

Cabinet Secretary

Jerusalem, 30 Sivan 5783
19 June 2023

To:

Adv. Suhad Bishara

Adalah – The Legal Center for Arab Minority Rights in Israel

Re: **Your letter to the Prime Minister dated 9 March 2023 regarding Decision B/6 of the Political – Security Cabinet on the regularization of the settlements in Judea and Samaria**

In reference to your letter, and as the Cabinet Secretary who brought the proposal for this decision before the Cabinet, I am honored to reply to you, as follows:

1. Initially, I would like to emphasize that this decision was taken lawfully by the Cabinet, on the basis of legal advice provided by the defense authorities.
2. As noted in my previous letters, Judea and Samaria were not seized from a sovereign state recognized by international law, and the State of Israel has a right to impose its sovereignty over these areas as they comprise the cradle of the history of the Jewish people and are an inseparable part of the land of Israel, although [Israel] has chosen, as a matter of policy, and in the absence of sovereignty, to administer them as territories under belligerent occupation.
3. It must be noted that Jordan seized control of the territories of Judea and Samaria unlawfully at the end of the British mandate and was considered, between the years 1948 – 1967, to be an occupier of these territories by [all] countries of the world (with the exception of Great Britain and Pakistan).
4. The contentions raised in paragraph 2 [of your letter] that relate to your mapping of settlements located within the areas of rural Palestinian councils are futile and, in fact, the settlements that were approved are located within the areas of jurisdiction of the Judea and Samaria regional councils. It must be emphasized in this context that the maps attached to your letter are immaterial, as the designation of various areas as "village lands" does not signify their being owned by private individuals or by the municipality of any particular village and is intended to serve administrative needs.
5. Furthermore, the land on which the settlements that were regularized are located are government-owned lands, in accordance with the law or acquired, with the consent of its owners. The reference points specified in this government decision determine that these are state lands in accordance with the law and subject to the required individual regulations.

6. Hence, also the claim in paragraph 3 of your letter that this decision is contrary to the High Court of Justice ruling in the **Silwad** case is immaterial, as this decision [by the High Court] concerns the Regularization Law, which has been annulled, although not for the reasons that you specified and not due to the absence of authority, but rather on the grounds of the use of private property without the consent of its owner.
7. As for your contentions in paragraphs 4 and 5, stating that this decision is contrary to international law, I wish to clarify that the legal right of the Jewish people under international law was anchored in the mandate that was approved unanimously by the League of Nations at the San Remo Conference in 1920 on the basis of the Balfour Declaration. The Mandate for Palestine determined that these areas were to be designated for the re-establishment of a national home for the Jewish people. The recognition of the right of the Jewish people to establish a national home in the land of Israel, including the areas of Judea and Samaria, was based on the historical and religious rights of the Jewish people in the land.¹ This was reinforced in the Treaty of Lausanne, signed on 23 July 1923, and in the San Francisco Conference of 1945, where proposals by Arab states to exclude the mandate over the Land of Israel and the historical right to it were rejected. The above rights of the Jewish people were never revoked.
8. With respect to the claim raised in paragraph 5, regarding the applicability of the Fourth Geneva Convention and the regulations annexed to the Hague Convention, it must be briefly clarified, that Jordan was not a legitimate sovereign, and the laws of belligerent occupation apply solely to territories that were seized from a legitimate sovereign.² Even though, in practice, Israel applies the Convention's humanitarian directives to the Arabs in Judea and Samaria and addresses their rights. In any event, it must be emphasized that the [governmental] decision in question is in line with the law applicable in the area and the rulings of the High Court of Justice as, according to the decision, this matter concerns the regulation of settlements on state land or on private properties whose owners granted their consent and not the expropriation of private property.
9. The aforementioned is based on the Mandate for Palestine that legally anchored the Jewish people's right to the land [of Israel], a right that has never been revoked. It was further established in numerous High Court of Justice rulings that the commander of the area is subordinate to the Minister of Defense and the government of Israel and to the law applicable to Judea and Samaria.
10. Regarding the contention raised in paragraph 6, this is a **presidential declaration by Malta** which holds the presidency of the Security Council and which the Council sought to adopt. The United Arab

¹<http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/The+Balfour+Declaration.html>;
https://www.rothchildarchive.org/collections/Rothschild_faqs/walter_rothschild_and_the_balfour_dclaration;
<https://www.gov.il/en/Departments/General/the-balfour-declaration-20-Oct-2017>

²Meir Shamgar, The Observance of International Law in the Administered Territories, 1 Isr. Y.B. Hum.Rts.262 (1971)

Emirates announced that it would not advance this resolution in the Security Council. **This is not an operative decision.** Declarations of this type do not bind the State of Israel.

- 11.** In summary, Israel is not an occupying power in Judea and Samaria but holds these areas legally, and the decision in question does not alter the law applicable in Judea and Samaria, in keeping with international law. The above is furthermore anchored in the book of Maccabees 1, chapter 15, verse 33: **“It is not a foreign land we have taken nor have we seized the property of foreigners, but only our ancestral heritage, which for a time had been unjustly occupied by our enemies”.**

Sincerely,

Yossi Fuchs

[signature]

Cabinet Secretary

Copies:

Yoav Gallant, Minister of Defense

Major General Yifat Tomer – Yerushalmi, Military Advocate General

Major General Yehuda Fox, IDF Central Command commander

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