt with in section 1 referred to all of the territory captured in 1948 and 1949 by the State of Israel beyond the United Nations line during the various military campaigns that began with Operation Nahshon in April 1948 and ended with Operation Fact, in March 1949. At the end of the War of Independence, Israel added, according to various estimates, about 2,500 square miles (6,500 Kilometers) of the Land of Israel to the State that were not included in the Partition Plan boundaries.

The addition of this land was alluded to in section 1 as the territory **defined** by proclamation of the Minister of Defense as **being held** by the IDF.

In the context of the Law as explained in the legislative debate on the Law, this meant territory of the Land of Israel that had earlier been "defined" in the Jerusalem Proclamation of August 2, 1948 and in the Land of Israel Proclamation of September 2, 1948, as "being held" by the IDF, although this meaning did not exclude the possibility that one or more new proclamations could be issued again at some future date, which would "define" additional areas of the Land of Israel as "being held" by the IDF. Because the law incorporated the two earlier proclamations, it could be made to apply by virtue of these proclamations to both past and future acquisitions of the Land of Israel beyond the UN line, as discussed below. This was important because the War of Independence continued for another eight months after the enactment of the Law during which period additional territorial acquisitions were in fact made. Most of the acquisitions acquired in the War of Independence took place in three areas, the corridor to Jerusalem and Jerusalem itself, in Galilee, especially Western Galilee and in the Negev, especially the eastern part. The enclave of Jaffa was another important acquisition for the State.

The third kind of territory mentioned in section 1 is the composite or unified territory consisting of the State of Israel within the UN line plus all of the acquisitions of territory that were made in the War of Independence. The Law gave this unified territory a very special name, the "Area of Jurisdiction and Powers", which was the title of the Law. The text of section 1 also referred to it as "the whole of the area", while the heading for section 1 called it the "area of application of law". The heading for section 2 adds still another name for this unified territory, namely, the "area of competence".

All of those various descriptive terms for the unified territory, whether it is the "Area of Jurisdiction and Powers", "the whole of the area", "the area of application of law" or "the area of competence" all denote and are synonymous with the State of Israel, in its enlarged boundaries, after the acquisitions of territory have been joined to it.

Section 2 of the Law filled a gap that was not provided for in section 1 of the Law. It applied the jurisdiction and administration of the State to the unified territory, which was confirmed by the Minister of Justice in the legislative debate on the Law, as seen below in Chapter 3.

Section 3 of the Law was one of great significance. The Law was made retroactive to May 15, 1948 (the 6th of Iyar, 5708). This created a fiction of law, under which the two proclamations dealing with Jerusalem and the rest of the Land of Israel were deemed to be issued after the Law was enacted, instead of before it as chronologically happened. What this accomplished was to make all the acquisitions acquired in the War of Independence an official part of the State as of the date of their conquest or effective possession in accordance with the provisions of the two proclamations. If any doubts existed about the legal validity of these two proclamations issued by the Minister of Defense before the Law came into force on September 22, 1948, they were validated retroactively under section 3.

The effect of the Law was to make the new city of Jerusalem, Jaffa and Nahariya all part of the State, officially and de jure, as of May 15, 1948. Those places or areas acquired afterwards became an official part of the State from the date of their conquest.

One additional consequence of section 3 was that no new proclamation had to be issued again, because the two already in existence were sufficient to annex any part of the Land of Israel that would in the future come into the effective possession of the IDF. However, as already noted, new proclamations could be issued if the Government decided on an alternative method other than the one given in the two proclamations to "define" additional parts of the Land of Israel conquered by the IDF.

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Chapter 2: The Jerusalem Proclamation of August 2, 1948 and the Land of Israel Proclamation of September 2, 1948

Purposes of the two Proclamations

These two Proclamations served a double purpose. First they established a military government in the areas where the IDF took over possession beyond the UN line which symbolized the new rule of the State of Israel. The area of Jerusalem that came under IDF rule was originally intended to be a part of a separate territory to be established as a corpus separatum, under a special international regime with its own laws and administration, headed by a Governor under the directions of the United Nations Trusteeship Council to last, for a trial period of ten years. The other areas which Israel acquired in the War of Independence were to be included in a proposed Arab state which never came into existence because of its emphatic rejection by the local Arab leaders as well as by the neighboring Arab states.

Since Israel at first accepted all aspects of the Partition Plan, including the corpus separatum for the City of Jerusalem as well as the proposed Arab state, it had by its own hand, denied itself the right to rule in the territories they comprised. But that self-denial ended with the establishment of military government in the areas conquered by or taken over by the IDF, as laid down in the Jerusalem Proclamation of August 2, 1948 and the Land of Israel Proclamation of September 2, 1948.

The second purpose served by these two proclamations was to annex the areas that came under military government to the State of Israel which was done by applying the law of the State of Israel to those areas.

As shown by the Area of Jurisdiction and Powers Ordinance, "the area of application of law" defines or comprises the territory of the State of Israel. Hence, the application of the law of the State of Israel to any defined area was the means adopted to cause automatic annexation and the expansion of Israel's de facto civilian borders.

The two Proclamations had the legal status of regulations issued by the Government of Israel under the Interpretation Ordinance of 1945 which was then in force. It did not matter that technically they were issued by the Minister of Defense in the name of the High Command of the IDF, since under the Interpretation Ordinance they were considered to be proclamations of the Government. They were shortly afterwards incorporated into the Area of Jurisdiction and Powers Ordinance, which gave them even greater legal force than before and removed any doubt as to their validity. In addition, the Jerusalem Proclamation of August 2, 1948 was further reconfirmed in the Jerusalem Military Government (Validation of Acts) Ordinance of the 4th of February 1949 (the 5th of Shevat, 5709). In this context, it should be noted that the military governor

of Jerusalem had also issued a proclamation in his own name very similar to the original Jerusalem Proclamation of August 2, 1948. This act as well as all his other acts, orders and regulations were validated by the Jerusalem Military Government Ordinance which ended military government in the area of Jerusalem as of February 2, 1949, before the end of the War of Independence.

Both the Jerusalem and Land of Israel Proclamations had common provisions. They both created areas of defined Israeli military rule and a specific and unique method for defining these areas. They both applied the law of Israel to the defined areas of military rule which caused their annexation to the State and the expansion of its de facto civilian borders. Finally, they both had retroactive provisions which made the proclamations valid from May 15, 1948 (the 6th of Iyar 5708) for acquisitions of territory added or conquered up to that date or if the acquisitions were acquired at a later date, then from that date.

The two proclamations differed in the definition of the territory which constituted the areas of military rule, since one was for the area of Jerusalem and the other for the rest of the areas of the Land of Israel. But it was in the matter of their future application where the principal difference was most apparent. The area of the Land of Israel that could be annexed to Jerusalem under the Jerusalem Proclamation was considerably smaller than the area of the Land of Israel that could be annexed to the State of Israel under the Land of Israel Proclamation.

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The Defined Area of Jerusalem under the Jerusalem Proclamation of August 2, 1948

The official name of the Jerusalem Proclamation of August 2, 1948 was Proclamation Number 1 of the Israel Defense Forces Government in Jerusalem.

This proclamation which established military government in a defined area of Jerusalem deliberately did not call such area an occupied area under international law - *shetah kavush*, but rather a possessed area - *shetah muhzak*, not only because it was not considered to be foreign occupied territory or part of another state, but if the proclamation had used the terminology of international law as reflected in article 43 of the Hague Rules and Regulations of 1907, Israel would have been barred from applying its own law and hence annexing such area to the State. The formula was brilliantly devised by the Minister of Justice, Pinhas Rosen, on the instructions of the Prime Minister and Minister of Defense, David Ben-Gurion.

The most important provision of the Jerusalem Proclamation of August 2, 1948 was the definition of "the possessed area" - *shetah muhzak* of Jerusalem, which prescribed the actual method, so simple in its application, which the Minister of Defense could use to annex this defined area to Jerusalem. The most important feature of the definition was that the annexation procedure was open-ended, that is to say, it was not limited to past acquisitions, but applied as well to future acquisitions of territory as follows from the definition of the "possessed area" of Jerusalem which expressly allowed for a new map to be used to replace the earlier one to delineate the future acquisitions.

The "possessed area" of Jerusalem was defined as follows:

1. The term "the possessed area" (quotation marks in the original text) means the area which includes the major part of Jerusalem - the city, part of its surroundings and its western approaches and the roads which connect Jerusalem with the coastal plain, the whole as shown in the boundaries of the Red line, which are marked in a map of the Land of Israel, that is signed by me and bears the date of today, the 26th Tammuz 5708 (August 2, 1948) **or in any other map that will replace it**, which will be signed by me and marked as mentioned above.

This definition of "the possessed area" of Jerusalem illustrated what was meant in sections 1 and 2 of the Area of Jurisdiction and Powers Ordinance which spoke about "any part of Palestine which the Minister of Defense has defined by proclamation as being held by the IDF." Here was a proclamation that did exactly what was said in these statutory provisions in regard to the area of Jerusalem!

The simplicity of the procedure for defining "the possessed area" of Jerusalem and hence the method of annexation is ingenious. All that was required to effect the annexation of "the possessed area of Jerusalem"

which had come under official IDF rule as of August 2, 1948 was a map of the Land of Israel in the office of the Minister of Defense, who identified this area of Jerusalem within the perimeters of a red line, then signed and dated it. If further acquisitions were made by the IDF which enlarged "the possessed area" after August 2, 1948 all that had to be done to annex these additional parts of "the possessed area" to the State of Israel was to produce a new map of the Land of Israel showing the enlargement of the area with a red line and the minister's signature and date. There was no necessity for any new proclamation or even any kind of public announcement - only a new map and a red marker would be sufficient to show the defined additional area on the map.

In actual fact, the corridor to Jerusalem was indeed widened after August 2, 1948 when the Harel Brigade conducted a military operation as part of Operation Yo'av (Ten Plagues) during the period October 15-22, 1948. Egyptian forces stationed in the Judean foothills at Bet Guvrin were driven out from their positions, allowing the precarious narrow corridor to Jerusalem to be widened southwards. It is presumed that the same procedure given in the Jerusalem Proclamation for annexation was followed in that particular case of territorial acquisition which enlarged "the possessed area" of Jerusalem.

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The Land of Israel Proclamation of September 2, 1948

Even more astonishing than the Jerusalem Proclamation of August 2, 1948 is the Land of Israel Proclamation of September 2, 1948. Its existence has been virtually forgotten by everyone and its meaning either not understood or ignored which is very strange since it provides the only constitutional basis for annexing to the State all acquisitions made in the War of Independence, apart from "the possessed area" of Jerusalem.

This Proclamation is officially called Proclamation Number 1 of the Israel Defense Forces Government in the Land of Israel. Like the earlier Jerusalem Proclamation, it is applicable not only to any acquisitions of the Land of Israel acquired before it was published, but also to those acquired afterwards, as evidenced by the right conferred on the Minister of Defense to use a new map of the Land of Israel to indicate any further acquisitions made by the IDF.

It is this future applicability of the Proclamation that allows for its unlimited use in the future to an unlimited area of the Land of Israel (excluding the possessed area of Jerusalem) by the most simple procedure imaginable, that makes the Land of Israel Proclamation truly incredible. These features of law are contained in section 1 of the Proclamation which reads as follows:

1. **Interpretation**: The term "possessed areas" (quotation marks in the original text) - *shtahim muhzakim*, mean the areas of the Land of Israel, the whole as shown in the boundaries of the marked-out areas in red color, on a map of the Land of Israel, which is signed by me and bears the date of today, the 28th of Av, 5708 (September 2, 1948) **or on any other map that will replace it**, which will be signed by me and will be marked as mentioned above.

The legal status of this Proclamation is that of a regulation issued by the Government of Israel, exactly like the Jerusalem Proclamation of August 2, 1948. It was also incorporated into the Area of Jurisdiction and Powers Ordinance giving it an enhanced legal status. Its method of defining and annexing parts of the Land of Israel being held by the IDF is also exactly the same. It applies the law of the State and not international law to the "possessed areas" which come under the rule of military government. It can be invoked in an open-ended manner to any future territorial acquisitions of the Land of Israel, by a simple administrative act of the Minister of Defense, without any fanfare or publicity. The only "tools" necessary for its application are a map of the Land of Israel and red marker. This is how the acquisitions or "possessed areas" of the Land of Israel, were "defined" in 1948 and 1949 by means of the Land of Israel Proclamation issued by the Minister of Defense, as prescribed in sections 1 and 2 of the Area of Jurisdiction and Powers Ordinance.

This method of defining territory, which is followed by automatic annexation was applied to Beersheba when it was conquered on October 21, 1948 in Operation Yo'av and to other parts of the Negev which were conquered subsequently in Operation Horev. There can be little doubt that had Judea, Samaria and Gaza been conquered in the War of Independence, as was possible at one point, they too would have been defined

and annexed in the same manner as were Beersheba and other parts of the Negev under the Land of Israel Proclamation without further ado, as being "possessed areas" of the Land of Israel. Even when they were conquered 19 years later, this Proclamation which had always remained in force in the succeeding years was still applicable. All that was theoretically required to effect their annexation to the State of Israel under the Land of Israel Proclamation was noting their conquest on a map of the Land of Israel or defining the exact areas with a red marker and the minister's signature and date. This may in fact have been done, but even if not, the Land of Israel Proclamation provides a sound legal basis for asserting that Israeli constitutional law required Judea, Samaria and Gaza to be automatically annexed the moment they came into the possession of the IDF in the Six-Day War and under the de facto military sovereignty of the State of Israel.

In virtue of its provisions, the Land of Israel Proclamation is the ultimate confirmation that the Land of Israel belongs eternally to the Jewish People!

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Chapter 3 : The Legislative Debate on the Area of Jurisdiction and Powers Ordinance, the Jerusalem Proclamation of August 2, 1948 and the Land of Israel Proclamation of September 2, 1948: The difference between possessed areas and occupied areas.

In 1948, the first Government of Israel under David Ben-Gurion was faced with a taxing legal question. It wanted to annex to the State those areas that the IDF acquired in the War of Independence after the Partition Plan became a dead letter by the change of circumstances brought about by the Arab attack against Israel. As noted above, annexation was accomplished by applying the law of the State to those possessed areas, but this could not be done if they were considered occupied areas within the meaning of international law as set out in Article 43 of the Hague Rules and Regulations. The Minister of Justice Pinhas Rosen (then Felix Rosenblueth) after wrestling with the problem came up with an appropriate solution. The acquisitions of territory would not be called "occupied areas" which denoted foreign sovereignty, but "possessed areas" which were "being held" by the IDF.

The vocabulary chosen to describe the status of the acquisitions of territory was deliberate and not accidental. Great pains were taken to show that these areas were in the "possession" of the IDF, rather than in the "occupation" of the IDF. They could then naturally be called "possessed areas", rather than "occupied areas" or what was just as worse from the legal point of view, "administered areas", which also denoted foreign sovereignty.

The subtle language used by the Minister of Justice to distinguish between "possessed areas" and "occupied areas" can be seen in the careful words used to draft the two Proclamations.

The opening recital of the preamble in both proclamations begins with the following words:

Jerusalem Proclamation: Whereas the area of Jerusalem ... is in the "possession" - *b'hazakato* of the IDF.

Land of Israel Proclamation: Whereas different areas of the Land of Israel are in the "possession" - *b'hazakato* of the IDF.

The noun "possession" with a suffix is also found at the end of the two proclamations.

Both the noun "possession" (*hazaka*) as well as the adjective "possessed" (*muhzak*) are derived from the verb "to possess" (*lehahazik*) existing in the causative form. The Hebrew adjective "possessed" (*muhzak*) that appears in the two proclamations is in the present tense of the passive causative form of the verb, known in Hebrew as *Huf'al*. This word was deliberately used in lieu of the adjective "*kavush*", which is used only to denote the military capture of foreign land that is indisputably under foreign sovereignty. "*Muhzak*" can be correctly translated into English either as "possessed" or "being held", or by similar words but under no circumstances can it be described as "occupied" within the meaning of international law. That was the subtle but sharp and enormous difference that existed in the minds of those who drafted the Area of Jurisdiction and Powers Ordinance under the very careful supervision of the Minister of Justice Pinhas Rosen as can be clearly seen in the following excerpts taken from the legislative debate on September 16, 1948, which also

confirms that the two proclamations were incorporated into the Law and also explains why the Law was needed.

> **Minister of Justice**: This Ordinance which cleared the Legislative Committee... explains and perfects the Proclamations, which imposed the law of the State on the possessed areas. You certainly remember that two proclamations were published, one that imposed the law of the State on the area of Jerusalem and a second proclamation that imposed the law of the State of Israel on the rest of the possessed areas. In imposing the law of the State, we still did not resolve all the questions which can arise ... we are not able to set up in the possessed area a separate administration or more correctly a separate central administration in order to implement the laws that we have imposed on these areas, by virtue of the Proclamations... By virtue of this Law [Area of Jurisdiction and Powers Ordinance] we create such administrative unity by the creation of a concept, a legal fiction, which is called "the whole of the area", an area which includes the area of the State of Israel and also the possessed area ... Were it not for this Law, doubts would arise, as to whether for example, the Attorney-General could submit claims and criminal complaints in Nazareth and Jerusalem. Were it not for this Law, the question would arise whether there exists a direct appeal from the District Court in Jerusalem to the Supreme Court of the State...
>
> **Zerah Wahrhaftig**: In the meaning of law, the Ministry of Justice certainly had difficulties about this question and therefore decided on possessed territory (shetah muhzak) and not occupied territory (shetah kavush), a concept (or distinction) that is almost unknown in international law. If this territory would be occupied territory, it would be impossible to pass a law which permits the civil law (existing) in the area of the State of Israel to also have effect inside it [i.e. inside occupied territory], for is it not true that in occupied territories there can only be military law. And we have in this case found a new legal term of "possessed area" - (shetah muhzak) and not occupied area - shetah kavush and this situation is unique.
>
> **Minister of Justice**: There is nothing in this Law from the political viewpoint. The Law gives an answer to a legal question and the legal question is: What is the relationship and connection between the possessed area and the area of the State of Israel? There is for example what is called the transfer of a hearing in a trial from one court to another. Perhaps we may wish to have a change of venue from Jerusalem to Tel Aviv or Haifa. As to the proposal of Mr. Wahrhaftig about section one (of the Law), that is exactly what we said in a proclamation, and there is no need in the [present] Law to repeat those things once more.

[**Petitioner's note**: The Minister of Justice was here referring to the worry of Mr. Wahrhaftig that the Law was in fact creating a legal difference between the parts of the Land of Israel outside the State according to the UN line that were captured by the IDF and the parts of the Land of Israel originally included in the State. The Minister of Justice replied in effect that the two proclamations had already solved that problem by erasing any differences that may have previously existed. This made the proposed amendments that Mr. Wahrhaftig wanted to make to the draft bill of law totally unnecessary.]

> **Minister of Justice** (continuing): In contrast to this, for purposes of administration and law, there is a need for reiterating what we said in the proclamations. There is a necessity for creating a concept of territory that includes (both) the possessed area and the area of the State. (Proceedings of the Provisional State Council, Sitting 18, September 16, 1948, pp. 7-8)

From the foregoing excerpts, it is clear that the new Law was meant to fill a legal gap left by the two proclamations. While they applied the civilian law of the State to the possessed areas which erased any legal differences between the various parts of the Land of Israel included in "the whole of the area", the two proclamations did not provide for the administrative unity that was also required in order to implement the identical law of the State of Israel now in force throughout "the whole of the area." The new Law covered precisely that gap and created one comprehensive legal and administrative system for "the whole of the area", that is, for both the possessed areas and the area of the State of Israel.

The brilliant plan of the Minister of Justice worked perfectly for the acquisitions made in the War of Independence but it was afterwards spoiled by the incorrect legal translation into English of the Hebrew adjective "possessed" (*muhzak*) which is derived from the Hebrew noun for "possession". Instead of using the most precise and accurate translation denoted by the words "possessed", "held" or "being held", the legal translator wrongly used the very detrimental word "occupied" which had serious and damaging ramifications

under international law. The very fine and subtle difference that was deliberately created by the Minister of Justice in 1948 between "possessed areas" and "occupied areas" was obliterated and then forgotten altogether.

An example of mistranslation from Hebrew into English occurred in the 1949 Law, the Jerusalem Military Government (Validation of Acts) Ordinance, which erroneously called the "possessed area" of Jerusalem as the "occupied area" of Jerusalem. The same mistake was repeated in an English translation of a Supreme Court judgment which referred to one of the parties in the case as the Military Governor of "The Occupied Area" of Jerusalem and used this phrase twice more in the body of the judgment (Neiman case, H.C. 1/48). This mistranslation later became widespread in popular usage even among jurists and judges after the Six-Day War when Judea, Samaria and Gaza were generally labeled "occupied areas" in English instead of what they should have been called, the "possessed or re-possessed areas" of the Jewish National Home and the Land of Israel, or alternatively, the liberated areas, as the Minister of Justice correctly called them in the Knesset debate of June 27, 1967.

The incorrect English translation of "*shtahim muhzakim*" as "occupied areas" produced an erroneous impression that existed universally, but first of all in Israel itself, as to the true legal status of these areas under Israeli constitutional law as well as under international law. The situation was then made even worse by the voluntary decision taken by the Government of Israel on June 7, 1967 with the approval of its eminent legal advisers who should have known better, but did not, to apply the laws of war under international law, to the areas of Judea and Samaria that were in IDF possession, instead of Israeli law. This was the very opposite of what was done 19 years earlier for the "possessed areas" of Jerusalem and the rest of the Land of Israel. The same wrongful decision was also made for the other re-possessed or liberated areas of Gaza, Sinai and Golan.

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Chapter 4: The non-application of the existing constitutional law to the re-possessed areas of the Land of Israel in the Six-Day War

The Area of Jurisdiction and Powers Ordinance provides for more than one method to "define" in a proclamation published by the Minister of Defense, which parts of the Land of Israel are "being held" by the IDF, which then causes their automatic annexation to the State. The ingeniously simple method of "definition of territory" adopted in 1948 by Pinhas Rosen and David Ben-Gurion was by the use of a map and red marker which indicated precisely the parts of the Land of Israel being held by the IDF.

A second alternative method for "the definition of these areas" was not through the use of a map and a red marker, but by a simple declaration in the proclamation itself declaring or naming the parts of the Land of Israel "being held" by the IDF, which as a consequence thereof, meant that the law of Israel would automatically be applied to "the whole of the area" comprising the State of Israel plus the newly defined parts or re-possessed areas, in accordance with the Law of September 22, 1948.

In the Six-Day War of 1967, Israel re-possessed the areas of Judea, Samaria, Gaza, Golan Heights and Sinai. Several proclamations were duly issued from June 6, 1967 onwards by the various Military Commanders of these areas, all of whom acted as surrogates for the Minister of Defense and the Government of Israel. They defined these areas as "regions" being held by the IDF, by making a simple declaration to that effect and naming them without the use of any map and red marker to physically show their location. As soon as this method of defining territory was used, the existing constitutional law required the law of Israel to be applied to these "possessed areas", or re-possessed areas, in the sense that they were originally parts of the Jewish National Home or of the Land of Israel that have been returned to the possession of the Jewish People. But the Government of Israel and the Minister of Defense supported by erroneous legal advice ordered otherwise. Instead of the law of the State automatically applying as it should have once the proclamation was issued, the Military Government established for each region, chose to apply the laws of war dictated by international law, specifically article 43 of the Hague Rules and Regulations of 1907. The rules of the Fourth Geneva Convention of 1949 were also applied voluntarily. This was a complete reversal of the 1948

precedent as well as being absolutely illegal according to the existing Israeli constitutional law and practice applicable to the situation.

To take a concrete example, two military proclamations were issued on June 7, 1967 for Judea and Samaria by the IDF Commander of Forces, Haim Herzog (the future President of the State) which defined these two parts of the Land of Israel as one region, called the "West Bank", according to its Jordanian name. The first proclamation was entitled the "Proclamation concerning the assumption of power" and the second, the "Proclamation concerning Law and Administration (Region of the West Bank). Section 1 of Proclamation Number 1 read as follows:

Proclamation Concerning the Assumption of Power

Section 1: The Israel Defense Army has entered the region today and assumed the power of government and maintenance of public law and order in the region.

Sections 1 and 2 of Proclamation Number 2 read as follows:

Proclamation Concerning Law and Administration

Section 1: **Interpretation**: "The region" (quotation marks in the original) means the region of the West Bank.

Section 2: **Validity of existing law**: The law that is in force in the region today, 28th of Iyar, 5727 (June 7, 1967) remains in force, provided there is nothing therein in conflict with the Proclamation or an order issued by me and the changes resulting from the establishment of government by the IDF in the region.

These two proclamations issued together by the IDF Military Commander on behalf of the Minister of Defense and the Government of Israel correctly "defined" the parts of the Land of Israel "being held" by the IDF, in accordance with section 1 of the Area of Jurisdiction and Powers Ordinance, even though this Law was not being consciously followed and the method of "defining territory" was different than the one used in the two proclamations of 1948. But instead of applying the law of the State as required by the Law of September 22, 1948 for re-possessed areas of the Land of Israel and the Jewish National Home, the IDF Military Commander illegally applied article 43 of the Hague Rules and Regulations. This provision of international law was designed to protect and safeguard the sovereignty of a foreign state which, as a result of a war, has lost its de facto power to rule over particular areas belonging to it. The Commander's action was in flagrant violation of Israel's constitutional law and practice as it then existed on June 7, 1967, which until that time had always applied the law of Israel to the re-possessed or liberated areas of the Land of Israel, especially when the application of such law reflected the existing political reality and facts on the ground, as it definitely did on June 7, 1967. This practice was stated authoritatively by the Minister of Justice three weeks later in the Knesset debate on section 11B of the Law and Administration Ordinance.

The Law of September 22, 1948 was originally enacted to provide eventual civilian rule of the State after the end of military government in the various areas of the Land of Israel defined in a Proclamation as being held by the IDF. But instead of ensuring this ultimate goal, the Military Commander of Judea and Samaria in 1967 ensured the claim of foreign sovereignty of Jordan, by keeping in force the existing Jordanian law, except as modified by the military proclamations and subsequent military orders.

In the Knesset debate on June 27,1967 on section 11B only one strong and clear protest was heard from the distinguished parliamentarians against what was then being done, which came from the member of the opposition Free Center Party, Eliezer Shostak. However, Shostak, who later became Minister of Health in the Government of Menahem Begin, did not realize that the "proclamation" he so eagerly awaited to be issued by the Minister of Defense under the Area of Jurisdiction and Powers Ordinance had already been issued several times in regard to the repossessed areas, namely, two relevant proclamations in 1948 followed by additional military proclamations in June 1967, applicable to the regions of Judea and Samaria, Gaza and Northern Sinai, Sinai proper and Southern Sinai and for the Golan Heights.

Had the existing constitutional law and practice been adhered to in June 1967, Judea, Samaria and Gaza would automatically have been annexed or incorporated into the State of Israel in the same way as other parts of the Land of Israel were annexed or incorporated in 1948. It is very likely that the Golan and at least substantial parts of the Sinai would have also become part of the State of Israel, on the assumption that they too were part of the Land of Israel as that term is understood and defined in Jewish law, Jewish history, Zionism and geography. There would also have been no need to enact section 11B.

The non-application of the existing constitutional law and practice to the re-possessed parts of the Land of Israel defined in the various military proclamations in June 1967 caused permanent and irreparable harm to the State of Israel. It created great misunderstanding and confusion both at home and abroad which aided the enemies of Israel. By applying international law to these re-possessed areas of the Land of Israel instead of Israeli law, it appeared to everyone including great friends of Israel that they were in fact "occupied areas" that did not belong to the Jewish People and therefore had to be returned to their rightful owners. This in turn caused enormous and unremitting pressures on Israel to do exactly that. It was one thing, sad as that was for foreign nations and international jurists to misunderstand the true legal status of those re-possessed and liberated areas of the Jewish National Home. It was quite another thing, tragic as well as heartbreaking in its consequences, for Israel's own Government leaders, many of its intellectual elite and most perplexing of all, its most distinguished jurists to be also misled. This monumental violation of law led directly to more illegal actions being committed, as the nation of Israel is now witnessing in the Interim Agreement with the PLO.

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Chapter 5: Are the Area of Jurisdiction and Powers Ordinance, The Jerusalem Proclamation of August 2, 1948 and the Land of Israel Proclamation of September 2,1948 still in force?

In a decision rendered on June 16, 1994, in the case of **Avraham Shaier** versus **The IDF Commander of Judea and Samaria** (H.C. 2612/94), the Supreme Court speaking through Justice Eliyahu Mazza, implicitly assumed that the Area of Jurisdiction and Powers Ordinance was still in force when it referred to this Law as being one of two ways through which there can be a general application of Israeli law to territories being held by the IDF outside the de facto civilian borders of the State, the other way being through section 11B of the Law and Administration Ordinance of 1948, as amended in 1967. That should definitively answer the question about the Law's applicability today, but more reasons can be given to show why this Law is still in force, despite the subsequent enactment of section 11B, which provided an alternative method for the general application of Israeli law to areas lying outside the State that are being held by the IDF.

The entire constitutional structure created by Israel's first Government, first Prime Minister and first legislature which granted statehood to Jewish Jerusalem, Jaffa and other parts of the Land of Israel not originally included in the Jewish State, would collapse if it is seriously claimed that the Area of Jurisdiction and Powers Ordinance is no longer in force. For this reason alone, this Law must remain binding, regardless of whether or not its provisions have been invoked in relation to any of the re-possessed areas of the Land of Israel in 1967.

The Law which ended military government in Jerusalem as of February 2, 1949, the Jerusalem Military Government (Validation of Acts) Ordinance specifically preserved in section 5 of the Law the powers conferred in the Area of Jurisdiction and Powers Ordinance, which included the power of the Minister of Defense to issue new proclamations. If the legislature wanted to repeal the Law of September 22, 1948, it would have done so by a specific piece of legislation and not relied on supposition. The fact that the Law was never specifically repealed confirms its existing validity.

Another reason for its continuing validity is that in 1956, the Knesset added section 2B to the Law which gave jurisdiction to Israeli courts over any seacraft or aircraft in the world that were registered in Israel, as if they were part of the physical territory of the State. This important provision of law would cease to have any effect if it is claimed that the Ordinance has expired or lapsed.

The claim of expiry is founded on the assertion that in 1967, section 11B "replaced" section 1 of the Law of September 22, 1948 as the only method of annexation. But it is clear from the words spoken by the Minister of Justice in the Knesset debate on section 11B, that the latter Law was meant only as a more democratic alternative and not as a replacement for section 1. He said the Government of Israel acting as a collective body, lacked a legal tool, by which it rather than the Minister of Defense would collectively make the decision as to whether or not to apply the law of the State of Israel in a general manner to re-possessed areas of the Land of Israel. This tool was provided by section 11B. Here are his comments on this subject, made on June 27, 1967:

> **Minister of Justice**: ...Since when in the State of Israel is the Minister of Defense an institution unto himself? Is this not a matter for a democratic state? Is this not the way in every organized state? If we were proceeding by way of the Area of Jurisdiction and Powers Ordinance and (if) things were done by proclamations that are issued by the Minister of Defense...
>
> **Eliezer Shostak**: In the name of the Government.
>
> **Minister of Justice**: Were not the proclamations that were issued by the Minister of Defense at that time, issued on his opinion alone and not on the opinion of the whole Government? ... In any matter that affects the national and political struggle, if the Government sees that it lacks whatever legal tool (it needs), it comes to the Knesset and passes a Law within 24 hours, if there is a need to do so. For this purpose, the Government of national unity exists. (op cit. p. 2427)

In the above exchange between the Minister of Justice and Eliezer Shostak, MK, the latter was right when he stated that the Minister of Defense in 1948, David Ben-Gurion acted in the name of the Government and not merely in his own name, in conformity with the Interpretation Ordinance of 1945 which applied at the time. However, the point raised by the Minister of Justice also had merit, since what he was really saying was that any decision of annexation should be taken by a collective order of the Government, rather than by a proclamation issued by the Minister of Defense alone, even if the latter acted by law in the name of the Government, since this was the way it was generally done in a democracy. It is clear therefore that section 11B was but another legal tool in the hands of the Government of Israel, which did not exclude the legal tool already in use, namely section 1 of the Law of September 22, 1948, which therefore remained fully intact.

The question of the legal status today of the two Proclamations issued in 1948 that defined various parts of the Land of Israel as "possessed areas" which were then annexed to the State is more complex, because their provisions were actually fulfilled in 1948 and 1949 as regards all the acquisitions of territory, acquired or won in the War of Independence. There is no doubt that those articles of the two proclamations dealing with the establishment of military government have lapsed. But the same cannot be said for those articles dealing with the annexation of the parts of Israel that were called the "possessed areas", since otherwise the legal validity of their annexation to the State would be in doubt.

However, as regards the Jerusalem Proclamation of August 2, 1948, there is no longer any possibility to invoke it, since it has been effectively replaced by the Law and Administration Order (Number 1) of June 28, 1967, the Jerusalem Proclamation of June 28, 1967 and the Basic Law: Jerusalem, Capital of Israel. In addition, municipal annexation can now be accomplished only in accordance with the provisions of the Municipalities Ordinance which sets up its own procedure for extending the boundaries of a particular municipality. Therefore, the original Jerusalem Proclamation of August 2, 1948 has no future use, but it does retain its past validity and status as a regulation of law issued pursuant to the Area of Jurisdiction and Powers Ordinance.

The current status of the Land of Israel Proclamation is even more complicated. Its provisions have never been completely fulfilled, since substantial areas of the Land of Israel re-possessed in 1967, remain outside the general civil framework of the State. Theoretically, it is still possible to invoke the administrative procedure this proclamation prescribes to join to the State those parts of the Land of Israel being held by the IDF as a result of the Six-Day War. However, this procedure has not been invoked since it was first used in the War of Independence. Any doubt as to its continuing validity can be quickly resolved merely by issuing an identical proclamation under the Area of Jurisdiction and Powers Ordinance.

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Chapter 6: Comparing Section 11B of the Law and Administration Ordinance and section 1 of the Area of Jurisdiction and Powers Ordinance: Similarities and Differences

There are several similarities as well as differences in both Laws which provide alternative procedures for annexation and the extension of the de facto civilian borders of the State of Israel.

First of all, both are basic constitutional Laws enacted by the legislature to provide for annexation of parts of the Land of Israel which had been under the de facto rule or occupation of a foreign nation, until their re-possession by the IDF. The method of annexation and extension of borders is different under each Law. Both Laws are enabling statutes which delegate the legislative power of annexation from the legislature to the Government, which acts according to an administrative procedure. Section 11B leaves the decision of annexation in the hands of the Government as a collective body, while section 1 allows the Government to act through the Minister of Defense who is granted ministerial jurisdiction over the areas of the Land of Israel acquired in wartime.

Both Laws apply only to the Land of Israel lying outside the de facto civilian borders of the State. Section 1 states explicitly that the areas of the Land of Israel must be in the possession of the IDF, while section 11B only assumes that fact. In theory, the Land of Israel means every part of it, even the parts not re-possessed, but no action can be taken under either section 11B or section 1 until specific areas of the Land of Israel are liberated by the IDF.

Each Law assumes that the entire Land of Israel is the patrimony of the Jewish People, under Israel's de jure sovereignty forever, whether or not all parts of the Land are in Israel’s effective possession and hence under its de facto sovereignty or even included in the de facto civilian borders of the State. This assumption is the real legal basis that allows captured areas of the Land of Israel to be annexed to the State. The concept of the Land of Israel and its relationship to the Jewish People is therefore firmly implanted in the constitutional law of the State of Israel, not as a political question, but as a legal subject.

Both Laws when they are invoked apply not only the complete body of law of the State to the annexed parts of the Land of Israel, but also its jurisdiction and administration, in regard to each of the three branches of government, legislative, executive and judicial, in order to create an unified legal and administrative structure for "the whole of the area". Once the law, jurisdiction and administration is applied, the pre-existing de jure sovereignty of Israel over the re-possessed areas, which until then had been only nominal and theoretical becomes actual and practical.

The most important difference between the two Laws is the question of choice, discretion and timing, concerning the decision to be made regarding annexation and the extension of the State's de facto civilian borders. Section 11B gives the Government acting collectively, a choice or right either to implement section 11B or not do so. Section 11B also gives the Government the choice or right to decide exactly how much of the Land of Israel in the possession of the IDF will be annexed, from none of it to all of the land being held. This means that under section 11B there is no automatic annexation or border extension. By contrast, section 1 leaves no choice or discretion to the Government, acting through the Minister of Defense. There is automatic annexation and border extension once a Proclamation is published by him announcing the repossession of areas of the Land of Israel by the IDF, as defined in the Proclamation, which is done either by means of a map and red marker or by a mere declaration, naming or describing these areas.

Furthermore, the Proclamation referred to in this Law must be published and not delayed, as soon as any area of the Land of Israel is effectively possessed by the IDF, otherwise a legal vacuum or confusion would be created or what is even worse, if no Proclamation were issued in a timely fashion, a presumption would arise of foreign sovereignty over the re-possessed area of the Land of Israel, contrary to the very purpose of this Law. Hence, there exists an obligation under Israeli constitutional law for the Minister of Defense to publish this Proclamation, which also serves the purpose of informing the public about the IDF conquest. The practice followed in 1948 as regards exactly when the Proclamation was to be issued, was in accordance with the date of “effective possession”, which well illustrated the meaning of this Law. This created a binding

precedent for its future application, but as noted earlier, the precedent was illegally disregarded in 1967. In a twist of irony, various proclamations were indeed issued for each of the regions of the Land of Israel liberated by the IDF, but instead of the Israeli military commanders applying Israeli law to these regions as clearly required by section 1 of the Ordinance, they applied the Hague rules of international law. This unexpected and disastrous development kept in force the foreign laws of the Arab states which had governed these regions prior to the entry of the IDF in plain mockery and violation of the annexing Ordinance that called for a difference course of action.*

* This paragraph, missing from the original court document, has been added here to provide further clarification of its meaning of section 1 of the Area of Jurisdiction and Powers Ordinance and to emphasize its illegal non-application in 1967.

A comparison of both laws reveals that the method of annexation and border extension is different because section 11B announces the general application of Israeli law in a government-issued order, while section 1, announces the re-possession of land, which is automatically followed by the general application of the law of the State of Israel to the re-possessed area. The practical results are the same under both section 11B and section 1, but the method or procedure to achieve those results are different. Section 11B is more flexible and gives the Government more time to decide what to do.

In light of the fact that applying section 11B was optional while section 1 was mandatory, section 11B was superfluous at the time it was enacted. It came into being only because of the illegal non-application of section 1 in June 1967 when various areas of the Land of Israel were returned to the effective possession of the Jewish People. The only way to have reconciled these two Laws was to have eliminated the factor of choice in section 11B and to have made the government-issued order of annexation applicable to all of the re-possessed areas in the Six-Day War, retroactive to the date of re-possession, while at the same time saving the validity of section 1 and the whole Law it embodied.

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Chapter 7: The Failure to Apply the Laws of 1948 in 1967 and the Inevitable Result

In the Six-Day War that lasted from June 5 to June 10, 1967, the IDF swept over all the territories of the Land of Israel west of the Jordan, left out of the Jewish State in May 1948 and even recovered for the Jewish People those territories which the British and French in 1920 preferred to keep out of the Jewish National Home despite a strong historical connection linking them to the Jewish People. This connection was the original criterion for deciding which areas would be included or excluded from the Mandate for Palestine.

In the period between June 7, 1967 (date of the re-possession of Judea and Samaria) to June 27, 1967 (date of the enactment of section 11B of the Law and Administration Ordinance), there was a golden opportunity to correct the mistakes of the past, change the British-French blueprint of the Middle East devised in the Sykes-Picot Agreement of March 9, 1916 and make up for the great weakness and dependency of the Jewish People in 1948, still reeling under the shock of the Holocaust, when the Big Powers and the UN were able to freely dictate the size and shape of the frontiers of the new born Jewish State, to its grave disadvantage.

In June 1967. the time was never more suitable for massive and substantial changes to Israel's incoherent borders, which would bring them more in line with the borders of the Jewish National Home delineated under the Mandate or the historic borders of the Land of Israel or what US President Woodrow Wilson referred to in 1920 as "rational borders". In the aftermath of the War many nations supported Israel's cause, impressed by the valor of its army in repelling Arab aggression and for putting an end to Arab threats and bombast against its existence as a State.

The constitutional infrastructure needed for absorbing the acquisitions of Judea, Samaria and Gaza, Golan and Sinai, was firmly in place, thanks to the stellar work of Israel's first Minister of Justice, its first Prime Minister and Minister of Defense. All that was lacking was a decision by the Government of Israel to apply the laws of 1948, which were still in full force and awaiting the call to be invoked, in particular the Area of Jurisdiction and Powers Ordinance and the Land of Israel Proclamation or an up-dated version of it. However that all-important decision was never made and an alternative legal measure was adopted, namely

section 11B of the Law and Administration Ordinance, which, as can be seen after the passage of 29 years, did not do what it was supposedly intended to do, which was to annex all or most of the acquisitions to the State of Israel in the period following the Six-Day War.

The failure in 1967 to apply the existing constitutional law and practice of 1948 was a deliberate act of government policy, which was both illegal and unforgivable in light of the catastrophic consequences that it has since caused, which could have been foreseen even then. It was the fault first and foremost of the Government for not observing the law in force. But the role played by the jurists who helped to advise the Government in deciding its policy was also critical and must not be overlooked. They, as well as the Government, acted as though the 1948 laws did not exist. They as well as the Government ignored the law of the Mandate, particularly article 5, which forbade partition of the Jewish National Home. They, as well as the Government, apparently did not know or care to know that the rights of the Jewish People and the State of Israel under international law to the re-possessed territories acquired in 1967 were not dependent at all on the UN General Assembly Resolution of November 29, 1947 which Israeli constitutional law had already discarded in August-September 1948. Rather, they were based solely on the Balfour Declaration accepted by the Principal Allied Powers at San Remo on April 25, 1920 as well as the Mandate for Palestine which was drafted for the express purpose to implement the Balfour Declaration for the benefit of the Jewish People to allow it to become an independent nation.

Incredibly, the jurists advising the Government favored the application of the laws of war to the re-possessed territories despite the fact that they were inapplicable or precluded by the constitutional obligation to apply Israel's own laws, which were based on extant Jewish rights to the Land of Israel inherited from the Mandate for Palestine.

The golden opportunity of 1967 was therefore squandered away by government policy because of either ignorance of the relevant international and constitutional law or a willful refusal to apply this pre-existing law. This has led directly to the present Interim Agreement which provides for the virtual abandonment of Judea, Samaria and Gaza.

Under this Agreement a new layer of law promulgated by the "Palestinian Council" is being introduced into Judea, Samaria and Gaza. This law has no basis whatsoever in any source of law, either Israeli constitutional law or international law, but derives solely from the Agreement itself and its devilish implantation into the Israeli military laws governing Judea, Samaria and Gaza.

The introduction of so-called "Palestinian Law" will destroy the entire constitutional structure so impressively and painstakingly constructed in 1948. It will also undermine Israel's own legal existence as a Jewish State. No bigger blow than that can happen. It is left to this Honorable Court to alleviate some of the disastrous consequences caused by this illegal development if it decides to grant the judicial remedies prayed for in this Petition.

Part 3:

Violations of law related to the Basic Law: Israel Lands, 5720/1960 and the State Property Law, 5711/1951

Under section 1 of the Basic Law: Israel Lands, all lands in the State of Israel which are under the ownership of the State, the Development Authority or the *Keren Kayemet Le-Israel* shall not be transferred to any one, either by sale or in any other manner. This prohibition against the transfer of "Israel Lands", as the Law calls them, does not apply to certain kinds of transactions, which are enumerated in a different but related Law, the Israel Lands Law. In a third related Law, called the Israel Lands Administration Law, section 5 of this Law amends section 5(b) of the State Property Law, to forbid the Government from selling or otherwise transferring the ownership of "Israel Lands" or even leasing them, if the area in question exceeds 100 dunams of non-urban land, except with the approval of the Israel Lands Council. A dunam is equal to 1,000 square meters or roughly one-fourth of an acre.

Section 1 of the Basic Law: Israel Lands, as well as section 5(b) of the State Property Law, both of which prohibit the transfer of "Israel Lands" as that term is defined under section 1, contain two conditions:

1. The lands must be located "in Israel";
2. The lands must belong to the State or an official body of the State, subject to its control, namely the Development Authority or the *Keren Kayemet Le-Israel*.

Both of these Laws do not prevent the State from rectifying its boundaries if that is necessary, provided the area involved is no more than 100 dunams. They are the constitutional counterpart of a criminal statutory provision, found in section 97(b) of the Penal Law, which also prohibits lands of the State from being transferred to the control of a foreign state.

The most natural question which arises from section 1 of the Basic Law: Israel Lands, as well as from section 5(b) of the State Property Law, is whether public lands owned by the State which are located in Judea, Samaria and Gaza can be classified as "Israel Lands" that is to say, lands which are located "in Israel", which would then make them subject to the constitutional prohibition against transferring their ownership to a foreign entity such as the PLO or the "Palestinian Council".

To find the answer, we must first define what the word "Israel" means as used in the expression "Israel Lands" or "Lands in Israel". The word "Israel" alone means the "State", including the territorial waters of the State of Israel, according to the Interpretation Ordinance (New Version). The word "State" or the expression "State of Israel" means the area of the Land of Israel where the law, jurisdiction and administration of the State of Israel apply in full as is logically inferred from sections 1 and 2 of the Area of Jurisdiction and Powers Ordinance and section 11B of the Law and Administration Ordinance. Hence the legal definition of the word "Israel" standing by itself as found in all laws enacted since the establishment of the State is defined as the area of the Land of Israel where the law, jurisdiction and administration of the State of Israel apply in full, which corresponds to the definition given in section 1 of the State Property Law (except that it omits the words "jurisdiction and administration"). In consequence of this definition, "Israel Lands" or "Lands in Israel", refer to those areas of the Land of Israel whose ownership vests in the State which are governed by the law, jurisdiction and administration of the State of Israel and hence are part of the territory of the State of Israel. It should also be noted that the legal definition for the word "Israel" in those laws that date from the period of the Mandate for Palestine, as they existed during this period prior to May 15, 1948, is the same as the Land of Israel, as stated specifically in section 15(a) of the Law and Administration Ordinance.

It is the practice of the Israel Lands Administration to consider that Judea, Samaria and Gaza are outside the civil framework of the State, because the law, jurisdiction and the administration of the State do not apply there, as they do for example in the Golan and East Jerusalem, where the prohibition on transfer of ownership of "Israel Lands" is in full force and effect.

However, the position adopted by the Israel Lands Administration in regard to Judea, Samaria and Gaza that assumes those regions are not integral parts of the State and therefore not subject to either the Basic Law: Israel Lands, or the State Property Law is not conclusive, since one must also determine if the practice followed by the Israel Lands Administration and the Government of Israel is in conformity with the constitutional law of the State.

The true situation is very complicated because the State of Israel itself does not recognize that Judea, Samaria and Gaza are part of its de facto civilian borders, but this was because the Government of Israel did not apply, as it was legally bound to do, section 1 of the Area of Jurisdiction and Powers Ordinance to these re-possessed areas, when they were being defined in several proclamations issued by the IDF on June 6, 7 and 8, 1967 as areas over which the latter had assumed the reigns of power. Once those areas were defined by proclamation as being held by the IDF, the law jurisdiction and administration of the State of Israel should have automatically applied to Judea, Samaria and Gaza in accordance with the constitutional Law of September 22, 1948. If the Government had observed this Law when the IDF first took possession of Judea, Samaria and Gaza, these parts of the Land of Israel would have been duly annexed to the State and the Basic Law: Israel Lands, as well as the State Property Law would have then applied to them, to their full extent.

It should be axiomatic that the State of Israel as a juristic person cannot derive benefit from an illegality committed by the Government of Israel. Under the principle of the Rule of Law, as distinct from what is

mere practice, the prohibition against the transfer of publicly-owned state lands must be held to apply to those lands in Judea, Samaria and Gaza which are owned by the State, in conformity with the provisions of those Laws governing "Israel Lands". Furthermore, the state-owned lands in these regions are under the de jure sovereignty of the State and part of its de jure borders even if they are not part of the de facto civilian borders of the State, as discussed in Part 1 of this Petition.

There is in regard to Judea, Samaria and Gaza a sharp dichotomy between what the law requires to be done and what is followed in actual practice. In such a case, the Supreme Court must uphold the law and disregard the practice. It should therefore conclude that section 1 of the Basic Law: Israel Lands, as well as section 5(b) of the State Property Law, do indeed apply to Judea, Samaria and Gaza. Accordingly, the Government of Israel never had the legal right to transfer the ownership of "Israel Lands" located in the re-possessed areas of the Land of Israel, to the de facto control of the "Palestinian Council", as it has already done and is intending to do again under the Interim Agreement.

Part 4:

Violations of law related to the Law of Return, 5710 (1950) and the Nationality Law, 5712 (1952)

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The Law of Return grants every Jew a "Right of Return" **"to this country – *'artsa'*"**, in section 1 of the Law. The Law of Return applies to every Jew who immigrated even prior to the enactment of the Law, as well as to every Jew born in this country. Every Jew therefore living today in Israel is deemed to be in the country as a result of the "Right of Return". Conversely, every Jew who lives outside the Land of Israel is assumed to be in Exile, which ends only when he returns to Israel as an immigrant.

The Right of Return is the basis of Zionism and it existed before the Jewish State came into being. Without this right which is given to every Jew, there could have been no State of Israel, for in the words of Israel's first Prime Minister, David Ben-Gurion, it is this right which built the State.

The Right of Return under the Law of Return includes two basic rights, the right to immigrate or make *aliyah* and the right to settle in "this country". This right is qualified in section 2 of the Law, since the Right of Return is not given to an applicant who is engaged in an activity directed against the Jewish People, which includes the State of Israel. This applies only to the present and not to past activity. The Right of Return is also withheld from a Jew who endangers public health or the security of the State as well as one who has a criminal past, who is likely to endanger public welfare.

Once a Jew has exercised his right of *aliyah*, he can settle anywhere in the Land of Israel wherever the State of Israel has established de facto civilian and military sovereignty. The Law of Return deliberately uses the words "to this country – '*artsa*'" to indicate that the Right of Return applies to any part of the Land of Israel even to those parts that lie outside the civilian borders of the State of Israel, but under its de facto military sovereignty.

Under the Ottoman Turkish administration of the Land of Israel, legal restrictions were placed on Jewish immigration and land purchase from 1882 onwards and were more strongly enforced after the first Zionist Congress at Basel, Switzerland in 1897 when the Turks concluded that the Zionist program inspired by the great Theodor Herzl would ultimately lead to the creation of a Jewish State through continuous Jewish immigration and settlement in the Land of Israel. That is why the "Right of Return" was one of the principal articles included in the Mandate for Palestine (article 6) which allowed Jews to immigrate and settle everywhere in the Land of Israel, except in Transjordan, which the British blocked-off illegally from organized Jewish settlement. The "Right of Return" enabled the Jewish population in the country to grow substantially and eventually achieve the goal of independent statehood in a part of the Land of Israel, as seen in the growth of Jewish Jerusalem, which reached about 100,000 on May 15, 1948.

Between 1948 and 1967, the Right of Return could only be exercised in the area of the Land of Israel included in the State of Israel and not in the rest of the Land of Israel where there existed de facto foreign

rule or occupation and a ban on Jewish immigration. But after the Six-Day War, with Israeli de facto military sovereignty established in Judea, Samaria and Gaza, it became possible for the first time to exercise the Right of Return in all the re-possessed or liberated areas, even though they still lay outside the de facto civilian borders of the State of Israel. This right applied in actual practice no less to the Golan and the Sinai, as it did to Judea, Samaria and Gaza, proving that the Right of Return was not limited only to the areas of the Land of Israel included in the State. The right of settlement, which is part of the Right of Return, allowed those Jews living abroad as well as those inside the State to migrate to the re-possessed areas in numbers that now approach 150,000.

Under the Interim Agreement, there is a double act of illegality committed in regard to the Law of Return. It places in danger the continued existence of Jewish settlements in the Land of Israel which are based on the Jewish Right of Return to the Land of Israel. Any actual evacuation of an existing settlement in Judea, Samaria and Gaza would be illegal under the Law of Return, regardless of the question of security. The same applies even to the "freezing" of settlements, to prevent their growth or expansion.

The second illegal act under the Interim Agreement in regard to the Law of Return is that it cordons off specific parts of the Land of Israel from Jewish immigration and settlement which shall be placed under the territorial jurisdiction of the "Palestinian Council", which will cover close to ninety percent of the territory of Judea, Samaria and Gaza once the Agreement is implemented in full. It therefore curtails the Right of Return for future Jewish immigrants and settlers who may have wanted to live in those cordoned-off areas in order to contribute to the rebuilding of the Land of Zion, which they will now be prohibited from doing. Even if the Knesset were to pass a specific Law authorizing the denial or curtailment of the Jewish Right of Return to areas under PLO control, that Law would be unconstitutional on its face, since the Right of Return is so fundamental a right of every Jew which pre-existed the State, it cannot be legally abrogated or diminished in any way. It should be emphasized that restrictions placed upon Jewish immigration under the Law of Return are for reasons of a personal nature, which pertain to a particular individual's character or activities (criminal past, illness, etc.) and are not collective restrictions imposed on Jews as Jews. Until the conclusion of the Interim Agreement, it was thought to be inconceivable to impose any restrictions on Jews settling anywhere in their country. But the irony is that even without a Knesset Law, the Interim Agreement is doing exactly what the Knesset itself cannot legally do, namely to prevent the future establishment of Jewish settlement in Judea, Samaria and Gaza, in the areas of the Land of Israel ruled by the "Palestinian Council". By taking away the Right of Return in relation to those areas, the Government of Israel defeats what David Ben-Gurion called the "central mission" of the State of Israel. It hinders the ingathering of the Jews in the Land of Israel, it breaks or weakens the precious historical link which every Jew so dearly holds to the Land of Israel, it undermines the raison d'etre of the Jewish State.

The supreme importance of the Law of Return, which can be aptly called the single most important Law of the State of Israel, was stressed by David Ben-Gurion who personally introduced the Law when he spoke in the Knesset debate on the bill, which took place on July 3 and July 5, 1950. His entire speech dwelt on the historic significance of this proposed Law and why it was necessary to be enacted, as can be seen from the following excerpts:

> The Law of Return is one of the State of Israel's basic Laws. It encompasses the central mission of our country, the ingathering of the exiles. This Law determines that it is not the State which accords the Jews of the Diaspora the right to settle in the State (when Ben-Gurion spoke, the only part of the Land of Israel that could then be settled was the area of the State), but this right belongs to every Jew by virtue of the fact that he is Jewish... although ... Jews do not have preference over non-Jews within Israel. The State of Israel is based on the complete equality in rights and duties of all its citizens ... **It is not the State which grants the Jews of the Diaspora the right to return, this right existed before the State did and it is that which built the State. This right derives from the historic, unbroken link between the people and the land which has also been recognized in the law of nations**, in a de facto manner.
>
> The Law of Return is not one of those immigration laws which determine under which conditions the country will accept certain kinds of immigrants ... **It is the unchanging law of Jewish history, reflecting the principle**

> **whereby the State of Israel was established**. It is the historic right of any Jew anywhere to come and settle in Israel ... for whatever reason... Knesset Proceedings, Volume VI, p. 2036-37)

On the second and third reading of the bill held on July 5, 1950, Ben-Gurion further elaborated on the exact meaning of the Law of Return, when he said:

> The entire Law is, in effect, **the proclamation of Zionism**, but we must not empty the Law of content by putting too much into it ... Nothing is better for the Jewish people than Zionism, but not blind Zionism ... Every Jew has the right to immigrate and this right derives from the Jewish people's right to live as a free nation in its own land. This right is not something metaphysical. I oppose MK Gil's suggestion (Yaakov Gil of the General Zionists Party) that we bring criminals or prostitutes or madmen here and put them in prison or hospitals. We are building a chosen country (Eretz Segula) for the Jewish people, not prisons or lunatic asylums.
>
> Every Jew has the right to immigrate to this country, because he is part of the Jewish nation and wants and is able to participate in rebuilding it. But we will not make a mockery of the idea of immigration and bring prostitutes and base persons here. Immigration is not going to prison. People immigrate to this country in order to join in building their homeland, their culture and their national revival, not to sit in prison because they are a danger to the public. (Ibid. p. 2099)

Ben-Gurion's words also find a strong echo in the opening paragraphs of the Proclamation of Independence which stresses that the Right of Return of the Jewish People applies to the whole Land of Israel, which is their birthplace from which they were forcibly expelled and which always remained the focus of their prayers and hopes for an eventual return to re-establish their homeland, as of old. It is this very same Right of Return which is hallowed by thousands of years of Jewish history and yearning for redemption which is now being struck down or trampled upon by the Interim Agreement.

The Law of Return is complemented by the Nationality Law. In this regard, it is sufficient to quote again Ben-Gurion, who in the same Knesset debate said:

> The Law of Return and the Nationality Law ...are closely connected and share the same ideological basis, deriving from the historic uniqueness of the State of Israel as regards both the past and the future, on both the internal and external levels. These two Laws determined the special character and destiny of Israel as the bearer of the vision of the redemption of the Jewish nation. (Ibid. p. 2035)

Later in the Knesset debate, Ben-Gurion added:

> …the Nationality Law complements the Law of Return, determining that by virtue of the fact that he has immigrated to Israel, a Jew becomes a national of his homeland, needing no further verification or condition other than his desire to settle in the State and live his life here. **These two Laws, the Law of Return and the Nationality Law constitute the charter of rights that is assured for every Jew of the Exile in the State of Israel**. (Ibid. p. 2037)

By virtue of section 1 and section 2(a) of the Nationality Law, read in conjunction with sections 1 and 2 of the Law of Return, the right of every Jew to acquire "Israel nationality or citizenship" applies not only to someone who has come to Israel and settled in "this country", or taken up residence, but theoretically to every Jew who under section 2 of the Law of Return received an immigrant's visa and expressed his desire to settle in Israel. Hence, Israeli nationality can be conferred in special cases even to benefit Jews living in the Exile or foreign countries, as has just happened in the case of Jonathan Pollard. But what is very important is that the right of every Jew to acquire "Israel nationality" applies to any part of the Land of Israel that is under the de facto civilian and military sovereignty of the State of Israel. Though Ben-Gurion in his Knesset speech only applied the Right of Return and the right to acquire "Israel nationality" (i.e. the Charter of Rights granted to every exilic Jew) to the specific area of the Land of Israel included in the State, he did so, because when he spoke in 1950, the areas of the Land of Israel that were later re-possessed in 1967 were not then under the State's de facto military sovereignty.

Confirmation that the exercise of the Charter of Rights granted to every Jew is extended to the re-possessed or liberated areas is given by sections 6(e) and 8(a) of the Nationality Law, which applies this Law to non-

Jewish residents of Judea, Samaria and Gaza. They can acquire "Israel nationality" by the process of naturalization as compared to the right of Jews to acquire their citizenship by return, under the Law of Return. What is true for non-Jewish residents of Judea, Samaria and Gaza who can acquire "Israel nationality" in this manner is true a fortiori for Jewish residents who live in the same re-possessed areas to acquire it by return.

The Interim Agreement prevents non-Jewish residents of Judea, Samaria and Gaza who come under the territorial jurisdiction of the "Palestinian Council" from ever availing themselves henceforth of the possibility of acquiring "Israel nationality" under sections 6(e) and 8(a). While it may be true that the practical importance of this is minimal, the denial of the possibility of acquiring Israel nationality by naturalization for those few isolated cases still represents a violation of existing law.

The Interim Agreement drastically reduces the area in Judea, Samaria and Gaza where Israeli citizens may live, which by itself is a curtailment of their Charter of Rights under the Law of Return and Nationality Law. While the Interim Agreement does not immediately bring Israeli nationals under the jurisdiction of the "Palestinian Council", this frightening prospect could materialize if any new agreement is reached about the evacuation of settlements in Judea, Samaria and Gaza in the permanent status negotiations. The very fact that these scheduled talks may lead to a loss of rights for Israeli citizens in case a further withdrawal is agreed upon, from the re-possessed areas, is reason enough to consider this to be a serious violation of the Nationality Law, particularly sections 1, 2(a) and 14(c). Under the latter provision, an Israeli citizen who refuses to leave a settlement targeted for evacuation will become without his consent a foreign national subject to foreign jurisdiction and a non-inhabitant of the State of Israel if and when the evacuation is implemented. He will in that eventuality be living in the Land of Israel outside the de facto sovereignty of the State. As a foreign national, who resides "abroad", though he lives in the Land of Israel, he will lose all the rights he once enjoyed as an "inhabitant of Israel" under the protection of the laws of the State of Israel. He will be converted in effect from an Israeli Jew to an exilic Jew, representing an inversion of what was intended to be done by the Law of Return and the Nationality Law. His Charter of Rights which Ben-Gurion so eloquently promised under the twin Laws of Return and Nationality will cease to exist in the entire territory of the Land of Israel abandoned to the PLO. To prevent such a travesty from ever happening, in which Israeli citizens could lose their inalienable rights of Israel citizenship, by forcing them to become foreign nationals or foreign inhabitants against their will or perhaps even stateless persons, the negotiations on permanent status issues regarding settlements. borders and Israelis, which threaten to bring this nightmarish possibility into a living reality, must be ordered to be stopped now! It will be too late afterwards for the Court to effectively intervene.

Part 5:

Violations of the principle of law related to the supreme legal value of the State of Israel as a Jewish State

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Chapter 1: Definition of a Jewish State

Despite its common usage, the concept of a Jewish State in law has never been exactly or explicitly defined, either in a statutory provision or in the case-law, but its constituent elements are known. Israel is a Jewish State de facto because the majority of its inhabitants are Jewish. Israel is a Jewish State de jure because the laws of the State reflect this fact or state it precisely and because it was built upon the values and ideas transmitted by Jewish religious law, Jewish history and Zionism. It must always be remembered that Israel was founded for one purpose only, namely to be a Jewish State to which every Jew living in the Exile had a natural and legal right to go to live and settle. This value is therefore the supreme value of the State of Israel.

The Jewish State is also a democracy governed by the Rule of Law, which is a central and cherished value of its existence. The value of democracy is inherent in Jewish law and has generally been a norm of Jewish life throughout the ages or an ideal to be realized. It co-exists in harmony with the idea that Israel is a Jewish State. Normally, there is no conflict between these two central values of Israel, but where it does arise, as it

has in the past, the transcending value of Israel as a Jewish State must prevail, even if this violates democratic norms, no matter how disconcerting that stark fact may seem to those who claim otherwise.

The most famous example of a conflict between the two central values arose at the very outset of Mandate rule by the British in Palestine. The Jews constituted a small minority of the population compared to the much greater number of Arabs. Arab leaders in Mandated Palestine seized on this point of a wide discrepancy in numbers of the respective communities to insist on democratic and representative institutions for all of the country which would have guaranteed them a huge majority on any of the self-governing bodies created and thus enable them to wreck the principal purpose of the Mandate for Palestine which was to secure the establishment of the Jewish National Home. No country-wide democratic bodies were ever set up because Arab leaders refused to cooperate with any British proposals for self-government which even in an attenuated form recognized the concept of a Jewish National Home in Palestine. On the other hand, Zionist leaders strongly denounced any British plans which would have left them in a status of a permanent minority subject to Arab rule.

Any plan to make Palestine a functioning democracy during those early years of the Mandate, based on universal suffrage ran absolutely counter to the idea of making Palestine a Jewish State. There was an inherent conflict between the two objectives, which no honeyed words could hide. Had the Arab leaders in Palestine acted wisely (from their point of view) and co-operated with the original British plan to create self-governing institutions, the Jewish State would perhaps never have emerged, because the British Government in the Malcolm MacDonald White Paper of May 17, 1939 opted for a Palestinian democracy at the expense of creating a Jewish State, thereby inverting the purpose of the Mandate.

What did emerge was the creation of democratic institutions not for every citizen of Palestine, Arab and Jew alike, but for the Jewish community alone, the *Yishuv*, officially called the *Knesset Yisrael*. It created its own elected assembly - the *Asefat HaNivharim*, with an executive council, the *Va'ad Leumi*, which administered the affairs of the *Yishuv* in a democratic manner.

The conflict that existed between Palestine as a democracy and Palestine as a Jewish State, each of which excluded the other during the Mandate, especially in its early years, led eventually to the adoption of the idea of the partition of the country between Arabs and Jews. This preserved the concept of democracy, but the idea of partition was itself illegal under the articles of the Mandate.

In the event of a conflict between democracy and a Jewish State, the supreme value of the State of Israel must prevail. In the case of Israel today, as it was during the Mandate, it is the Jewish nature of the State of Israel which is paramount, otherwise the entire justification of having a Jewish State disappears. Theoretically and practically, this means that the Knesset or a majority of the population of the State of Israel cannot legally vote to disband the Jewish State or adopt any law which negates its purpose or character, as could be done if Israel were purely a democracy. The value of the State of Israel as a Jewish State is therefore, without question, the most important value of the State.

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Chapter 2: Laws of the State which recognize the State of Israel as a Jewish State and which help to define its meaning

The Proclamation of Independence issued by the People's Council on May 14, 1948 (Iyar 5, 5708) in Tel Aviv, specifically declared "the establishment of a **Jewish State** in the Land of Israel to be known as the State of Israel." According to the Proclamation, it was a natural right of the Jewish People to be masters of their own fate, like all other nations, in their own sovereign State. The very fact that the proclamation was proclaimed on Friday afternoon just hours before the Sabbath began, when the Mandate was still legally in force, was to avoid the desecration of the Sabbath, which pointed to the Jewish nature of the new State of Israel.

As discussed in Part 4 of this Petition, the State of Israel is founded upon the Right of Return of the Jewish People to the Land of Israel, as embodied in both the Law of Return and the Nationality Law. The former as

Ben-Gurion said, is the unchanging law of Jewish history and the proclamation of Zionism, which symbolizes Israel as a Jewish State.

There are many other laws of the State which confirm that Israel is first and foremost a Jewish State, some dealing specifically with Zionism while others with the observance of Jewish law and religion. In the last decade, new statutory provisions were enacted or added in three basic Laws which affirm Israel to be both a Jewish State and a democratic state, as found in section 7B of the Basic Law: The Knesset, section 2 of the Basic Law: Freedom of Occupation and section 1A of the Basic Law: Human Dignity and Liberty. Another proof to demonstrate the Jewish character of Israel, as reflected in its laws is the occasional use that is made of the Jewish calendar instead of the Gregorian calendar, as seen in two examples given in the law, one to determine the tenure of the President of the State and the other for setting the date for calling Knesset elections every four years.

The most interesting development welding Israel to its Jewish character came in 1980 when a major Law was enacted which introduced Jewish religious law - *halakha*, into the entire legal system of the State, that was not limited as before to the law of personal status that governed all Jews living in Israel. This was the Law on the Foundations of Law, which instructed the Courts of Israel, in section 1 of the Law, to consult the "heritage of Israel", which contains in it the principles of freedom, justice, equity and peace, whenever it is necessary to look for an answer to a legal question which is not found in statute law, case-law or by analogy. As a result of this Law, the vast corpus of Hebrew legal literature could now be consulted as sources for answering any puzzling legal question, in any field of law, including constitutional law.

However, the practical use of this important Law was severely limited by an improper narrowing of the meaning of section 1 of the Law, by making the concept of "heritage of Israel" and its four principles, apply only to questions of law where there is a "gap" in the existing law. That is wrong because the Law itself does not speak of any gap but refers basically to a situation where a legal question requiring decision cannot be clearly answered by the legal sources at hand, due to its difficulty or ambiguity or other reason and needs further clarification in another source of law. In such circumstances, where no unambiguous answer can be found to a vexing question, the gap is already assumed to exist and therefore there is no need to insist on the prior existence of a gap.

Another question about this Law concerns what exactly is the "heritage of Israel". At the very least, it constitutes the great legal works and treasures that make up Jewish religious law, upon which the foundation of Judaism as a religion rests. The first treasure of Jewish jurisprudence is the teaching of the Torah, or written law found in the Pentateuch (*Humash*), which God revealed to Moses at Sinai (Mount Horeb) about 33 centuries ago. The law which is derived from the Torah (*de Oraita* in Aramaic) has been classified into 613 headings or commandments, including 365 prohibitions (equal in number to the solar days of the year) and 248 precepts (equal to the limbs or organs of the human body). This law is supplemented by the enormous corpus of talmudic and post-talmudic legal literature, which is designated by the general term, oral law or laws of rabbinic provenance (*de rabbanan*).

The latter interprets and analyses the Written Law. It was handed down orally from generation to generation, but was later recorded in order that it not be forgotten. As a written text, it is studied as intensely as the Sinaitic Law, for according to tradition, the *halakha* in its entirety was given to Moses at Sinai, including both the Written Law (*Torah she-bi-khetav*) and the Oral Law (*Torah she be-al peh*).

The Talmudic literature is divided into two great compilations or pillars, the Babylonian Talmud and the Jerusalem or Palestine Talmud. Both consist of two distinct parts, the text of the *Mishna* and a supplement called the Gemara, which is a commentary on the *Mishna*. The two Talmuds contain the records of academic discussion and of judicial administration of Jewish law.

The *Mishna* is a collection of the oral laws or *halakhot*, codified at the close of the second century CE by the foremost legal scholar of the day, Judah HaNasi, who also served as the patriarch of Judea and head of the Sanhedrin.

The *halakhot* which are found outside the *Mishna* have also been collected in a supplement to the *Mishna* called the *Tosephta*, arranged according to the same order as the *Mishna*. These *halakhot* or statements of Jewish law which are found in the *Tosephta* are known by the Aramaic term, *baraitot*, because they are "external" to the *Mishna*.

Some *halakhot* are not collected at all, neither in the *Mishna*, nor in the *Tosephta*, but are scattered throughout the two Talmuds. Some are also contained in the *Midrash*, a collection of rabbinic interpretations, both legal and non-legal, which expose new meanings to Biblical verses. All of these uncollected *halakhot* are also considered as *baraitot*, since they are extra-mishnaic expositions of Jewish law.

The second great talmudic work, the Jerusalem or Palestine Talmud, which is only one third the size of the Babylonian Talmud, contains discussions about the *Mishna* of Judah HaNasi, by the *amoraim* or sages who lived in the century and a half after the legal codification of the *Mishna*. It was completed C.400 CE a century before the compilation of the Babylonian Talmud C.500 CE. The initial portion of this work was edited by Yohanan Ben Nappaha, once a pupil of Judah HaNasi.

The post-talmudic halakhic literature comprises the brilliant works of all the great halakhists, who wrote commentaries on both the Torah and the Talmud. A partial list of the most famous halakhists were the French scholar, Rashi and his disciples, the Tosafists who wrote additions to his commentary on the Babylonian Talmud, followed by Isaac Alfasi (Rif), Maimonides (Rambam), Nahmanides (Ramban), Meir Ben Baruch of Rothenburg, Asher Ben Yehiel (Rosh) and his son, Jacob Ben Asher, Solomon Ben Adret (Rashba), Joseph Karo and Moses Isserles (Rema).

The "heritage of Israel" would also include non-halakhic works from the Bible, in particular the words and prophecies of the great Prophets of Israel and also the Writings or Hagiographa, comprising the third and final part of Jewish Scriptures. This is supplemented by homiletic discourses on the Bible, dealing with legends and ethics found in the *Aggadah*, the name given to all the non-legal material of the Talmud and *Midrash*.

However, the "heritage of Israel" includes more than the legacies of *halakha* and *aggadah*. It also applies to the ideas and values imparted or transmitted by the history of the Jewish People during the extensive periods they ruled or predominated in the Land of Israel from Abraham to the close of the Second Temple Period and continuing onwards.

Finally, the "heritage of Israel" should logically include the ideas and values proclaimed by Zionism, as a movement of the Jewish People, because it is responsible for the re-establishment of the Jewish State.

The "heritage of Israel" therefore embraces three basic elements, *halakha*, Jewish history and Zionism. This enumeration is important for the question of defining a Jewish State, as a principle of law. As earlier stated, the meaning of a Jewish State is not given either in the statue law, case-law or by analogy. Therefore, according to the Law on the Foundations of Law, the legal definition and meaning of a Jewish State must be found in the sources provided by the "heritage of Israel", namely, *halakha*, Jewish history and Zionism.

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Chapter 3: Surrendering Parts of the Land of Israel: A violation of the definition and meaning of the Jewish State according to *halakha*, Jewish history and Zionism.

By defining a Jewish State in terms of *halakha*, Jewish history and Zionism, it is necessary to consult each of these three branches of knowledge to determine if it is permitted to give up voluntarily or involuntarily parts of the Land of Israel to a foreign nation, state or entity.

A. *HALAKHA*

The first element of a Jewish State derived from the "heritage of Israel" is *halakha* and therefore what it says about giving up the Land of Israel is relevant in deciding whether it is permissible. The use of *halakha* in this instance derives from its being a part of the definition of a Jewish State and not from the fact that there is any

obscurity or ambiguity in the statutory law, which on the contrary deals with the question of territorial withdrawal in very conclusive terms.

Under *halakha*, the Land of Israel was exclusively given to the Jewish People by God as a heritage for itself and it would therefore be a desecration of His Name to give it up, which would violate the promise He made to our patriarchs Abraham, Isaac and Jacob. This is the normative rule of *halakha* and the further question is whether it is an absolute commandment with no exceptions or if there may be any divergence. Guidance for the answer comes from two of the greatest halakhic authorities, Maimonides (Rabbi Moses Ben Maimon or Rambam), 1135-1204 and Nahmanides (Rabbi Moses Ben Nahman or Ramban), 1194-1270. Because of their towering status on halakhic questions, what they say on the subject would be conclusive in giving the viewpoint of *halakha*.

Maimonides, in his list of 613 commandments, set out in his *Sefer Ha Mitzvot*, compiled according to 14 guiding principles, includes a commandment on War, known as the *milhemet mitzvah*. This commandment applies to the situation whenever an enemy threatens to take away the land of the Jewish People or to demand tribute from them (*Hilkhot Melakhim* 15, 1 and *Hilkhot Ta'aniyot* 2, 1-3). Rather than give up land or pay tribute, the Jewish People are under a positive duty to go to war, even though this involves a loss of life. The rule of *pekuah nefesh* is therefore inapplicable to this commandment because it cannot be performed without the risk of loss of life. If the Jewish People are compelled by *halakha* to go to war to prevent an enemy from taking over their land, all the more does *halakha* also forbid the voluntary surrender of the Land of Israel for any reason. The rule of *halakha* against the surrender of the Land of Israel is therefore an absolute one, admitting of no exceptions.

This rule can also be deduced from what Maimonides says about the status of Gentiles living in the Land of Israel. According to Rambam, they are not permitted to reside in the Land of Israel unless they accept the seven laws of Noah (*Hilkhot Akum* 6,6), pay taxes and enjoy no authority over Jews (*Hilkhot Melakhim* 6,1). These restrictions would logically mean that Gentiles cannot be sovereign rulers in the Land of Israel, otherwise they would not come under these restrictions which Maimonides applies to them. And if they cannot be sovereign rulers, the logical consequence is that *halakha* forbids giving up any part of the Land of Israel to any Gentile nation.

Nahmanides is equally clear on this question. He states emphatically in his Commentary on the Rambam's *Sefer HaMitzvot*, charmingly called by him Positive Commandments which the Rambam Forgot, that Jews are commanded to settle the Land of Israel and not leave it in the hands of other nations. Though the Rambam did not state this particular commandment on the settlement of the Land of Israel, this does not detract from what he did say about the necessity to go to war to defend the Land of Israel from enemy invasion and plunder, or the obligations imposed on Gentiles living in the Land of Israel.

There is therefore no doubt about the position of *halakha* on the territorial surrender of the Land of Israel. It is forbidden under all circumstances, even where war is inevitable and where it is certain that there will be loss of life. This probably explains why Jews in the Land of Israel have always revolted against foreign rule during their multi-millennial history. There are dissident views on this question today, but other notable 20th century halakhic authorities who endorse the normative or standard view includes such famous authorities as Rabbi Zvi Yehuda Kook, Rabbi Menahem Schneersohn, (the Lubavich Rabbi of Habad Hassidism) and former Chief Rabbis, Shlomo Goren, Avraham Shapira and Mordechai Eliahu.

B. JEWISH HISTORY

In regard to the second element of what constitutes a Jewish State, derived from the heritage of Israel, namely the history of the Jewish People in the Land of Israel, the historic experience and extant evidence confirm the principle of *halakha* prohibiting the voluntary surrender of the Land of Israel to a foreign state, nation or entity, despite two possible exceptions, one in regard to King Solomon in the First Temple period and one in regard to the Hasmonean monarch, John Hyrcanus II, in the Second Temple period.

It was the norm and standard during the First and Second Temple periods, that the Jewish People then alive never hesitated to stoutly defend their country against all attempts by foreign invading armies to conquer and

subjugate the people and their land. Whenever foreign conquerors did succeed, popular resistance always developed afterwards and revolts broke out to oust the invaders and break the shackles of foreign rule, particularly during the period of harsh Roman oppression.

What appears to be the first exception to the historic experience affirming territorial inviolability of the Land of Israel occurred during the 40 year reign of King Solomon, who ruled an empire that included Syria and Transjordan from approximately 971 to 931 BCE, according to generally accepted chronology. During his reign of tranquility and economic prosperity, the First Temple in Jerusalem was built. To obtain the necessary funding and building materials for this great religious and national project, as well as skilled craftsmen and artisans needed to carry it out, Solomon turned to the Phoenician ruler, Hiram, King of the State of Tyre. They had a close and friendly relationship. In consideration for his indispensable assistance to build the Temple, Solomon made what would be considered today a legal pledge by giving him 20 villages in the land of Kabul, located in Western Galilee, near the border with the State of Tyre. This transaction may also be seen as a border adjustment between the two States, which was formalized in a treaty that benefitted both parties. The Second Book of Chronicles of the Bible provides us with additional information that the land given to Hiram was eventually returned to Solomon's possession and that the Israelites continued to live there (2 Chronicles 8:2). It would appear then that there was no real cession of territory from Solomon to Hiram but only a legal pledge, in which the possession but not the title or ownership of the land was transferred by Solomon to the Phoenician king for a certain period as a security to pay back his debt or discharge his obligation, but even if a cession did occur, it was more in the nature of a border adjustment, which does not substantively violate the rule of territorial integrity.

A second example where the Land of Israel was voluntarily given away occurred during the civil war and dynastic struggle for the throne of Judea between the two Hasmonean brothers, the younger Judah Aristobulus II and the older John Hyrcanus II, sons of Alexander Yannai (103-76 BCE) and Shlomzion (76-67 BCE). Upon the death of their mother, Queen Shlomzion (Salome Alexandra), in 67 BCE, Aristobulus seized royal power and displaced his incompetent brother Hyrcanus from the throne of Judea and the high priesthood. Hyrcanus had reigned for about two years before and also for three months after the death of his mother. He agreed to step down after many of his soldiers deserted to his brother. The two then agreed to end their hostilities and Hyrcanus freely accepted the fact that Aristobulus should be king.

However, the Idumean adviser of Hyrcanus, Antipater II (originally called Antipas) whom King Alexander Yannai and Queen Shlomzion had appointed as governor of the whole of Idumea, became jealous of Aristobulus' power and unceasingly incited Hyrcanus against him and finally persuaded him to plot his overthrow. Both of them travelled to the city of Petra, where the Nabatean King Aretas III had his palace. Antipater offered him gifts to win his support to restore Hyrcanus to the throne of Judea. According to Josephus in his Book on Jewish Antiquities (XIV, 14-8) Hyrcanus also promised him that if he were restored to his throne, he would return the territory embracing twelve cities which both his father Yannai and his grandfather, Hyrcanus I (134-104 BCE) had taken from the Nabateans. The list of the 12 cities which Hyrcanus promised to give back to Aretas is not perfectly clear. Most of the cities were in the land of Moab in Transjordan, while a few, such as Medaba, Heshbon and Pella were outside Moab proper, in territory assigned to the tribes of Reuben and Gad.

On the strength of the promise made by Hyrcanus, Aretas marched against Aristobulus and defeated him in a preliminary battle.

As these events were unfolding in Judea, the Roman General and triumvir, Pompey came to Syria, after completing a successful expedition waged against Tigranes, the King of Armenia. He was apprised of what was happening in the dispute between the Hasmonean brothers and decided to intervene. He received envoys from both Aristobulus and Hyrcanus, each of whom sought his aid. In the end, Pompey sided with Hyrcanus, the weaker of the two contenders for the Judean throne, because he posed no serious threat to Roman power. Aristobulus gallantly fought to secure his position, but was overcome by superior Roman forces. Pompey conquered Jerusalem in 63 BCE and his army slaughtered 12,000 Jews in the fighting that took place,

according to Josephus. This put an end to Jewish independence that had been enjoyed for 79 years since Demetrius II Nicator (Victor), King of Syria had recognized the rule of Simeon the Hasmonean in 142 BCE.

Pompey restored the high priesthood to Hyrcanus and recognized him as leader of the Nation, but excluded the title or rights of a king. The title of ethnarch - head of the people - was subsequently given to him by official decree of Julius Caesar in 47 BCE.

The help that the Nabatean King Aretas had provided to Hyrcanus was not forgotten. He kept his promise and restored the 12 cities to his rule.

This raises an interesting historical-legal question as to whether the action of Hyrcanus constituted a voluntary surrender of the Land of Israel.

There is no doubt that the surrender of the Trans-Jordanian cities of Medaba, Heshbon and Pella fell into this category. But the answer is less certain for the remainder of those cities which were located in Moab, a land which was not originally part of the patrimony of the Twelve Tribes of Israel.

The Moabite nation was according to tradition descended from the son of Lot, who was called Moab. Their land lay east of the Jordan, south of the River Arnon, which bordered the land allotted to the tribe of Reuben, but at various times, the Moabites extended their boundaries northwards beyond the river Arnon. Under David and Solomon, Moab formed part of their kingdom as a vassal state. It was apparently not included in Solomon's 12 administrative districts. Moab's subservience continued under the two Israelite kings, Omri and his son, Ahab, after which it regained its independence. However, the country was later subjugated by both Assyria and Babylonia. Finally, it came under the dominion of the Nabateans. By this time the Moabites had ceased to exist as a separate people. When Yannai conquered the land, he took it from intruders who originated in Arabia. Since the Nabateans themselves had no legal right over this land, except by conquest, it can be justly argued that it had become part of the Land of Israel, after the end of the separate existence of the Moabites, because as a people they were ethnically akin to the Israelites, although they practiced idolatry and often fought against them. Their close connection as nations despite great religious differences is seen in the story of Ruth the Moabitess, who was an ancestor of King David.

If Moab had indeed become part of the Land of Israel through historical connection and conquest, this would make Hyrcanus' return of Moab to the Nabateans an act of surrender of the Land of Israel. However, this wrongful act must be seen in the context of his ambitious bid to regain royal power in Judea and therefore cannot be considered a legal justification for ceding the Land of Israel to a foreign nation.

C. ZIONISM

The third and final element in the definition of a Jewish State which is derived from the heritage of Israel is Zionism and therefore it too must be examined to see what it says on the question of surrendering the Land of Israel. The first Zionist Congress, held at Basel, Switzerland in August 1897, formulated the official program of Zionism which remained in effect until after the establishment of the State. Its aim was to create for the Jewish People "a home in Palestine, secured by public law", to be achieved by the systematic settlement of Palestine. It never dawned on the Zionist founders that Palestine would be partitioned for this purpose or that the home would be established in only a part of the Land of Israel. They naturally assumed that all of the Land of Israel would become the reconstituted home of the Jewish People. This was the hope and dream of Theodor Herzl, under whose guidance and direction, the Basel Program was drafted. He envisioned the future Jewish State in his novel, Altneuland (Old-New Land), completed on April 30, 1902, as lying east and west of the Jordan and reaching northwards to the Litani River and the sources of the Jordan, as appears from a map of Palestine he used in writing his novel.

Transjordan was seen as an integral part of the country where Jewish settlement would be undertaken, as proposed even earlier by Nahum Sokolow, who translated Herzl's novel into Hebrew under the title Tel Aviv, whence the name of the city. The plan of Jewish settlement in Transjordan was also envisioned by the English Christian Zionist, Laurence Oliphant (1829-1888), who recommended the Gilead region as the best place to start, in a book he wrote on the subject.

It was therefore not Zionism that advocated partition, which could only weaken its ultimate aim of settling the whole country by the anticipated mass inflow of Jewish immigrants. It was the British Government which fostered the policy of partition first in Transjordan, in 1921-1922, as a way of appeasing Arab ambitions and preventing strife with France and subsequently, in 1937 as a practical way of allowing Jewish statehood in a very tiny part of the land comprising an area of only 1554 square miles where Jews would not be outnumbered by Arabs. This was the plan put forth in the Peel Royal Commission report of July 7, 1937. However, the partition plan was contrary to article 5 of the Mandate, which required the Mandatory Power to preserve the territorial integrity of the country.

It is true that Weizmann and the majority of delegates attending the 20th Zionist Congress held in Zurich on August 3-16, 1937 agreed to consider this plan of partition, as a basis for securing a more favorable partition of Western Palestine but not because it was sanctioned by the platform of Zionism. Rather it brought the attainment of a Jewish State one step closer to realization. The Zionist decision to further explore the Peel partition plan has to be seen against the background of the impending doom of the greater part of Europe's Jewish population. The partition plan provided a ray of hope in an otherwise bleak situation. Had it materialized, it would have opened the gates of Palestine to possibly millions of Jews. But Britain retracted the plan in the White Paper of May 17, 1939 after first obtaining the report of the Woodhead Commission in October 1938, which in effect cancelled out the recommendations of the Peel Commission. With the dropping of the Peel plan caused by a British change of policy that proved disastrous to Jewish hopes, the original aim of Zionism was restored, namely, to establish a Jewish State in all of the Land of Israel that remained after the British truncation of Transjordan. The restoration of the Zionist platform was begun at an American Zionist conference held at the Biltmore Hotel in New York in May 1942, when a plan was adopted, afterwards known as the Biltmore Program. It stated unambiguously that "Palestine [must] be established as a Jewish Commonwealth". This was followed by the plan's approval at a meeting of the Zionist General Council in Jerusalem on October 15, 1942 and its adoption at the 22nd Zionist Congress in Basel on December 9-14, 1946.

The very same circumstances which compelled Zionist leaders to consider the abortive Peel Partition Plan prevailed once more in the case of the Partition Plan recommended by the United Nations Special Commission on Palestine, which released its report on August 31, 1947. The plight of the Jewish People had meanwhile become so forlorn after the Holocaust that Zionist leaders were ready to clutch at any straw which promised a state and place of refuge for the remaining Jews of Eastern and Central Europe. Under this kind of unrelenting and enormous pressure, Ben-Gurion as Chairman of the Jewish Agency and later as head of the Provisional Government of the new State of Israel even agreed amazingly enough to accept a Jewish State without any part of Jerusalem included in the State, as well as tiny and misshapen borders; just as he had earlier agreed to accept the proposal of the Peel Commission for the establishment of a Jewish State in only a small part of the country. The offer of partition was accepted out of pure necessity and not because it was ordained by the Zionist official program which ideologically opposed the whole idea. The choice at the time was either taking a portion of the Land of Israel or none at all. In any case, there was technically no surrender of the Land of Israel, because it was still in the possession of the Mandatory Government and not in Jewish hands. It is therefore wrong to say as some commentators constantly do that Zionism and partition of the Land of Israel are compatible. They are not. Ben-Gurion himself made this clear by the constitutional legislation he was instrumental in getting enacted in the first year of the State's existence which provided for the future unification of the entire Land of Israel under the sole rule of the Jewish People, as discussed in Part II of this Petition. The statement he was reported to have made immediately after the Six-Day War about the need to return all the acquisitions won in that war for an idyllic peace even if true counts for little compared to what he did when he was Prime Minister and Defense Minister in 1948.

He is, moreover, on public record as being a proponent of keeping all the Land of Israel for the Jewish People, despite his acceptance of the UN Partition Plan and the earlier Peel Partition Proposal. To know his true position on partition of the Land of Israel, one need only recall his famous words in 1937 spoken at a special session held at Basel in conjunction with the 20th Zionist Congress (August 3-16, 1937, Zurich) to commemorate the first Zionist Congress of 40 years earlier in the same city. His exact words were:

> No Jew is entitled to give up the right of establishing (i.e. settling) the Jewish Nation in [all of] the Land of Israel. No Jewish body has such power. Not even all the Jews alive today have the power to cede any piece of land whatsoever. This is a right* vouchsafed or reserved for the Jewish Nation throughout all generations. This right cannot be lost or extinguished under any condition. Even if at some particular time, there are those who declare that they are relinquishing this right, they have no power nor competence to deprive coming generations of this right. The Jewish Nation is neither bound nor governed by such a waiver or renunciation. Our right to the whole of this country is valid, in force and endures forever. And until the Final Redemption has come, we will not budge from this historic right.

* The exact meaning and scope of the word "right" wherever it appears in this quotation from David Ben-Gurion, as confirmed by the context refers to **the right to establish or settle the Jewish Nation in all parts of the Land of Israel, without exception**. The right of settlement in turn assumes a right of Jewish Sovereignty over the whole country called the Land of Israel.

It is apparent from Ben-Gurion's above words that though he had already accepted the concept of partition as a pressing necessity, in order to establish the Jewish State, his real goal, as stated, was always the **unification of all parts of the Land of Israel under Jewish sovereignty**. Partition served only as a transitory or interim step in the realization of the ultimate goal to win possession of the entire country for the Jewish Nation. Though he never realized this goal during his long service as Prime Minister, he nevertheless implanted this notion of eventual unification of the Land of Israel into the State's constitutional structure and made it the law of the land to be enforced whenever additional parts of that land would be liberated by the Israel Defense Forces. It may therefore be safely assumed that in the absence of any serious military threat to Israel's security, Ben-Gurion, had he been in power in 1967 and guiding the nation's destiny, would never have sacrificed this aspiration after its very accomplishment, no matter what the counter-considerations may have been, such as making possible peace treaties with Arab states or the more inhibiting Arab demographic question, which proved less serious than first anticipated. It is most likely then that Judea, Samaria and Gaza would have been annexed to the State by Ben-Gurion as Prime Minister as soon as effective possession of these lands had been obtained, under the very law he himself had created for that purpose, namely the Area of Jurisdiction and Powers Ordinance. One need only look at what Ben-Gurion did in 1948 while at the height of his power when he annexed all parts of the Land of Israel that the IDF had liberated, to confirm the truth of this statement, despite what others have tendentiously imputed to him after he retired from active public life.*

* This last paragraph, missing from the original court document, has been added for further clarification of Ben Gurion's true position on the question of the Land of Israel and territorial withdrawal therefrom.

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Chapter 4: The Surrender of the Land of Israel Under the Interim Agreement

Under the Interim Agreement, most of Judea, Samaria and Gaza as a unified territory is given away to the PLO to become part of the territorial jurisdiction of the "Palestinian Council". This is an unprecedented voluntary surrender of the Land of Israel to an enemy and criminal organization that was completely unnecessary and is without a shred of legality under the principle of law that Israel is a Jewish State according to *halakha*, Jewish history and Zionism. This voluntary surrender of territory has occurred despite a halakhic prohibition against it. It also violates the norms and expectations of Jewish history and Zionism. There was not even a remote danger of destruction of the State from the PLO, nor was saving of life a factor, which could have justified so revolutionary a step in the eyes of those who have a dissenting view about what *halakha*, Jewish history and Zionism decree on the subject of territorial surrender of the Land of Israel. On the contrary, by giving up parts of the Land of Israel to the PLO, the Government of Israel has created a great security danger for Jews who live in Judea, Samaria and Gaza and in the areas of the State adjacent to Arab rule. The move has already resulted in the unnecessary tragic deaths of many Jews whose toll is constantly rising. In these circumstances the voluntary surrender of the Land of Israel to foreign rule is an unforgivable act. It is a clear betrayal of *halakha*, which is part of the legal definition and meaning of a Jewish State. It has no support from Jewish history which teaches us to liberate the Land of Israel from foreign rule, not to deliver it to those who covet it. Finally, it lacks any ideological basis in Zionism which

never countenanced the national rights of any other people to the Land of Israel, despite the fact that its official leadership did agree to divided rule of the Land of Israel as the only way to establish the Jewish State, at a time of desperate necessity.

The Government of Israel has disarmingly offered a three-fold explanation to justify the voluntary surrender of the Land of Israel. It pretends it is an act of morality not to rule another nation, it is necessary for the racial separation of Jews and Arabs and it brings peace to Israel. However, not one of these reasons is sufficient in law to justify giving up the Land of Israel.

First, the question of morality cannot be raised in opposition to the exclusive legal right of the Jewish People to its homeland, since morality per se cannot defeat a legal right even if the premise of morality is accepted as true. But in light of the fact that there has never been a nation called the "Palestinian People" in the history of the Land of Israel, the question of morality is misplaced or wrongfully raised.

Second, the fact that Arabs live in Israel as a minority and have their own language and religion does not therefore mean there should be a total separation of the Arab and Jewish peoples into two separate states. Under this principle for the separation of nations, the multiplication of states in the world would grow unreasonably high since it assumes that a minority can never live peacefully with the majority of another nation.

Finally, land for peace is not a concept recognized in the law of Israel. No other nation in the world has ever followed a course of action prescribed by this concept, with possible rare exceptions. No one can seriously imagine a hypothetical case of the United States surrendering a part of its territory to Mexico or Canada to achieve peace if there had existed a state of war between them. The same holds true for Canada giving up part of its vast domain to the exploited native Indians who lived in the country long before those who now dominate it. Or Russia surrendering land to the Chechens, Serbia surrendering land to the Bosnian Moslems, Spain surrendering land to the Basques. The idea that the Jewish People honor a concept not accepted by any other nation on the planet is truly bizarre, especially when this course of action violates the most sacred precepts, ideas and values of *halakha*, Jewish history and Zionism which are the guideposts behind the legal principle that Israel is a Jewish State under its laws.

Part 6:
Violations of Law relating to Treason as defined in the Penal Law, 5737-1977, Chapter 7, Articles 1 and 2, Sections 91, 97, 99 and 100

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Chapter 1: Various Acts of Treason in the Interim Agreement with the PLO and the Punishment prescribed by law

The Government of Israel has undertaken various obligations in the Interim Agreement with the PLO, which require it to perform certain acts which may be classified prima facie as treason under sections 97, 99 and 100 of the Penal Law. Those obligations can be divided into four kinds of acts:

1 the category of acts which "**impair the sovereignty**" of the State of Israel - section 97(a);

2 the category of acts which "**impair the integrity**" of the State of Israel - section 97(b);

3 the category of acts under section 99 which give assistance to an "**enemy**" in war against Israel, which the Law specifically states includes a terrorist organization;

4 the category of acts in section 100 which evince an intention or resolve to commit one of the acts prohibited by sections 97 and 99,

The punishment prescribed in the Penal Law for the first three kinds of acts of treason is death or imprisonment for life. The harshness of the punishment emphasizes the seriousness with which the State of Israel views the crime of treason, which it seeks to prevent by the punishment it imposes upon offenders. However, there is a modification of the death penalty in section 96. It can only be imposed by the Court when the act of treason was committed in a period in which armed hostilities were carried on by or against

Israel. This restriction on the use of the death penalty is probably not applicable in a case of treason with a terrorist organization, since if it were to cease its armed activities, it would no longer be a terrorist organization. The restriction is only meant to apply during the time there is a truce or cease-fire in effect after armed hostilities have taken place between two warring states.

The punishment for evincing a resolve to betray the State of Israel where the person makes known his intention to commit an act contrary to sections 97 and 99, is punishable by imprisonment for 10 years.

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Chapter 2: The applicability of Sections 97 and 100 to the Interim Agreement

The three kinds of acts of treason envisioned in sections 97 and 100 of the Penal Law can only be charged against the Government of Israel and all of its ministers, in relation to the Interim Agreement, on the premise or assumption that the constitutional law of the State of Israel considers Judea, Samaria and Gaza to be under its de jure sovereignty. Section 31(8) of the Interim Agreement deals with those areas of the Land of Israel as a single territorial unit based on the opposite assumption that they are not under the State of Israel's sovereignty. The whole agreement provides for the interim disposition of Judea, Samaria and Gaza, with the greater part of the territory to be placed under the rule and jurisdiction of the "Palestinian Council" followed by negotiations to determine their permanent status or final disposition. This Petition argues that all the acts of interim disposition, already made since the Interim Agreement was officially signed at Washington, on September 28, 1995 as well as all acts of further disposition under that Agreement which the Government of Israel is required to carry out during the 18 month period which follows the date of the inauguration of the "Palestinian Council", come within the scope of sections 97, 99 and 100, because Israeli constitutional law makes precisely the assumption that is required by those three penal provisions before they can be invoked, namely the assumption of the State of Israel's de jure sovereignty over Judea, Samaria and Gaza.

This assumption is made in the following constitutional laws:

1. Section 11B of the Law and Administration Order, as illustrated in the Law and Administration Order (Number 1) of June 28, 1967;
2. Section 8A(a) of the Municipalities Ordinance, as illustrated in the Jerusalem Proclamation of June 28, 1967;
3. Protection of the Holy Places Law;
4. Section 1 of the Area of Jurisdiction and Powers Ordinance;
5. The Land of Israel Proclamation of September 2, 1948;
6. The Basic Law: Israel Lands and the State Property Law; In these two Laws, there is an assumption of de jure sovereignty over all "Israel Lands" which applies in strict legal theory to Judea, Samaria and Gaza, but which is not applied in practice because of the illegal failure to implement Section 1 of the Area of Jurisdiction and Powers Ordinance and the Land of Israel Proclamation;
7. The Law of Return;
8. The Nationality Law;
9. The principle of law embodied in the definition and meaning of the State of Israel as a Jewish State, according to *halakha*, Jewish history and Zionism;

Each of these Laws and the principle of law concerning Israel as a Jewish State have been discussed in Parts 1 to 5 of this Petition. It is unnecessary to repeat everything said regarding the legal assumption contained in these laws about Israel's de jure sovereignty over Judea, Samaria and Gaza, except to add a few more observations.

As seen in both historical experience and modern examples, de jure sovereignty may exist independently or separately from statehood, although generally, they do not. In the cases where they do exist independently or separately, they are found primarily in the English-speaking world, where the governing state or mother

country does not include its dependencies or possessions in the makeup or the constitution of the governing State. This kind of situation is shown, for example, today, in the case of the relationship between the United Kingdom and the Falkland Islands as well as for the island of Bermuda. The opposite kind of situation applies in the relationship between France and some of its overseas possessions such as the islands of St. Pierre and Miquelon off the south coast of Newfoundland, Canada, which are an integral part of the State of France.

The legal relationship that has existed ever since June 1967 between the State of Israel and the areas of Judea, Samaria and Gaza is only broadly comparable to the cases in the English-speaking world where there exists an actual separation of de jure sovereignty from statehood. Israel's relationship to Yesha is sui generis (in a class by itself) because, first, it voluntarily imposed a regime of military government applying international law that has lasted for a long period of time; second, because of the proximity of these lands to the de facto civilian borders of the State and third and most important of all, because they are inalienable parts of the Land of Israel and the Jewish National Home which are intimately and ineradicably connected by history, geography, religion, culture and law to the State of Israel and the Jewish People from the time of the patriarch Abraham.

The true legal status of Judea, Samaria and Gaza to the State of Israel has unfortunately been obscured and falsified by the application of the norms of international law to these areas at the very outset of military rule in June 1967. The only way to see their true legal status is by removing the distorting lens which comes from illegally applying the wrong kind of law. It is not military government per se which is responsible for the great distortion and falsification of the true legal status of these parts of the Land of Israel. Military government existed before, in 1948 and afterwards, when emergency circumstances justified it. Rather, it was caused by the illegal application of international law, in lieu of Israeli law, as erroneously decided by the Government of Israel in June 1967.

The wrong application of law has led directly to the present Interim Agreement, whose ultimate plan is to detach most of Judea, Samaria and Gaza from the State of Israel and place this territory under the illegal rule of the PLO and the "Palestinian Council". This surrender of territory, consisting of integral parts of the Land of Israel and the Jewish National Home is not merely a mistake of policy that can be easily excused or rectified afterwards. It is the gravest violation of criminal law, because first the surrender of sovereign territory is absolutely prohibited under both Israeli constitutional law and criminal law, which prescribes the most severe punishment for the commission of such an act and second, because it can only have, both presently and especially in the years ahead, the most dangerous repercussions on the actual existence of the Jewish State and the welfare of its inhabitants. This gravest of criminal violations makes all the Ministers of the present Government personally liable to the punishments prescribed in the law, based on the principle of collective cabinet responsibility, provided the rest of the elements and requirements for the commission of the offense under section 97 are also fulfilled regarding intent, lack of lawful authority, lack of lawful means and lack of good faith.

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Chapter 3: Impairment of the Integrity of the State of Israel under Section 97(b): Elements required for the Commission of the Offense

The surrender of territory under the de jure sovereignty of the State of Israel is an offense punishable under section 97(b), which reads as follows:

Article Two: Treason

97(a) ...

97(b) A person who, with intent that any area be withdrawn from the sovereignty of the State or placed under the sovereignty of a foreign state, commits an act calculated to bring this about is liable to the death penalty or to imprisonment for life.

There are three separate elements required in the commission of an offense under section 97(b), which impairs the integrity of the State of Israel:

1 The "area" which is withdrawn must be under the existing sovereignty of the State;

2 The person who withdraws the area must have the capability, but not the lawful authority to do so;

3 The person who withdraws the area must do it with intent and know in advance it or he has no lawful authority, but does it anyhow, without good faith;

1. Withdrawal of Territory under State Sovereignty

The first element of the crime of treason which impairs the integrity of the State is the withdrawal of an area from the sovereignty of the State. The word "area" refers to an area of the Land of Israel that also lies outside the de facto civilian borders of the State of Israel, which it rules as de facto sovereign, for as we saw above, lands can be under a State's sovereignty, even if they are not formally included in the makeup of the State. Furthermore, as was pointed out in Part 1 of this Petition, section 11B of the Law and Administration Ordinance assumes, as do other laws, that the Land of Israel as a whole constitutes the de jure sovereign borders of the State of Israel, even though much of the Land of Israel included in these de jure borders, is not at the same time included in the de facto civilian borders of the State. Without this basic assumption, there is no meaning or purpose to section 11B. Moreover, the de jure sovereign borders never change, nor does Israel's de jure sovereignty over these borders. What may change are only the de facto civilian borders or de facto military borders over which Israel enjoys de facto sovereignty. Therefore, the reference to the word "sovereignty" in section 97(b) can only refer to a withdrawal from Israel's de facto sovereignty - whether military or civilian, over a particular area or areas of the Land of Israel, with de jure sovereignty always remaining vested in the State of Israel, even after de facto sovereignty ceases to exist.

In the instant case of Judea, Samaria and Gaza, the de facto sovereignty which Israel holds and exercises is, at least in outer appearance or form, of a military and not civilian nature, except in regard to Israelis living there, who are treated as citizens of the State under civilian jurisdiction. De facto military sovereignty in turn means the existence of de facto military borders and what Israel is therefore giving up under the Interim Agreement are its de facto military borders that extend beyond the de facto civilian borders of the State of Israel. This cession of territory is therefore an impairment of the integrity of the State of Israel within its de facto military borders and not its de facto civilian borders. The de facto civilian borders are not being changed at all, because Judea, Samaria and Gaza were never included in the State of Israel, illegal as that was.

In regard to placing an area of the Land of Israel under "foreign sovereignty", as stated in the text of section 97(b), this is a technical drafting error, since no part of the Land of Israel from the viewpoint of Israel's constitutional law can ever be legally placed either under the de jure or de facto sovereignty of a foreign state, entity or nation. What the legislator really meant to say here was placing an area of the Land of Israel under foreign control, administration or occupation. This is what happened to Judea and Samaria when they were under Transjordanian-Jordanian control from May 1948 to June 7, 1967 and also what happened to Gaza which came under Egyptian administration from May 1948 to June 6, 1967.

2. Capability to Effect Territorial Withdrawal without Lawful Authority or Means

The second element of the crime of treason under section 97(b) is the capability needed to withdraw an area from the de facto sovereignty of the State of Israel, even though there exists no lawful authority to do so. This capability exists only for a very limited number of persons or authorities, who may include any of the following: the Knesset, the Government of Israel or Cabinet, the Prime Minister, who acts either alone in secret, or together in secret, with the foreign minister or defense minister or with both of them and lastly, the Chief of Staff of the IDF.

The Knesset is the repository of the sovereignty of the State of Israel, but this is illusory, because it is controlled in its day to day affairs by the Government in power, which in effect directs all of its legislative activity. Hence, if the Knesset approves the withdrawal of an area from the de facto sovereignty of the State

of Israel, it is not acting as an independent body making its own decision, but only as the servant carrying out the wishes of its master, the Government of Israel.

The Knesset can approve the Government's decision of withdrawal either through a simple resolution, a vote of confidence, or a vote of no confidence that is rejected, or by the passage of a Law. In the first three instances, no legal change is produced.

The situation would be more complicated if the Knesset approved territorial withdrawal by the passage of a new Law. As a general rule, the passage of any new Law should be considered as unconstitutional if it violates a Basic Law, which stands in contradiction to the new Law. This is because of the fundamental principle of the Israeli legal system viz., the Rule of Law, which must be observed by all authorities of the State of Israel, including the Knesset itself. But if at the time the new Law is passed, the pre-existing contradictory legislation is simultaneously repealed, then the new Law should normally take effect, unless it violates the basic norms of democracy or the definition and meaning of a Jewish State according to *halakha*, Jewish history and Zionism, as further discussed in Part 7 of this Petition. A clear instance when a Knesset Law would be prima facie unconstitutional based on the above criteria is a Law which abolishes the Jewish character of the State of Israel, either by prohibiting the observance of the Sabbath or other holy days or by surrendering parts of the Land of Israel to a foreign state, entity or nation. In this respect, one need only recall the immortal words of David Ben-Gurion, quoted in full in Part 5 of this Petition, about the illegality of surrendering the Land of Israel, which applies to every authority of the State of Israel, including the Knesset.

Though it holds and exercises the sovereignty of the State of Israel, the Knesset really acts as the trustee of the rights of the Jewish People in safeguarding its patrimony and heritage of the Land of Israel. This is evidenced by the Law of Return, which only confirms the pre-existing legal right of the Jewish People to possess the Land of Israel, even before the State was created. This is also confirmed by the Proclamation of Independence which refers to the "sovereign or independent Jewish People settled in its own Land."

If the Knesset has no lawful authority to enact a Law which withdraws an area of the Land of Israel from the de facto sovereignty of the State of Israel or places such area under the control or administration of a foreign state, all the more reason why the Government of Israel also cannot do so. Though the Government enjoys immense power under the Basic Law: Government, its authority is still limited and subject to law and this limitation of authority extends to the withdrawal of an area of the Land of Israel, from the de facto sovereignty of the State of Israel.

As a result of the fact that no Law can be passed by the Knesset to empower the Government to surrender territory that forms part of the Land of Israel, there does not exist any "lawful means" for the Government to do so. Nor can the Government empower any one else for the same purpose. Therefore, section 97(b) which prohibits surrender or withdrawal of territory, applies to every person or authority without exception, including the Knesset, the Government, the Prime Minister and every other minister or official of the State of Israel.

3. Intent to Effect Territorial Withdrawal without Good Faith

The third element of the crime of treason in section 97(b) is the intent and prior knowledge of the person or authority who carries out the withdrawal. Intent, as defined by section 91, means an act or omission done or made with a specific intention, without lawful authority. Read in conjunction with section 97(b) in regard to the specific case of Judea, Samaria and Gaza in the Interim Agreement, it means giving up de facto sovereignty over those lands and thereby reducing the de facto military borders of the State of Israel, without having had the lawful authority to do so. If this had been done through the passage of a Law in a free and open debate in the Knesset, **prior to** any surrender or withdrawal from territory, then a defense of "good faith" may conceivably be raised under section 94 to any charge or prosecution under section 97(b). But such "good faith" cannot exist where territorial withdrawal is carried out under an agreement reached in undue and deliberate haste, as occurred in regard to the Interim Agreement where the terms were negotiated in secret without the democratic participation of the nation's elected representatives prior to making the Agreement and where the government was afraid to consult the nation about its proposed withdrawal from the Land of

Israel. There also cannot exist "good faith" where the person or authority concerned has been duly notified of the criminal conduct of its proposed course of action before the act of territorial withdrawal was carried out. For any or all of these reasons, the Government and its ministers cannot claim "good faith" for deliberately flouting section 97(b).

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Chapter 4: Impairment of the Sovereignty of the State under section 97(a)

Section 97(a) defines a crime of treason which exists separate and apart from the crime of treason in section 97(b). Both parts of section 97 are concerned with sovereignty over the Land of Israel, but section 97(a) does not deal with the integrity or wholeness of the Land of Israel, in which a part of the Land is broken off, surrendered or withdrawn from the de facto sovereignty of the State of Israel. Rather, section 97(a) is concerned with the impairment of de facto sovereignty which is not extinguished at the time the act is initially committed, even though it may happen ultimately. The act of impairment may be of a territorial or non-territorial nature which weakens or calls into question Israel's right of sovereignty over the Land of Israel. It is not only one particular act, but can consist of a whole range of acts, each of which individually may impair the de facto sovereignty of the State of Israel over the Land of Israel. Section 97(a) therefore has a much broader scope than section 97(b).

Section 97(a) reads as follows:

> A person who, with intent to impair the sovereignty of the State, commits an act calculated to impair such sovereignty is liable to the death penalty or to imprisonment for life.

The same elements which constitute the offense of treason under section 97(b) apply also to section 97(a), namely the basic assumption of de jure sovereignty of the State of Israel over the Land of Israel, capability and intent, lack of lawful authority, lack of lawful means and lack of good faith because of prior knowledge.

The list of treasonable acts that can be committed under section 97(a) are varied and extensive. A brief enumeration of some of these acts which the Government of Israel has already done or plans to do under the Interim Agreement with the PLO, is herewith given.

1. Recognition of the national and political rights of a foreign people to rule in the Land of Israel, alongside the Jewish People

The recognition of the national rights of another people to the Land of Israel lies at the root of all of the other acts of treason which impair the sovereignty of the State of Israel under section 97(a) and is therefore of utmost importance. The origin of this illegal act began with the concept of administrative or political autonomy for the local Arab residents of Judea, Samaria and Gaza, presented by Menahem Begin to the Knesset on December 28, 1977, which led to the Camp David Framework Agreement for Peace in the Middle East (Sept. 17, 1978). However, recognition of the national and political rights of Arabs living in Judea, Samaria and Gaza, has reached its zenith in the Interim Agreement, which grants far-reaching and unprecedented political powers to a foreign nation over substantial parts of the Land of Israel, together with recognition of its nationhood.

The whole idea of a separate "Palestinian People" supposedly distinct from the Muslim Arab people of Syria, Lebanon and some other Arab states, is one of the great hoaxes of the 20th century. The national and political recognition granted to this fictitious entity, the so-called "Palestinian People" subverts and prejudices the genuine national and eternal rights of the Jewish People to the Land of Israel, whose historic connection to it goes back almost four millenia. No other state in the world would accept the competing claim of a foreign nation which never existed in history and is part of a broader Arab or Muslim nation, which seeks to expel the Jewish People from its own homeland and thereby deprive it of its own national and political rights. The Government of Israel, which has recognized and furthered the growth of this fictitious foreign national entity in the Land of Israel can be charged with the crime of treason under section 97(a) for its role in this deception which impairs Israel's sovereign rights to its national domain.

2. Creation of an embryonic foreign State, foreign Government and foreign army in the Land of Israel

The Interim Agreement not only recognizes explicitly the national and political rights of a foreign Arab nation in the Land of Israel, but has empowered it with sufficient authorities, powers and responsibilities which enable it to construct an independent Arab State, with its own legislature, executive, judiciary and army. It is an amazing phenomenon that Israel, whose existence is still not physically assured, helps to create yet another Arab state in the Jewish National Home, whose population has manifested and continues to manifest unswerving hostility to the Jewish People and still aspires to destroy the Jewish State. The Government of Israel's act of Arab state-building is needless to say, an act which impairs the sovereignty of Israel, contrary to section 97(a).

3. The transfer of authorities, powers and responsibilities from the State of Israel to a foreign entity

The actual transfer of various authorities, powers and responsibilities to the "Palestinian Council" under the domination of an illegal and criminal organization, while its Charter calling for the extirpation of the Jewish State and the deportation of most of its Jewish inhabitants, is still in effect is per se an act which impairs the sovereignty of the State of Israel. As a result of this transfer, the Knesset loses its rights of sovereignty to the full extent of the transfer of powers to the "Palestinian Council". The Interim Agreement enumerates in detail forty separate spheres of civil affairs transferred to the jurisdiction, personal, functional and territorial, of the "Palestinian Council". In addition to that, is the transfer of legal and criminal jurisdiction. The entire transfer of jurisdiction constitutes a serious loss of state powers and de facto sovereignty, contrary not only to constitutional law, but also to section 97(a) of the Penal Law.

4. Redeployment and Internal Security

The four phases of redeployment of the IDF within Judea, Samaria and Gaza, which puts internal security in the areas evacuated by the IDF in the hands of the "police forces" of the "Palestinian Council", threatens the lives and physical safety on a daily basis of 150,000 Jewish inhabitants, who live close to the areas to be evacuated. The non-presence of the IDF in these areas may eventually cause an abandonment of some Jewish settlements and a migration of their inhabitants from the areas of the Land of Israel where there is insufficient or no protection to other areas of the country. The abandoned areas will then be left in the hands of the PLO, which will be an ironic and cruel twist of fate, representing the reverse of what happened in 1948 when Arabs fled their homes for different reasons. The abandonment of land, home and settlement caused by the IDF's redeployment will be a further erosion of Israel's de facto military sovereignty in the Land of Israel.

5. Impairment of Israel's sovereignty over its capital city, Jerusalem

There is a two-fold impairment of Israel's sovereignty over Jerusalem in the Interim Agreement. The first arises from the fact that the great majority of Arabs who live in East Jerusalem, who are not Israeli citizens, qualified as registered electors and candidates in the elections to the "Palestinian Council" with the right to sit as members of that body. There are also seven members of the 88 member "Palestinian Council" who represent the electoral district of Jerusalem who are included in that body. This allows the PLO to claim that Jerusalem is already included in the overall jurisdiction of the Council, which as a democratically-elected body represents all of its voters, in whatever district or constituency they may live.

The second impairment of Israel's sovereignty over Jerusalem is caused by the fact that it is an issue to be discussed in the final status negotiations. This means that the question of sovereignty over Jerusalem is still open, despite the fact that Israeli constitutional law, irrevocably makes it an integral and non-negotiable part of the State and hence, a closed issue. The threat posed to Israel's sovereignty over Jerusalem is one of the gravest violations under section 97(a), which the Government of Israel has committed in the Interim Agreement.

6. The holding of territorial-wide elections to a foreign legislature in the Land of Israel

The holding of foreign elections to a foreign legislature, which will rule over substantial parts of the Land of Israel is by its very nature an impairment of sovereignty of Israel. No other country in the world would permit a law-making body to operate in its homeland which will directly affect the law-making powers of its own legislature. The fact that this election was conducted under the supervision of foreign international observers makes the impairment of sovereignty all the worse.

7. Permanent Status Negotiations

The concept of permanent status negotiations on issues such as Jerusalem, borders and settlements is illegal because these negotiations will concern issues about which the constitutional law of Israel has already determined the final status. The Government of Israel therefore has no lawful authority to upset that status, especially when there is not even prior consent from the Knesset in the form of a special Law or enabling act. Negotiations about Jerusalem's permanent status were discussed in number 5 above. Negotiations over the borders of the State, that go beyond the question of Jerusalem are also prohibited by section 11B of the Law and Administration Ordinance which fixes those borders as co-extensive with the Land of Israel in a de jure manner and allows for an eventual expansion of the de facto civilian borders up to the full extent of the de jure sovereign borders. Nor can the Government of Israel negotiate the permanent status of settlements established in the Land of Israel since that violates the Law of Return as well as article 6 of the Mandate. The Government can only authorize the establishment of new settlements and not uproot the existing ones. There is nothing the Government can negotiate with the PLO in regard to "foreign relations" since that is a matter only for independent states, which automatically excludes the PLO. The Government does have power to negotiate the return of a very small number of Arab refugees, so long as it does not change the demographic character of the country. But it cannot undertake these negotiations with the PLO which is not a state. The idea that Israel will conclude a new agreement with the PLO on issues of final status which involves negotiations between a sovereign state and a non-sovereign entity has no basis in international law, nor in Israeli law. The only result of such negotiations on final status issues can be an impairment of Israel's sovereignty under section 97(a) or a further loss of de facto sovereignty over parts of the Land of Israel contrary to section 97(b).

8. Transfer of Religious and Archaeological Sites to the Custody of the "Palestinian Council"

It is difficult to find a more shocking and unbelievable act committed by the Government of Israel in the Interim Agreement as the one which transfers Jewish Holy Places and archaeological sites to the custody of the "Palestinian Council". The Government has further agreed to provide it with all archaeological records, including a list of all excavated sites and artifacts found since 1967 and even to consider returning these artifacts during the negotiations to take place on final status.

Only a government which has no feeling at all for places of Jewish religious devotion and for sites which physically connect the Jewish People to their glorious past can so callously surrender the heritage and treasures of their own people to a foreign entity or think of doing so. It would be hard to find a precedent, if any does exist, for so insensitive an act.

The transfer of Jewish Holy Places violates the Protection of Holy Places Law because the Government of Israel has the exclusive right of administration and cannot transfer this right to any other party, particularly a foreign body. The transfer of archaeological sites and records and the possible transfer of artifacts, violates the Antiquities Law, since such transfer is based on the grotesque concept that Israel is the "occupier" of so-called "Palestinian Lands", which requires it to return these sites, records and artifacts, at the end of the "occupation", to the sovereign and rightful owner, namely, the fictitious "Palestinian People", from whose lands the artifacts were taken and removed. The agreement by Israel to do this in regard to various sites and records and to discuss the demand for the return of the artifacts not only violates the State’s laws and legal principles, but is irrational.

The sites, records and artifacts are clear and undisputed evidence of the Jewish historical connection to the Land of Israel. The State of Israel came into being as a result of world recognition of this historical

connection in 1920 at San Remo. This connection, so well known even in Christian countries which revere the Bible, goes back to the days of patriarch Abraham, who came to the Land of Israel (then the Land of Canaan) about 3,800 years ago, from Ur of the Chaldees, in ancient Sumer (today Southern Iraq). For Israel to abandon or spurn its precious connection to the Land of Israel is to abandon or spurn its raison d'etre as a Jewish State. This is exactly what the Government has done in agreeing to turn over various religious and archaeological sites, records and also, possibly, artifacts to a fictitious foreign nation which arrogates to itself, without any justification, the Jewish historical connection. Moreover, the Government has given by this very reckless act, an air of credibility to the fanciful and false claim that the so called "Palestinians" are the direct descendants of the original inhabitants of the country.

9. Surrender of Water Resources

Israel has agreed to give up important quantities of water to the "Palestinian Council" during the interim period calculated at 28.6 mcm/year and to negotiate a final agreement for additional supplies during the permanent status negotiations. Moreover, by eventually giving up most of Judea and Samaria, Israel will lose exclusive control of its principal reservoir of drinking water which supplies its major cities, Tel Aviv, Jerusalem and Beersheva. This reservoir is located in the Western Judean and Samarian highlands and called the Mountain Aquifer. The water in this subterranean aquifer flows from east to west, emerging downstream into the Yarkon and Taninim Rivers on its way to the Mediterranean.

The water from this precious source is vitally needed for agricultural development and the general growth of the country. By placing it in foreign hands, the Government of Israel is literally risking the survival of the State of Israel and therefore impairs its sovereignty.

10. Calling Judea and Samaria by the name "West Bank"

The term "West Bank" for Judea and Samaria denotes Jordanian sovereignty. This name was officially replaced by the joint name of Judea and Samaria, in the Law called "Emergency Regulations (Judea, and Samaria, Gaza Region, Golan Heights, Sinai and Southern Sinai - Criminal Jurisdiction and Legal Assistance) (Extension of Validity) Law 5737-1977. The change of name went into effect on December 31, 1977. The Government's usage of the name "West Bank" in the Interim Agreement violated this Law, as well as section 97(a).

11. Symbols of Foreign Statehood in the Land of Israel

Under the Interim Agreement, the "Palestinian Council" has the right to issue its own monetary currency, postage stamps, passports, automobile license plates, as well as the right to build and operate independent communication systems, including an independent telephone network and radio and television stations. It can also fly its own national flag in the areas under its jurisdiction. All of those rights are symbols of foreign statehood in the Land of Israel, which impair the sovereignty of the State, which would not be permitted by any other independent state within its own territory.

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Chapter 5: Assistance to a Terrorist Organization in a War Against Israel

A third crime of treason which can be charged against the Government of Israel in addition to the two kinds already discussed, is in regard to the "assistance" it has given to an "**enemy** in war against Israel", as specified in section 99, which reads as follows:

> 99(a) A person, who with intent to assist an enemy in war against Israel, commits an act calculated so to assist him is liable to the death penalty or to imprisonment for life.
>
> (b) For the purposes of this section, "assistance" includes delivering information with intent that it shall fall into the hands of the enemy or in the knowledge that it may fall into his hands; and it shall be immaterial that no war is being waged at the time the information is delivered.

Section 99 has to be read in conjunction with section 91 as amended in 1979, which defines an "enemy" and "terrorist organization" as follows:

> 91. In this chapter "**enemy**" means anyone who is or declares himself to be a belligerent or maintains or declares himself to be maintaining a state of war against Israel, whether or not war has been declared and whether or not armed hostilities are in progress and it also means a terrorist organization;
>
> "**terrorist organization**" an organization, whose objectives or activities are intended to cause the downfall of the State or to harm the security of the State or the safety of its residents or Jews in other countries.

By virtue of section 8 of the Prevention of Terrorism Ordinance, the Government published a Proclamation in the Official Gazette on October 23, 1980 declaring the "Palestine Liberation Organization" to be a terrorist organization. This declaration is still in force and cannot be revoked for two reasons:

1. The Charter of the PLO which calls for armed struggle against Israel and its destruction has never been changed or amended;
2. The PLO contains several constituent organizations such as the Popular Front for the Liberation of Palestine led by George Habash, the Popular Front for the Liberation of Palestine - General Command, led by Ahmed Jibril, the Democratic Front for the Liberation of Palestine led by Nayef Hawatmeh and the Palestine Liberation Front led by Abu Abbas, all of which continue to advocate armed struggle against Israel and therefore, so long as they are members in good standing of the PLO, the latter will always fit the definition of a terrorist organization even if the Charter is changed, unless those organizations which profess violence against Israel are expelled from its ranks.

While it is true that Yasser Arafat, the Chairman of the PLO, renounced war and terrorism against Israel in two letters dated September 9, 1993 (though backtracking on other occasions by his call for "jihad"), his renunciation does not by itself bind the PLO until its highest governing body, the "Palestine National Council" confirms what he has renounced, which it has failed to do after the passage of two and a half years. Therefore, until the PLO officially does what Arafat has promised it would do, it remains a "terrorist organization" as well as an "enemy in war against Israel" in the eyes of the law of Israel in accordance with sections 91 and 99 of the Penal Law.

Both before and after the Interim Agreement, the Government of Israel has provided all sorts of "assistance" to the PLO and its ruling body, the "Palestinian Authority" whose leading members all come from the ranks of the parent PLO, despite the fact that it is still legally an "enemy in war against Israel". It has given the "Palestinian Authority" financial assistance and helped to arrange a world's donor conference for this purpose; it has collected taxes on its behalf; it has provided intelligence information and established joint police patrols; it has transferred information and documents concerning all Arabs living in Judea, Samaria and Gaza; it has allowed five Israeli post offices to be used in the elections for the "Palestinian Council". All of this "assistance" is a violation of section 99 and despite the fact that the Knesset has enacted Laws in 1995 and 1996 to legalize these forms of assistance, it has never changed the old Law, which banned such assistance. Therefore, the new Laws enacted by the Knesset to help the PLO and implement the Government's agreement with it are unconstitutional, because the Knesset is obliged to observe the pre-existing Law, unless it first repeals it, which it has not done. This is the essence of the principle called the "Rule of Law".

Even if the Charter of the PLO is eventually amended, or abolished altogether and the PLO ceases to be a "terrorist organization" and an "enemy in war against Israel", as defined in law, this will not change the fact that the criminal law was systematically violated during the entire period of time that the Interim Agreement was made and implemented until the date of amendment or abolition.

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Chapter 6: Evincing a resolve to betray

The fourth and last crime of treason being committed by the Government of Israel is the intention it has evinced to betray the State by committing acts which either impair the sovereignty or integrity of the State or assist an enemy in war against Israel. This crime is defined in section 100, which reads as follows:

> A person who does any act evincing one of the intentions referred to in sections 97, 98 and 99 is liable to imprisonment for ten years.

As a result of section 100, any act of treason which the Government of Israel committed under sections 97 and 99 began from the moment it formed an intention to commit the act of treason. It is difficult to prove the exact date when intention was formed, but the Interim Agreement sets down exactly what the Government intends to do to implement the terms of the Agreement and the date when it will do so. Accordingly, it serves as an incriminating document to prove intention, assuming that the acts the Government plans to commit under the Interim Agreement do in fact violate the provisions of sections 97 and 99 of the Penal Law. It has been the burden of this Petition in Part 6 to show exactly that.

Under section 100, it does not matter if the act of treason was committed in actual fact. All that needs to be shown is the intention to commit the act. It is for this reason that all of the Government's future plans to implement the Interim Agreement are a violation of section 100, whether this concerns future redeployments of the IDF, additional transfers of authority to the "Palestinian Council" or any negotiations about Jerusalem or other issues of final status.

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Chapter 7: Summary Note on Treason

The crime of treason is reprehensible and odious and therefore should not be lightly charged against anyone. Prima facie evidence is required before such a grave charge can be made and the final determination of it can only be given by a court of law. It is generally committed by individuals and not by Government leaders and least of all by the Government itself. But section 97 is a special species of the crime of treason, quite unique to Israel which cannot be committed by any ordinary individual. It was specifically enacted to prevent the Land of Israel from being further surrendered to foreign hands as was done during the Mandate period. It applies specifically to the Government or its highest leaders, since only they have the ability or capability, needed to commit the crime, but not the lawful authority. It is rare indeed that a Government as a whole can be charged with acts of treason. But the unprecedented nature of the Interim Agreement in which the Government and its ministers have openly, unashamedly and joyfully given up parts of the Land of Israel to an enemy in war against Israel and will do so again in the upcoming months under the same agreement makes that charge feasible for the first time in the history of the State.

The Interim Agreement and its implementation provide the necessary legal evidence which is required to prove treasonable acts of surrender of territory, impairment of sovereignty of the State and assistance to an enemy in war against Israel. These acts are being carried out in the name of peace which by and large shields the perpetrators from censure and press attack and prevents the exposure of the real legal nature of the acts being committed. It is very difficult even to raise the charge in a serious manner or to discuss it free from acrimonious debate or counter-charges. It is next to impossible to do so when the acts committed are accompanied by ceremonies of state, refrains of joy, paeans of praise and granting of awards and prizes from both international quarters and important elements of Israeli society. International leaders are only too glad to see Israel weakened and made dependent on them which helps their standing with their Arab friends. Israeli leaders and supporters of this process have no such excuse and are subject to the restraints and punishments imposed by law for engaging in or helping an illegal process.

The gravity of the charges of treason raised in this Petition makes it mandatory that they be carefully examined and deliberated upon in the only forum where this can be properly done, where the majesty of law governs, where calm and reason prevail and where respect for all parties is maintained, which are the hallmarks of the Supreme Court of Israel and its honorable judges.

The arguments herewith presented in support of the charges of treason against the Government must be faced and not skirted, because they will not go away. Refusal to see the true situation for fear of the consequences or backlash will only cause more damage to occur in the future, for the process is continuing unabated until its inevitable denouement of tragedy, unless the brakes are courageously and swiftly applied now, before all

is lost. Future generations of Jews in the Land of Israel will not be lenient nor forgive any dereliction of duty, in a matter so deeply affecting the destiny and well-being of the Jewish State of Israel.

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Part 7:

Violations of the principle of law related to the legal value of the State of Israel as a democratic state governed by the Rule of Law

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Chapter 1: Meaning of the Rule of Law

Israel is by law a democracy, more accurately, a representative democracy, in which political decisions are made by persons chosen to represent and be responsible to the whole body of citizens. One of the indispensable features associated with democracy is the idea of the Rule of Law, which is the most fundamental and hallowed principle of the entire Israeli legal system.

The basic meaning of the Rule of Law is that the existing Law is supreme and must be obeyed. No one is above the law and every person is subordinate to it. It applies not only to the ordinary people and citizens of the State who are the subjects being governed, it applies especially to the governors themselves, in particular to each branch of government, executive, legislative and judicial. Hence, no person or body, no matter how powerful is exempt from the rules of law. If they are not obeyed, then those who offend the law can be called to account.

The principle of the Rule of Law in Israel was best stated by the President of the Supreme Court, Justice Aharon Barak, then Deputy-President, in the Pinhasi case (HCJ 4267/93) as follows:

> The Court, itself an arm of government was bound to insure within the framework of separation of powers, that the other arms of government obeyed the law. This was the meaning of the Rule of Law. The status of the arms of government is high indeed, but the law stands above them all.

The principle of the Rule of Law reflects the values of the State of Israel as both a democratic state and a Jewish State.

However, the Rule of Law is not absolute and is subject to exceptions. This occurs if a law of the State violates other norms of democracy, such as the need for regular and free elections, an independent judiciary and basic freedoms of every person. This also occurs if the Rule of Law violates the definition and meaning of a Jewish State, as defined by *halakha*, Jewish history and Zionism. This would theoretically happen if a law forbade the observance of the Sabbath and Jewish religious holidays or if a law prohibited Jewish immigration and settlement in the Land of Israel or impaired the territorial integrity of the State of Israel.

The Rule of Law could not have been observed in Germany during the Third Reich when anti-democratic and anti-Jewish laws were enacted by the legislature of the State. Obeying laws of this kind would be abhorrent and farcical and is the true reason why article 43 of the Hague Rules and Regulations of 1907 was not applied in 1945 when the Allied Powers invaded and subjugated the State of Germany, ending its sovereignty.

Many anti-Jewish decrees have existed throughout the ages. The Seleucid (or Macedonian) King of Syria, Antiochus IV, also called Antiochus Epiphanes (God Manifest), banned Jewish worship in the Land of Israel in 168 BCE. Various popes, beginning with Pope Gregory IX (1227-41) and Pope Innocent IV (1243-54) in the thirteenth century issued papal bulls to seize and publicly burn the Talmud to prevent Jews from studying it. In our own day, the British Government published the Malcolm Macdonald White Paper on May 17, 1939 which imposed severe restrictions on Jewish immigration to the Land of Israel at the very time the Holocaust was occurring and banned it altogether after 5 years, unless the Arabs living in the country consented. Land transfer to Jews was either prohibited or restricted in various areas of the country.

In these kinds of instances where there is oppression and tyranny, the principle of the Rule of Law does not have to be obeyed. It may then not only be disregarded, but actively resisted. Such laws in fact justify revolt or civil disobedience, as did happen in regard to Antiochus' decree, the papal bulls and the White Paper.

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Chapter 2: The Rule of Law as applied to the Government of Israel

The Rule of Law as applied to the Government of Israel is recognized as a principle of law explicitly in section 40 of the Basic Law: Government, formerly section 29 of the old Law. The Government of Israel has enormous powers, but everything it does is subject to the observance of pre-existing laws and therefore its powers are not unlimited, nor is it a sovereign entity unto itself. It is subject in fact to the superintending control of the Courts of Israel, for if it infringes a law, or acts without lawful authority, only the Courts can intervene and rule its action to be ultra vires and of no effect.

In the specific case of the Interim Agreement, the Government of Israel has violated and continues to violate on a daily basis the constitutional and criminal laws of the State. This Petition enumerates the alleged violation of at least fourteen laws and principles of law including the principle of the Rule of Law.

The Government by its own tacit admission violated other Laws not enumerated here, which it sought to remedy by directing the Knesset to enact ex post facto legislation to implement the Interim Agreement and earlier agreements. This kind of retroactive legislation may be permissible for technical and inadvertent violations of law which were not originally foreseen. But it is not an acceptable practice to be condoned by this Honorable Court when the violations of law are substantive and deliberate, not merely technical or inadvertent, because then it violates the essence of the Rule of Law.

In dealing with the PLO, the Government of Israel has consistently violated the Rule of Law by first making an agreement full of illegalities and then forcing the Knesset to retroactively approve the violations. For the Rule of Law to be observed, the Government of Israel must first go to the Knesset to get approval for what it intends to do, by asking it to change the law prior to a proposed action or agreement, but not after the fact, when the law has already been violated.

The Government of Israel has succeeded so far to act with impunity in total disregard of legal restraints by getting implementing legislation from the Knesset for the Interim Agreement and previous agreements. However, it will be of no avail when the violations of law committed by the Government cannot be rectified even by the Knesset. This applies in particular to the fourteen violations of law and principles of law enumerated in this Petition, since these laws and principles, which remain in full effect, are part of the constitutional structure of the State of Israel, which cannot be torn down even by the Knesset since that would destroy or undermine the raison d'etre of Israel as a Jewish State.

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Chapter 3: The Rule of Law as applied to the Knesset

The Knesset is the holder and trustee of the sovereignty of the State, but it does not have unlimited power, because as Judge Barak said, in the Pinhasi case, it too is subject to the Rule of Law. Since Israel is a democratic state and above all, a Jewish State, the Knesset has no authority to enact a Law which abridges or cancels democratic norms or the guiding characteristics of a Jewish State.

By contrast, the Parliament of the United Kingdom is totally supreme and not subject to any limitations. It can pass any Law which violates democratic norms or any other system of belief. It is not subject to the Rule of Law, which has often been violated in the United Kingdom. Formerly the King could do no wrong, now that dictum applies to Parliament as an institution.

In the parliamentary system of Israel, the rule is substantially different. The Knesset, as the supreme authority of the State, is nevertheless subject to the Rule of Law. It must abide by the fundamental values of the State and therefore cannot enact a Law which transgresses those values. It is bound by the Laws of

preceding Knessets which have codified those fundamental values containing entrenched statutory provisions.

However, not all democratic norms of the State or Jewish values have the same weight. The Knesset can therefore pass a Law which violates some democratic norms, if the violation as stated in the recent case of **United Mizrahi Bank** v **Migdal Cooperative Village** which dealt with the Agricultural Family Sector Arrangements Law giving debt relief for moshav farmers,

1) befits the values of the State of Israel,

2) is enacted for a proper purpose and

3) is no greater than required.

These three conditions which are necessary to exist for violating a constitutional law, are given in section 8 of the Basic Law: Human Dignity and Liberty, and also section 4 of the Basic Law: Freedom of Occupation.

The fact that the Knesset can violate a Basic Law in one case as regards certain democratic norms does not mean that it can do so in other cases for those democratic norms which are the most fundamental of all. For instance, the Knesset could never pass a Law that could withstand judicial review if it abolished the requirement to have Knesset elections held on a regular basis and in a free manner or if it abolished the observance of the Sabbath or prevented Jews from exercising the Right of Return to come to the Land of Israel.

In the specific case of the Interim Agreement, the Knesset has passed a Law to implement the provisions of this Agreement despite the fact that it contains large scale violations of pre-existing laws which remain in effect. Can the Knesset therefore pass such a Law? According to the precedent of the above-mentioned "Arrangements Law", it can if the value of "peace" is thought to be of such an important nature it can override any violations of pre-existing laws.

If "peace" were the supreme value of the State of Israel, greater than any other value, then the violations of pre-existing laws might be overlooked or be permitted. But peace with a terrorist and criminal organization and an enemy in war against Israel is not the supreme value of the State of Israel. Therefore, the Knesset legislation approving the Interim Agreement which is filled with violations of pre-existing laws including Basic Laws of the State must be struck down by this Honorable Court as an unacceptable divergence from the Rule of Law, which even the Knesset is obliged to respect.

Under the meaning of the Rule of Law, any Knesset Law which violates a pre-existing constitutional law, which remains in force after the enactment of the new Law means that it is unconstitutional. It should also be noted that some constitutional laws are "basic Laws" even without that official designation, particularly the Law and Administration Ordinance, the Area of Jurisdiction and Powers Ordinance, the Law of Return and the Nationality Law.

Where the Knesset passes a new Law that contradicts the supreme value of Israel as a Jewish State, then the new Law is unconstitutional. This applies particularly to a Knesset Law which pretends to legitimate the surrender of areas of the Land of Israel, to a foreign entity, which is absolutely forbidden by the Law of Return and other constitutional legislation as well as by the definition and meaning of a Jewish State.

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Chapter 4: The Rule of Law as applied to the Judiciary

One of the consequences of this all-embracing and fundamental legal principle is that it also applies to the judges and courts of Israel, who represent the judicial branch of government. The judiciary in Israel is an honored and respected institution, whose members must, according to the declaration of allegiance in article 6 of the Basic Law: Judicature, uphold the laws of the State of Israel, dispense justice fairly, not pervert the law and show no favor. In doing what is required by their oath of office, a court must not fear the consequences of its judgments. It must not avoid deliberating upon very sensitive constitutional cases for fear of upsetting the other branches of government. It must not selectively apply the law to some persons or

bodies, but not to others. These obligations of judicial behavior also arise from article 2 of the same basic law, which required courts and judges to be subject only to the authority of the law and not be influenced by any other consideration.

The law of Israel has declared both the Palestine Liberation Organization as well as Kahane Chai and Kach as illegal organizations. As a result of the last two organizations being declared illegal under the law of Israel, they are unable to operate freely in the State of Israel, to conduct any sort of activity, even a memorial ceremony for their assassinated leader, Rabbi Meir Kahane (Supreme Court judgment rendered December 13, 1995). In contrast, the Palestine Liberation Organization is permitted to receive wide-scale assistance from the Government of Israel, despite the fact that the law declares it to be an illegal organization and an enemy in war against Israel. Until the law is changed and it has been at least three years since the Government began its first contacts with the PLO, the Government of Israel must be held accountable for its blatant violation of law in dealing extensively with an illegal organization and entering into agreements with it.

The principle of the Rule of Law obliges the Supreme Court to uphold the existing law of Israel in regard to the Palestine Liberation Organization just as it has done so in the case of other illegal organizations. It must not hesitate to pronounce judgment upon the Government's actions which were and still are a violation of sections 91, 97, 99 and 100 of the Penal Law. Otherwise, it itself will be in contempt of the Rule of Law.

In the specific case of the Interim Agreement there are fourteen alleged breaches of law, most of which are of a constitutional nature. Any case dealing with constitutional questions is inherently and unavoidably of a political nature, even though the questions raised are legal. The Rule of Law requires this Honorable Court to adjudicate **a political case involving legal questions**, as raised in this Petition, which is very different from a political case which deals exclusively or predominantly with "political questions". **A political case dealing with legal questions is a justiciable matter, while a political case dealing with political questions is not.** This vital distinction was made in the famous American case of **Baker** v **Carr**, which the Supreme Court cited in its ruling in the case of **Bargil** ("Peace Now Movement") v **Government of Israel** (HC 4481/91).

The present Petition is not based on wide generalities or concerned with the policy of the Government per se. Rather, it deals with concrete and specific legal issues which overshadow any political issue or question of policy involved. This Honorable Court is therefore duty bound to duly consider the merits of this Petition, under the governing principle of the Rule of Law.

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Part 8:

Notification to the Attorney-General of the Government of Israel about violations of law and principles of law contained in the Interim Agreement and the Letter of Reply.

The Petitioners advised the Attorney-General on July 27, 1995 that the Government of Israel is prohibited by the constitutional and criminal laws of the State from transferring any additional powers and responsibilities to the "Palestinian Authority" as contemplated in the Interim Agreement which was then in the advanced stage of being completed and that it was his sacred and compelling duty to advise and caution the Government to obey the existing laws of the State and therefore cancel its plan to sign and implement the proposed Interim Agreement. Copies of the letter were also sent to the Minister of Justice, the Legal Adviser of the Ministry of Foreign Affairs and the Legal Adviser of the Knesset. A letter of reply dated September 28, 1995 was received on October 11, 1995 from Meni Mazouz, Deputy Attorney-General who gave three specific reasons for not complying with Petitioners' appeal. These reasons are presented herewith, together with Petitioners' rebuttal.

1. First reason for non-compliance:

The regions of Judea, Samaria and the Gaza Strip are not included in the sovereign borders of the State of Israel, but rather they are held by it since 1967 under belligerent occupation according to the laws of war of public international law. Therefore, the powers of legislation, jurisdiction and administration in these areas

are not powers that are vested in the Knesset, as you claim, but rather in the Military Commander of the region, who is appointed by the Government and acts in the region by virtue of the rules of public international law. Your arguments in your letter are based on an erroneous legal-factual assumption as if the areas of Judea and Samaria (Yosh) and the Gaza Strip are included in the sovereign borders of the State of Israel and obviously your conclusions in relation to this are themselves erroneous.

Rebuttal:

It is indeed surprising that the Deputy Attorney-General could describe Israel's status in three famous and historic areas of the Land of Israel as one of "belligerent occupation", according to the laws of war of public international law. There was no validity for saying that in 1967 nor is there today. This wrong impression arose because of Israel's own fault, when it applied Jordanian law instead of Israeli law, after conquering these areas in the Six-Day War. Applying Jordanian law was perceived by foreign states and most observers as an admission that Judea and Samaria were integral parts of the sovereign state of Jordan and conversely under Israel's "belligerent occupation". But the Deputy Attorney-General should have known better. His statement that Israel's status in Judea, Samaria and Gaza is governed by the rules of "belligerent occupation" is inaccurate and damaging, because if true it means that Israel is holding lands that are the sovereign possessions of a foreign state, as an occupier (koveshet). This is plainly impossible, since Jordan was never the true sovereign of Judea and Samaria, nor was Egypt the true sovereign of Gaza. It may be true that Jordan, by its own internal laws, considered itself as the sovereign, when it annexed these lands on April 24, 1950 by a decision taken by the two Houses of its national Parliament, the Senate and Chamber of Deputies. However, its claim was rejected by practically everyone else, including other Arab states and finally even by Jordan itself on July 31, 1988 when King Hussein publicly announced the disengagement of his country from Judea and Samaria, by breaking off all existing legal and administrative links with them after 38 years of unity.

In his speech to the citizens of Jordan, King Hussein constantly used the phrase, "occupied Palestinian lands", no less than half a dozen times in referring to Judea and Samaria. This was an admission by him as the monarch of Jordan that those parts of the Land of Israel were not part of his kingdom or state, under the "sovereignty" of Jordan, but part of what he himself referred to as "Palestine". This name was officially given to the Jewish National Home on April 25, 1920 at the San Remo Conference when the Principal Allied Powers awarded the Mandate for "Palestine" to the United Kingdom, with the ultimate goal of helping to establish an independent Jewish State for the benefit of the Jewish People, viz., for those who would emigrate to the Land of Israel from all over the world. The Mandate for Palestine was not meant to establish an Arab state for a fictitious Arab people called "Palestinians", as that term was used by the Jordanian monarch.

All that can be logically derived from King Hussein's use of the phrase "occupied Palestinian lands" was that Judea and Samaria were at least not "occupied Jordanian lands", which therefore rules out the applicability of any concept of "belligerent occupation" on the part of Israel because this condition cannot exist if there is no foreign state or more particularly, a reversionary state, which is considered to be the recognized sovereign of those territories. Hence, what international law calls "belligerent occupation" under article 43 of the Hague Rules and Regulations of 1907 does not apply to Judea and Samaria.

By the same token, Israel could not be classified as an "occupier" of Gaza because it was never part of Egypt, even under the laws of Egypt.

It should be noted that if the logic used by the Deputy Attorney-General to describe Israel's status in Judea, Samaria and Gaza, had been used in 1948, then neither Jewish Jerusalem, Jaffa, Acco, Nahariya, Nazareth, Lod, Ramle nor Beersheva, could have become part of Israel, since they too, could have been said to have been "occupied" by Israel, contrary to article 43 of the Hague Rules and Regulations of 1907. In fact this was the original reason why many foreign states such as the United States refused to recognize Israel's status in Jerusalem, including the modern part of the city, because it was "occupying" the UN-designated territory of Jerusalem. The use of the phrase "belligerent occupation" to describe Israel's status over the expanded parts

of the State beyond the UN line including Jerusalem would have been considered pure nonsense in 1948 just as it should be considered likewise today in regard to Judea, Samaria and Gaza.

In his response, the Deputy Attorney-General also asserted that Judea, Samaria and Gaza are not part of the sovereign borders of the State of Israel, which he said was an "erroneous legal-factual assumption" made by the Petitioners in their letter, which led to erroneous conclusions. However, he should realize that the origin of this assumption comes not from the minds of the Petitioners or their attorneys, but from Israeli constitutional law. This assumption underlies section 11B of the Law and Administration Ordinance of 1948, as amended in 1967, section 8A(a) of the Municipalities Ordinance of 1964, as amended in 1967, the Protection of Holy Places Law of 1967, section 1 of the Area of Jurisdiction and Powers Ordinance of 1948, the Jerusalem Proclamation and the Land of Israel Proclamation of that same year, the Law of Return of 1950, the Nationality Law of 1952 and it also arises from the definition and meaning of a Jewish State according to *halakha*, Jewish history and Zionism. Without this "legal-factual assumption", none of these preceding laws would make any sense and moreover, Judea, Samaria and Gaza would have to be considered part of a foreign state or foreign territory, if they are not part of the de jure sovereign borders of Israel. It is the same "legal-factual assumption" which the Deputy Attorney-General objects to, that allowed Israel in 1948 to annex to the State, the territorial acquisitions that were acquired in the War of Independence outside the Partition borders, just as it should have been done for the territorial acquisitions of 1967.

The only way to clearly and logically resolve the apparent confusion existing about the borders of Israel is, as stated in Parts 1 and 6 of this Petition, to divide the question of sovereignty between de jure sovereignty and de facto sovereignty and then further sub-divide de facto sovereignty between civilian sovereignty and military sovereignty. This in turn produces borders which are also de jure sovereign borders and de facto sovereign borders. The latter then sub-divides into de facto civilian borders and de facto military borders.

The Petitioners never claimed in their letter that Judea, Samaria and Gaza are part of Israel's de facto civilian borders, since that decision was never taken by the Government of Israel, though it was illegal not to have done so, since it violated section 1 of the Area of Jurisdiction and Powers Ordinance. What the Petitioners did and still do claim is that Judea, Samaria and Gaza are indeed part of the de jure sovereign borders of the State, as well as part of its de facto military borders, by virtue of the laws quoted above. However, those de facto military borders are now being "whittled away" by the territorial withdrawal process taking place under the Interim Agreement.

The same assumption that exists of de jure Israeli sovereignty over the Land of Israel underpinned the words of the Minister of Justice, Yaacov Shimshon Shapiro on June 27, 1967 when he told the Knesset that Judea, Samaria and Gaza have been "liberated from the yoke of foreigners". Hence, whether it is realized or not, the delineation of Israel's de jure sovereign borders has already been decided by the principles of Israeli constitutional law and the Deputy Attorney-General should rethink his stated position on this matter.

As a consequence of his reasoning, the Deputy Attorney-General asserted that the powers of legislation, jurisdiction and administration in Judea, Samaria and Gaza are vested not in the Knesset but in the Military Commander of the Region, appointed by the Government of Israel. This assertion flatly contradicts section 11B of the Law and Administration Ordinance and other constitutional legislation. If this were really true in law, then section 11B and the other related laws, would have no legal basis and should have never been enacted in the first place. While it is indeed true that the Military Commanders in the various regions were given the powers of legislation, jurisdiction and administration, these powers did not originate from international law, but were derived from a voluntary and deliberate decision made by the Government of Israel in June 1967 not to apply Israeli law, but to apply on a provisional basis the international laws of war.

However, the Government decision of 1967 was not a decision that had to be made by virtue of international law nor by virtue of Israeli law. It was in fact a decision contrary to Israeli law. It was taken only because the Government of Israel wanted to buy time to entice the Arab states to make peace with it. It was therefore reluctant to take any irrevocable steps to alter the status quo. The policy failed, but the original government decision of applying international law on a voluntary basis, instead of Israeli law as was required, remained

in place until the present day and proved to be the greatest legal mistake and violation of law ever made by any Government of Israel.

A mere three weeks after the Military Commander was given powers of legislation, jurisdiction and administration on a provisional basis, the Knesset, by passing section 11B, asserted that these powers were really the powers of the Knesset and did not permanently belong to the Military Commander who only acted under the delegated authority of the Government of Israel. As usual, the Knesset adopted a docile position and allowed the Government to decide when its powers that were being temporarily exercised by the Military Commander, as a policy expedient, would come into actual use. In the meantime, those Knesset powers which were specifically mentioned in section 11B, were left in a state of suspense, except in the very few instances where the Knesset directly used them to enact laws and statutory provisions for Judea, Samaria and Gaza, as for example in the Protection of Holy Places Law and for some statutory provisions in the Nationality Law and other laws.

The situation is certainly complex and confusing. But it is wrong to say that the Military Commander is vested with his powers, as of right by public international law, when in fact he is only being employed by the Government of Israel as a temporary stand-in or surrogate for the Knesset, until such time as it will have decided under its delegated power granted under section 11B to annex Judea, Samaria and Gaza.

If it were really true that the powers exercised by the Military Commander were derived from international law and that it is these same powers which are being transferred to the "Palestinian Authority" and its successor, the "Palestinian Council", then he, as the transferor of those powers would have had to become a party to the Interim Agreement in order to give his consent to the transfer of his powers. The fact that he is not an official party to the Agreement, proves that those powers were never his original powers to begin with, but belonged to the State of Israel which vested them in its legislative organ, the Knesset, by virtue of section 11B.

*** * ***

2. Second Reason for Non-Compliance:

Section 11B of the Law and Administration Ordinance, 5708-1948, authorizes the Government to apply Israeli law, jurisdiction and administration to the areas of the Land of Israel that are outside the borders of the State of Israel but it is not required to do so. The Government made use of this power only for the unification of Jerusalem.

Rebuttal:

It is true that the Government is not required to act under section 11B, but at the same time it cannot give away the delegated powers it received from the Knesset, nor the powers of the Knesset that were not delegated to it, nor the very lands upon which these powers can be exercised, which is what the Government has essentially done for most of this unified territory in making the Interim Agreement with the PLO.

Section 11B was not intended only for the unification of Jerusalem. It was also intended to be used and exercised for all parts of the Land of Israel outside the de facto civilian borders of the State, as clearly indicated by the fact that the first order issued under the law bore "number 1" in its title indicating it was only the first order in a series of orders to be made.

In any event, the option which exists in section 11B concerning the extension of Israel's borders and whether or not the Government of Israel actually exercises this option is not the true legal point in this dispute as indicated by the Deputy Attorney General. It is another question entirely which is really at issue, viz., whether the Government of Israel can repeal of extinguish the option in section 11B altogether and prevent its future exercise. By ceding substantial areas of Judea, Samaria and Gaza to the PLO, the Government has foreclosed the option and made section 11B a deal letter, at least for those areas which have already been transferred to the control of the PLO, where the option will obviously no longer exist. This foreclosing of the option is absolutely contrary to the purpose of section 11B and the reason for which it was enacted. Once the option has been foreclosed or abrogated, it becomes impossible to implement the terms of section 11B, as

originally conceived by the Knesset. In addition, there is a usurpation of the powers and jurisdiction of the Knesset by the Government of Israel, constituting a violation of the legal framework known as the separation of powers between the Executive and Legislative branches of government.*

* This entire last paragraph, not in the original court document has been added to further demonstrate how section 11B of the Law and Administration Ordinance was misinterpreted by the Deputy Attorney General in regard to its optional character and specifically to show how he missed the legal point involved in this law which arose as a result of the Interim Agreement.

While section 11B is of an optional character, the same is not true for section 1 of the Area of Jurisdiction and Powers Ordinance, which must be complied with, as soon as the Minister of Defense has defined in a proclamation, those areas of the Land of Israel being held by the IDF. The purpose of this law was the same as the purpose of section 11B, namely to apply the law, jurisdiction and administration of the State to new acquisitions of the Land of Israel beyond the de facto civilian borders of the State. The choice given to the Government in section 11B was paradoxically rendered meaningless by the mandatory nature of section 1. The Government of Israel was derelict in its legal duty in not applying Israeli law, jurisdiction and administration as soon as the Military Commander acting as the surrogate of the Minister of Defense published a proclamation for Gaza on June 6, 1967 and for Judea and Samaria on June 7, 1967 that these areas of the Land of Israel were in the possession of the IDF.

The Deputy Attorney-General wanted very much to overlook the mandatory statutory provisions of the Area of Jurisdiction and Powers Ordinance either because he wrongly believes that this Law is no longer in force or because he knows that if it truly applies, it would make all of the present Government's actions in Judea, Samaria and Gaza illegal under that Law, not only as regards the Interim Agreement, but indeed in regard to all actions it has taken since the IDF first took over their possession in June 1967.

*** * ***

3. Third Reason for Non-Compliance:

In addition, there is no substance in your argument about section 97 of the Penal Law. This argument was raised in the High Court of Justice case in regard to the negotiations with Syria about the fate of the Golan Heights and the Court, by the Honorable former Deputy-President, Menahem Alon, determined that this claim is "fundamentally erroneous and it would have been better not to have argued it." (HC 4354/92) **Temple Mount Faithful Movement** v **The Prime Minister and Others** (Supreme Court Judgments Volume 47(1) 37 at page 40).

I also mention, in this regard, the words of the High Court of Justice (at page 42) concerning the power of the Government for conducting political negotiations, as follows:

"In conclusion, there is nothing in the statutory provisions that restrict the power of the Executive Authority to conduct political negotiations as they see fit, as regards their manner and direction. This is its power and even its duty, under law; it is presumed that the Government will act within the framework of the statutory provisions of the State, and when any conclusion is reached in the political negotiations, as said before, it will be brought to the Knesset for confirmation. We are certain that the Petitioners feel the importance and urgency of the subject of their petition and it is permissible and their political civic duty to bring this subject for hearing and deliberation, in all seriousness and to their full extent, before the legislature and executive authorities, to their representatives and servants. But this does not mean that there is any substance in their arguments that the Respondents supposedly acted without power in the conduct of negotiations and even violated the law. This is getting into a realm of law that is not justiciable."

These words which were spoken in regard to the Golan Heights, which has been annexed to the State of Israel, applies, all the more so, to our case. The decisions concerning the fate of the areas of Judea and Samaria and Gaza are political decisions that are left to the discretion of the competent authorities of the State and there is no justification or basis to the arguments found in your abovementioned appeal.

Rebuttal:

The Petitioners do not dispute the quoted words spoken by the learned former Deputy-President of this Honorable Court, Menahem Alon, nor the principle of law which was the basis of his decision, the ratio decidendi. What they do dispute is what the Deputy Attorney-General says is the principle of law handed down by Justice Alon and the Court. The Petitioners do not accept the interpretation given by the Deputy Attorney-General which they believe is wrong and misleading.

Justice Alon never gave the Government of Israel carte blanche to give up the Golan Heights, as the Deputy Attorney-General makes it appear, when he says that sections 97 and 100 of the Penal Law were considered by the Court in the case of the Temple Mount Faithful Movement and found to be inapplicable, or "fundamentally erroneous." All that Justice Alon really decided based on a careful reading of the whole judgment was that sections 97 and 100 did not apply to the Golan at the time political negotiations were underway with Syria in 1992, simply because there was no legal evidence then in front of the Court to show that the Government was in fact contemplating a withdrawal from the Golan. Had there been such evidence and had the Petitioners in that particular case followed proper civil and constitutional procedure, the judgement would have likely been different then the one that was rendered.

The real basis for the judgement of the Court was that the Government acts within its lawful authority whenever it conducts negotiations to achieve peace with an enemy state at war with Israel, which is derived from its power in the realm of foreign relations. Furthermore, since these negotiations are clearly of a political nature, they are non-justiciable so long as they remain within the framework of law. The Government's power to conduct political negotiations to achieve peace in the manner and direction it favors is not in dispute. It is only if those negotiations touch on matters which are not permitted by the laws of Israel to be the subject of negotiations, that they may then come under legal attack.

The laws of the State allow a great many issues to be discussed, as part of the negotiations to achieve peace. These include for example, discussions about terminating the existence of the state of war, the establishment of diplomatic relations, granting trade privileges and concessions, permitting and regulating tourist travel, payment of damages or compensation for property destroyed during the war, demilitarization of territory, release of prisoners, repatriation of a limited number of refugees that does not upset the existing demographic balance and a host of other issues.

These negotiations are strictly political and do not involve a breach of law. It is only if the negotiations enter a subject which the law does not allow to be negotiated that the matter can then become a cause fit for judicial review. There can, for example, be no negotiations about matters which violate democratic norms and the Jewish character of the State. In particular, there can be no negotiations about withdrawing an area from the sovereignty of the State or placing it under the rule of a foreign state, as expressly forbidden by sections 97 and 100 of the Penal Law. This is clear even from the title of the chapter of criminal law in which sections 97 and 100 are found, which specifies offenses committed in the field of foreign relations, among others. Therefore, if the subject of negotiations becomes the withdrawal of the State of Israel from "Israel Lands" or any area of the Land of Israel under the de jure and de facto (military or civilian) sovereignty of the State, then what was originally only a political matter and non-justiciable, becomes transformed into a legal question, because of the evident breach of law involved in these negotiations.

To return to the case of the Temple Mount Faithful Movement, it is true that the Petitioners raised the question of territorial withdrawal from the Golan, but not a shred of evidence was ever adduced to prove that this was actually the Government's intention, when the case was heard in 1992. The Court therefore never dealt with the question of the legality of negotiations concerned with withdrawal from or surrender of lands under the sovereignty of the State. What it dealt with was only the Government's lawful authority to conduct peace negotiations, within the framework of the law.

The real ratio decidendi of the Court judgment is given in the following extract:

> It appears clear to the Petitioners also, that the Government of Israel cannot be said to have committed a crime, especially that of treason in regard to the negotiations it conducted with Syria and for having raised ideas about

> the surrender of one area or other of the Golan Heights. And if the Petitioners really thought this was indeed being done, it is natural [to assume] they would have submitted an appropriate complaint to the competent bodies, such as the Attorney-General and would have heard his reaction. But this argument concerning the commission of a crime by the Respondents [was raised only] to give [a semblance of] legitimacy to the Petitioners that petitioned against Respondents [in their attempt] to force the intervention of this Court and [cause] its review of the political action of the Government of Israel. (Ibid. p. 42-43)

It is clear from the above extract of the judgment that had there really existed any proof adduced by the Petitioners, to show that the Government of Israel intended or was in the process of surrendering one part or other of the Golan, or the whole of it, to Syria as a result of the peace negotiations then taking place, the Court would have been ready to judicially review the question of the legality of this process. But before it would have done so, it needed to be satisfied that the Petitioners themselves really believed the Government had violated the law of treason under sections 97 and 100, by first making a complaint, in due and proper form, to the competent authorities, and only after exhausting this remedy and getting no satisfactory response, could they then submit their Petition to the Supreme Court. They had omitted to take this preliminary procedural step which induced the Court not to take seriously their argument of alleged treason against the Government for which no acceptable evidence was ever produced.

The foregoing picture of what the Court really had in mind when it handed down its judgment, was confirmed, by off-the-bench remarks made by Justice Dov Levin who is publicly reported to have given the following advice to the Petitioners and their Attorney, according to a news report of the case:

Justice Dov Levin said it is too early to deal with any legal aspects of giving up the Golan. "When we get to that point, then you can petition the court again," Levin told attorney Yehoshua Nener (quoted from the Jerusalem Post, Friday, September 25, 1992, page 3A, "High Court quickly rejects petition to prevent negotiations over Golan", by Herb Keinon).

It is very interesting to note that Justice Alon in the extract quoted from his judgment even indicated that it was the Government itself that was subject to sections 97 and 100, assuming there had been any real evidence which could support the charges made by the Petitioners. However, his identification of the Government as a potential offender of sections 97 and 100 was obscured by other parts of his judgment which appeared to indicate the exact opposite, namely the following:

1. The actual approval which the Court gave to the Government for its negotiations with Syria under the Madrid formula, to convene a Peace Conference about which no evidence existed concerning the violation of any law;
2. The support for these peace negotiations given by the Knesset, which began under the previous Government;
3. Prime Minister Menahem Begin's statement that peace negotiations with Syria was still possible despite passage of the Golan Heights Law, 5742-1981, which annexed this territory to the State of Israel. This statement of Begin cannot be taken to mean that he therefore envisioned or sanctioned the surrender of any part of the Golan. Peace negotiations with Syria are possible, even without the need to surrender land, just as that would be the case if peace negotiations were conducted by the Government of Israel with Iraq, Saudi Arabia or any other Arab State at war with it, where surrender of land is obviously not an issue.
4. The quotation from the Chairman of the Knesset joint Foreign Affairs and Law, Justice and Constitution Committees, when he introduced the penal legislation in 1957 that included sections 97 and 100. He apparently thought that these sections did not apply to the Government in negotiating peace with Arab countries, as distinct from applying to other groups or persons, who were not named by him.

In light of the actual ratio decidendi of the Court and the lack of legal evidence presented in the case of the Temple Mount Faithful Movement to support the alleged violation of sections 97 and 100 by the Government of Israel, there was no basis for the Deputy Attorney-General to conclude that the Government

of Israel is exempt from the future applicability of this penal legislation as regards all additional negotiations conducted with Syria even if they deal with Israel's withdrawal from the Golan, or a part of it.

Nor is he justified in extending blanket exemption to the Government for all negotiations it conducted in the past with the PLO concerning Israel's withdrawal from most of Judea, Samaria and Gaza. The penal provisions of 97 and 100 certainly do apply to both cases where there is clear and indisputable evidence that the negotiations were about the surrender of sovereign territories of the State of Israel.

Part 9: Conclusion

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The State of Israel faces today its gravest predicament that was simply never foreseen before because it was so improbable. How to restrain its own Government from voluntarily and happily surrendering vital areas of the Land of Israel to a foreign nation in order to create a new national entity, which will inevitably be transformed into a foreign state and in doing so violates both the constitutional and criminal laws of the State of Israel. This kind of situation would have perplexed the Founder of Organized Zionism and the Father of the State of Israel, Theodor Herzl, whose searing vision of a Jewish State was based on a complete and integral land, with enough space to accommodate the Jewish masses who would return to Zion to rebuild the land of their forefathers. It would have caused tears of mourning in the eyes of the great figures of halakhic teaching, stretching back more than 33 centuries to the time of Moses, who led the Israelites out of Egypt to the Promised Land, the Land of Israel, in fulfillment of the covenant made by God with the Patriarchs of the Jewish nation, Abraham, Isaac and Jacob. The voluntary surrender of the Land of Israel to a foreign enemy had it taken place in ancient days would have sparked a rebellion by those great Hebrew heroes and fighters who fought so bravely and loyally to defend the Land of Israel, the Jewish homeland, against all kinds of mighty oppressors and conquerors. For the Land of Israel has always been considered as a sacred heritage and trust of the Jewish People since their beginning as a people. To actually give it up to non-Jewish people as an act of morality or for peace lacks all logic. It is not only a negation of *halakha*, Jewish history and Zionism, but in the circumstances in which it is being done, is an act of contempt against the Rule of Law, because the surrender of the Land of Israel is being accompanied by widespread and continuous violations of constitutional and penal legislation.

In a law-abiding, democratic Jewish State, the only effective recourse to fight illegal actions taken by one's own Government is through the judicial system, in particular, by submitting a Petition to this Honorable Court detailing the violations of law and praying for appropriate relief. The extent of government illegality can then be determined by it in a fitting manner.

On the shoulders of this Court therefore lies an onerous and fateful responsibility. It must stop the Government from destroying the constitutional structure of the State that has existed intact since 1948, but which in reality reflects the dreams and aspirations of 2,000 years of Jewish yearning and struggle to re-build an independent Jewish State in all of the Land of Israel. It must stop the Government from acting against the criminal laws of the State which sets the worst kind of example for the people of our country. It must uphold what David Ben-Gurion called the unchanging law of Jewish history and the Proclamation of Zionism in speaking about the Law of Return. It must therefore stop the Government from giving up the Land of Israel to an enemy which still swears by its covenant to destroy the Jewish State and the Jewish People who live in it.

The Government has great powers and cannot be held in check when it acts illegally, except by this Honorable Court. It has run roughshod over the Knesset which routinely obeys its illegal directives and has caused it to validate an agreement which cannot be truly validated. When fundamental laws are violated by the Government with impunity, it loses its legitimacy to govern the people of Israel. In this situation of lawless conduct by the Government, abetted by the servile approval of the Knesset, this Court is the only place of redress for the Jewish nation!

To meet its great responsibility, this Honorable Court must examine the illegal actions of the Government with the greatest care and courage. If it fails to do so and brushes aside this Petition without due

consideration on the merits, it will have acted not only against its oath of office to uphold the laws of the State, it will also bear full responsibility for all consequences that naturally follow from the illegal actions of the Government. Therefore, to end the eclipse of law by the Government and avert a future tragedy for the citizens and inhabitants of the Jewish State, which looms before our very eyes, as the implementation of the illegal agreement with the PLO gathers momentum and reaches new and more advanced stages, in the months ahead, the timely intervention of this Honorable Court is of the greatest urgency. It must deliberate on the legal issues and violations of law alleged in this Petition and prescribe the remedies required to halt the commission of any further illegal acts by the Government. The welfare of the Jewish nation and the Jewish State now and in the future are dependent on what the Court will decide in this case. This is its highest obligation and the supreme duty of the law it cherishes.

Authored by:
HOWARD GRIEF (sgd)
ATTORNEY FOR PETITIONERS

APPENDICES:

Affidavit
Exhibits

AFFIDAVIT

I, the undersigned, Professor Hillel Weiss, Professor of Hebrew Literature at the Bar-Ilan University in Ramat Gan, whose identity card number is 143504-9, after having been duly warned to state the truth or be liable to the penalties prescribed by law if I do not do so, hereby declare as follows:

1) I am Petitioner number one herein;
2) I have read the annexed Petition, and affirm that all the facts and allegations made therein are true, and according to the law, to the best of my knowledge.

In witness whereof, I have signed at Jerusalem, this 9th day of May 1996

Professor Hillel Weiss (sgd)

I, the undersigned attorney, Howard Grief, hereby confirm that on the 9th day of May 1996, the aforementioned Declarant Professor Hillel Weiss, who is known to me personally, appeared before me, and after due and proper warning to state the truth or be liable to the penalties prescribed by law if he did not do so, declared as aforesaid.

Howard Grief, Attorney (sgd)