7

# מדינת ישראל

## גנזך המדינה

משרד רה"מ ראש הממשלה

מס' תיק מקורי

מחלקה

מס' תיק



1977/10 - 1977/12

# מדינת ישראל

## משרדי הממשלה

3

לשכת היועץ להסברה חוץ.

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תומר הסברה.

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12/1977-9/1977

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שם: עדי שיעקוב ארוס

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תפקיד: יועץ

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מס' תיק: _____

תוכנית השלום החדשה של הממשלה היכתה אותנו בתדהמה, מפני שהיא מורתרת על ריבונות ישראלית בחבל רפיח. אם תתגשם תוכנית זו - יוסגרו כל הישובים לריבונות זרה, וצה"ל יצטרך לפנות את האיזור. הסכנה הבטחונית למדינת ישראל תחזור לקדמותה.

השלום הוא השאיפה של כולנו ואנו משוכנעים שאת השלום אפשר להשיג גם בלא שמדינת ישראל תוותר על חבל ימית. ישראל גילתה את רצונה לשלום בהסכימה לוותר על 98% משטח סיני והחזרתם לריבונות מלאה של מצרים; אך, גם על מצרים להוכיח רצון דומה לוותר רק על 2% משטחו של סיני - למען שלום יציב.


תושבי חבל רפיח חרדים לעתידם ולעתידך. זוהי חרדה לבטחון מדינת ישראל. משום כך אנו קוראים למאבק למען החלת הריבונות של ישראל על חבל ימית, על כל ישוביו במסגרת של גבול בן-הגנה. רק בדרך זאת יובטח שלום אמיתי, יציב וצודק לדורות, שלום שלא יתמוטט, עם משבר ראשון.

אתה, הרוצה בכל נפשך ובכל מאודך בשלום;
אתה, שלא פעם אחת נלחמת מלחמת מגן בחבל רפיח;
אתה, ששיכלת מטובי חבריך שנפלו בהגינם בגופם על ישראל הנתקפת;
אתה, בן עמם של נביאי ישראל שניבאו כי, "לא ישא גוי אל גוי חרב ולא ילמדו עוד מלחמה" ומאמין ורוצה בכך;

שדות

אתה, הצטרף אלינו למאבק נגד כל תוכנית המורתרת על גבולות בני-הגנה בינינו לבין מצרים, נגד העברת הישובים בחבל רפיח לריבונות מצרים, נגד הוצאת צה"ל מחבל רפיח.

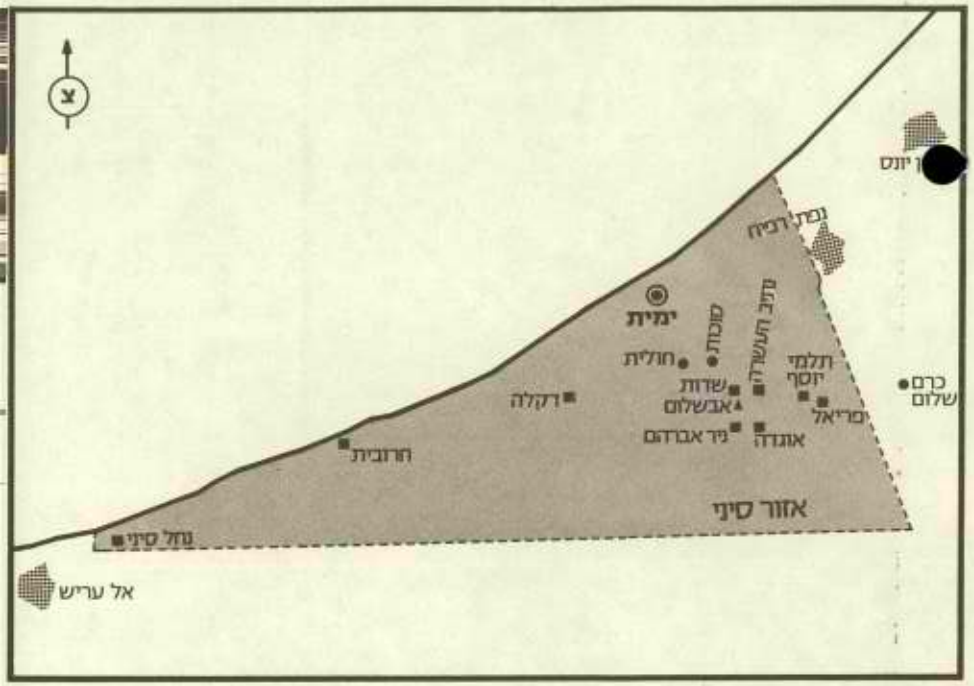
ימית

הצטרף אלינו למאבק למען המשך פיתוחו של חבל רפיח בריבונות ישראל.

הצטרף אלינו למאבק למען משא=ומתן על שלום עם מצרים בלא לוותר על חבל רפיח.

הוועד הבין-תנועתי
לגבולות השלום והבטחון

# חבל ימית-
# מדינת ישראל



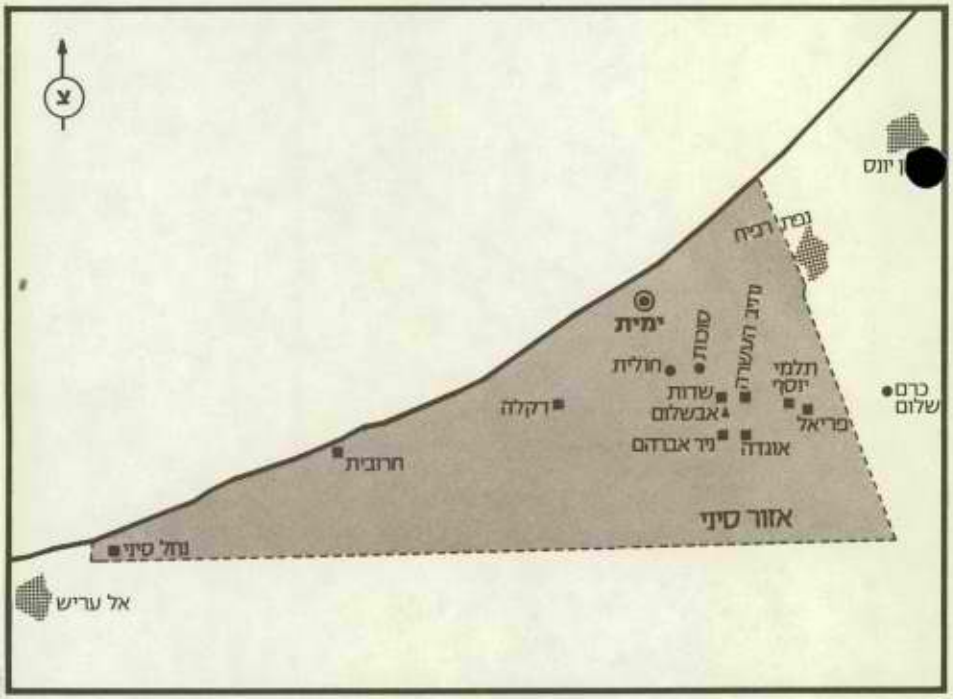

מתוך הכרת חשיבותה הבטחונית של פיתחת רפיח והרצון למנוע הפיכתה מחדש אי-פעם לקרש קפיצה להתקפה צבאית על ישראל, החליטה הממשלה להקים באיזור שרשרת ישובים -שיהוו יחד עם צבא הגנה לישראל - חגורת מגן למדינה. הכנסת אישרה את החלטת הממשלה והחליטה שלא לחזור אל קווי=הגבול הקודם.

ממרחבי המדבר והחולות עלתה הקריאה לבוא להתישב בפיתחה ולהבטיח בכך בטחון ישראל לדורות.

מאות מתושבי ישראל, טובי בניה של המדינה, נענו לאתגר, באו למקום ובעמלם, בעזרת המוסדות המיישבים, הפכו ארץ צלה לגנים פורחים. הם קיוו להיות חלוצים לפני מחנה גדול שיבוא ויתקע יתד במקום. במשך השנים נוסדו באיזור זה - חבל ימית - 12 ישובי-קבע, חקלאיים, וכן העיר ימית. עתה חיים באיזור 3,500 נפש, כמחציתם ילדים שכבר נולדו במקום זה והושגה התפתחות חקלאית מרהיבה. המתיישבים מוצאים לחמם מהארץ ולפניהם תוכניות נרחבות לעתיד.


חולית מתאוררת כחר
כקיבוץ
בפיתחת רפיח
ציגי הישובים נפגשו עם סיעת המפד"ל בכנסת
המר: ישובי הפיתחה הם חגורת
בטחון של ישראל וישארו כאלה
חיזוק היישובים — החלטה חיובית
לילי: לממשלה אין מנדט
סגיר ישובים לריבונות זר
ישובי חבל ימית
דורשים להשאר
בריבונות ישראל
ויקטור שם־טוב:
יישובי רפיח
חגורת־בטחון
חיונית לישראל
עצמאי

# חבל ימית-
# מדינת ישראל

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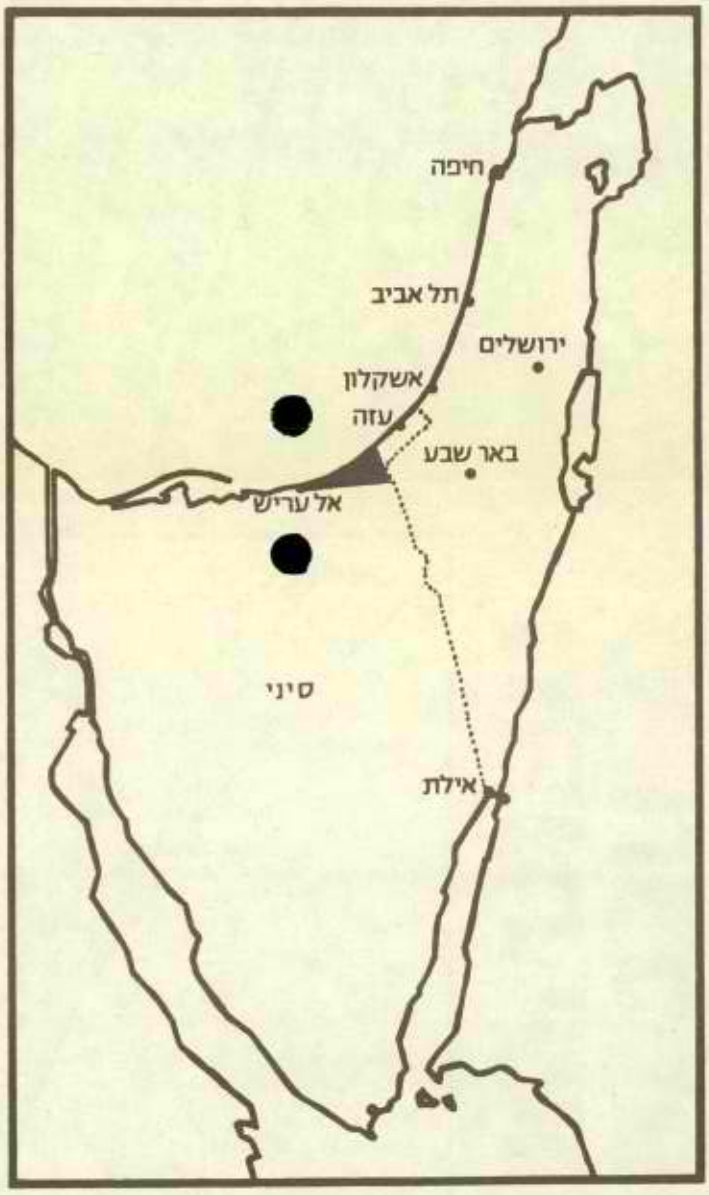


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הוועד הבין-תנועתי
לגבולות השלום והבטחון

POINT OF INFORMATION REGARDING THE PITCHAT RAFIACH ZONE

This is to inform the Israeli citizen and others concerned about the Pitchat Rafiach area:

Seven years ago this area (13,000 acres in all) was barren desert as it had lain for 2000 years. Its only population was several occasional wandering Bedouin families whose sole livelihood was grazing sheep and goats over the drifting sand dunes.

Today, the area is completely changed from barren desert to the green flowering fields of 14 successful agricultural settlements and the growing city of Yamit.

This area is important to the State of Israel in many ways.

Three wars have been fought and won here (1948, 1956, and 1967). With the Israel Defence Forces each time breaking into the Northern Sinai Desert. In 1967, one of the largest tank battles of the war was fought in Pitchat Rafiach and twenty young tank crewmen lost their lives.

This fact is enough for Pitchat-Rafiach's strategical military importance, as recognized by all Knesset members since 1967. As a result of this the Israeli Government sent young Israelis out here to establish the agricultural settlements which flourish today.

These settlements are important for the security of Israel in peace even more than in war: In time of war it will not be the settlements which hold back the attacking armies, yet in days of peace they will be a barrier between Egypt and the Gaza-strip, a barrier of fields, farms, children and all the factors that sum up to simple peaceful everyday life, and so, by these elementary factors, the borders of Israel will be true and secure.

Pitchat Rafiach presently is a very important agricultural and economic factor. We have in seven years become one of the Nation's largest exporters of fruits, vegetables, and flowers.

We are presently bringing and in the future will bring to Israel much needed foreign currency. The city of Yamit provides a needed challenge to new immigrants who have already come from the United States, South America and Russia (some of them former prisioners of Zion). These new immigrants have built their future on the sands of Yamit having come at the insistence of the Israeli government that whatever peace agreement Pitchat Rafiach would remain in Israeli hands.

It is not the settlers in Pitchat Rafiach who are against peace. We were born and raised during our nation's various wars and the majority of us have served in the armed forces and have fought in at least one of many wars.

Today, we as parents don t want our children and our small nation to face another war.

We all intend to remain, plant, grow and flourish under ISRAELI SOVEREIGNTY. We find it impossible to believe that anyone who is aware of Jewish history from ancient times to the present can with clear heart and conscience allow our future to be in the hands of Egyptian sovereignty.

Only Jews ignorant of history and blind to circumstance can take either their liberty or freedom for granted.

SIGNED,

ACTION COMMITTEE

PITCHAT RAFIACH ZONE

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ACTION COMMITTEE

PITCHAT RAFIACH ZONE

הרצליה

Jerusalem, December 12, 1977

Mr. Max N. Osen
1403 Milford Terrace
Teaneck
New Jersey 07666

Dear Mr. Osen,

Mr. Yehiel Kadishai has passed on to me your letter of 2 December, 1977, and I am enclosing the legal opinion prepared by our legal experts on the subject of the settlements. I welcome your suggestion to "Americanize" and edit or expand it.

I myself, have not hesitated to describe as absurd the opinion that the settlements are illegal.

Yours sincerely,

Adviser to the Prime
Minister on Information
Abroad

*Max N. Osen*
ATTORNEY AT LAW

TELEPHONE
(201) 692-0176
NEW YORK (212) 688-1980

1403 MILFORD TERRACE
TEANECK, N. J. 07666

Dec. 2, 1977

Mr. Y. Kadishai
Office of the Prime Minister
Jerusalem, Israel

Dear Mr. Kadishai:

I trust this letter will find you on the return from a successful visit to Great Britain.

As you know Mr. Alfred Atherton has been nominated to represent the US in Cairo. About 6 weeks ago this gentleman testified before Congress on the illegality of new settlements on the so-called West Bank. I venture to state that all of the American people know nothing on this legal issue and that 99.9% of all lawyers know nothing on the subject.

In view of the above, may I suggest that you contact Dr. Meir Rosenne or his office, and have them supply you with their detailed opinion rebutting this version of international law. After I receive same through your good offices, I will "americanize" the opinion and edit or embellish same and then submit the article to 2 important legal journals for publication. This issue is too important to be neglected. Why should USA opinion accept as "law" the opinion of Mr. Atherton or our State Dept! I happen to disagree with their whole approach and their legal reasoning is faulty!

With kind regards,

Max N. Osen

MNO:MS

Jerusalem, Nov.23, 1977

Mr. Axel Springer
Bernadottestrasse 7
1 Berlin 33

Dear Mr. Springer,

Mr. Arthur Cohn of Basel has been good enough to send me an English translation of your article in DIE WELT of 5 November, on the U.N. resolution censuring Israel for its settlements policy. I need hardly say that I read the article with admiration and gratification. I see it of course, as a further manifestation not only of your feeling for our people and the justice of its cause, but of your efforts to convey to your fellow Europeans an understanding of the bonds of real interest that should unite Israel with the Western world.

May you go from strength to strength,

Yours sincerely,

Shmuel Katz
Adviser to the Prime Minister
on Information Abroad

Arthur Cohn

CH-4052 BASEL
Gellertstrasse 18

✆ 421242
Arcobal Basel
Telex: 62261

November 16, 1977

Mr. Shmuel Katz
Prime Minister's Office
Jerusalem

Dear Mr. Katz,

Allow me to draw your kind attention to the enclosed article which appeared in the German daily DIE WELT and for your information, I am sending you an English translation thereof. I am sure you will agree that in these days, it is admirable if a non Jewish publisher like Axel Springer goes out of his way to defend Israel's interest with arguments which are by no means popular in Germany or Western Europe at this time. Therefore, I respectfully suggest that you consider dropping a note to Mr. Springer, because I know, he would value this.

Mr. Springer's personal address is:

Bernadottestrasse 7
1 Berlin 33

Incidentally, Mr. Menachem Begin knows me personally from the world première of my film production THE GARDEN OF THE FINZI CONTINI.

Every good wish,

Yours sincerely,

Arthur Cohn

Dear Mr Cohn,

Many thanks for your letter of 16 November with the enclosed article by Axel Springer. I am writing him and ~~suggest~~ I much appreciate your ~~the~~ advice, as I am sure ~~that Begin~~ the Prime Minister will too.

Yours sincerely,

Encl.

Translation

of an

Article

by

AXEL SPRINGER

in

DIE WELT

5. November 1977

on the

UN - Resolution

Censuring Israel

for its

Settlements Policy

Israel is concerned about its future. Who shares this concern? There are many individuals in many countries of the world who share the hopes and sufferings in the fate of this incomparable land and its people. Germans also turn to Israel in solidarity, feeling the particular obligation, recognizing the unique chance to show Faith, to offer a restitution which cannot be expressed in figures alone.

This is not little, but it is not enough. Besides the sympathy of the many individuals, Israel also needs the friendship and help of states, governments and parliaments in the free world. That seemed a matter of course for a long time. But now Israel is a lonelier country than it was. It is surrounded by whole-hearted hostility and half-hearted friendship. When it seeks decisive spiritual and moral companionship Israel finds itself forgotten, abandoned, even betrayed.

It would be a historical Fall of Man on an appalling scale if Israel's hopes were also to be frustrated by the free part of Germany.

After Israel's victories in the Six-Days War and the Yom Kippur War people of discernment saw that Israel's friends would one day be measured by their attitude in everyday life, when the sighs of relief and the euphoria of shared joy were forgotten.

Now the states of the European Community, including the Federal Republic of Germany, have voted for a resolution in the United Nations condemning Israel for its settlements policy in the occupied areas. But in our country no protest was heard against a German delegation having put the Jewish state in the dock - little more than thirty years after Auschwitz. America and a handful of other states withheld their votes. But Germany voted with Israel's enemies.

The objection that Europe should wherever possible speak with one voice is not valid here. In this case it would be cynical and false. Did the Federal Republic endeavour to deter its European

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allies from this evil denunciation? Was there any German effort to prevent Europe from stabbing Israel in the back? Of this nothing is known. If the effort had been made and failed, Germany would still have had the honour of not sharing in the attack.

Settlements in occupied areas, what is it all about? In an article which is quite critical of Israel the New York Times writes that in the Jordan Valley and on the hills of Judea, that is in the "West Bank" so often mentioned, there are 2,500 Jews, including women and children - as against 750,000 Arabs living there.

Also the rumor is repeatedly spread that the new settlements are on land taken from Arab farmers or landowners. The opposite is true. In almost every case the land is public which has often lain fallow for centuries and which young Israeli pioneers now want to develop into arable land. In the few cases where to round off a parcel land had to be acquired from private ownership, the purchase was strictly in accordance with Jordanian laws which still apply there. What a contrast to the expropriation of Jewish property in many Arab countries!

On the question of the settlements the Israeli Foreign Minister, Moshe Dayan has said: "They have no relevance to the final frontiers. These will rather be laid down in negotiations between Israel and its neighbours."

But the Western world has swallowed the Arab propaganda and - though it well knows better - has adopted the claim that the establishment of some Israel settlements in occupied Western Jordan and the Gaza Strip will prejudice the possible evacuation of these areas, thus jeopardizing peace in the Middle East. The demagogic deduction that renouncing these settlements and restoring the occupied areas to the Arab countries will almost automatically bring permanent, secure peace to the Middle East found a complaisant response in the West. Even America, Israel's only protector, has been lured into this trap.

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But this claim has been refuted by history. When Israel lived within its old boundaries, between 1948 and 1967, when it possessed not a single settlement beyond this old boundary, there was no peace either. On the contrary: there were constant frontier incidents, indeed wars were started against Israel. To divert attention from their own aggression the Arab states and the countries of the Soviet empire dubbed Israel the "aggressor" and still do so today. But they and the whole world knew that Israel had only defended itself. So where there was no peace in the Middle East before Israel occupied the disputed areas, why should peace come after occupation ends?

A complete return to the old boundaries with their deadly threat to Israel's existence would much rather be an invitation to Israel's enemies to launch another attack. This is Israel's reason for refusing to withdraw until credible and reliable guarantees for its free and peaceful existence are given. This reason should be taken seriously - by everyone who means peace when he says peace.

It is not a few Israeli settlements beyond its old frontiers which endanger peace in the Middle East, but Arab covetousness and Arab aggression. Arabs have fought against Arabs; the bloodshed in the Lebanon destroyed peace and brought death. On the Iraqui-Syrian frontier and that between Iraq and Kuweit Arabs fired on Arabs. In the Yemen Arabs shed Arab blood. What did the UN do to prevent that? What resolutions were passed condemning this, to say nothing about the war of extermination against the Kurds? A few days after the UN vote against Israel Suheir Mohsen, chief of the Saika guerilla group, called for mobilization of the Arab countries as the first step towards a new war against Israel. The United Nations will pass over this in silence.

What destroyed peace in the Middle East in the most frightful way was Arab terrorism. It is still destroying peace. The PLO (the Palestinian Liberation Front) took this path with the trail of blood

it has laid. The UN's response was thunderous applause for the PLO's top terrorist, Yassir Arafat, who carried a pistol as he stood on the podium of this institution which allegedly concerns itself about peace but glorifies those who destroy it.

The political boosting of the PLO - Willy Brandt only recently officially received a representative of this organization in Bonn - its "legitimation" as spokesman for "justified Arab concerns" would have been a scandal even if it had been restricted to the Third World. Western collaboration in the capitulation before this murderous organization was, however, politically and morally culpable beyond all grasp.

If this Fall has so far not been seen for what it is, although the PLO has repeatedly shed innocent blood before the eyes of all, why is it not recognized now that terrorism, with its Arab roots and ramifications has befallen Europe and above all Germany? Now at the latest, when the common enemy has been recognized, the common effort should join the Federal Republic with Israel in defence of their very own interests. The victims of those who threaten peace are to be found in the cemeteries. But that is still not enough. As though it had all never been, as though there had been no Nazi barbarity in the past, no murderous terror in the present, the Federal Republic of Germany has condemned Israel for a few frontier settlements. Shortly before that we burried the pilot, Captain Jürgen Schumann, murdered by Arab terrorists. Cunning Arafat, who slily and tactically "distanced" himself, received German thanks - Israel the German verdict "guilty".

In his vain appeal to the forum of the United Nations Israel's representative, Ambassador Chaim Herzog, uttered some shocking facts which deserve to be kept on literal record:

"So a Jew, by virtue of his being a Jew, and for no other reason, cannot settle on land which he and his family own and have owned for tens and perhaps hundreds of years. What this hastily devised and maladroit resolution is suggesting is that I am forbidden to settle on land of a village in the Hebron Hills, Masuoth Yitchak,

which bears my late father's name and which is Jewish owned, for one reason and one reason only, because I happen to be a member of the Jewish people. This is the vicious anti-semitic, Nazi philosophy behind this resolution. This is the trap into which gullible Western delegations are being lured by this seemingly legalistically worded, innocent looking resolution. It is mind-boggling, but what representatives of the European Community ... are being asked to vote for, is an extension of the Nuremberg Laws by specifying that a Jew cannot settle on land which he owns because he is a Jew. It is as simple and as sinister as that."

There is really nothing to add to that.

It was disastrous enough that the USA in common with Moscow discovered and proclaimed the "legitimate" rights of the Palestinians. Germany should not concur in this.

Of course, the United States of America have accepted Israel's consistent refusal to negotiate with the PLO. But they did so only reluctantly, although nobody but the PLO itself wants a Palestinian state under their leadership. Israel cannot want it; America does not want it. Syria fears it. Egypt cannot bear the idea. Then what in the world has the PLO to seek at a Middle East conference in Geneva, what can the PLO contribute to solving the problem, to peace, as Israel's destruction is its declared aim?

Before the General Council of the World Jewish Congress a few days ago in Washington President Jimmy Carter gratifyingly assured Israel of America's lasting friendship. But he also said that the Arab governments no longer disputed Israel's right to live within safe, recognized frontiers. But none of the neighbo-ring states of the Jewish country has so far accepted Jerusalem's repeated offer to lay this down in bilateral negotiations or even to strive towards diplomatic relations. If this were to develop the Israelis themselves could and would be prepared to make concessions.

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A citizen of Jerusalem recently said to a German friend: "It may sound presumptuous, but it's not: Whenever things went badly for the Jews, they went badly for the rest of the world."

Now things are not going well for Israel, nor for the world. It is challenged by Communism from Siberia to Leipzig, from Rome to Paris, from Africa to Asia. It is visited by terrorism, whose murderous tracks are in the truest sense of the word beginning to be boundless.

Why does not the world grasp that Israel's safety is one of the keys to peace in the world? It cannot be hard for any thinking man to understand that Israel does not wish to commit suicide by withdrawing behind its old frontiers, that it will not recognize the PLO, which foretells Israel's destruction, as a partner in negotiations, and that it resists constant urgings to make advance concessions.

The western world is quite able to grasp this. But there is another motive preventing it from standing firm to Israel: Arab oil. Western Europe has knuckled down instead of resisting blackmail. If there were major oil wells in Israel it could be sure of support in its vital needs.

Among all the nations concerned this fact is most shameful for Germany. The Federal Government has demonstrated guilt and contrition in its attempts to overcome the past towards the countries of eastern Europe to an almost masochistic degree. But when it comes to Israel the readiness to give political support, arising from a sense of guilt, is lacking. It is certainly no coincidence that no German chancellor has yet fallen to his knees in Jerusalem.

Of course no such dramatic gesture is required. Israel needs overt and active encouragement, understanding and active diplomatic assistance. Even if nobody in the world did this for the Jewish state, we Germans should do it.

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What the present enjoins on us is spiritual and practical repulsion of violence. This is also the vital element for Israel's survival. If Germany is not at Israel's side in this, then Germany will go down in history as having failed. There are historic trials which must be stood not in one's own cause alone.

But then we hear that in the free part of Berlin a PLO representative says at a Communist meeting that "the annihilation of the Zionistic structure Israel" is the "only solution for the Middle East problem". That was said on German soil, in the centre of German dignity and self-assertion. It takes little to imagine how such news must be received in Jerusalem.

Those who govern in Bonn are responsible for the scandalous vote in New York against Israel, as far as our country is concerned. They gave the relevant directives. And yet it is a failure on the part of all. For the Opposition failed to enter the necessary objection. It does not see that it has a quite particular duty towards Israel when the Coalition parties fail. The Opposition neglects to give this subject, by which the moral stature of our nation will be measured, the magnitude it deserves in Parliament.

Israel needs international friends. May we be those friends, despite all that happened a few decades ago? We have this chance to prove our worth. Israel extends its hand to us. But we do not grasp it, we make the representative of the Federal Republic of Germany in the New York world forum raise his hand to vote against Israel. Anyone who fails to deeply be consternated at this has no sense of the past, no understanding of the present and no feeling for the future.

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תדריך
משרד החוץ המחלקה להסברה ירושלים
הסברה

לשמור לי.

397

ירושלים, י"א בחשון תשל"ח
23 באוקטובר 1977

לפ"ר

אל הנציגויות

## התנחלויות - ניר רקע

לצורך הסברת נושא ההתנחלויות מצ"ב ניר רקע המעלה את ההיבטים השונים של הנושא.

הניר דן בזכותנו ההיסטורית, מסביר את האספקט הבטחוני של ההתנחלות, קובע כי אין ההתנחלויות מהוות מכשול לשלום ומבהיר את האספקט המשפטי.

כמו כן עונה הניר על טענות של הפקעת קרקעות, הטית מקורות מים ו"הכללת" שטחים.

דו קיום בשלום היא המטרה הסופית.

* * *

# JEWISH SETTLEMENT IN THE AREAS ADMINISTERED BY ISRAEL

## THE CONTINUITY OF JEWISH SETTLEMENT

Jewish settlement in the Land of Israel dates back to biblical times. Throughout the ages, the Jewish People has steadfastly adhered to its historic right to live in and settle its ancestral homeland, even when conditions in the land made such activity extremely difficult. To the Jewish People, therefore, settlement is a permanent and natural feature of its existence in its homeland.

## AN INTEGRAL PART OF ISRAEL'S SECURITY

The establishment of settlements is determined primarily by security needs. Army bases are in need of considerable assistance from civilian localities. Among these needs are: suppli medical assistance and dwellings for the families of career soldiers, even within the "green line" (the 1948-1967 armistice line between Israel and its neighbours). It is an accepted practice that army bases are located near civilian localities.

## NOT AN OBSTACLE TO PEACE

There is no connection between the progress towards a Middle East peace agreement and the establishment of settlements. The Arabs refused to negotiate peace with Israel even when there were no settlements or, for that matter, even when Judaea and Samaria were under Arab control. The settlement issue is simply a device to cover up for the Arabs' stubborn refusal to negotiate with Israel, whose destruction they seek. The recent course of events in the Middle East proves that the settlements have in no way hindered progress towards agreements. The disengagement agreements with Egypt and Syria were reached without the settlements repr senting a stumbling block. The present issues delaying the reconvening of the Geneva Peace Conference are not related to the settlements. They concern such questions as that of Palestinian representation, the number of delegations, etc. These problems would have to be discussed even if there were not a single Jewish settlement in the areas administered by Israel. The settlements are merely a tool of Arab propaganda. As observed by Professor Fred Gottheil of the University of Illinois, at the House of Representative hearings, on 12 September 1977: *"Jewish settlements are an issue because the existence of the State of Israel is an issue."*

## NOT A MEANS OF IMPOSING SOVEREIGNTY

Should the Arabs - after three decades of unremitting military economic and political warfare against Israel - show a willingness,now,to reach a genuine peace with Israel, there is no reason why Jews and Arabs should not be able to live together in one region. Just as the Israeli Arabs - half a million live in Israel today - are a bridge to understanding between Arab

and Jew, so can Jews living in an Arab area play a similar role. The notion that Judaea-Samaria should be the one place in the world today where Jews would be barred from living is reminiscent of the racist "Judenrein" notion developed forty years ago by the Nazis. Certainly, Israel cannot accept such a notion.

Moreover, the settlements, as such, do not create political facts. The Prime Minister has made it clear, from the rostrum of the Knesset, that so long as negotiations are being held with the Arab states, Israeli law will not be applied to the territories. Besides, facts - important facts - can be established not only by action but also by inaction. We know, from bitter experience, that physical absence from places to which we have an historical and emotional attachment will lead to the loss of access to these places.

n 1948, for example, the Jordanian army captured the Jewish Quarter of the Old City of Jerusalem and drove out its inhabitants. The Armistice Agreement later concluded between Jordan and Israel affirmed the right of Jews to visit the Western Wall, Jewry's holiest shrine, though it was now under Jordan's control and no Jews lived in the area. However, the Jordanians never honoured that clause and from 1948 until Jerusalem was reunified in 1967, Jews were denied access to this most revered of their holy places.

In any case, Israel has repeatedly made it clear that it cannot and will not return to the fragile and indefensible pre-1967 armistice lines. The location of the future borders between Israel and the neighbouring Arab states, therefore, will be determined by negotiated agreements, rather than by the Jewish settlements beyond the armistice lines.

"HE LEGAL ASPECT

It has been charged that Jewish settlement in the areas administered by Israel is illegal under the Fourth Geneva Convention on the Protection of Civilians in Time of War. Article 49 of the Convention entitled "Deportations, Transfers, Evacuations", prohibits "individual or mass forcible transfers as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country..." The article also states that it is forbidden to "deport" or "transfer" parts of its own civilian population into the occupied territory.

From an overall reading of Article 49, it is evident that its purpose is to protect the local population from deportation and displacement. It thus becomes apparent that such deportations and transfers are prohibited only if they involve the displacement of the local population.

This conclusion is also reflected in the Oppenheim-Lauterpacht Treatise "International Law"

(Vol II-7th Edition, Page 452):

> *"The Occupying Power must not deport or transfer parts of its own civilian population into the territory occupied by it - a prohibition intended to cover cases of the occupant bringing in its nationals for the purpose of displacing the population of the occupied territory."*

Since no Arab inhabitants have been displaced by Jewish settlements, it is clear that the situation envisaged in Article 49 of the Geneva Convention does not apply to the Jewish settlements in question.

Incidentally, Jews constitute only ½ of 1 per cent of the population of Judaea and Samaria. In all the areas administered by Israel, there are less than 7,000 Jews - among a population of over a million Arabs.

THE ISSUE OF LAND EXPROPRIATIONS

It has been claimed that the settlements are being established at the expense of expropriated Arab lands. The overwhelming majority of settlements have been set up on government and public land. In the few instances where private land was involved, it was acquired for public purposes in accordance with Jordanian law and against full compensation. Similar laws providing for acquisition of land for public purposes exist in Israel and in most other countries.

In all cases of such land acquisition, any owner who feels aggrieved or feels that the compensation was not sufficient has right of access to the Supreme Court sitting as the High Court of Justice. This court can and does issue writs against the government or the military authorities whenever it feels that any person, including residents of the territories, have a legitimate grievance. In a number of instances, the court has found against the authorities.

RETURNING HOME

It should be emphasized that Jewish settlement is often a return to lands and homes illegally seized by the Arabs. Gush Etzion, for instance, was settled by Jews before the War of Independence. In 1948, it was occupied by the invading Arab forces, which brutally slaughtered the Jewish civilian population. Following the Six-Day War, the survivors of Gush Etzion returned to their villages, which had remained abandoned through the years, and began the task of reconstruction. Similarly, the 1929 massacre of the Jewish community in Hebron brought about a temporary halt to a centuries-old presence in the city where the Jewish Patriarchs are buried. Failure to return to Hebron following the 1967 War might have implied acquiescence to a reality imposed by Arab aggression. Nevertheless, Israel has gone out of its way not to encroach on land or homes presently owned or inhabited by Arabs. In Hebron, for example, Israel

did not reclaim the homes taken by the Arabs in 1929 but contented themselves with constructing a new quarter outside the city.

Hebron and Gush Etzion are only two examples of settlements destroyed by the Arabs. The Jewish Quarter of the Old City of Jerusalem, for example, was systematically demolished by the Jordanian occupation forces.

ARAB WATER NOT DIVERTED TO SETTLERS

It is totally untrue that water supplies are taken from the Arabs and given to the Jews. The fact is that in June 1967, Judaea and Samaria did not possess the infrastructure necessary for drinking-water plants. This task was undertaken by the military administration, which began igging and drilling wells near Hebron, Bethlehem, Ramallah, Nablus, Jenin and Tulkarm. Since then, the quantity of water supplied to these villages and towns has increased more than five-fold. The water-related projects put into operation by the administration have been of benefit primarily to the Arabs, who constitute more than 99% of the area's population.

CONTRIBUTION TO PEACEFUL COEXISTENCE

The settlement policy is an extension of the "Open Bridges" policy. During the 1920's and 30's, there was substantial economic growth in the area as a result of Arab-Jewish cooperation. The Jews introduced modern methods of agriculture and marketing which made Palestine the envy of the entire Middle East. The Arabs benefitted from this prosperity no less than the Jews. In fact, thousands of Arabs from the neighbouring countries came to settle in Palestine during those years, drawn by higher wages, better living conditions and greater economic opportunity.

Current Arab-Jewish economic cooperation has again led to substantial gains for both sides and a general reduction of tension in the area. Clearly, the creation and maintenance of economic and social ties between Arab and Jew is no less important to the breaking down of the walls of hostile Arab propaganda, than it is to continued prosperity.

We believe that the agreement concerning Judaea, Samaria and the Gaza Strip should be based on our living together with the Palestinian Arabs in those areas, and not on partition of the territory.

IIC/397/October 1977.

PERMANENT
REPRESENTATIVE OF ISRAEL
TO THE UNITED NATIONS

800 SECOND AVENUE
NEW YORK, N. Y. 10017

OXFORD 7-5500

CHECK AGAINST DELIVERY

STATEMENT BY AMBASSADOR CHAIM HERZOG

TO THE GENERAL ASSEMBLY

~~ON ITEM A/32/L.3~~

(ISRAEL SETTLEMENTS IN THE ADMINISTERED TERRITORIES)

26 OCTOBER 1977

Mr. President,

The item under discussion is typical of a new and frightening phenomenon of the conduct of international relations by means of the use of slogans and code words. A stereotypic slogan is uttered by a leader of prominence in the world to the effect that Israeli settlement in the territories administered by Israel is illegal and an obstacle to peace. The cry is then taken up by delegate after delegate, many of whom have no knowledge, as they freely admit to us, of the facts. They then echo parrot-like this cliche without even pausing for one moment to ascertain the facts. I am not asking you to agree with us in advance, but I am asking you to move away from this superficial approach to international affairs and at least to study the issue and approach the subject after having given due thought and mature consideration to the facts on both sides.

To associate reference to the settlements with a cliche alleging an obstacle to peace is no more valid than it is to invoke automatic associations with such well used cliches as "imperialist aggressors", "western decadence", "inalienable rights", "hegemonistic super-power", and the like.

Mr. President,

The purpose of the barrage of attacks leveled at Israel in this Assembly is a two-fold one: it is part of an all-out attack on the State of Israel as a whole, and an attempt to create

false impression that there exists an atmosphere of incipient revolt on the West Bank and in Gaza. Those who are inclined to believe the falsifications served up here in support of this thesis are reminded that ours is a free and open society which all members may visit at will to investigate conditions for themselves. Those who have already availed themselves of this opportunity have found, not a state of tension and revolt, but an atmosphere of co-existence and cooperation in an environment of growing prosperity. We do not claim that West Bank Arabs are the staunchest supporters of Israel. Indeed, I would say that their loyalties are very divided. But until a peaceful solution is found to the problems of our area, they are living together side by side with Israelis in an atmosphere of daily coexistence, as any visitor to the territories concerned can see for him or herself.

Mr. President,

What are we discussing here today? I propose to deal in detail with every aspect of the subject. But let me say very simply at the outset that we are discussing moves by the Government of Israel which have not displaced one single individual, which have not removed one single Arab from his property and which has not cost one single life. Nonetheless, the General Assembly, the Security Council, the Special Political Committee and the Second Committee are all seized of this problem within the span of a few days. All this while we have heard in the General

Debate many of the problems which are plaguing the world today and costing precious lives in the tens of thousands. Not one of them will be dealt with in this Assembly.

This plenary has not had the time this week because the Arab delegates were unwilling to forego or postpone this debate to discuss the scourge of terror which is threatening innocent men, women, and children throughout the world. It has not had the time to discuss the wave of international terror which has spread throughout this world by terrorist organizations such as the PLO and their trainees in such organizations as Baader-Meinhof in Germany and the Red Army in Japan financed by countries such as Libya. The subject has been relegated to the Special Political Committee. But there is time in the Plenary and in the Security Council, not to mention other forums, to engage in this irrational hate-ridden obsession with Israel.

This plenary will not have the time to discuss the invasion of an independent Black African country, namely Ethiopia, by the invading forces of the Somali-Arab State coalition with the resulting loss of thousands of innocent lives. This Assembly will not have the time in which to discuss the alarming revelation by the Deputy Foreign Minister of Oman that the incursion by South Yemen supported terrorists, has created a problem of half a million refugees. Nobody even bothered to pay attention to this frightening revelation.

This plenary will not have the time to discuss the bloodshed in the Algeria-Mauritania- Morocco conflict over the West Sahara.

This plenary will not have the time to discuss the complaint of Chad which was voiced here on the Libyan annexation of its territory; an annexation justified,mark you, by invoking, of all things, the Mussolini-Laval pact of 1935.

I could go on citing all the terrible massacres and atrocities which are occurring throughout the world, none of which will be dealt with in this Assembly.

For this there is no time. There is time to deal with one issue in one forum after another which, I repeat, whatever your views as to the policy of our Government, has not cost one single life, has not displaced one single individual and has not removed one person from his land. The tragedy is not that there is no time to deal with other problems because of the overriding obsession with Israel, but that there are countries here that know better and which did not have the courage to disassociate themselves from this sickening process which is turning this organization, as a former distinguished delegate of the United States of America pointed out, into a theatre of the absurd. Let me say at this point how refreshing it was to hear the distinguished Foreign Minister of Canada in the general debate take up this theme and impliedly endorse this view.

A resolution has been presented to this Assembly with a title, believe it or not, nine lines long. This resolution already in its title prejudges the case. It flatly asserts that Israel's measures are "illegal"; that they are "designed to change" fundamental matters in the territories, that they are "in contravention of "the principles of the U.N. Charter, etc; and that they are an "obstruction in the way of peace efforts".

Some delegates here may not be aware of the principles of justice which are central to the system of government to which we in Israel subscribe, namely that a party is innocent until proven guilty. Certainly a large number of the co-sponsors of the resolution are doubtless unaware of this elementary principle.

However, it should be unnecessary to remind those delegations who represent democratic regimes,with independent judiciaries, of the strange development whereby this Assembly has, in recent years, taken upon itself to be prosecutor, judge and jury all in one.

This resolution has been submitted with great fanfare by the Foreign Minister of Egypt in a speech to this General Assembly.

If ever there has been a case of bare-faced hypocrisy, it is this case of an Egyptian complaint about Israeli practices in the territories administered by Israel. These territories have a history and I shall go into it. But they have a very recent history too. From 1948 until 1967 Gaza was administered by Egypt, and Judea and Samaria, two of the districts in the West Bank, by Jordan.

Mr. President,

For 19 years, from 1948 to 1967, Israel was not building settlements; for 19 years Israel was not in the territories at all; for 19 years Egypt and Jordan had it in their power to do everything that they today demand of us. They did not do it. It is only fitting therefore, before examining Israel's action in the territories, to cast a brief glance over the record and credentials of our accusors in those same territories.

There is a maxim in English Law- "He who comes to court must come with clean hands." For 19 years Egypt oppressed the people of Gaza, keeping them virtual prisoners in their refugee camps, subjecting them to every form of human disability and denying the most elemental freedoms and human rights. One of the first decrees of the Egyptian military governor of Gaza was the imposition of a curfew, from 9 p.m. to dawn. This curfew lasted for 19 years, and violators were put to death. Highways were closed to all but military traffic after dusk. A strict censorship was imposed. Locally published newspapers were prohibited.

For 19 years under the Egyptians no elections were held. The Governor was Executive, Legislature and Judiciary in one and his decree was final. Gaza residents were not allowed to work in Egypt, and they were denied Egyptiar citizenship. In October 1961, Radio Damascus accused Egypt of "exercising tyranny in the Strip," and the Jordanian newspaper Falastin described "the disgrace of living under Egyptian domination in the Strip". From Saudi Arabia, Jiddah Radio, on 10 March 1962, broadcast the following condemnation:

> "We are aware of the laws which prohibit all Palestinians from working in Egypt with or without pay, a condition which is stamped on the passport of every Arab who enters Cairo. On this occasion we would like to ask Cairo what is this Iron Curtain which Abdul Nasser and his cohorts have lowered around Gaza and the refugees there? The Military Governor in Gaza has prohibited any Arab from travelling to Cairo by air without a military permit, which is valid for 24 hours. Imagine Arabs, how Nasser, who claims to be the pioneer of Arab nationalism, treats the Arab people of Gaza. Gaza and its miserable people who starve while the Egyptian

> Governor of Gaza and his officers and soldiers bask in the wealth of the Strip. These are the very methods which the dictator Hitler used in the countries that he occupied during the world war".

And this, Mr. President, is the country that is now self-righteously condemning Israel for its actions in the administered areas. Egypt has the effrontery to accuse Israel. By what credentials? Look at what is happening in Egypt to the ancient Coptic community there. The discrimination against an ancient Christian group, which numbers in the region of 7 million in Egypt today, is discrimination before the law, discrimination in employment, discrimination in education.

Although the Copts number a sixth and more of Egypt's total population, they have been virtually eliminated from all prominent positions in public and official life, in governmental posts, in the diplomatic corps, in the universities, administration, army and the police. And yet Egypt has the audacity to come to this Assembly and arraign Israel's policies in the territories.

Let us go further. The Egyptian resolution alleges that Israeli policies in the teritories are a special obstruction of efforts aimed at achieving peace in the Middle East. But what, one might ask, has been Egypt's contribution to peace in the Middle East in the last 30 years?

The territorial situation in our region today is a product, a direct product, of three wars of aggression launched by Egypt against Israel in 1948, 1967 and 1973. From 1948 onwards, Egypt systematically violated its international obligations by closing the Suez Canal to vessels destined to Israel, and blockading the Straits of Tiran, another international waterway The results of the Six Day War and the Yom Kippur War are well known to you all.

On 1 September 1975 Egypt signed an interim agreement with Israel, calling inter alia for a reduction in political warfare against Israel. Since that date Egypt has been in the forefront of those waging such political warfare against Israel. The recent address of the Foreign Minister of Egypt to this Assembly and this present debate are yet further examples of the flagrant violation by Egypt of international obligations to which it solemnly subscribed but two years ago.

Is this, then, the face of a state which has made its due contribution to peace in the Middle East? This is the face of a state which is shameless in its hypocrisy and which should be the very last to argue that Israel has placed obstacles in the way of peace in the Middle East.

The Jordanian record on the West Bank is no better than is that of Egypt in Gaza. During 19 years of Jordanian occupation, thousands of West Bank residents were arrested, prominent local leaders were jailed, political activity was curbed, and the Jordanian army brutally suppressed the riots which broke out every frew months, killing and wounding hundreds of West Bank Arabs.

Not content to bar Jews completely from the Old City of Jerusalem, from their Holy Places and from the Hebrew University and Hadassah Hospital, the Jordanian Government embarked on a deliberate campaign of systematic destruction and desecration, laying waste to the Jewish Quarter, tearing up 38,000 of the 50,000 tomstones in the ancient Jewish cemetery on the Mount of Olives, plundering and burning hundreds of holy scrolls and books, and leaving 58 synagogues destroyed or converted into stables, henhouses and public latrines. In 1958 and 1965, Christian clergymen and schools were subjected to a maze of of discriminatory legislation passed by the Amman Parliament.

As a group of West Bank Arabs told the Beirut daily Al-Hawadith on 23 April 1971,

> "We have lived a long period under the humiliation of Arab nationalism, and it pains us to say that we had to wait for the Israeli conquest in order to become aware of human relationships with citizens."

By contrast to the severe restrictions of Egyptian and Jordanian rule, there is today no curfew in the administered areas. Arab students from the territories are permitted to continue their studies at universities in Cairo, Amman and Damascus, and Israel each year facilitates the pilgrimage to Mecca for thousands of residents of the territories.

The gross national product in the West Bank and Gaza has risen by an annual average of 18% since 1967, per capita income has increased by 80% in the West Bank and 120% in Gaza, private consumption in both areas has risen by 11% per annum, and unemployment has dropped to almost zero. Indeed, the economic growth rate of the two areas is higher than that of Israel, Egypt, Jordan, Syria, Iraq and Lebanon. The education budget is ten times larger than it was under Egyptian and Jordanian administration and the health budget has increased 20-fold in the West Bank and 30-fold in Gaza.

The Arabs in the territories administered by Israel enjoy freedom of speech, freedom of press and freedom of movement. They enjoy complete freedom of cultural and religious expression, and indeed the holy places, for example, are autonomously administered by each faith. The administered areas are the only place in the entire Arab world in which the Arab population

is free to express its opinion against the government of the country in which they live.

It is against this background of prosperity, cooperation and scrupulous respect for freedoms and human rights, that Israel's establishment of settlements must be considered.

Mr. President,

The ancient historic and religous rights of the Jewish people in the Holy Land, in which the Jewish people have maintained a constant unbroken presence for thousands of years and which has been consecrated by thousands of years of religous, national, political and historic experience, was confirmed by the League of Nations after World War I. The re-establishment of a Jewish homeland in Palestine which included the area that is today the Kingdom of Jordan, Israel, the West Bank and Gaza, was welcomed among others by leaders of the Arab resurgence who recognized that there was room for one small Jewish State, within a total area of four and one-half million square miles in which the Arab nation realized its sovereignty in twenty Arab states.

In 1947 the General Assembly of the United Nations, in an historic act, confirmed to the Jewish people its historic right to a state of its own in its ancient homeland. The Arab nations rejected the United Nations resolution out of hand. On 15 May 1948, with the conclusion of the British Mandate, seven Arab armies invaded Palestine with the avowed purpose of destroying the

resolution and the State of Israel in its infancy. Those Arab military operations were condemned, and were described by the then Soviet delegate to the United Naticns, Mr. Andre Gromyko, in the Security Council, as being "aimed at the supression of a National Liberation Movement."

A small Jewish community, out-numbered and out-gunned fought back desperately and successfully, losing 1% of its population in the process, and the State of Israel was established.

The Arab armies, including the Transjordanian Legion, invaded the territory of what was Palestine in 1948 in open and flagrant violation of the UN Charter. That invasion was carried out, as is common knowledge, with the avowed purpose of destroying the State of Israel.

> "...an armed struggle is taking place in Palestine as a result of the unlawful invasion by a number of states of the territory of Palestine, which does not form part of the territory of any of the states whose armed forces have invaded it."
> (Mr. Tarasenko, Ukranian Socialist Soviet Republic, Security Council, 27 May 1948.)

Because of the aggressive character of their invasion of Palestine -- which was emphasized in the Security Council deliberations conducted during the months of May-June 1948, by the majority of its members, led by the Soviet Union and the United States -- the invading states could not acquire rights of sovereignty over the territories which they occupied. U.S. Representative Senator Warren Austin termed the Jordanian invasion of Judea and Samaria "the highest type of the international violation of the law."

The rights of the invading states in the territories of the former Palestine Mandate occupied by them were, therefore, at the most, the rights of an occupant without any authority to unilaterally annex the occupied territory.

Jordan's unilateral "annexation" of Judea and Samaria in 1950 had, therefore, no basis or validity in international law. The Jordanian "annexation" never received any international acknowledgement: only Britain, which at the time was the real power behind Abdullah's Jordan, and Pakistan, granted recognition to this Jordanian measure (Britain excluded East Jerusalem from this recognition). Even the member states of the Arab League threatened Jordan with expulsion from their ranks because of that "annexation."

In 1967, Israel was again the victim of aggression when President Nasser moved his armies with great fanfare into Sinai, and in an atmosphere of Arab frenzy and hysteria undertook publicly to annihilate Israel. He closed the Straits of Tiran, peremptorily ordered the U.N. Forces out of Sinai and Gaza, and gathered an international Arab army around Israel bent on the destruction of our country, as he put it in Arabic القضاء على اسرائيل the total annihilation of our people, man, woman and child. If requested I am prepared to make available the actual recordings of the Arab threats at the time. Our advice transmitted to King Hussein through the good offices of General Odd Bull of the United Nations to keep out of the war was ignored by him and he

launched a military attack on Jerusalem along the Israeli border, indiscriminately bombing, shelling and attacking Israeli towns and villages, including the holy city of Jerusalem. A Jordanian shell fired from the West Bank Town of Kalkilieh missed my home in Tel-Aviv on the coast, by twenty five yards, which fact amongst others explains my distinct reluctance to see hostile forces such as those of the PLO, stationed in those same attacking positions.

As a result of this unprovoked Arab attack which took place when we were sitting along the 1967 lines, to which delegates accord such a sacrosanct and reassuring quality today, the territories under discussion are under Israel control today. We sought no war. We were promised annihilation. A new holocaust was our prospect. We fought back to defend ourselves, our wives, our children,our homes from a grim and unthinkable fate -- a fate, I repeat, openly promised us over every Arab media by every Arab leader in a wave of uncontrolled hysteria which is frightening and horrifying in itself to recall.

May I appeal to my Jordanian colleague, Dr. Nusseibah, not to indulge once again in falsifying history. Do not repeat the exercise with which we are all too familiar of rewriting history. Your King has recorded it all frankly and honestly in his memoirs. We have all read them, describing Nasser's betrayal and the duplicity of the Syrians. Please, Dr. Nusseibah, don't embarass me by having to prove that you are casting doubts as to the honesty of the account of these events as presented by your

> "Having regard to the consideration that ... Israel (acted) defensively in 1948 and 1967... and her Arab neighbours ... (acted) aggressively in 1948 and 1967 ... Israel has better title in the territory that was Palestine, including the whole of Jerusalem, than do Jordan and Egypt ...."

Professor Schwebel wrote further on this subject in the American Journal of International Law in 1970 as follows:

> "As a general principle of international law, as that law has been reformed since the League, particularly by the Charter, it is both vital and correct to say that there shall be no weight to conquest, that the acquisition of territory by war is inadmissible. But that principle must be read in particular cases together with other general principles, among them the still more general principle of which it is an application, namely, that no legal right shall spring from a wrong, and the Charter principle that Members of the United Nations shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state. So read, the distinctions between aggressive conquest and defensive conquest, between taking of territory legally held and the taking of territory illegally held, become no less vital and correct than the central principle itself.
>
> "Those distinctions may be summarized as follows: (a) A state acting in lawful exercise of its right of self-defense may seize and occupy foreign territory as long as such seizure and occupation are necessary to its self-defense. (b) As a condition of its withdrawal from such territory, that state may require the institution of security measures reasonably designed to ensure that that territory shall not again be used to mount a threat or use of force against it of such a nature as to justify exercise of self-defense. (c) Where the prior holder of territory had seized that territory unlawfully, the state which subsequently takes that territory in the lawful exercise of self-defense has, against that prior holder, better title.

> "The facts of the June, 1967, "Six Day War" demonstrate that Israel reacted defensively against the threat and use of force against her by her Arab neighbors .... The conclusion to which these facts lead is that the Israeli conquest of Arab and Arab-held territory was defensive rather than aggressive conquest.
>
> "The facts of the 1948 hostilities between the Arab invaders of Palestine and the nascent state of Israel further demonstrate that Egypt's seizure of the Gaza strip, and Jordan's seizure and subsequent annexation of the West Bank and the old city of Jerusalem, were unlawful .... It follows that the Egyptian occupation of Gaza, and the Jordanian annexation of the West Bank and Jerusalem, could not vest in Egypt and Jordan lawful, indefinite control, whether as occupying Power or sovereign: ex infuria jus non oritur.

The state of the law has been correctly summarized by Elihu Lauterpacht, a distinguished authority on international law, as follows:

> territorial change cannot properly take place as a result of the unlawful use of force. But to omit the world "unlawful" is to change the substantive content of the rule and to turn an important safeguard of legal principle into an aggressor's charter. For if force can never be used to effect lawful territorial change, then, if territory has once changed hands as a result of the unlawful use of force, the illegitimacy of the position thus established is sterilized by the prohibition upon the use of force to restore the lawful sovereign. This cannot be regarded as reasonable or correct.

A measure of the rather superficial manner in which this entire problem is being approached by the various delegations expressing themselves on the subject, can be gauged from the fact that in most of the statements all the territories are lumped together although their international legal status is entirely different one from the other. The fallacy in this argument was pointed out

only a few days ago by the U.S. Assistant Secretary of State for the Near East and South Asia, Mr. Alfred L. Atherton, Jr. when he testified on this very issue before the House International Relations Subcommittees on International Organizations and on Europe and the Middle East, in the U.S. Congress. There he drew a clear distinction between the legal status of the Sinai and the Golan on the one hand (Egypt has never made a sovereign claim to the Gaza Strip) and that of the West Bank. He goes on in his testimony: "In the West Bank and Gaza, however, the situation is different. Both of these territories were part of the British Mandate of Palestine. While the legitimate existence of a sovereign Israel in Part of Palestine is recognized, the question of sovereignty in the part of Palestine remaining outside of Israel under the 1949 armistice agreements has not been finally resolved."

Professor Schwebel, now with the U.S. State Department, has stated that from an international legal point of view, "Israel has better title in the territory that was Palestine, including the whole of Jerusalem than do Jordan and Egypt," while the Assistant Secretary of State for the Near East and South Asia, whose Government had incidentally previously suggested that such settlement was illegal, now admits under congressional examination that the question of sovereignty in the West Bank and Gaza has not been finally resolved. And yet, mark you, my distinguished colleagues, you are asked to vote for a resolution

which prejudges the issue already in the wording in its title, for it refers to "illegal" Israeli measures before you have heard the case presented by each side, before you have had a chance to analyze and evaluate them. You have been asked so to vote because it is cynically assumed that you are not interested in the facts, because it is assumed that your mind is made up and you do not wish to be confused with the facts.

Israel's position is that the Fourth Geneva Convention is not applicable to the territories. The Fourth Geneva Convention, where it applied (to our knowledge it has never formally been applied anywhere in the world), is intended for short-term military occupation and is not relevant to the sui generis situation in this area. Moreover, even were the laws of belligerent occupancy applicable, these rules, including the 1907 Hague Regulations, contain no restriction on the freedom of persons to take up residence in the areas involved. It has been claimed, however, that Article 49 of the Fourth Geneva Convention is pertinent here.

From the overall reading of Article 49 it is evident that the purpose of this Article is to protect the local population from deportation and displacement. Para. 6 must be read in the light of the general purpose of the Article. It thus becomes apparent that the movement of population into the territory under control is prohibited only to the extent that it involved the displacement of the local population.

This conclusion finds expression in the leading treatise Oppenheim-Lauterpacht International Law (Vol II, 7th ed., p.452):

> "The occupying power must not deport or tranfer parts of its own civilian population into the territory occupied by him - a prohibition intended to cover cases of the occupant bringing in its nationals for the purpose of displacing the population of the occupied territory."

Article 49 must be understood against the background of World War II. It was aimed in part against such horrors as the barbarous extermination camps in occupied Europe to which Jews and others were taken by the Nazis and in part against the displacement of the local population with a view to making room for the German invaders.

Bearing in mind both the provisions of the Article and its legislative history it is clear that the situation envisaged by Article 49 does not apply to the Jewish settlements in question. No Arab inhabitants have been displaced by Jewish settlements or by these peaceful villages and townships.

There is a further aspect to this question which has been totally overlooked in the very superficial manner in which this problem is being approached by so many delegations, basing themselves as they do on the inevitable cliches and code-words without recourse to which no serious international issue can apparently be approached.

For centuries Jews have owned land in Judea, Samaria and Gaza, and have of course lived there. They lived on these lands

during the period of the Ottoman Empire and the British Mandate. They were driven out by Jordanian and Egyptian aggression which was not recognized by the Arab international community, let alone the general international community. If you subscribe to the notion that for a Jew to settle on land which he owns wherever it may be,has no legal validity for the simple reason that he is a Jew, and that is the obvious implication, then what in fact you are doing is subscribing to the hateful Nazi Nuremberg Laws many of which apply today in the racist legal codes obtaining in Arab countries. Take for instance the Jordanian citizenship law No. 6 of 4 February 1954 which granted Jordanian nationality to residents of Judea and Samaria which had been illegally annexed to Jordan. Paragraph 3 of this law states "Any man will be a Jordanian subject ... (3) if he is not Jewish .... This in addition to a comparatively recent law which notes that sale of land to a Jew is punishable by death.

Now certain members of this Organization have the unbelievable effrontery to suggest that a Jew, by virtue of his being a Jew, and for no other reason, cannot settle on land which he and his family own and have owned for tens and perhaps hundreds of years. There are settlements on Jewish owned land in the Hebron Hills, in the Gaza Strip, in the Jordan Valley, by the Dead Sea. What this hastily devised and maladroit resolution is suggesting is that I am forbidden to settle on land of a village in the Hebron Hills, Masuoth Yitchak, which bears my late father's name and which is Jewish owned, for one reason and one reason only, because

I happen to be a member of the Jewish people. That is what you are being asked to vote for.

This is the vicious anti-semitic, Nazi philosophy behind these laws and behind this resolution. This is the trap into which gullible Western delegations are being lured by this seemingly legalistic worded, innocent looking resolution. It is mind boggling, but what representatives of the European community which arose out of the ashes of post-Nazi Germany not to mention others, are being asked to vote for, is an extension of the Nuremberg Laws by specifying that a Jew cannot settle on land which he owns because he is a Jew. It is as simple and as sinister as that.

It has been claimed that the settlements are being established at the expense of expropriated Arab lands. This is untrue. The overwhelming majority of settlements have been set up on Government and public land which have been barren rock strewn hillsides and deserts for centuries. In the very few instances where private land was involved, it was acquired for public purposes in accordance with Jordanian law which applies in Judea and Samaria and against full compensation. Similar laws providing for acquisition of land for public purposes exist in Israel and in most other countries.

In all cases of such land acquisition, any owner who feels aggrieved, or feels that the compensation was not sufficient has right of access to the Supreme Court sitting as the High Court of Justice. This Court can and does issue writs against

the Government or the military authorities whenever it feels that any person, including residents of the territories, has a legitimate grievance. In a number of instances, the Court has found against the authorities, and redressed the plaintiffs.

Let us look once more at this ill-conceived resolution. Again, it has a veiled racist allusion to what it calls conveniently "demographic changes". This is a new code word in the U.N. lexicon reflecting Arab racist anti-Jewish policy which is in danger of being adopted by gullible spokesmen of many countries whose philosophy is far removed from such racism and racist philosophy.

What it means is that it is wrong for Jews to live amongst and with Arabs, because they are Jews. If 50,000 Arabs have returned to the territories since 1967 under the family reunion scheme and the total population of the territories has increased by 17.4% in the last ten years, that is not considered a "demographic change". If the Arab population of Israel has grown from 150,000 in 1949 to 550,000 today that is not considered a "demographic change". But if a total of approximately 6,000 Jews (as opposed, mark you, to 50,000 Arabs who entered the territories at the same time) settle in Judea, Samaria, Sinai, Gaza and Golan, 6,000 Jews in an area populated by 1¼ million Arabs, this Assembly is convened to face this threat of what is now called a "demographic change". If approximately two and a half thousand Jews settle in an area populated by three quarters of a million Arabs in Judea and Samaria -- remember that is what all this excitement

and fuss is about, two and a half thousand Jews amongst over 700,000 Arabs and not one life is lost thereby or one person dispossessed, the General Assembly has time to ignore all the tragedies besetting this world in order to express its concern about what it calls demographic changes. What utter perverted racist nonsense! And the tragedy is that one hears it echoed not by those countries from whom one expects to hear such philosophies, but from countries whose basic philosophy is opposed to such an anti-semitic racist approach. Over half-a million Arabs live in Israel in a predominantly Jewish population side by side with their Jewish neighbours. By what great concept of human rights is it wrong for a few thousand Jews to live in a predominantly Arab population? The purpose behind this resolution is prompted by an Arab desire to pursue their racist philosophy which calls for the exclusion of all non-Arab elements from the Middle East, the Christians from the Lebanon, the Assyrians and the Kurds from Iraq, the Jews from the Arab World, the Jews from Israel, the Christians from Southern Sudan, the Copts from Egypt and so on, a philosophy which was summed up by the leader of the P.L.O. with its Nazi covenant calling for the destruction of a nation, Yassir Arafat: "There will be no presence in the region but the Arab presence."

You are being asked to endorse the Nazi racist philosophy of creating an area that is "Judenrein", that is free of Jews. It is sad to see nations which suffered from the Nazi yoke and oppression contemplating support for the resurrection of this hated anti-semitic thesis which brought a holocaust and tragedy to this world.

We, on the contrary, believe that our fruitful co-existence with half a million Arabs in Israel and a million and a quarter Arabs in the territories has created a bridge to the Arab world. By living together with this Arab population we have established a daily dialogue between us and a major element of the Palestinian Arabs. We have brought about a greater degree of mutual understanding than has ever been achieved before, and have developed daily grass roots Arab-Jewish cooperation in all fields of human endeavour, medicine, agriculture, commerce, politics and science.

We have created the foundations from which to advance further towards the solution of the Palestine Arab problem on a basis of growing understanding.

This we shall achieve if the process of negotiation and dialogue in the Middle East is encouraged and not obstructed by this Assembly. We shall not achieve it if the sinister philosophy which permeates the proposed resolution and which will undoubtedly be the theme of this debate is allowed to be the prevalent idiom in the Middle East today.

We believe that the only effective way of bridging the gap existing between Jew and Arab in the Middle East is by the peoples living together, maintaining a continuous dialogue and learning to live side by side. Only then can a bridge to peace be established. It will certainly not be built by a slavish pandering to the basic racist and anti-semitic philosophy behind resolutions which call for the establishment in this age, of areas which are Judenrein,-free of Jews, - of areas from which individuals are to be excluded only and solely because they are Jews.

Mr. President,

It has been alleged in this resolution and in public statements that the establishment of settlements is an obstacle to peace. Let me just say this. The statement that Israeli settlement among a million and a quarter Arabs is an obstacle to peace is a lie. To say so is to engage in a cynical falsification of history.

For 19 years from 1948 to 1967 we were not establishing settlements in Judea, Samaria, Gaza, Sinai and the Golan, because we were not there. There was no such "obstacle" from 1948-1967. Did the Arabs talk about peace, or negotiate peace ? Not only were we not in the territories, Jordan and Egypt were there. We did not establish settlements and bring agricultural progress to these areas. Nor indeed did Egypt and Jordan establish settlements. They let those territories languish in disease and poverty (thirty per cent unemployment, indescribable conditions in impoverished refugee camps, etc.). They were in control of the West Bank and

Gaza, but they did not permit the establishment of a Palestinian State because then as now they did not want one. Jordan saw itself to be the Palestinian State, which in all honesty it is. They formed the P.L.O. in 1964. Why ? They were in control of the West Bank and Gaza and could have established a P.L.O. controlled Palestinian State. Because, Mr. President, the issue is not and never was - the settlements in Judea and Samaria or Gaza. The issue was and is Jewish settlement in our country. The issue is not Kaddum or Etzion or Regavim or Yamit or Ramat Magshimim. The issue is Tel Aviv or Haifa, as the representative of the P.L.O. has said in this building, the issue has been and is every settlement we have ever established wherever it may be in the Galilee, in the Negev, in the Gilboa, in the Sharon, in Judea, in Samaria and in the coastal plain. Compared to the main issue facing us, this subject is comparatively irrelevant and is designed solely to divert attention from the main issue, namely negotiations towards peace.

I repeat. To assert that the settlements constitute an obstacle to peace is a falsehood and a deliberate attempt to avoid the principal issue.

There is no connection between the progress towards a Middle East peace agreement and the establishment of settlements. The settlement issue is simply a device to cover up for the Arab States' stubborn refusal to negotiate with Israel, whose destruction many of the seek. The recent course of events in the Middle East proves that the settlements have in no way hindered progress towards agreements. The disengagement agreements with Egypt and Syria were reached without the settlements being mentioned at all.

The present issues delaying the reconvening of the Geneva Peace Conference are not related to the settlements. They concern such questions as that of Palestinian representation, the number of delegations, etc. These problems would have to be discussed even if there were not a single Jewish settlement in the Israel-administered areas. The settlements are merely a tool of Arab propaganda. As observed by Professor Fred Gottheil of the University of Illinois, at the House of Representative hearings, on 12 September 1977-:"Jewish settlements are an issue because the existence of the State of Israel is an issue".

Mr. President,

We owe no apology to anybody for our statehood and national sovereignty which are hallowed by 4000 years of a continuous, unbroken, national, religious, political and social experience such as no other nation has ever know. It has been consecrated by one of the greatest experiences in history as recorded in the Book of Books, the Bible. Long before most of the nations represented in this hall existed or even dreamt of statehood, a great Jewish civilisation, which has benefited mankind as a whole and which gave rise to two other great religions, Christianity and Islam, was flourishing in the cities and villages of Judea and Samaria.While wild herds roamed on the sites of what are today the great capital cities of the world, the prophets of Israel were proclaiming to mankind throughout Judea and Samaria in their immortal words the great principles of humanity for the first time.

When many of the great civilisations of today were but primitive societies, the judges of Israel were dispensing justice in Jerusalem on the basis of one of the most advanced and enlightened codes of law in history.

The story of the Bible is one continuous story of the historical experience of the Jewish people in its ancient homeland in areas which are associated instinctively by any schoolchild with our people. Hebron is the burial place of the Jewish Patriarchs to this day. From there King David ruled until he moved his capital to Jerusalem.

According to the Nuremberg degree type proposition behind this resolution, Isaiah, the prophet of peace, whose immortal words are carved on a wall outside this United Nations building, would not be permitted if he returned, to live in Judea and Samaria where he once stood and preached, because in the view of the co-sponsors of this resolution his presence would constitute a danger to the demographic composition of the territories.

Mr. President,

In these territories, Jewish history began four thousand years ago and has continued uninterrupted. The Kingdom of Israel was centered upon the hills of Judea and Samaria. The biblical name of Samaria is Shomron, and it was the capital of the ancient kingdom of Israel.

Mr. President, the Bible is not just something one teaches at Sunday School. The Bible is a record of the living experience of a people which has continued in an unbroken chain of history of greatness, of tragedy, of unparalleled human contribution, of struggle for existence against overwhelming odds and always of triumph and advance. Do distinguished delegates really believe that after all that we as a people have experienced, we will be intimidated by a racist, discriminatory resolution in the tradition of the Nuremberg laws?

That this is not a political issue has been made crystal clear by our Foreign Minister in this Assembly Hall but two weeks ago. "The settlements will not decide the final borders between Israel and its neighbours. The borders will be decided upon in negotiations between Israel and its neighbours. The settlements are by no means an obstacle to peace, because if they were, we should have had peace years ago."

What characterises this debate, as indeed characterises all the debates in the U.N. on our issues, is the one-sided approach of most delegations. All resolutions demand something of Israel. The other side is never asked to desist from hostile acts, to abstain from political warfare, is never encouraged, never once in the General Assembly, to move towards negotiations between the parties.

Many of the settlements under discussion were established within the framework of the security requirements of our country as seen by our government.

It is conveniently forgotten that the Arab States maintain that a state of war eixsts with Israel. Indeed only a few weeks ago, Foreign Minister Fahmi of Egypt announced to the pess in Washington that for the first time Egypt was prepared to accept Israel as a Middle Eastern country and to live in peace in this area. Here you have an official admission of Egypt's attitude to Israel over the last thirty years, based on a complete refusal to make peace with Israel. Nevertheless when we take steps to ensure our security, they are deplored. Why ? As long as our neighbours maintain that a state of war exists, are we not entitled to take all reasonable measures to protect our population ?

It is the duty of our government, a duty which is clearly recognised in international law, to do what it sees fit to protect its inhabitants. We certainly cannot be expected to pretend that time stands still and to ignore our security requirements while the world waits until this or that Arab leader deigns to open negotiations instead of sending his delegate here to engage in name calling and abuse.

In this connection, I should add that other political and juridical questions also exist. For example there have never been recognized political borders between Israel and its Arab neighbours. Since the wars of 1967 and 1973, special agreements are in force until the achievement of a "just and lasting peace" as required by Security Council Resolution 242 and 338, a peace intended, inter alia, to establish secure and recognized borders.

Mr. President,

This Assembly has fallen into a trap set by the Arab States and others who wish to take advantage of a given situation politically against Israel.

At a time like this, you are dealing with a side issue. If the

Arab states felt unhappy about the settlements, what prevented them from entering into negotiations at any stage with us on this and other issues?

Did they really have to wait thirty years before using their automatic majority to pre-empt the time of this Assembly to discuss a side issue. When I call it a side issue, I am describing it in the words of none other than President Sadat on 4 August 1977 in an interview with A.B.C. Television when he said about the settlements; "Well, in my opinion, this is a side issue". Or let me quote Assistant Secretary Atherton before a House Committee in Washington but a few days ago. "The relationship between the settlements and the principle of self-determination cannot be discussed in isolation, because the settlements are but a single factor involved in negotiating peace".

The settlements are a side issue and certainly not an obstacle to peace. The obstacle to peace is the Arab refusal to recognize the Jewish people's right to sovereignty in its ancient homeland. The obstacle to peace is an implacable Arab refusal to recognize Israel, to negotiate with Israel, to make peace with Israel. The obstacle to peace is the refusal of the Arab countries to sit down at the negotiating table with Israel. The obstacle to peace is reflected in the immature and puerile behaviour of the Arab delegations in rising to leave the hall when our Foreign Minister rose to speak because they are afraid to listen to the other side.

The obstacle to peace lies in the failure of world leadership and opinion to insist that both sides sit down and negotiate face to face. The obstacle to peace lies in the encouragement given to Arab intransigence because of reasons of expediency. The obstacle to peace is evident daily for you to see and listen to

in the halls of the U.N. The obstacle to peace is a basic Arab attitude and until that attitude is changed there cannot be, I regret, any real advance towards peace. These are the obstacles to peace and any attempt to point a finger at Israel's actions and to characterize them as obstacles to peace is untrue and baseless and is nothing but a grave misinterpretation of events in the Middle East.

Mr. President,

These problems and others are not problems which can be treated lightly by my people. It is not generally realized how complex is this issue, and what is its significance for the Jewish people as a whole. What may be just another statement in Moscow, or some subtle political move in Washington or an expedient acquiescence in Western Europe or merely going along with the majority in some other part of the world, can be a matter of life and death for us. For many countries, in dealing with this issue, an erroneous move, a miscalculation can at worst be merely a political errror or blunder. For us it can be the difference between existence and destruction.

We are frequently accused of having a Holocaust complex. Mr. President, the Holocaust is not a complex. It is a very awesome and realistic experience of our generation. When the same Nazi philosophy calling for the destruction of our people is the basic philosophy of an organization such as the P.L.O. which is given Observer status in this Organization, then what are we we to say. Who can challenge us in a world in which

mass slaughter of nations such as in Lebanon and in Iraq, a major invasion of an independent country such as in Ethiopia and other horrifying developments throughout the world and similar catastrophes do not merit the attention of this Assembly? Who can challenge us therefore if we feel that this world is still capable of cynically ignoring the massacre and destruction of nations? Who can challenge us if our security takes precedence over other nations' political expediency?

Mr. President,

All of the problems raised here could be solved by negotiation. The issues dividing use can be resolved only when we sit down face to face to negotiate. The Arab States' refusal to negotiate with us face to face is an expression of their refusal to recognize our right to exist. Nothing can be wished away by words and redundant debates. The Arab States will not be able to change the legal status, the geographical nature and the demographic composition of the territories by pushing through yet another resolution, much as they would like to. They will only be able to obtain changes by fulfilling Resolution 242 and negotiating secure and recognised boundaries with Israel. What purpose is there in all these resolutions? They will not advance peace in our area one iota.

Let me quote the representative of the two major powers in this world. On 29 March 1954, Deputy Foreign Minister Andrei Vyshinsky of the Soviet Union said as follows in the Security Council:

"You can submit whatever resolutions you like. But life does not call for resolutions: it calls for decisions which can promote the settlement of important international questions which are still outstanding.

"What is the proper method for this? The method is that of direct negotiation between the interested parties. On one side we have the representative of Israel and on the other the representative of Egypt; they are sitting opposite one another. Let them sit down together at one table and try to settle the questions which the Security Council cannot settle now. I am deeply convinced that they can find a better solution. That is why certain representatives and States show a stubborn disinclination to permit direct negotiations between the interested parties and are trying to interfere in and, unfortunately, to hinder those negotiations."

Last year Ambassador Sherer of the United States in explaining a vote in the Special Political Committee said that:

"United Nations deliberations were not a game. The United States, for its part, would approach debates on the Middle East with one principal criterion in mind: would the debate or resolution in question help to advance the cause of peace in the area?"

Does this resolution meet this standard?

Let me conclude by reiterating the words of a very distinguished former Secretary-General of this Organization, Mr. Dag Hammarskjold who said: " You can condemn a state or you can negotiate with it but you cannot do both".

It is for this Assembly to decide for the path of negotiation. It can do so by rejecting this and similar resolutions.

הקונסוליה הכללית של
ישראל בניו־יורק

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# JEWISH SETTLEMENT IN THE AREAS ADMINISTERED BY ISRAEL

## THE CONTINUITY OF JEWISH SETTLEMENT

Jewish settlement in the Land of Israel dates back to biblical times. Throughout the ages, the Jewish People has steadfastly adhered to its historic right to live in and settle its ancestral homeland, even when conditions in the land made such activity extremely difficult. To the Jewish People, therefore, settlement is a permanent and natural feature of its existence in its homeland.

## AN INTEGRAL PART OF ISRAEL'S SECURITY

The establishment of settlements is determined primarily by security needs. Army bases are in need of considerable assistance from civilian localities. Among these needs are: supplies, medical assistance and dwellings for the families of career soldiers, even within the "green line" (the 1948-1967 armistice line between Israel and its neighbours). It is an accepted practice that army bases are located near civilian localities.

## NOT AN OBSTACLE TO PEACE

There is no connection between the progress towards a Middle East peace agreement and the establishment of settlements. The Arabs refused to negotiate peace with Israel even when there were no settlements or, for that matter, even when Judaea and Samaria were under Arab control. The settlement issue is simply a device to cover up for the Arabs' stubborn refusal to negotiate with Israel, whose destruction they seek. The recent course of events in the Middle East proves that the settlements have in no way hindered progress towards agreements. The disengagement agreements with Egypt and Syria were reached without the settlements representing a stumbling block. The present issues delaying the reconvening of the Geneva Peace Conference are not related to the settlements. They concern such questions as that of Palestinian representation, the number of delegations, etc. These problems would have to be discussed even if there were not a single Jewish settlement in the areas administered by Israel. The settlements are merely a tool of Arab propaganda. As observed by Professor Fred Gottheil of the University of Illinois, at the House of Representative hearings, on 12 September 1977: *"Jewish settlements are an issue because the existence of the State of Israel is an issue."*

NOT A MEANS OF IMPOSING SOVEREIGNTY

Should the Arabs - after three decades of unremitting military, economic and political warfare against Israel - show a willingness, now, to reach a genuine peace with Israel, there is no reason why Jews and Arabs should not be able to live together in one region. Just as the Israeli Arabs - half a million live in Israel today - are a bridge to understanding between Arab and Jew, so can Jews living in an Arab area play a similar role. The notion that Judaea-Samaria should be the one place in the world today where Jews would be barred from living is reminiscent of the racist "Judenrein" notion developed forty years ago by the Nazis. Certainly, Israel cannot accept such a notion.

Moreover, the settlements, as such, do not create political facts. The Prime Minister has made it clear, from the rostrum of the Knesset, that so long as negotiations are being held with the Arab states, Israeli law will not be applied to the territories. Besides, facts - important facts - can be established not only by action but also by inaction. We know, from bitter experience, that physical absence from places to which we have an historical and emotional attachment will lead to the loss of access to these places.

In 1948, for example, the Jordanian army captured the Jewish Quarter of the Old City of Jerusalem and drove out its inhabitants. The Armistice Agreement later concluded between Jordan and Israel affirmed the right of Jews to visit the Western Wall, Jewry's holiest shrine, though it was now under Jordan's control and no Jews lived in the area. However, the Jordanians never honoured that clause and from 1948 until Jerusalem was reunified in 1967, Jews were denied access to this most revered of their holy places.

In any case, Israel has repeatedly made it clear that it cannot and will not return to the fragile and indefensible pre-1967 armistice lines. The location of the future borders between Israel and the neighbouring Arab states, therefore, will be determined by negotiated agreements, rather than by the Jewish settlements beyond the armistice lines.

THE LEGAL ASPECT

It has been charged that Jewish settlement in the areas administered by Israel is illegal under the Fourth Geneva Convention on the Protection of Civilians in Time of War. Article 49 of the Convention entitled "Deportations, Transfers, Evacuations", prohibits "individual or mass forcible transfers as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country..." The article also states that it is forbidden to "deport" or "transfer" parts of its own civilian population into the occupied territory.

From an overall reading of Article 49, it is evident that its purpose is to protect the local population from deportation and displacement. It thus becomes apparent that such deportations and transfers are prohibited only if they involve the displacement of the local population.

This conclusion is also reflected in the Oppenheim-Lauterpacht Treatise "International Law" (Vol II-7th Edition, Page 452):

> *"The Occupying Power must not deport or transfer parts of its own civilian population into the territory occupied by it - a prohibition intended to cover cases of the occupant bringing in its nationals for the purpose of displacing the population of the occupied territory."*

Since no Arab inhabitants have been displaced by Jewish settlements, it is clear that the situation envisaged in Article 49 of the Geneva Convention does not apply to the Jewish settlements in question.

Incidentally, Jews constitute only ½ of 1 per cent of the population of Judaea and Samaria. In all the areas administered by Israel, there are less than 7,000 Jews - among a population of over a million Arabs.

THE ISSUE OF LAND EXPROPRIATIONS

It has been claimed that the settlements are being established at the expense of expropriated Arab lands. The overwhelming majority of settlements have been set up on government and public land. In the few instances where private land was involved, it was acquired for public purposes in accordance with Jordanian law and against full compensation. Similar laws prc viding for acquisition of land for public purposes exist in Israel and in most other countries.

In all cases of such land acquisition, any owner who feels aggrieved or feels that the compensation was not sufficient has right of access to the Supreme Court sitting as the High Court of Justice. This court can and does issue writs against the government or the military authorities whenever it feels that any person, including residents of the territories, have a legitimate grievance. In a number of instances, the court has found against the authorities.

RETURNING HOME

It should be emphasized that Jewish settlement is often a return to lands and homes illegally seized by the Arabs. Gush Etzion, for instance, was settled by Jews before the War of Independence. In 1948, it was occupied by the invading Arab forces, which brutally slaughtered the Jewish civilian population. Following the Six-Day War, the survivors of Gush Etzion returned

to their villages, which had remained abandoned through the years, and began the task of reconstruction. Similarly, the 1929 massacre of the Jewish community in Hebron brought about a temporary halt to a centuries-old presence in the city where the Jewish Patriarchs are buried. Failure to return to Hebron following the 1967 War might have implied acquiescence to a reality imposed by Arab aggression. Nevertheless, Israel has gone out of its way not to encroach on land or homes presently owned or inhabited by Arabs. In Hebron, for example, Israel did not reclaim the homes taken by the Arabs in 1929 but contented themselves with constructing a new quarter outside the city.

Hebron and Gush Etzion are only two examples of settlements destroyed by the Arabs. The Jewish Quarter of the Old City of Jerusalem, for example, was systematically demolished by the Jordanian occupation forces.

ARAB WATER NOT DIVERTED TO SETTLERS

It is totally untrue that water supplies are taken from the Arabs and given to the Jews. The fact is that in June 1967, Judaea and Samaria did not possess the infrastructure necessary for drinking-water plants. This task was undertaken by the military administration, which began digging and drilling wells near Hebron, Bethlehem, Ramallah, Nablus, Jenin and Tulkarm. Since then, the quantity of water supplied to these villages and towns has increased more than fivefold. The water-related projects put into operation by the administration have been of benefit primarily to the Arabs, who constitute more than 99% of the area's population.

CONTRIBUTION TO PEACEFUL COEXISTENCE

The settlement policy is an extension of the "Open Bridges" policy. During the 1920's and 30's, there was substantial economic growth in the area as a result of Arab-Jewish cooperat . The Jews introduced modern methods of agriculture and marketing which made Palestine the envy of the entire Middle East. The Arabs benefitted from this prosperity no less than the Jews. In fact, thousands of Arabs from the neighbouring countries came to settle in Palestine during those years, drawn by higher wages, better living conditions and greater economic opportunity.

Current Arab-Jewish economic cooperation has again led to substantial gains for both sides and a general reduction of tension in the area. Clearly, the creation and maintenance of economic and social ties between Arab and Jew is no less important to the breaking down of the walls of hostile Arab propaganda, than it is to continued prosperity.

We believe that the agreement concerning Judaea, Samaria and the Gaza Strip should be based on our living together with the Palestinian Arabs in those areas, and not on partition of the territory.

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# Israeli Rights and Wrongs

"What else is new?" Israel's chief delegate to the United Nations, Chaim Herzog, asked after last week's 131-to-1 vote in the General Assembly censuring Israel for establishing settlements in the territories it has occupied since 1967. What is new is that virtually all Israel's friends, including all the West European governments, joined in the vote of censure. The Israelis could take little comfort from the United States abstention. Washington has often denounced the settlements as obstacles to peace; it abstained purportedly because its co-chairmanship of the forthcoming Geneva conference dictated a neutral posture.

The critical resolution, sponsored by Egypt, stated that Israeli settlements in the occupied territories "have no legal validity and constitute a serious obstruction of efforts aimed at achieving a just and lasting peace." Ambassador Herzog responded with a tough and well-reasoned speech. Where, he asked, was Arab solicitude for the inhabitants of the Gaza Strip and the West Bank before 1967, when those territories were under the highly repressive rule of Egypt and Jordan?

He pointed out that under Israeli control, by contrast, Arab inhabitants prospered much more than neighboring Arab populations. The 6,000 Jewish settlers (2,500 on the West Bank) had not displaced a single Arab. As for legalities, Israel's title to the West Bank was at least as good as Jordan's, proclaimed unilaterally only in 1950, or as Egypt's claim to Gaza. Therefore, a resolution based on the Fourth Geneva Convention—to safeguard the rights of the "legitimate sovereign" and to protect the local population from displacement and deportation—did not apply. The settlements, Mr. Herzog insisted, are no obstacle to peace. He quoted Israeli Foreign Minister Moshe Dayan: "The settlements will not decide the final borders between Israel and its neighbors. The borders will be decided upon in negotiations between Israel and its neighbors."

All this was sensible and legally persuasive. It is true that 2,500 settlers could scarcely change the demographic composition of an area like the West Bank that contains three-quarters of a million people. But it is also largely irrelevant to the politics of the present situation.

Even to many of Israel's friends the legalities, and the generally benign nature of Israeli occupation, are of relatively modest weight. They are outweighed by the fact that during Israel's existence as a state before June 1967 its authority did not extend over the West Bank, Gaza, Sinai and the Golan Heights. Israel's friends fully acknowledge its right to guarantees that the occupied territories will never again be used as bases for terrorism or worse. They contend only that the policy of settlement is an obstacle to the diplomacy that might obtain such guarantees.

The overwhelming fact is that the Israeli Government's good faith is suspect when it comes to declarations, such as General Dayan's, that the settlements will not decide borders. On this issue, Israel speaks with more than one voice. Prime Minister Begin has often asserted that Israel would never return Judea and Samaria—as he calls the West Bank. His Minister of Agriculture, General Sharon, proposes to settle two million Jewish immigrants there. General Dayan seems to oppose annexation of the West Bank but he also insists that Israel control it indefinitely to provide a security barrier.

Disingenuous statements have been followed by confusing behavior. At first, settlers were encouraged, then they were not. Then they were enlisted in the armed forces and made to live within military camps. Then this plan, too, was altered; the settlers will now retain their civilian identity but have the support of troops. And so on. Outside observers must be pardoned if they conclude that the Israeli Government intends to encourage wider settlement of occupied territory, especially the West Bank, either to incorporate the settlements into Israel proper or to extend its security zones around them. For this reason, regardless of the juridical merits of Israeli claims, the settlements indeed constitute "a serious obstruction" to Middle East peace.

In such a welter of conflicting territorial claims, there are no "just" solutions. Israel may well have a firmer title to Judea and Samaria than any of its enemies. But its assertion may make real peace impossible. How ironic, and tragic, to put out of reach one sort of settlement—the peace settlement Israelis would for so many years have been overjoyed to achieve—because of the settlements that the General Assembly rightly decried.

Jer. Post, 25.9.77

# Dayan 'cautiously optimistic' at talk with Jewish leaders

By MALKA RABINOWITZ
Jerusalem Post Correspondent

NEW YORK. — American Jewish leaders came away from a 90-minute meeting with Foreign Minister Moshe Dayan here on Friday feeling that Dayan had conveyed a cautiously optimistic view of Israel's political prospects.

"We were not summoned to the barricades," was the widespread reaction among the hundred or so persons present. The meeting was called by the Conference of Presidents of Major American Jewish Organizations.

Many among Dayan's audience were left with an impression o si-ble progress in negotiation th Egypt as well as on prospects for renewing Geneva talks this year.

A flurry of disagreement over the settlement issue arose during an earlier meeting with the small "inner cabinet" of the presidents' conference.

American Jewish Congress president Arthur Hertzberg reportedly challenged Dayan on this issue, saying it would be easier to interpret Israel's position if Jerusalem were not quite so aggressive on the issue of West Bank settlements.

In reply, Dayan said the government had not gone beyond its predecessors on this issue. Moreover, the settlements were not prejudicial to negotiations: he indicated that options existed for dismantling them or locating them on the Arab side.

Hertzberg reportedly countered that it was a question not only of policy but of image: he mentioned statements by Agriculture Mi r Ariel Sharon and by Shmuel K .n this connection, stating that their utterances conveyed an image of greater extremism in Israel policy than was actually the case.

Dayan, accompanied by an entourage that included Ambassador Simcha Dinitz, indicated that his meetings with President Carter and with congressional committees had gone well.

**Defence Committee which would maintain parliamentary supervision over Israel's secret services. No other Israel Prime Minister has ever done this, despite its importance, Arens said.**

Arens also took exception to Dayan's style of secret diplomacy. Israel, he said, needs more open diplomacy, because this is more advantageous for a democratic coun- rather than secret talks.

ens also rebuked Dayan for his statement in Washington that settlements would not determine Israel's final borders. He claimed this indicated a readiness to dismantle settlements if necessary.

"We are only at the very beginning of negotiations for a genuine peace in the area. And one of the characteristics of a genuine peace must be that Israelis can settle anywhere in Eretz Yisrael, including any part of it which is not under Israeli sovereignty," Arens said.

## UK Jewish millionaire commits suicide

LONDON (JTA). — Sir Eric Miller, a British Jewish millionaire, committed suicide on Yom Kippur Eve following press allegations of financial irregularities in his firm.

Miller, 50, shot himself in his garden shortly after hearing the *Kol Nidrei* prayer in a synagogue in London's Great Portland Street. A synagogue official told a reporter that "you (the press) killed him."

Miller was under investigation by police over the management of his £40m. (nearly IL800m.) company. He leaves a wife and three children.

**A YACHT** crewed by five

Our beloved fath

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The funeral will leave today at 11 a.m. from the Sanhedri for the cemetery on

THE AMERICAN JEWISH COMMITTEE Institute of Human Relations, 165 E. 56 St., New York, N.Y. 10022, PLaza 1-4000

# ISRAELI POLICY TOWARD THE WEST BANK AND JEWISH SETTLEMENTS

## A Background Memorandum

By George E. Gruen and Marc Brandriss

### The Basic Issues

Recent actions by the Israel Government in the area known as the West Bank of the Jordan River have raised questions in many minds as to its ultimate intentions with respect to the disposition of the territory and the effect on prospects for peace in the Middle East. Is the legitimization of existing Jewish settlements and plans for new settlements simply an expression of the view that Jews have a natural and historic right to live anywhere—and particularly in their historic homeland, without prejudice to the final terms of a negotiated Arab-Israel peace agreement? Or are these actions meant to tell the Arabs and the world that Israel intends to exercise its political sovereignty and not relinquish any of the territory of the West Bank even to an ostensibly moderate Arab ruler, such as King Hussein of Jordan?

Do the Begin Government's actions represent a fundamental change in the Israeli position with regard to the West Bank? All the settlements approved by the previous Labor Governments could be justified in terms of security. They were consistent with the lines of the Allon Plan, which although not formally adopted, had been applied in practice. The plan, first proposed by Yigal Allon shortly after the 1967 war, envisioned an 8 to 12 mile "security belt" of settlements along the Jordan River and settlements in other sparsely populated areas of strategic significance elsewhere on the West Bank. It would leave open for eventual return to Arab control in a peace settlement the densely-populated areas of the West Bank.

However, the legalization by the Begin Government of three civilian settlements in the heart of the West Bank is interpreted by some as signifying a major departure from the previous security rationale of the Labor government. Are these actions intended to implement the public reaffirmation by Prime Minister Begin that he considers historic Judea and Samaria—the Biblical names for the West Bank area—to be "liberated" and not occupied territories; or do they constitute a strong opening bargaining position that may be modified during the course of negotiations?

At present, no clear long term policy for the West Bank and no formal annexation has been announced by the Begin Government. This is in accordance with the self-restraint on this issue incorporated into the new Government's Basic Policy Guidelines in June 1977, reportedly at the insistence of Foreign Minister Moshe Dayan. Paragraph 10 of the Guidelines notes that the Knesset had empowered the Cabinet to apply by administrative order "the law, judiciary and administration of the state to all territory of the Land of Israel" /presumably including the West Bank/, but then adds that the Government will not invoke this authority "so long as negotiations are being conducted on a peace treaty between Israel and its neighbors. The matter will be determined by the choice of proper timing, the political judgment of the Government and the approval of the Knesset after a special debate."

On August 14 the Israeli government announced that it was extending government economic and social services to the inhabitants of the West Bank and the Gaza Strip in order to grant them "equal rights, the same as those enjoyed by residents of the State of Israel." A government spokesman denied that the legal status of the territories or citizenship of the inhabitants was in any way affected by the decision and that they would remain under military administration, with Jordanian law continuing to apply to Judea and Samaria. The following day, Mr. Begin explicitly stated that the move was "by no means the beginning of annexation but was motivated solely by a desire to improve the lot of the Arabs under Israeli rule." On August 17, the Israeli government approved the establishment of three new settlements on the West Bank.

The U.S. State Department, on August 18, issued a strongly worded statement, reportedly approved by President Carter, reaffirming the American position that these "unilateral illegal acts in territories presently under Israeli occupation create obstacles to constructive negotiations." A second statement issued at the same time, while noting that Israel had emphasized the "humanitarian aims" of its decision to extend government economic and social services to the Arabs on the West Bank and Gaza, pointed out that "the action creates an impression of permanence of Israeli occupation...that is not helpful."

Israel, on the other hand, claims that the three new settlements were all in close proximity to the 1949 Armistice Demarcation Lines (the so-called "green line") and thus fell within the category of "minor modifications" that the United States had agreed could be made in establishing the final boundaries. The three settlements could be justified by the need for "secure and recognized boundaries" and would thus fit into the "Allon Plan" formula. In fact, they had been approved in principle by the previous Labor Government earlier in the year.

## Current Extent of Israeli Settlement

Whatever the ultimate Israeli intentions, the current number of Israeli civilian settlers on the West Bank has been, as President Carter himself has conceded, relatively insignificant "and quite small" when compared to the Arab population of 680,000. While the Israel Government has not provided current official figures on the extent of settlement, Israeli sources have mentioned the existence of 36 settlements on the West Bank with an Israeli civilian population variously estimated at 2,200 to 3,000. They also acknowledge the existence of less than 80 settlements in all the occupied territories with a combined population of approximately 5,000 Israeli settlers.

Other sources, such as Newsweek (August 8, 1977) estimate that 12,000 Israeli settlers are presently living in all the occupied territories, including the Golan Heights, the Gaza Strip and Sinai, with up to half of the total on the West Bank. Similarly, Bill Moyers in a CBS television report on the West Bank, on August 16, 1977, cited a total of 6,000 Jewish settlers.

However, Time magazine (August 8) alleges a total of 90 Jewish settlements throughout the occupied territories, containing an Israeli population of 60,000. Inquiries to Time as to the basis for their figure, resulted in the response by a Time researcher that their figure includes the Israelis living in nine communities in formerly Jordanian-held Jerusalem and its outskirts, which Israel since 1967 has incorporated within the enlarged Jerusalem municipality.

## Development of Israel's Settlement Policy

The political basis for Israeli settlement in the occupied territories is complex. Some have referred to it as "creeping annexation"; others as "establishing facts"; and still others as legitimate security measures adopted by an occupying power concerned for its defense.

In reality, Israeli settlement policy on the West Bank from its initial phase has been somewhat haphazard, partially due to the pressures and counter-pressures of domestic politics. In the early months after the 1967 war, it was assumed that most of the West Bank was to be returned to Jordan in exchange for a peace treaty, with the exception of East Jerusalem, which was to have a distinct status from the rest of the occupied territory. But by September 1967, the government came to the conclusion (after the Arabs had decided on "no peace, no recognition, no negotiations" at their Khartoum summit) that peace was not forthcoming. Many Israelis desired the total annexation of the West Bank. Some considered the West Bank as historically and religiously part of Israel. To them, Hebron or Nablus (Shechem) was just as much rightfully Israel's as was Tel Aviv. Others believed that from a strategic point of view, Israel's possession of the West Bank was vital to its defense.

The Herut Party historically favored Israeli expansion beyond the 1948 lines. This position was not confined to Herut. The Liberal Party, Herut's partner in Gahal (and now its major partner in Likud), had called for the retention of Judea and Samaria, as had the National Religious Party, a member of the governing Labor Party coalition. The Labor Party membership itself was sharply divided. When the Movement for the Whole Land of Israel was founded in 1967, it included some members of the Labor Party.

The Labor Government was initially able to overcome these pressures and on the whole prevented Jewish settlement of the West Bank. Many others in the Labor-led coalition, such as the late Finance Minister Pinhas Sapir were fearful of the demographic problem involved in annexing an area with such a large population of Arabs, known to have the highest birth rate in the region.

But in November 1967, the Whole Land of Israel Movement, enjoying the support of a wide and varied segment of the public, challenged the prevailing policy by supporting both morally and financially the efforts of those who were planning to reestablish the pre-1948 Jewish settlements in the Etzion Bloc between Jerusalem and Hebron, that had been captured and destroyed by the Jordanians during the War of Independence. The government gave in to these pressures and the settlements in the Etzion Bloc were restored.

Another challenge to government policy was successful when, in April 1968, a small group of religious settlers financed by the Whole Land of Israel Movement moved into the city of Hebron. (This too was an area of pre-Israel Jewish settlement, from which the Jews had fled after a pogrom during the 1929 Arab riots.) They were, for a time, confined to an Israeli military post within the city, but eventually the government decided to transfer the new settlement through the construction of a Jewish suburb and industrial complex known as Kiryat Arba (a Biblical name) in September 1971. At the same time that Kfar Etzion was resettled in November 1967, the government also decided to allow the rebuilding of Beit HaArava, a kibbutz located prior to 1948 at the juncture of the Jordan River and the Dead Sea.

However, by May 1968, the government had decided to establish Jewish settlements throughout the entire length of the Jordan Valley, and not only in areas where Jewish settlements had existed in the pre-1948 period. All the Israeli Prime Ministers since the Six-Day War have stated that Israeli policy was to maintain the Jordan River as Israel's security border and the settlements along the Jordan Rift would help establish Israel's control. This approach kept open the option of negotiations between Israel and Jordan. The Nahal (fighting, pioneer youth) settlements established by the Israel Defense Forces in conjunction with the various kibbutz movements combine military training with farm work. Israel has claimed that these settlements are in substance military outposts like those manned by regular units of the Israel Defense Forces.

Those settlements which are essentially civilian in character have been established in areas which the government had hoped would be assigned to its jurisdiction by peace treaties. Various guidelines were adopted with regard to the location of these settlements. They were to be placed on unused land with full compensation paid to the Arab owners. (State-owned land held by the Jordanian Government prior to 1967 is presently under the control of the Israel Lands Authority.) Preference was given to strategically important and underpopulated areas. In the case of civilian settlements consideration was also given to the availability of arable land and water resources.

The policy remained essentially in effect as long as the Labor Party had been in control of the government, although certain modifications in emphasis were introduced in the face of domestic pressures and external events. Prior to the Yom Kippur War, and in anticipation of elections scheduled for October 31, 1973, the Labor Party adopted a program drafted by Minister Without Portfolio Israel Galili which seemed to represent a shift toward a more hardline stance. Under the Galili plan one and a quarter billion Israeli pounds was to be allocated for the development of the West Bank and Gaza and for the integration of Arab agriculture and industry with Israel's own economy. The plan also envisioned new Jewish settlements in

all the occupied territories. It would, for the first time, entitle Jews to purchase Arab lands and property in the West Bank and Gaza.

After the Yom Kippur War, the Galili plan was shelved. In its place, the Labor Party adopted a new platform which contained a policy phrased in general terms stating that "all will be done to continue and strengthen land settlement in accordance with decisions which the Government of Israel will take from time to time, with priority given to considerations of state security." While the Alignment platform undertook to seek "defensible borders that will ensure Israel's ability to protect herself effectively," it expressed a desire for peace based on "territorial compromise," in essence, a reaffirmation of the principles behind the Allon Plan. However, pressures for new settlements, outside the general framework of the Allon Plan have continued.

The Gush Emunim movement, in defiance of Labor Government policy set up a settlement at Kadum near the ruins of ancient Sebastia in December 1975. Prime Minister Yitzhak Rabin viewed the settlement at Kadum, in the densely Arab populated Samaria, as a challenge to government authority and threatened to remove it by force if necessary. This action, however, was never carried out although the government refused to recognize its legality.

## The Begin Government's Policy

After Likud defeated Labor in the Israeli election in May 1977, its leader Menahem Begin set up a narrow coalition with the National Religious Party and General Ariel Sharon's Shlomzion Party, with the support of the Agudat Israel Party in the Knesset. All these parties support wider settlement in the West Bank. Begin had campaigned on a platform calling for the retention of Israeli control over Judea and Samaria, and the continued settlement of Jews on the West Bank. He rejected the concept of any area barred to Jewish settlement (made Judenrein). Shortly after the election Begin visited the settlement at Kadum and announced "we stand on the land of liberated Israel. We believe this is the land of Israel as a right. It belongs to the Jewish people," and called again for the establishment of new settlements.

At the same time Prime Minister Begin reiterated his readiness to meet directly with the leaders of the Arab states at Geneva or elsewhere to conclude peace treaties, emphasizing that there were no preconditions and that each side would be free to present any proposals it wished.

Mr. Begin's visit with President Carter in July did not lead to the open confrontation many had feared as both leaders stressed the personal rapport they had achieved. Yet, the much heralded peace proposal Begin brought along with him to Washington turned out to be "a plan for the framework of the peacemaking process" rather than a specific proposal for the substance of a peace agreement. Begin did not publicly specify the extent to which Israel would be prepared to withdraw from occupied land nor did he commit himself to refrain from establishing new settlements on the West Bank. Israeli press reports suggested that he was prepared for extensive withdrawal from Sinai and the Golan Heights, but would continue to insist on Israeli control of the West Bank.

Underscoring the lack of agreement with Carter on substantive issues, Begin, on his return to Israel, overruled the decision of the previous Israeli government and recognized three formerly unauthorized civilian settlements on the West Bank, including that at Kadum (renamed Elon Moreh), as legal and permanent entities. Legalization of these settlements in the heart of the West Bank appears to signify that the question of security will no longer be claimed as the sole or primary justification for settlement.

The legalization of the three settlements was immediately criticized by Secretary of State Vance who called the action an obstacle to peace. Carter, at a press conference, agreed with this assessment but tended to downplay the significance of the Israeli action. Although Begin did not clearly state whether he would accede to Carter's request that he abstain from further settlement and denied that a freeze on new settlements was in

effect, some observers gave the optimistic interpretation that Begin's action was a move to defuse the demands of his more activist supporters. These observers believe that by legalizing the three settlements and thus reaffirming the principle of support for Jewish settlement, Begin may now refrain in practice from starting any new ones until the Geneva talks are given a chance.

The decision, approved by Begin, to legalize the settlements was actually made by the Ministerial Committee on Settlements, headed by Minister of Agriculture General (ret.) Ariel Sharon, and consisting of other Cabinet members and representatives of the Jewish National Fund and the Jewish Agency, the two voluntary bodies that have historically been involved in the purchase of land and the settlement of Jewish immigrants. The Committee reportedly has before it plans, not yet approved, for at least 16 new settlements in the West Bank.

According to a report in the Washington Post of July 13, 1977, there are four projects in the planning stage for the highly populated Jordan Valley areas. At least seven new settlements are planned by the Gush Emunim movement in the more densely populated areas of the West Bank. (Leaders of the Gush Emunim announced at a press conference in New York on August 7, 1977, that 12 new Jewish settlements by their movement were in the planning stage.) Begin's own Likud Party reportedly has plans for the building of five new Jewish urban areas in the West Bank with a potential total population of 150,000 to be erected over a four-year period.

On September 3, Minister of Agriculture Sharon, an outspoken advocate of Jewish settlement in the occupied territories, stated on Israeli radio that he had a plan to settle two million Jewish settlers in a security belt extending from the Golan Heights in the north to the tip of the Sinai Peninsula in the south. The plan envisaged the establishment of a number of Jewish urban and agricultural settlements in sparsely inhabited areas of the West Bank. Sharon's plan, however, has been greeted with skepticism by the Israeli public. Most Israelis, including some members of the Begin Government, regard it as impractical in view of Israel's lack of financial resources and its present total Jewish population of only three million.

Sharon caused another stir when on September 8 he implied in an interview in the Israeli newspaper Ma'ariv that several new settlements had been secretly established on the West Bank over the last month. The Israel Government immediately notified the U.S. State Department that despite Israeli press reports to the contrary, it had not begun any new Jewish settlements in occupied territory. Sharon himself issued a clarification, claiming that the paper had misconstrued a general comment to the effect that not all steps in the lengthy settlement process are announced in the press.

Foreign Minister Moshe Dayan has defended the settlements as "productive and constructive for peace" because they bring Jews and Arabs together; therefore the West Bank settlements could be seen as assets rather than as obstacles to peace. It was Dayan, who as defense minister in the Labor government had successfully advocated the open bridges policy with Jordan and had also authorized the relatively free movement of Arab workers from the territories into pre-1967 Israel. So far there is not much social contact between the Jewish inhabitants of the settlements and their Arab neighbors, although there is growing economic cooperation.

Dayan has now elaborated a proposal for the West Bank for presentation to President Carter on behalf of the Israel Government during his September visit to the United States to attend the UN General Assembly. The proposal reportedly suggests that the Arab inhabitants of the West Bank be given substantial autonomy, with the option of retaining Jordanian citizenship, while Israel would maintain control over the defense and security of the territory. It calls for "functional" arrangements that would give the Arab population a large degree of self-government and would rely heavily on the cooperation of moderate West Bank leaders while excluding strong supporters of the Palestine Liberation Organization. The plan conceives of the evolution of several West Bank ministries, headed by local Arabs, which would deal with specific areas such as commerce, industry, health, and education, and it would encourage economic links between Israel, the West Bank, and Jordan with an unhindered flow of people and goods. Ac-

cording to the plan, Israel would reserve the right to buy and settle vacant lands. Dayan's proposal is in line with his belief that since there is no current prospect for a territorial agreement between the Arabs and Israel with regard to the West Bank, a practical solution should be attempted that would allow both sides to live together.

The Dayan plan reportedly also would offer the 300,000 stateless Palestinian refugees in the Gaza Strip a choice of Israeli or Jordanian citizenship.

## Legal Considerations Under Security Council Resolution 242

The major legal arguments put forward by those who would demand Israel's complete withdrawal from all the territories that came under its control in June 1967 are based on the erroneous interpretation of the provisions of Security Council Resolution 242 which calls for "withdrawal of Israeli armed forces from territories occupied in the recent conflict" and the second paragraph of the preamble of the resolution which asserts the principle of the "inadmissibility of the acquisition of territory by war."

U.S. Ambassador Arthur Goldberg and British delegate Lord Caradon, author of the final text, both have affirmed that the omission of the definite article before the word "territories" in the withdrawal clause was deliberate. The primary territorial objective of the resolution is the establishment of "secure and recognized boundaries." Resolution 242 does not legally require full Israeli withdrawal from all the territories it occupied in June 1967; yet, at the same time, it does not preclude a demand by the Arabs in negotiations for complete withdrawal.

The ambiguity of Resolution 242 leaves room for both opposing demands during the process of negotiations between the parties, but does not require an Israeli commitment for full withdrawal as a condition for those negotiations. Nevertheless, as Goldberg recently indicated, while the resolution's sponsors contemplated "less than total withdrawal," they definitely expected substantial Israeli withdrawal on all fronts, including the West Bank.

A more complex legal question concerns the preamble's clause affirming the principle of the "inadmissibility of the acquisition of territory by war." The Arabs and their supporters point to this clause of the resolution as the basis for their demand that Israel withdraw from all the territories occupied in June 1967 as a condition for the settlement of the Arab-Israel dispute. The Arab states, until recently, had demanded this even as a precondition for entering negotiations for a settlement.

The contrary Israeli argument as presented by Professor Yehuda Blum, Senior Lecturer in International Law at the Hebrew University in his book, Secure Boundaries and Middle East Peace, (Jerusalem, Hamakor Press, 1971, pp. 80-91), asserts that the pro-Arab view is based on a confusion between the acquisition of territories and their occupation. According to Blum, there is nothing under the UN Charter or general international law that would lead one to suppose that military occupation, especially when it is the result of a war undertaken in self-defense, is illegal. Consequently, the clause of Resolution 242 regarding the "inadmissibility of the acquisition of territory by war" cannot mean that a military occupier must withdraw before peace terms are agreed upon.

The real meaning of the clause, noted Professor Blum, is that it considers as inadmissible the attempt to base title to territory on conquest--that military victory itself does not give rights to territory, and that the future disposition of territory can only follow from an international agreement between the parties concerned. Thus if a future peace agreement between Israel and its Arab neighbors provides for secure boundaries that depart from the military demarcation lines of the 1948 Armistice Agreements, those future boundaries will be decided not on the basis of the mere physical presence of Israeli forces, but from an international agreement concluded by the parties concerned. (At Arab insistence, the Armistice Agreements explicitly state that the demarcation lines are not permanent political boundaries, and that the determination of the final boundaries between Israel and her neighbors would be left for the "ultimate settlement of the Palestine question.")

Legal Basis for Israel's Claim that the West Bank is Not "Occupied"

While these general legal considerations appear valid with regard to those territories occupied by Israel in June 1967 which lie beyond the boundaries of former Mandatory Palestine (the Sinai Peninsula and the Golan Heights), other considerations are also pertinent with regard to those territories lying within the former Mandate area which had been invaded by Jordan and Egypt in 1948. In fact, the Egyptian occupation of Gaza and the Jordanian annexation of the West Bank, Blum argues, were unlawful in themselves, and in violation of Article 2(4) of the UN Charter which calls on all members to refrain in their international relations "from the threat or use of force against the territorial integrity and political independence of any state." Consequently, the use of force by Egypt and Jordan having been illegal, it could not give rise to any valid legal claims or rights of sovereignty over any part of the former Mandatory Palestine--certainly their rights could not exceed those of Israel which assumed control over these territories in 1967.

The annexation of the West Bank by Jordan in 1950 can thus be regarded as invalid under international law. (Egypt never claimed sovereignty over Gaza.) Only two states, the UK and Pakistan, formally recognized the Jordanian annexation. After a lengthy squabble, the Arab League only saw fit to acknowledge the Jordanian annexation as a "trust" and "without prejudice to any final settlement of the Palestine question." Israel in May 1950, denounced the Jordanian action as "a unilateral act which in no way binds Israel" and that "the question of...territories west of the Jordan remains...open."

Prime Minister Begin repeated this argument recently in Jerusalem on July 27, 1977, on his return from the U.S. Responding to the State Department statement criticizing the legalization of three settlements on the West Bank, Mr. Begin said that Israel cannot be considered an occupying power in the West Bank in the legal sense because Jordan which had earlier held the territory had occupied it by aggression in the 1948 war.

In contrast to Jordan's 1948 occupation, Israelis contend that when Israel used force in 1967, it was legitimately used in exercise of its inherent rights of self-defense under the UN Charter. Since the boundary line with Jordan until 1967 was the armistice line of 1949, and not a recognized international border, when the Jordanians attacked across the line into Israel in 1967, the action constituted a violation of the armistice and the armistice agreement then became invalid. This argument, however, leaves open the possibility of the Arabs also claiming the invalidity of the 1949 armistice lines and demanding a return to the 1947 partition lines recommended by the UN General Assembly, the only internationally-approved proposal for dividing former Mandatory Palestine.

The Legal Problems of Settlement on Occupied Territory and the U.S. Position

Other legal questions arise with respect to the establishment of settlements in the occupied territories. In the past, Israel has considered these areas (excluding Jerusalem) as that of territory occupied during war and it has not annexed any part. (In June 1967, East Jerusalem was "reunified" with West Jerusalem when the Knesset enacted a law extending Israeli administrative jurisdiction to an enlarged Jerusalem municipality.)

The United States currently claims that the establishment of settlements in the occupied territories is a violation of international law under the provisions of the Fourth Geneva Convention of 1949 which declared illegal the type of population shifts employed by Nazi Germany during World War II. According to Article 49, paragraph 6 of the Convention, "The occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." (Emphasis added.) Last year William Scranton, then the U.S. Ambassador to the UN, for the first time explicitly declared that the U.S. regarded Israeli settlements in the occupied territories as "illegal," and that they presented an obstacle to peace.

However, previous to Scranton, U.S. Ambassadors to the UN were not as explicit as he was in terming Israeli settlement policy in the occupied

territories as illegal, and in the main their comments focused on the Jerusalem issue. Ambassador Goldberg, in referring to measures Israel had taken with respect to East Jerusalem, emphasized that the U.S. did not consider these measures other than "interim and provisional" which "cannot affect the present international status nor prejudge the final and permanent status of Jerusalem." Ambassador Charles Yost in July 1969 told the Security Council that the international law governing occupied territories also applied to East Jerusalem. In the U.S. view, he said: "The expropriation or confiscation of land, the construction of housing on such land, the demolition or confiscation of buildings, including those having historic or religious significance, and the application of Israeli law to occupied portions of the city are detrimental to our common interests in the city." (Emphasis added.)

By March 1976, Ambassador Scranton was asserting in the Security Council a new emphasis in U.S. policy with respect to Israeli measures in the occupied territories. On March 31, he quoted from article 49 of the Fourth Geneva Convention and then added: "Clearly, then, substantial resettlement of the Israeli civilian population in occupied territories, including East Jerusalem, is illegal under the Convention and cannot be considered to have prejudged the outcome of future negotiations between the parties on the location of the borders of States of the Middle East." He went on to say that, "Indeed, the presence of these settlements is seen by my Government as an obstacle to the success of the negotiations for a just and final peace between Israel and its neighbors."

Secretary of State Cyrus Vance recently repeated this contention after Israel's legalization of three settlements on the West Bank in July 1977: "We have consistently stated and reiterated during our discussions here in Washington that we are of the opinion that the placing of these settlements is contrary to international law and presents an obstacle to peace."

But the view that the settlements violate international law is disputed by other legal scholars. As noted above, Article 49 of the Fourth Geneva Convention was drafted to outlaw the "forcible transfers, as well as deportations" of the kind massively undertaken by the Nazis. Consequently, the prohibition in paragraph 6 has been interpreted by leading international law authorities as only "intended to cover cases of the occupant bringing in its nationals for the purpose of displacing the population of the occupied territory." (Lauterpacht's Oppenheim, 7th ed., Vol. II, p. 452) The new Jewish settlements have not displaced the local Arab population. Moreover, Israel contends that although the Geneva Convention does not legally apply to the West Bank and Gaza, it nevertheless adheres to its provisions in the treatment of the Arab civilian population.

## Political Considerations

Irrespective of the legal merits of the case, there are two issues of practical political consideration. 1. Are the settlements in the West Bank a minor factor in the Arab-Israel conflict, or do they really present a major obstacle to a peace agreement? 2. Will these issues develop into a major crisis in U.S.-Israel relations.

It seems apparent that President Carter is set on bringing about a Middle East peace settlement based on the three major principles of his Middle East policy despite the current Israel Government's opposition to two of them--the withdrawal of Israeli forces from almost all of the territory it occupied in June 1967 with only minor alterations in the pre-1967 borders, and the establishment of some kind of Palestinian homeland on the West Bank, preferably linked with Jordan. Only on the third component of Carter's outline for peace is there agreement with Israel--the acceptance by the Arabs of a real peace with diplomatic and trade relations with Israel.

In his news conference following the Begin visit, Carter indicated his awareness of the pressures within Israel for the establishment of new settlements that Begin has to contend with. However, when asked in a Time magazine interview, published August 8, whether he would use "persuasion or pressure" if Israel's position at Geneva was quite different from his own, Carter responded in general terms, referring to his efforts to convince both Arab and Israeli leaders to support the American approach, but

clearly implied that he would appeal to Begin's domestic and foreign opposition: "I would try to marshall the support of the leader, first of all. Secondly, the opinion of his people back home, the constituencies that might exist in our own country that would have influence around the world, opinion that exists in the European community, and in the Arab nations as well." Thus President Carter appears determined to gain wide support for his own view of a fair territorial settlement. Prime Minister Begin has similarly indicated that he is prepared to appeal directly to American public opinion to oppose objectionable features in the Carter Administration's Middle East policy.

It is still too early to speculate on the final outcome of the current Israeli and Arab foreign ministers' consultations with President Carter. In a September 20 news conference following his talks with President Carter and State Department officials, Foreign Minister Dayan acknowledged that wide gaps still existed between Israel and the United States as well as between Israel and the Arabs, but added that, "We all have to distinguish between the start of negotiations, the bargaining, and the ultimate compromise. I think ultimately an agreed formula will be found."

While noting the differences between Israel and the U.S. over continued plans for Israeli settlements in the territories occupied by Israel during the 1967 war, Dayan said that in a final agreement, "if some settlements were on the other side of the ultimate border" means will be found to "remove them" or adjust to circumstances in some other way. However, Dayan added that, "we can assure the Arab states negotiations will not be decided on settlements."

Dayan thus reflected the Israeli view that the real obstacle to peace in the Middle East is not the restoration of Jewish communities in the historic land of Israel, but the continuing Arab refusal to acknowledge the right of a sovereign Jewish state to exist in the Middle East alongside the 21 sovereign Arab states.

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