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The Illegality of the Sharm el Sheikh Memorandum Under Israeli Law

Howard Grief^d

A. Introduction

Once again an agreement is made by the Government of Israel with the Palestine Liberation Organisation that overflows with illegalities and once again they are ignored, unnoticed and unreported to the obvious relief and benefit of the Government and its leaders who made the agreement but to the great detriment of the Jewish nation which will suffer the harsh consequences. With a wide and cheerful smile that masked the damage he had just inflicted and a hearty clasp of Yasser Arafat, using both his hands accompanied by a side pat on his waist, Prime Minister Ehud Barak has taken the State of Israel a long step further down the tragic path of complete surrender of Judea, Samaria and Gaza by signing a new agreement with him on September 4, 1999. Barak's exuberance on this occasion extended to US Secretary of State, Madeleine Albright, whom he hugged and embraced in open view of the audience. Since it was due to American intervention and prompting that brought this agreement into being, it was fitting therefore that Albright received warm thanks from the obedient Prime Minister.

This new agreement, signed at Sharm el Sheikh, known in Hebrew as *Mifraz Shlomo* (Solomon's Bay) amid great cheers, fanfare and celebration, completes the sorrowful work of former Prime Minister Netanyahu and ushers in Barak's own new era of "peace and surrender".

The actual title of the new agreement is an unwieldy collection of characterizing words which causes insult to the dignity of the State of Israel. It is officially called: The Sharm el Sheikh Memorandum on Implementation Timeline of Outstanding Commitments of Agreements Signed and the Resumption of the Permanent Status Negotiations (hereinafter: The Sharm el Sheikh Memorandum).

The long-winded title openly insinuates that Israel has reneged on commitments it undertook in previously signed agreements, which remain outstanding and unfulfilled, while the PLO, on the other hand, has ostensibly honoured its part in those same agreements. The reference is principally to the Wye River Memorandum of October 23, 1998 in which Israel had agreed to turn over an additional 13% of the territory of Judea and Samaria to the PLO but where, after transferring only 2% of the territory, indefinitely

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. A Jerusalem-based attorney and notary, as well as a specialist in Israeli constitutional law, **Howard Grief** is the author of the "Petition to Annul the Interim Agreement" which was presented to Israel's Supreme Court. (The Court, calling the Petition "a political position" extricated itself from dealing with the matter.) The Petition was published as ACPR's Policy Paper No. 77 and describes the illegal nature of the Israel-PLO Agreements under Israeli law and their non-applicability under international law. Several feature articles of his have appeared in the pages of *Nativ*.

suspended any more transfers of territory, pending the PLO's compliance of its own obligations under that agreement.

The ballyhoo which accompanied the signing of the memorandum at Sharm el Sheikh was again another reminder to Israel by the Americans and the countries of the European Union that it must carry out the additional territorial withdrawals previously suspended as well as expected new ones to regain the PLO's trust and bring an end to the conflict with the fictitious nation called the "Palestinians" although that was exactly what was claimed to have been accomplished in 1993 when the first agreements were made with the PLO. The celebrations which occur at these signing ceremonies have in reality become a subtle and very effective technique to cement Israel's acceptance of self-destructive agreements while the Government and its leaders rejoice with toasts, smiles, hugs and handshakes with the other international guests and revellers.

As is the case with all prior agreements, the Sharm el Sheikh Memorandum contains important procedural and substantive violations of the laws of the State of Israel. Though it is useless to expect any practical remedy for these violations, it is important that they still be noted, as clearly as possible for the sake of truth and posterity and possible future rectification. The slim hope remains that one day there will be a true judicial and political accounting of all the actions that were undertaken that led to the making of these awful agreements to surrender the Land of Israel.

B. Lack of Prior Cabinet Authorization

The first procedural irregularity which no one among Israel's legal establishment has thought important enough to point out or strongly condemn is the improper signing of the Sharm el Sheikh Memorandum by Prime Minister Barak without any prior authorization of the Cabinet as he is legally required to obtain.

Barak did in fact get prior approval for one aspect of the agreement, namely the release of 348 Arab prisoners who committed their offences prior to September 13, 1993 which marks the date when the PLO (as distinguished from the "Palestinian Team" in the Jordanian-Palestinian delegation to the Middle East Peace Conference) first signed in its own name the original agreement called the Declaration of Principles on Interim Self-Government Arrangements, with the Government of Israel in Washington. But there was no Cabinet approval for the agreement as a whole given in advance of the signing of the Sharm el Sheikh Memorandum since Barak rushed to sign it in an unusual gesture on a Saturday night just before the Cabinet could see the final version and approve all its provisions, in order to accommodate the visiting American Secretary of State and Egyptian officials who were impatiently waiting for him to star in the elaborate ceremony they had meticulously prepared.

This unconstitutional procedure was brazenly begun at Oslo on August 20, 1993 when the original DOP was signed by Attorney Yoel Singer, then an employee of Israel's Foreign Ministry, without any prior authorization nor even knowledge at the time by the Cabinet. Shimon Peres, then the Foreign Minister, had declined to sign that agreement precisely because he knew and expressly stated to those around him in the Oslo Plaza Hotel where the signing ceremony was held that Cabinet approval was first necessary before he could sign which had not been given since nobody in the Cabinet knew about it apart from him and Prime Minister Rabin. For that very reason he delegated the task of signing the DOP to Yoel Singer. However his signature, too, was unauthorized by the Government of Israel which needed to approve it in advance. An illegal act was therefore knowingly and deliberately committed both by the person who actually signed the DOP in the name of the Government of Israel and those who authorized him to sign, namely Peres and Rabin.

The Basic Law: Government provides the Prime Minister with considerable powers in regard to his appointed ministers and the ministries they administer. But his powers do not coincide with those of the Cabinet. It is the Cabinet and not the Prime Minister which enjoys exclusive jurisdiction in the area of foreign affairs. This includes the power to make peace or war.

The approval needed for the signing of an agreement with a foreign entity such as the PLO which will affect the peace and security of the State is therefore the prerogative and responsibility of the Cabinet which, if it is to carry out its function properly, needed to know in advance about all the details of the agreement before it could provide its authorization for signing it. But just as in the case of Oslo, there was no prior and official Cabinet authorization for the signing ceremony at Sharm el Sheikh.

The Israeli system is in marked contrast to the American constitutional practice, which does in fact permit the President to act on his own as regards international engagements that are not embodied in the form of full-fledged treaties. That presidential power applies to the making of what are known as Executive Agreements for which no ratification process is necessary. However, in the case of treaties made by the President with foreign nations, they must first be submitted to the US Senate for its advice and consent and they only take effect if two-thirds of the Senators present for the vote have concurred. The provisions of the treaty then become a part of the supreme law of the land alongside the US Constitution and federal laws, taking precedence over state constitutions and legislation and must be upheld by the courts.

While the President may act on his own accord, without the need for special authorization by another body in regard to “executive agreements” that are less formal than treaties, no individual Cabinet Minister, including the Prime Minister, can do so in Israel in regard to any kind of agreement with a foreign entity that binds the State domestically or internationally without the prior approval of the Cabinet. It is only when the Cabinet has given its approval in advance that international agreements of any kind can legally take effect immediately upon signing even without Knesset authorization, as has often occurred in the past.

The approval by the Knesset of an international agreement which, by definition, can only be made with states or state-controlled organizations that automatically excludes the PLO is not at present grounded in Israeli constitutional law and is therefore unnecessary. This is precisely why some international agreements that have been properly and officially approved by the Cabinet in advance of their signing can take immediate effect without waiting for Knesset ratification. The lack of any Knesset role in the ratification of international agreements and treaties can be changed only by a new law enacted for the purpose.

In the case of the Sharm el Sheikh Memorandum, it only entered into force one week from the date of its signature, even though a 7% transfer of territory to the PLO and the release of 200 prisoners was carried out for technical reasons before then. This delay of one week is a sure indication that Prime Minister Barak did not have Cabinet authorization before he signed the agreement and that he also knew it was necessary. But getting authorization after the fact is not legally the same as getting it in advance. When it is afterwards, the agreement is tainted by illegality, during the whole period of time there was no proper and official consent given by the Cabinet. Moreover, subsequent approval by the Cabinet, which corrects the legal defect, nonetheless places the Cabinet in the unacceptable position of being a mere rubber stamp of a fait accompli, without having any choice as it is supposed to have of making possible alterations in the agreement.

This reverse order of doing things is contrary to proper constitutional procedure, as well as a denial of Israeli democratic precepts and good government. In acting this way, Prime Minister Barak usurped the exclusive jurisdiction of the Cabinet in the area of foreign affairs. He alone wielded the power that rightfully belongs to the Cabinet as a whole when he decided that the Sharm el Sheikh Memorandum would be signed by himself as soon as Chairman Arafat had telephoned him to approve the agreement while the US Secretary of State was anxiously waiting to attend the signing ceremony. This kind of anti-democratic behaviour on the part of the Prime Minister makes him to be a law-unto-himself.

C. Lack of Legal Capacity to Make a Binding Agreement or Contract

While the lack of Cabinet Authorization prior to the signing of the Sharm el Sheikh Memorandum does not by itself make it null and void, a second procedural violation certainly does. This violation has been present in every agreement that has been made with the PLO and can never be remedied unless Israeli law ceases to treat the PLO as a terrorist organization. Under the general rules pertaining to the making of a valid contract

or international agreement, it is essential for their validity that the parties have full legal capacity. If either party is not fully competent, then there can be no binding and enforceable contract or international agreement.

With regard to the PLO, Israeli law considers it to be a terrorist organization to this very day, which means that it is an illegal body without any legal capacity to enter into a valid contract with the State of Israel that is binding and enforceable under Israeli law. Nor can it make an international agreement or treaty with Israel since it is not a state or a recognised subject of international law. As a terrorist organization, the PLO may also be described as a criminal organization having therefore no juridical capacity to make a contract which a court can uphold. This latter designation denies it the status of being a legal person which can be recognized in law capable of exercising rights and carrying out obligations.

The status of the PLO as a terrorist and criminal organization which applies also to its constituent members such as Fatah and its offshoot the Palestinian Authority, arises from the definition of a terrorist organization in both the Penal Code of Israel and the Prevention of Terrorism Ordinance and more particularly from the fact that it is the first organization mentioned in the list of 14 terrorist organizations in a Proclamation issued by the Government of Israel on October 12, 1980. The name of the PLO has never been removed from this list despite all the so-called "peace agreements" which have been made with it since August 20, 1993. This means that all such agreements that were freely and voluntarily entered into by the Government of Israel with the PLO without there being any necessity or duress to justify them are null and void ab initio. The Sharm el Sheikh Memorandum is no exception to this rule and is on that account alone an illegal and unenforceable agreement.

If the Government of Israel whose partner in the "peace process" is the PLO, no longer considers it to be a terrorist organization, why has it not taken any action to remove it from the List of Terrorist Organizations it itself has drawn up? It was barred from doing that so long as the PLO Charter which governs its activities remained in force. The clauses of the Charter which call for the liberation of "Palestine" by armed struggle and the downfall of the Jewish state were sufficient proof that the PLO was a terrorist organization which could not be removed from the Government list.

To solve this problem concerning the terrorist nature of the Charter, PLO Chairman Arafat affirmed in a letter dated September 9, 1993 addressed to Prime Minister Rabin, which formed the basis of the Mutual Recognition Agreement between Israel and the PLO, that those articles of the Charter which deny Israel's right to exist and the provisions of the Charter which are inconsistent with PLO recognition of Israel are now inoperative and no longer valid. Consequently the PLO undertook to submit "the necessary changes" in the Charter to the Palestinian National Council for formal approval.

This approval was supposedly given at a special session of the PNC in April 1996, but the new government of Prime Minister Netanyahu elected in June of that year found the amending procedure to be inadequate and demanded that the PLO fulfill its commitment to revise the Charter in accordance with the exact procedure provided in the Charter. In the Note For The Record that was agreed to between Arafat and Netanyahu in conjunction with the Hebron Protocol of January 15, 1997, the need for such a revision by the PLO was reaffirmed.

The revision of the Charter took place according to Arafat, in January 1998 when he wrote to President Clinton to inform him that 11 clauses of the Charter had been nullified and 18 others modified in conformity with his commitment to Rabin. Since the Charter comprised 33 clauses, this meant that 29 of them were either revoked outright or modified in part leaving only 4 clauses untouched. If such were the case, the Charter could no longer be considered to be in existence since not only was the Charter substantially reduced in size, but the entire reason for which it was made, namely the liberation of "Palestine" by armed struggle was no longer part of the Charter. If it is argued otherwise that the Charter still exists despite the alleged changes and deletions which would have reduced it to 22 articles in an abridged form, it is strange that the amended version was never published by Arafat to substantiate this fact. It is more likely that the Charter

could not survive as a coherent and meaningful document once the wholesale changes and deletions of key passages were allegedly made.

The final step in this process of changing the Charter came on December 14, 1998, when, at a meeting in Gaza of the Palestine National Council (PNC) and other bodies, in the presence of President Clinton, the letter earlier sent by Arafat to Clinton mentioning the changes in the Charter was approved unanimously by the audience of PNC members who stood up and raised their hands in a show of support of Arafat's appeal to endorse these changes. This procedure was accepted by the Government of Israel under former Prime Minister Netanyahu as sufficient to annul the anti-Israel, anti-Zionist passages of the Charter, which in effect meant the abrogation of the Charter itself since those passages were crucial to the very existence of the Charter.

The natural consequence of all of these changes and steps to amend the Charter was that if this document no longer governed the activities of the PLO, then there could be no PLO either as a viable body. The abrogation of the Charter is the death knell of the PLO, since the two are intimately connected and cannot be separated one from the other. The Charter is the ideological basis and *raison d'être* of the PLO, as well as the source of its authority. Taking away these underpinning elements would mean the dissolution of the PLO as it had always existed. In fact, this was the general feeling in Israel itself. It was thought that the PLO had been effectively replaced by the "Palestinian Authority" which governs the areas of Judea, Samaria and Gaza from which Israel has withdrawn.

But since its alleged death after the abrogation of the Charter, the PLO has re-emerged with renewed vitality to sign the Sharm el Sheikh Memorandum and it is the PLO, not the Palestinian Authority, which is now conducting the final status negotiations with Israel. It is therefore, still very much alive as an organization contrary to earlier expectations. Its name which calls for the liberation of "Palestine" and reflects the provisions and overall goal of the Charter is still proudly intact. Since that is the case, the PLO Charter must logically still exist at least in the eyes of the leaders and members of the PLO.

The entire process for the amendment and revocation of the Charter must therefore be described as a political charade and a clever falsehood or manoeuvre, which was meant, apparently successfully, to deceive the Government of Israel as well as the gullible President Clinton. The latter in his unabashed enthusiasm evinced in his Gaza address said that the passages contained in the "Palestinian" Charter calling for the destruction of Israel have been rejected "fully, finally and forever". President Clinton is mistaken. The Charter has not been rejected "fully, finally and forever" nor changed by even one iota so long as the PLO is in existence and remains the same organization as it has always been since its founding in 1964 before Israel acquired Judea, Samaria and Gaza.

There is therefore no reason to remove the PLO from the List of Terrorist Organizations since it is still governed by the same Charter as has always governed it, which is what the Government of Israel also probably realizes to be true. This would explain its inaction to clear the name of the PLO from that list.

Furthermore, so long as the PLO contains within it other groups such as those led by Nayef Hawatmeh and George Habash which openly call for Israel's destruction, there can be no change in its status as a terrorist and criminal organization under Israeli law. It should be recalled that only two weeks before the signing of the Sharm el Sheikh Memorandum, Arafat met with Hawatmeh and Habash in separate meetings in Cairo and offered them prominent positions in the future negotiations with Israel on final status. They initially turned down his offer but may still participate in the negotiations if Arafat will agree to their demands even if only tacitly or indirectly. These meetings prove that the PLO has not changed its spots and remains a terrorist organization. No protest was heard from the Government of Israel concerning Arafat's overtures to the two terrorist leaders which are still continuing.

It is perplexing that the Attorney-General of Israel, whose job it is to advise the Government about the legality of its actions, has never seen fit to examine the question of how the Government of Israel can continue to do business with the PLO when it is still a terrorist organization. It would have been better for the Government and the entire nation had he issued a ruling on this matter instead of leaving the question to

remain in limbo as if it did not matter. Had he given an official opinion, then we would certainly know upon what basis of law the Government of Israel is allowed to make contracts with the PLO while it retains the status as a terrorist and criminal organization. The Attorney General would also have to be consistent in his ruling since the Government of Israel has added the Kach organization to the list of terrorist bodies, which prevents it from operating altogether in the State of Israel.

It is not only the Attorney-General who has not acted as required in the matter of clarifying the legal status of the PLO and its ability to make valid contracts with the Government of Israel. The President of the Supreme Court, Justice Aharon Barak, has decided that the legal personality of the PLO is irrelevant to the question of the validity of contracts it has made with the Government of Israel. (see his brief judgement in the case of Prof. Ariel Cohen and 25 other Petitioners vs The Government of Israel. HCJ:2805/94) This assertion must rank as one of the strangest statements of law ever pronounced by a High Court judge. If it is indeed irrelevant, as Justice Barak said, then no contract can ever be ruled invalid on the basis that it was made with a disqualified and incompetent person. The entire law of contracts regarding legal capacity of the parties would also become irrelevant or need revamping in light of his judgment. Presumably, Justice Barak considered the question of the PLO's legal personality to be irrelevant since he considered this question to be inextricably linked to a political matter which he ruled was an insufficient ground to cause the Court's intervention and the further examination of this question.

The result has been that the Government of Israel can do whatever it wants to do, unrestrained and unhampered in its dealings with the PLO, since neither the Attorney-General nor the Supreme Court have chosen to intervene to advise or declare that such engagements with an incapable body are against the law of the State from the point of view of constitutional procedure alone.

Finally, in regard to this matter, it should be noted that where an agreement is invalid by reason of the incapacity of one of the parties, the ratification of the agreement by the Cabinet and even the Knesset does not add a shred of legality to it, as is the case with the Sharm el Sheikh Memorandum. A parallel situation exists in the law of agency where an agent has entered into a contract without the approval of his principal with a disqualified person who has no legal capacity to make a contract such as a contract for the sale or purchase of a property. This contract cannot be "ratified" afterwards by the principal of the agent because the very contract itself is invalid to begin with and therefore unenforceable. In the same way, the Cabinet or Knesset could not ratify an illegal contract made with the PLO.

D. Territorial Withdrawals from the Land of Israel: Substantive Violations of Constitutional, Criminal and International Law. *

Territorial withdrawals from the Land of Israel carried out by the Government of Israel under the Sharm el Sheikh Memorandum constitute substantive violations of law that contradict both the constitutional law and the Penal Code of Israel.

Under the terms of the new Memorandum, Israel has given up a further 11% of land in Judea and Samaria, as previously agreed in the Wye River Memorandum, but some changes have been made in the exact location of the land to be given up.

The actual surrender of land by Israel to the "Palestinian Authority" is falsely called a redeployment of IDF forces to disguise the surrender. The first phase of it which comprised 7% did not even involve a movement or relocation of any Israeli troops which is what a redeployment is by its very nature. This perfectly illustrated the false jargon employed by the Government of Israel to hide what it was really doing.

* This subject has been treated in a full and comprehensive manner in the position paper published by the Ariel Center for Policy Research (ACPR) entitled "A Petition to Annul the Interim Agreement". Therefore only an abbreviated comment is made here about this most important subject.

The use of language is a weapon employed not only by the enemies of Israel, but by the Government of Israel itself to deflect or reject criticism of its actions. Hence, Israel does not withdraw from Judea and Samaria but only “redeploys” from the “occupied territories” or from the former Jordanian “West Bank”. This phraseology used by the Israeli supporters of territorial withdrawal from the Land of Israel ignores or disregards the true legal status of these areas as integral parts of the Jewish National Home under both international law and Israeli law. It is as if these areas were never governed by the Balfour Declaration and the Mandate for Palestine which are part of international law as well as Israeli law except insofar as they have been modified by the existence of the State of Israel. It is as if there had been no boundary agreements between the Mandatory Powers, Britain and France, which included Judea and Samaria within the limits of the Jewish homeland. It is only the abject failure to understand Jewish legal rights and title over all the Land of Israel which allows both Israeli and international jurists to consider ancient Jewish lands such as Judea and Samaria to be “occupied territories” under international law, rather than being part of the sovereign Jewish homeland even though they have never been incorporated into the borders of the State of Israel as legally required by the law inspired by David Ben Gurion known as the Area of Jurisdiction and Powers Ordinance . This law had been enacted expressly for the purpose to regulate Israel’s territorial gains in the War of Independence and make them an integral part of the State.

This failure is even more pronounced in Israeli legal and judicial circles who are impervious to the recognition of their true status under the very constitutional law they are supposed to know intimately and interpret for the enlightenment of all. These jurists fail to grasp that under Israeli constitutional law, Judea and Samaria are not supposed to be surrendered to a foreign entity such as the PLO but rather they are intended exclusively for incorporation into the borders of the State and for no other purpose. Provision for their incorporation into Israel is the basic assumption of three very important constitutional laws, namely the aforementioned Area of Jurisdiction and Powers Ordinance, section 11B of the Law and Administration Ordinance and the Law of Return. This assumption means that the Israeli legislator in enacting these three laws considered Judea, Samaria and Gaza as already being under the de jure sovereignty of Israel and wanted these laws to be implemented to their full extent as soon as Israel gained possession and hence de facto sovereignty over them. The true international and constitutional status of these patrimonial Jewish lands inherited from our Judean and Israelite ancestors never changed despite the fact that they were under foreign domination before their conquest by the IDF. It was only when they were returned to the bosom and possession of the Jewish people in 1967 that Israel could then exercise its existing de jure sovereign rights over them. Now they are being illegally handed over to the PLO which makes a mockery of the legal structure Israel created for their eventual integration into the State as reflected in these above cited laws.

The cession under the Sharm el Sheikh Memorandum of sovereign Jewish territories whose sovereignty is assumed by Israeli constitutional law as well as by the Balfour Declaration and the Mandate for Palestine is also a gross and serious violation of all the provisions of the Penal Code which relate to the subject of treason. The punishment for committing acts of treason relating to the relinquishment of sovereign territories of the State of Israel is the severest in the Penal Code. This crime can result in the imposition of life imprisonment against the perpetrators and even execution where the circumstances justify it.

However, the problem with the laws of treason regarding the surrender of Israel’s sovereign territories is that they are never enforced and the perpetrators never prosecuted. This allows those political leaders of Israel who are accused or suspected of having committed this terrible national crime to go scot-free since until now the law has remained a dead letter on the statute books, left lying there by an indifferent Attorney General even though the circumstances required him to act against those suspected of a violation of the law for giving away Israel’s sovereign areas contrary to section 97(b) of the Penal Code. That is the real reason why new territorial withdrawals from the Land of Israel can continue uninterrupted and do not trouble those confident and smiling Israeli leaders who, whether with pain or joy in their hearts, plan to implement the surrender of additional sovereign areas of the State of Israel to the PLO and even the Golan Heights to Syria.

Had the law of treason ever been duly prosecuted and enforced instead of remaining a dead letter, there would not be so much advocacy of territorial withdrawal from the Land of Israel that comes not only from

Israeli political parties and their leaders but also from every corner of the journalistic world. It persistently advocates “land for peace” with the PLO and Syria to forestall every imaginable danger that may possibly confront the country in the future, especially from a nuclear-armed Iran or Iraq. One need only read over an extended period of time the daily editorial columns and columnists of both the *Ha’aretz* newspaper and *The Jerusalem Post* for sad confirmation of this very disturbing phenomenon. Our Israeli journalists would not be so carefree with their terrible advice if they knew or were told they were possibly breaking the law of treason (in particular Section 97(a) of the Penal Code) by advocating in newspaper articles the surrender of Israel’s sovereign territory either to the PLO or to Syria. These articles can be construed as acts calculated to impair the sovereignty of the State over that territory and are therefore prohibited. A journalist’s freedom of expression does not include the right to advocate the commission of a crime and to incite or propose an act of treason falls within this category.

Those who argue that section 97(b) of the Penal Code is not applicable in the case of Judea, Samaria and Gaza because they are not under Jewish sovereignty have the burden of proof to explain how the Knesset could have enacted section 11B of the Law and Administration Ordinance or how the Provisional State Council could have enacted the Area of Jurisdiction and Powers Ordinance both of which laws clearly and unambiguously assume the existence of such sovereignty. This burden of proof can never be discharged because the assumption of Jewish sovereignty over Judea, Samaria and Gaza is irrebuttable under Israeli constitutional law.

However despite the ironclad case that section 97(b) of the Penal Code is indeed applicable to governmental-ordered territorial withdrawals from Judea, Samaria and Gaza, and that section 97(a) extends the law’s applicability even to non-governmental bodies and persons, those provisions of criminal law are blithely ignored on the false basis that these lands are the possessions or property of another nation which justifies the use of the legal term “occupation” and their surrender to the PLO. The situation will never be righted until the Supreme Court decides it will adjudicate their true legal status on the merits of the case and when the Attorney General starts to prosecute the lawbreakers who have committed acts of treason. But at present that prospect is non-existent until circumstances are changed.

E. The Historical Aspect

If more attention were paid to the past history of the Land of Israel and the Jewish historical connection to it, the advocates of territorial withdrawal would be less ready to cede land and would refrain from calling Judea, Samaria and Gaza “occupied territories”.

Their history lesson should start with the meaning of the term “Judea” exactly as used in the expression “Judea and Samaria” which they prefer not to use since it connotes what they do not want to know.

Judea, in its various linguistic forms, was the official designation of the land inhabited by the Jews for the entire millennium preceding the Common Era and for more than a century afterwards. To the Greek-speaking Macedonian and subsequent Latin-speaking Roman rulers of the country, the usage of this national and political designation was an acknowledgement by them that the Land of Judea belonged originally and always to the Jewish people. The word “Judea” in Greek and Latin actually means “the Jewish country”. It is the Hellenised form of the Aramaic adjective “Yehudai”. The word was derived from the name of the district called “Yehud” in the Persian Achaemenid empire which was one of the lands included in the province or satrapy of Abar Nahara (“Beyond the River”, i.e. west of the Euphrates). Prior to that, the term Judea is traceable to the name used for the Kingdom of Judah and the territory of the tribe of Judah, the fourth son of the patriarch Jacob and Leah.

The word “Jew” has the same lineage as the word “Judea”. It too referred to one who originally lived in the area of the tribe of Judah, then to any resident of the Kingdom of Judah. In the Persian period, it denoted a person from the land of Yehud. In the Hellenistic and Roman periods, it designated someone who dwelt in

the land of Judea, who also practiced the Jewish religion. The term “Jew” was thus intrinsically bound up with the word “Judea” in the national and political sense, apart from its religious connotation.

The extent of the territory called “Judaea” in Roman usage and “Iouda” or “Ioudaia” in Greek usage, ranged, in a broad sense, from all of the country under Jewish rule, including Galilee and Samaria and even parts of Trans-Jordan to a more restricted sense in which only the region of Judea proper was included.

The very long Jewish historical connection with the Land of Judea is what motivated the Principal Allied Powers (Britain, France, Italy and Japan) at their conference at San Remo on April 24 & 25, 1920 to award a Mandate to Britain for the express purpose of re-constituting the Jewish National Home in Palestine that embraced the ancient territory of Judea in both its wide and narrow senses. Giving up the Land of Judea in light of its history, as revealed by the etymology of the terms “Judea” and “Jew” is equivalent, not only to renouncing Jewish legal rights and title under both international law and Israeli domestic law, but also to renouncing our Jewish heritage and birthplace which form part of the Jewish soul and being.

Those responsible for dismembering the land of Judea and handing it over to a foreign entity, the PLO which represents an invented nation with an invented historical connection to the Land of Judea, are behaving, whether consciously or not, in the same manner as the wicked Roman Emperor, Hadrian. After quelling the Bar Kochba Rebellion, he decided to remove the name Judea from official usage in order to eradicate any Jewish right or tie to this land which was in tandem with his policy to outlaw the practice of Judaism just as the mad Seleucid monarch, Antiochus IV Epiphanes, did 300 years earlier. He therefore changed its name to “Syria Palestina” or “the Philistine Syria” which subsequently became shortened to “Palestine” in popular usage, with the word “Palestina” changing its grammatical form from an adjective into a noun.

The transformation taking place today of “Judea” into “Palestine” which is being carried out under the Sharm el Sheikh Memorandum and the earlier Wye River Memorandum, is in reality a repeat performance of what took place in the time of Hadrian. It is a disgrace and shame that this is now being done freely and voluntarily by the Government of Israel which prefers to ignore the Roman precedent. Those Israeli leaders who dreamt up this tragic scenario of ceding the land belonging to the Jewish people could not have conceived and implemented it had they been imbued with a deeper sense of Jewish history in their hearts and minds which would have guided them in the other direction.

One more thing should be noted in the way this process of territorial withdrawal is being effected, which is the terminology used for transferring the precious and hereditary lands of Judea and Samaria to the PLO. It is not only the false terms “redeployment” and “occupied territories” which are being employed to describe the surrender of these lands. The process of surrender is made infinitely easier when it is not “Judea” the heartland of the Jewish people that is being ceded to the PLO, but only Areas “A”, “B” and “C”. The use of these alphabetical letters for the historic lands of Judea and Samaria rob them of their history and past association with the Jewish people who have never forgotten the stirring and decisive events that took place there long ago which evoke both glory and tragedy. Their use also betrays abysmal ignorance and a negative attitude to the land itself.

This terminology is also a sad throwback to the infamous Sykes-Picot Treaty of March 9, 1916 which completely dismembered the Land of Israel among the Allied Powers. This agreement did not describe the Jewish land by any name at all. Instead the major part of it was designated simply as the “Brown Zone” which included Judea, Samaria and Gaza. It was to be governed by an international condominium of France, Britain and Russia to which Italy was added a year later in a supplementary accord with the other Allies. Upper Galilee was designated as the “Blue Zone” under direct French control, except for Haifa and Acco, which were to become part of the “Red Zone” ruled directly by Britain. The Negev and most of Trans-Jordan were included in the “B” Zone” under British influence intended for an Arab state, while the part of Trans-Jordan that is north of the Yarmuk which includes Bashan and the Golan were included in the “A” Zone under French influence that was also set apart for an eventual Arab state.

The Allies of World War I did not consider Zionist aspirations in the making of the Sykes-Picot Treaty though the original British plan prepared by the Government of Herbert Asquith in April 1915 as detailed in

the report of the De Bunsen Committee did conceive of Palestine becoming a separate and recognized country including all of Trans-Jordan. It was not very long afterwards that the Allied Powers, first individually, then collectively, did agree to the idea of establishing a Jewish National Home in Palestine. But in the meantime, they greedily and secretly divided the Turkish Ottoman Empire prior to its expected dissolution. Their description of the Land of Israel as consisting of nothing more than coloured areas on the map and different lettered zones without any proper descriptive names could be understood from their perspective since they were not thinking in terms of the land's historical identification with the Jewish people. But the same explanation does not apply to the Israeli negotiators of the Israel-PLO agreements and their superiors who employed and approved these vacuous terms for the lands of Judea and Samaria. Their delineations and delimitations of Judea and Samaria into A, B, and C zones were not innocent at all but deliberate and reprehensible as well as indicative of their evil intentions to give these lands away to the PLO which Israel is now in the process of actually doing.

F. The American Attitude to Jewish Settlements as Revealed in the Letter of Assurances to the PLO

Though it is not an integral part of the Sharm el Sheikh Memorandum as an annex, the American Government introduced the subject of Jewish settlements in Judea, Samaria and Gaza in a Letter of Assurances sent by Secretary of State, Madeleine Albright to Arafat. The letter stated that the US is "conscious of your concerns about settlement activity" and "knows how destructive this activity has been to the pursuit of Palestinian-Israeli peace".

The US position on Jewish settlements in Judea, Samaria and Gaza shows an amazing lapse of memory relating to official American acceptance of the British Mandate for Palestine and all that that implied for the future Jewish state. It is true that ever since the time of President Reagan's first Administration, the US has viewed settlements as an obstacle to peace though not an illegal activity. This was actually an improvement over the position of the previous Administration of President Carter which did view Jewish settlements in Judea, Samaria and Gaza as illegal. However, even this view that settlements constitute an obstacle to peace or are a destructive activity is an unacceptable affront and should be protested in the sternest manner.

The Americans should be reminded that they unequivocally endorsed Jewish settlement activity in all parts of the Jewish National Home including Judea, Samaria and Gaza in a treaty they signed with Britain on December 3, 1924 entitled the "Anglo-American Convention on Palestine". The treaty was duly ratified by the US Senate on February 20, 1925 and signed by President Calvin Coolidge, on March 2, 1925 and then formally proclaimed by him on December 5, 1925 after the exchange of the documents of ratification done two days earlier in London. The text of the Mandate for Palestine was incorporated verbatim into the preamble of the Convention and became part of the operative text of the treaty by the words of Article 1, which read as follows:

Subject to the provisions of the present convention, the United States consents to the administration of Palestine by His Britannic Majesty, *pursuant to the mandate recited above.*

In addition to Article 1, the US tied itself directly and irrevocably *as a legal party* to the exact terms of the Mandate, by the inclusion of Article 7 in the treaty which stated:

Nothing *contained* in the present convention shall be affected by any modification which may be made in the terms of the mandate, as recited above, unless such modification shall have been assented to by the United States.

Since the entire British Mandate for Palestine was "contained" in this treaty, this clearly meant that the US had to give its assent and not only its advice to any proposed change in the terms of the Mandate. But most important of all was that as a direct result of this convention, American domestic law adopted into its system in toto all the provisions of the British Mandate for Palestine. Henceforward, the United States and its citizens were required to observe and fulfill every article and clause of the treaty which included the whole

Mandate, as stated no less by President Coolidge when he issued his public Proclamation. The tremendous significance of what the US did in adopting the provisions of the Mandate for Palestine into its legal system, which made it part of the supreme law of the land, has been overlooked or simply not realized in regard to Israel today. The American action was a unique legal development. For no other country in the world did what the US did. Not even the United Kingdom nor the Mandated State of Palestine ruled by Britain emulated the American example. Neither country had incorporated the Mandate into their domestic legal systems and therefore its provisions were not considered part of the applicable law of Palestine during the entire period it was governed by Great Britain under the Mandate. This non-inclusion of the terms of the Mandate in the law of Mandated Palestine was affirmed by various judgments rendered by the Mandatory Courts which dealt a stunning blow to the legal and political establishment of the Jewish National Home. This anomaly was changed only retroactively by the Israeli Supreme Court which ruled that the terms of the Mandate had indeed been part of the domestic law, even without formal incorporation.

The US had signed this treaty with Great Britain in order to secure for itself and its nationals the same rights and benefits that were already secured by member states of the League of Nations and their nationals. This was necessary because the US was not a member of the League of Nations. One of the articles which the US Government was required to honour was Article 6 of the Mandate for Palestine which read as follows:

The Administration of Palestine ... shall encourage, in cooperation with the Jewish agency referred to in Article 4, close settlement by Jews on the land, including State lands and waste lands not required for public purposes.

The word "land" as used in Article 6 meant the entire Land of Israel which was included in the British Mandate for Palestine and represented the corresponding Hebrew term for Palestine.

As a direct result of this treaty and American recognition of the reborn State of Israel which inherited the rights granted to the Jewish people under the Mandate for Palestine, the American Government cannot legally object in any way to the right of Jewish settlement activity in Judea, Samaria and Gaza, which was one of the essential provisions of the Mandate recognised in the treaty with the British. During the whole time that the Mandate was in force, the US never considered Jewish settlement as an obstacle to peace or a destructive activity but as essential to carry it out. The American position that it is now exactly that, as stated in Albright's letter to Arafat with President Clinton's concurrence, is in flagrant violation and a repudiation of its own treaty obligation "to encourage close settlement by Jews on the land".

It is true that this treaty is no longer in effect because the Mandate itself has been terminated. But this is offset by the fact that the rights recognised by the United States Government in favour of the Jewish people under the Mandate survived the termination of the Mandate and had already become a recognized part of international law including the right of Jewish settlement activity in all areas of former Mandated Palestine.

The safeguarding of this right of settlement activity under international law makes the US duty-bound to observe it today even with the demise of the Mandate. This obligation arises because of the doctrine of estoppel and the very existence of the State of Israel, which is the only *legal* successor state to Mandated Palestine.

Under the doctrine of estoppel, which is a general principle of law applicable in international law as well as domestic law, a person (including a state or nation) is forbidden by reason of its previous conduct to the contrary, to assert or deny something that contradicts what it admitted before. Accordingly, the United States is estopped by its former treaty with Great Britain from speaking out against Jewish settlements in Judea, Samaria and Gaza when it itself legally approved and recognized them as one of the primary conditions for the British administration of Palestine. This is especially so because it knew then that in signing the treaty with Great Britain, the rights granted to the Jewish people under that act would be the basis upon which an independent Jewish state would be reconstituted after the Mandate came to an end.

Israel inherited the Jewish right of settlement activity when the State came into existence on May 15, 1948. It was recognized *de facto* by the United States Government on the very same day and *de jure* diplomatic recognition was accorded on January 31, 1949. American recognition of the State of Israel was tantamount to

recognition of all rights which the State inherited from the Jewish people under the Mandate for Palestine including the right of settlement activity. This right could not be exercised during the 19-year period of illegal Jordanian occupation of Judea and Samaria (the same applied to Egyptian controlled Gaza), but it revived as soon as Israel acquired these territories in the Six-Day War, since they were integral parts of Mandated Palestine to which the Anglo-American Convention had clearly applied. This was also in accordance with the fact that the US never recognized Jordanian foreign rule in these territories.

Despite the recent statements made by President Clinton to Arafat, which were reiterated in the Letter of Assurances that accompanied the Sharm el Sheikh Memorandum to the effect that his Administration supports “the aspiration of the Palestinian people to determine their own future on their own land”, there is no American legal recognition of any such “right”, as there definitely is for the right of the Jewish people to determine their own future on their own land in Judea, Samaria and Gaza. Therefore, the next time President Clinton or any other American Government sees fit to malign Jewish settlements in these areas and issues a call for their cessation, they should be told in clear and unambiguous language that they have no legal or moral ground for complaint.

G. The Inapplicability of UN Security Council Resolution 242 to Judea, Samaria and Gaza

In the Sharm el Sheikh Memorandum, the parties reaffirmed that Permanent Status negotiations will be conducted on the understanding that they will lead to the implementation of United Nations Security Council Resolutions 242 and 338. For the PLO this means that Israel must give up all of Judea, Samaria and Gaza including eastern Jerusalem as well as dismantle all the settlements established there since 1967.

In the previous Wye River Memorandum there was no mention of these two resolutions serving as a basis for the final status negotiations, although they are recited in identical language in the preamble to the Interim Agreement of September 28, 1995 and specified in the text of the Declaration of Principles. Their absence in the Wye River Memorandum may have been a reflection of former Prime Minister Netanyahu’s desire not to cede any more than 43 or 44% of the territory of Judea and Samaria to the PLO.

In view of the centrality of Resolution 242 to Israeli-PLO negotiations under the Sharm el Sheikh Memorandum, it is important to know whether Resolution 242 does require Israel’s withdrawal from Judea, Samaria and Gaza.

It was formulated by the British Ambassador to the United Nations, Lord Caradon, and was unanimously adopted by the Security Council on November 22, 1967 five months after the end of the Six-Day War. The key clause in Resolution 242 refers to the “withdrawal of Israel armed forces from territories **occupied** in the recent conflict”. The argument as to whether this includes all or some of the “occupied territories” is really immaterial since the true point to know is not whether there exists or was meant to be, in either the English or French versions, a definite article or indefinite article in the grammatical sense before the word “territories”, but whether or not Judea, Samaria and Gaza may be characterized as territories which are “occupied” within the meaning of that term as used in Articles 42 & 43 of the Hague Rules and Regulations which is the relevant international law on the subject of military occupation. If seen in this proper light, Resolution 242 is inapplicable to Judea, Samaria and Gaza because they never legally belonged to any other state when Israel brought them once more under Jewish possession which therefore means that they could not have been “territories **occupied** in the recent conflict” as stated in Resolution 242, within the meaning of this term attributed to it in international law.

Though Resolution 242 has no application to these territories because they are not “occupied”, in the sense required by this resolution, the supreme irony is that it was the Government of Israel itself which led the entire world to believe that they were in fact “occupied territories” to which the resolution could therefore apply. This arose from two actions by Israel whose reasoning was not apparent to the outside world. First, the Government set up a military administration in these areas in accordance with the Hague Rules and Regulations as well as the Fourth Geneva Convention, as soon as they had been effectively re-

conquered for the Jewish people by the Israeli Defence Forces, though it did so on a voluntary basis for humanitarian considerations. Second, it enforced the laws of Jordan in Judea and Samaria, instead of the laws of the State of Israel and as regards Gaza, it chose to apply the old Mandatory law as well as Egyptian military orders and proclamations instead of the laws of the State of Israel. The result was that Israel treated Judea, Samaria and Gaza as if they were truly “occupied territories” under the rules of international law relating to warfare when, in fact, they were absolutely not. The principal blame for this lay with Meir Shamgar, then the Advocate General of the IDF before he became Attorney General of the State and later President of the Supreme Court. He successfully urged this course of action upon the Government of Levi Eshkol and had even prepared for the introduction of a military regime for conquered territories several years before the outbreak of the Six-Day War.

The military administration in Judea, Samaria and Gaza operating under foreign law instead of Israeli law, was a gross and blatant violation of Israeli constitutional law which required the application of the laws of the State to the repossessed territories of the Jewish National Home. But that was not done for the reason that Israel did not want to annex these areas to the State because of the high number of Arabs living there, although it gave a different reason for doing so, namely the hope it had to exchange them for true peace with the Arab states which thus misled the entire world into believing that these territories were truly “occupied territories” that did not belong to Israel.

Had the Government of Israel done what it was required to do by its own constitutional law, very few states, apart from Arab states and their Soviet and Muslim allies, would have called them “occupied territories” under international law. But since the Government chose deliberately and voluntarily to actually treat them as “occupied territories”, it was not surprising that this is what they came to be considered in the eyes of the world at large especially by the United States and even, sadly enough, by a great many people in Israel including some judges of the Supreme Court, who should have known better.

The notion that Judea, Samaria and Gaza were “occupied” in the international law sense also arose from the negligent mistranslation into English of the Hebrew expression “*shtahim muhzakim*” which was mistakenly rendered as “occupied territories” which gave it an incorrect meaning. The Hebrew expression really meant that these territories are in the “possession of the Israel Defence Forces and consequently they could be literally described in English as either “held territories” or “possessed territories” and even more accurately as “re-possessed territories of the Jewish people” in light of the fact that they had been integral parts of the Jewish National Home. Another possible English term is “acquired territories” since the IDF acquired their possession through military conquest and in so doing returned them to their rightful owner, the Jewish people from which the State of Israel is itself derived. Any other English term or expression such as “administered territories” or “disputed territories” is inexact. In the former case there is an implication of foreign sovereignty, while in the latter case their Jewish ownership is placed in doubt.

Under the Governments of Menachem Begin and Yitzak Shamir, Israel did not consider Judea, Samaria and Gaza to be “occupied” within the meaning of Resolution 242, but by that time all countries of the world, especially the United States, had already been convinced by Israel’s initial actions to treat them as if they were.

Furthermore, neither Begin nor Shamir bothered to change the military administration which prevailed in the re-possessed areas of the Land of Israel, nor did they abolish the foreign laws which applied there and replace them with the laws of the State of Israel. Their ignominious failure to right the situation allowed those Israeli leaders who came afterwards, namely Rabin, Peres and now Barak, to accept the application of Resolution 242 to Judea, Samaria and Gaza.

This acceptance can only be described as astounding, as well as being an illegal act, not only under Israeli law as reflected in the constitutional and criminal laws noted above, but also under international law as exemplified in the adoption of the Balfour Declaration by the Principal Allied Powers at the San Remo Conference and the confirmation of the Mandate for Palestine for the express purpose of implementing this

Declaration which assumed that the entire country of Palestine, including Judea, Samaria and Gaza, was for the sole and exclusive national benefit of the Jewish people.

By demanding that the PLO recognize Resolutions 242 and 338 if it wished to make peace with Israel, and by agreeing to make it the basis of the Permanent Status negotiations, Israel's Labour Party leaders fed the expectations of the PLO to claim all of Judea, Samaria and Gaza which is exactly what it has done in the aftermath of the Sharm el Sheikh Memorandum. This Israeli policy has thus exploded in its face, though the Government of Israel has never acknowledged its error and still insists on the sanctity of Resolution 242.

Despite what Israel has done to injure itself, there is no legal way under international law to make Resolution 242 apply to Judea, Samaria and Gaza except by retroactively abrogating the Balfour Declaration and Mandate for Palestine which would constitute a reformulation of conventional international law that has existed intact since 1920 though often forgotten. This would also be a rewriting of history and make Israel's presence in Judea, Samaria and Gaza to be seen only in terms of its military conquest rather than deriving from true inherited rights which were definitively endorsed by the international community in the early years after World War I.

The adoption of Resolution 242 has not clarified or improved the Middle East situation, but hopelessly muddled it and also entwined Israel in various arguments over whether the resolution is self-enforcing and what is the correct interpretation of its provisions. It is not a key legal document in framing Arab-Israeli issues as its many backers allege with great enthusiasm. It has masked Jewish rights and allowed Arabs to make fantastic claims based upon its provisions. Israel's acceptance of it was a very great mistake which has led it down the slippery road of surrender.

Moreover, it has also entangled Israel in complicated constitutional questions concerning the authority and structure of the United Nations, in particular the authority of the Security Council to pass binding resolutions for the settlement of international disputes as in the case of the Arab states against the existence of Israel.

Prof. Eugene V. Rostow, who had a diplomatic role in the making of Resolution 242 as Undersecretary of State for Political Affairs in the Johnson Administration, believes that Resolution 242 is "legally binding" because the Security Council "ordered" the states of the region to make a just and lasting peace in accordance with the more specific provisions of Resolution 242 when the Council also adopted Resolution 338 at the time of the Yom Kippur War. If Rostow's view were correct, this would mean that if Israel refused to implement Resolution 242 it would be in violation of the Charter and therefore subject to possible military and economic sanctions.

This view of Rostow belies the nature of Resolution 242 which is really in the form of a recommendation rather than a binding decision. It provides a set of guidelines and enunciates principles which the Security Council has deemed appropriate to achieve peace between Israel and her Arab neighbours, but which is largely up to the parties themselves to decide how to carry it out if they wish to do so at all.

The deeper question involved in the passage of Security Council resolutions is whether any of them can ever be "legally binding" having the force of law even without the consent of the parties involved. While the Charter of the United Nations is an international treaty that has been duly ratified and therefore part of international law, the resolutions passed by the Security Council can never be "laws" in the traditional sense of the term, since the Security Council is not a legislature. Its decisions and recommendations, no matter under what chapter or article of the Charter they are based upon, can only be of a non-binding character unless the parties involved consent to be bound, since they are exactly what they are called, namely "resolutions" rather than laws.

If Security Council resolutions were binding on Israel, then it would have to accept whatever it decided in regard to Judea, Samaria and Gaza. If, for example, the Council decided that Jerusalem was not the capital of Israel, contrary to Israel's own basic law on the matter, would Israel have to abide by that kind of decision? The answer is obviously no, because otherwise Israel would lose its sovereignty to the UN Security Council and so would every other country in the world.

What is evident in regard to Resolution 242 is that it certainly does **not** apply to the benefit of the PLO, which is not a state party to whom it can apply under the terms and language of that resolution. It therefore cannot claim that it is entitled to receive any territories from Israel under it. Since it is not a beneficiary under Resolution 242, there was no reason at all to mention it in the Sharm el Sheikh Memorandum or in any prior agreement. The bizarre fact that it was the Government of Israel which agreed to apply Resolution 242 as the basis for all its agreements with the PLO, except in the Wye River Memorandum, provides clear and ample proof of its illegal and irrational conduct.

H. Why There Should Be No Permanent Status Agreement with the PLO

Under the Sharm el Sheikh Memorandum, Israel and the PLO will engage in Permanent Status negotiations that began again on September 13, 1999 in order to reach a Permanent Status Agreement. The two sides will first conclude a Framework Agreement on all Permanent Status issues within five months, followed by a comprehensive agreement within one year.

The issues that will be negotiated in the Permanent Status negotiations, as specified in the Interim Agreement are refugees, Jerusalem, borders, settlements, security arrangements, foreign relations, water, and other issues of common interest.

The idea that a Permanent Status agreement is required with the PLO representing the “Palestinian People” to end the “100 year conflict” is grotesque and scandalous, without any basis in history and laden with fictions and illegalities.

There is no need for a Permanent Status agreement since most of the issues to be discussed have already been settled in the aftermath of World War I by Britain, France, Italy and Japan who divided up the Turkish domains in the Middle East largely in favour of Arab claims to the exclusion of other peoples, specifically Kurds, Armenians and the all but forgotten Assyrians or Chaldeans who are members of the Nestorian Christian community. All of the foregoing ethnic or religious groups were either promised or considered for independence or autonomy but in the end were denied that privileged status, while on the other hand, the Arabs were given everything they sought, which only whetted their greedy appetite for even more. As part of this comprehensive and permanent settlement that did not fully appease Arab ambitions, Palestine was reserved exclusively for the exercise of Jewish national rights.

The creation of the State of Palestine in 1920 under the Mandate System was intended for Jews, both those who resided there and those who would return from the Exile. Under that settlement the “Palestinians” were defined as Jews, not Arabs, though the latter could also obtain Palestinian citizenship along with other non-Jewish communities. In a strange turn of history amounting to linguistic theft of identity, the Arabs of Palestine and those who illegally migrated there in large numbers during the Mandate period, subsequently adopted the name “Palestinians” for themselves, after the Jews of Palestine abandoned this name in 1948 with the emergence of an independent Jewish state.

The Arabs of Palestine under the final Allied settlement were considered part of a wider Arab nation who had their independence recognized in the neighbouring Arab countries, but whose civil and religious rights would be protected in the Jewish state.

Though it is true that in the UN Partition Plan of November 29, 1947, an Arab state was contemplated in what is now Judea and Samaria after three decades of strife with Palestinian Jews in Mandated Palestine, the Arabs themselves living in the country foiled the plan in conjunction with the neighbouring Arab states. As a result the final settlement devised by the Principal Allied Powers at the San Remo Conference in 1920 was restored as originally conceived when Israel regained all of Palestine west of the Jordan River in the Six-Day War of 1967, except that all of Trans-Jordan remained in Arab hands.

The new “final settlement” which will now be negotiated is based on a falsehood that the State of Israel must share the Land of Israel with a fictitious nation known as the “Palestinians”, who are in truth largely Moslem

Arabs who borrowed this name in order to invent a new national identity, ostensibly separate and apart from other Arabs living in the rest of Israel, in Jordan, Syria and elsewhere as part of a grand strategy to destroy the Jewish state.

This “final settlement” is supposed to settle a conflict between Israelis and “Palestinians” that has lasted 100 years according to Prime Minister Barak. That in itself is a fiction since the real parties involved are Jews and Arabs and the “conflict” was caused by the latter who opposed the Jewish return to their ancestral country.

The actual issues to be negotiated between Israel and the PLO, is a recipe for the destruction of the Jewish state. This is particularly true in regard to the issue of “refugees” concerning which the PLO is now demanding the return of no less than 4 million Arabs into “Palestine”, their alleged “homeland” in accordance with UN Resolution 194 adopted by the General Assembly on December 11, 1948 but opposed at the time by all the Arab and Communist countries. Arafat made this specific demand in a UN address on September 23, 1999. If such a large number are admitted, the result will be the virtual strangulation of the Jewish state, which Arafat certainly knows will happen if his demand were to be accepted and implemented which is why he proposed it.

What should be borne in mind is that there is no such thing as a “Right of Return” for Arabs, whether they are called “Palestinians” or “refugees”, to any part of the Land of Israel. It is not their ancestral country. They were never its original inhabitants as they falsely claim nor permanently lived there until after the Arab invasion and takeover of the country in the 7th Century, long after Jews had lived there for two millennia. Most Arabs who came to the Land of Israel originated in Arabia, Syria and Egypt and either sneaked into the country as illegal immigrants or came originally with the invading Arab or Muslim armies as foreign settlers. The “Right of Return” exists only for the Jewish people as specifically recognized in the British Mandate for Palestine and in the Law of Return enacted by the Knesset in 1950. It is grotesque that the Arabs and the PLO can assert such a right which does not belong to them and it is absurd as well as illegal for the Government of Israel to recognize this alleged right. To do so would reverse a central tenet of Zionism which is to rebuild a Jewish majority in the entire Land of Israel.

Another issue of the Permanent Settlement concerns Jerusalem which does not need to be “permanently settled” since that has already been achieved by the **Basic Law: Jerusalem**, enacted by the Knesset on July 30, 1980. Opening this issue to negotiations is a very grave violation of Israeli constitutional law and the Penal Code. Yet it is being done in total disregard of that law, which proves beyond any reasonable doubt that the Government does not observe the “Rule of Law” while so stoutly and hypocritically maintaining that it does.

The Basic Law on Jerusalem is perfectly clear in its meaning. It is the capital of the Jewish state and the seat of the President of the State, the Knesset, the Government and the Supreme Court. It cannot therefore be a subject of negotiations with the PLO which also wants to make it the capital of an independent Arab state. It is a wonder of wonders that an issue so definitively settled in Israeli law can become a debatable issue once again.

It is also grotesque to think of Jerusalem as being an “Arab city” when it has always been the national and spiritual centre of Jewish life throughout three millennia in deed and thought and has no basic role in the Muslim religion except in myth and legend devised principally to counter Jewish ties to the city. The Arabs have their principal centres of life in other places such as Mecca and Medina, Baghdad, Damascus and Cairo. They have no need to add Jerusalem to this list except as a tactic to deprive Judaism of its holiest city and Jews of their national birthright.

Designating Jerusalem as “Arab” because a hundred thousand or more Arabs live in the city is the same as designating New York City as Spanish or Black because millions of Spanish and Blacks also live there. If we adopt this kind of reasoning to characterize a city’s identity based solely on demography rather than including other factors, then Washington DC would be seen as an African city and Berlin as also a Turkish city. But that would be entirely illogical. Jerusalem is no more “Arab” than New York is Spanish,

Washington DC is African or Berlin is Turkish. Demography then is not the only criterion for defining a city. Its real identity must be based on several other factors particularly in regard to how the city was shaped by its history and take into consideration those earlier inhabitants who dwelt there for long periods of time, including its famous rulers and personalities and to whom it means the most as the symbol of their nationhood and religion. By these other standards, Jerusalem has always been a Jewish city even when the majority of its inhabitants were foreign Arabs or even Christian Crusaders from Europe. In this regard, it should be remembered that ever since Hadrian crushed the Bar Kokhba revolt in 135, Jews were not always free to live in Jerusalem. The ban on Jewish residence was renewed by the Byzantine Emperor Heraclius and it was also in effect during the Crusader period. During the Turkish period, the Ottoman sultans prevented Jews from Eastern Europe living there until their harsh orders were overturned by Muhammed Ali, the governor of Egypt, who briefly ruled the Land of Israel from 1832-40. The various prohibitions and restrictions placed on Jewish settlement in the city during different historical periods succeeded to stunt Jewish growth and gave it an artificial foreign character until Jews once again achieved ascendancy in the City of David.

Another final issue of the Permanent Status Agreement is to determine the borders of the PLO state and that of the Jewish state. Again we enter the realm of the absurd, the grotesque and the illegal. The borders of the Jewish state were fixed between Britain and France in the early years of the Mandate for Palestine and originally encompassed all of the historic area of Palestine including Trans-Jordan except for parts of what is today southern Lebanon in the region south of the Litani. Partition has occurred several times since then but each time it was illegally imposed upon the Jews of Palestine who had no choice but to accept what was done because of necessity and weakness. That period is now over and Israel can justifiably reassert what are the true borders of the Jewish Nation which are coextensive with the Land of Israel.

The borders of the Jewish state should not be determined in any talks with the PLO, as they have no legal or historical right to the Land of Israel. Setting up a PLO state in the Land of Israel is an outright negation of Zionism and the grossest of gross violations of Israeli constitutional law and criminal law.

The Government of Israel should come to its senses and break off the negotiations for an artificial Permanent Settlement with the PLO that can only end in disaster.

I. Conclusion

It should be evident to any clear thinking person whose roots or future life lie in the Jewish state and the Land of Israel or who supports it from abroad, that the "peace process" with the PLO is one entire fraudulent exercise from its very beginning to the time it will end, which undoes the work of one hundred years and more of Zionism and undermines the fifty year struggle to maintain a strong and viable Jewish state free from Arab danger and attack.

Those who watch and mourn what has happened since August 1993 can only be dumbfounded that it was not the strength of the PLO or any foreign state that caused the battle to preserve the whole Land of Israel to be lost for now, but the incredible fact that it was the Government of Israel under four successive Prime Ministers, which is responsible for ceding increasing portions of the Jewish homeland to a foreign entity that still styles itself as the Organization for the Liberation of Palestine.

The process of territorial cession for an illusory peace that can never be made with a fanatical Muslim enemy that will forever seek the destruction of the Jewish state in accordance with its religious beliefs, is a betrayal of everything dear and precious to the Jewish people, its history, its religion, its heritage, its identity and not least the constitutional laws of the Jewish state which favour the unity of the Land of Israel. It is also dispiriting that this process can continue apace, without any fear on the part of the Government and its leaders, because there is no one in a countervailing position of authority to tell those who wield executive power to halt this self-destruction or reprimand them for what they have already done or will do in the future. The people of Israel have silenced their former strong voice of protest as a result of the death of Prime

Minister Rabin because of personal fear and intimidation. The Attorney General has allowed the Government to do whatever it wants in the matter of territorial cession without advising that it is contrary to law. Israel's Supreme Court has abdicated its duty and refused to intervene on the false ground that it cannot adjudicate a political question, which is what it considers the surrender of Judea, Samaria and Gaza to be, despite the existence of statutory laws which prove the exact opposite of what it has decided.

In giving up Israel's patrimony, the leaders of the country do not pay any price but on the contrary win warm praise and support both from Israel's defeatist and anti-Zionist media and from foreign leaders. Prime Minister Barak has recently stated in an interview conducted with the Jerusalem Post (September 24, 1999) that "to think about giving up parts of this land is like pulling out an arm" ... "The thought of giving up land" — he cites as examples Beth El, Shilo, Ma'ale Levona and Beth Horon — "tears my heart", because "I have an emotional and physical attachment to each and every one of these place", he said.

These were noble sentiments but coming from Barak, they lack any sincerity and conviction in light of the Sharm el Sheikh Memorandum and the joyful manner in which he signed and embraced it. If he believed in his own words he would have refused to enter into an agreement that may lead to exactly what "tears his heart". Moreover, no one is pulling out his arm. If that were really the case, he would refuse to surrender any land. But he need not worry about his personal safety and security. The price of his folly will be borne instead by others, especially the average Israeli who will be subject to increasing terrorist attacks as more and more land is given away and the establishment of a PLO state draws ever nearer.

When disaster finally befalls the Jewish state, which is now inevitable, those who caused or furthered it will have likely left the political scene, and perhaps even the country, and will therefore escape an accounting for what they did unless a State Commission of Enquiry is established and those responsible are then made to answer for their terrible misdeeds and violations of law.

However, for the present, no political or judicial remedy is available to prevent the looming disaster. The Sharm el Sheikh Memorandum has brought it much closer to realisation. Like Britain in 1939, Israel must stand ready for the inevitable outbreak of war while it marches to "peace" and surrenders its precious and beloved lands to a cruel and corrupt enemy which should never have been allowed entry into the Land of Israel and which must eventually be evicted if the Jewish state is to regain once again its lost patrimony.