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ISRAELI SETTLEMENT AND ISRAELI LAW IN JUDEA AND SAMARIA

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Israeli settlement in Judea and Samaria was resumed in the wake of the Six-Day War in 1967. In the first decade after the war, under the rule of a Labor-led government, Jewish settlement was concentrated in the Etzion Bloc (a region that had been settled by Jews until they were overrun by the Arab Legion in 1948), Kiryat Arba, which adjoins Hebron, and the Jordan Valley (an area of agricultural settlement). During the years of a Likud-led government (1977-1984), as well as during the time of the National Unity Government (1984-1988), headed jointly by the Labor Alignment and the Likud, Israeli settlement was undertaken in all areas of Judea and Samaria.

Types of Settlement

From an organic and municipal standpoint there are three categories of settlement:

1) Agricultural settlements. Kibbutzim and moshavim are located primarily in the Jordan Valley, the Etzion Bloc, and the South Hebron Hills. These settlements are internally organized as agricultural cooperative units and receive municipal services from a regional council in every contiguous geographic region.

2) Urban settlements. A number of cities and towns exist in Judea and Samaria ranging in size from 1,000 to 12,000 inhabitants and having the legal status of local councils. They include

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Kiryat Arba, Efrat, Maaleh Adumim, Maaleh Ephraim, Ariel, Emanuel, and Alfei Menashe. Any person wishing to reside in these cities may do so.

3) Communal settlements. This form of settlement typifies Judea and Samaria. What is unique to communal settlements is that the settlement, which comprises from 70 to 150 families, can decide on its own way of life, including control over deciding who will be accepted as a resident of the settlement. A number of these communal settlements are religious, others secular, and some are mixed -- religious and secular. All have established principles for living together which have proven durable over time. The communal settlements are also organized within the framework of regional councils (federations of smaller settlements).

Six regional councils function in Judea and Samaria under Israeli law. They include South Hebron Hills, Megillot, Gush Etzion, Jordan Valley, Mateh Binyamin, and Samaria.

The Legal Foundation of Municipal Authorities

The municipal organization of the local and regional councils was established by an order that was issued by the military commander of the Judea and Samaria region in March 1978 (a few days prior to the signing of the peace agreement with Egypt and a number of months after the Camp David talks). The regional commander is the supreme authority in Judea and Samaria and the legislation which emanates from him, formally termed orders (tzavim), has the normative sanction of primary legislation (akin to laws passed by parliament in Western democracies). The orders which the regional commander legislated are quite brief and simply noted that the local and regional councils would be conducted according to a set of bylaws to be established. These laws, which were issued on the same day and have since undergone various changes, amendments, and additions, are based to a large extent on Israeli municipal legislation governing local and regional councils.

An Enclave of Israeli Law

Overall, it is Jordanian law that is recognized in Judea and Samaria. Jordanian law provides for an entire fabric of municipal structure including cities and village councils. However, the political decision that was taken left Israeli settlements outside the bounds of existing Jordanian legislation. Thus in the municipal sphere a situation has been created where a quasi-enclave of Israeli law exists within Judea and Samaria. This enclave is not characterized by territorial contiguity since the areas of the local and regional councils encompass only the Jewish settlements, whereas the adjacent Arab communities are not included in this framework and Jordanian law continues to apply to them.

The local and regional councils were originally intended to provide solely municipal services. However, in Judea and Samaria many foundations of Israeli administration such as education, business licenses, etc. were introduced under this local council umbrella.

An important development was the establishment of courts for local affairs over which Israeli judges from the magistrate courts preside, and one can appeal their decisions to Israeli district courts. At first these courts were awarded limited prerogatives akin to those awarded the municipal courts in Israel with regard to zoning and building, sanitation, etc., but gradually they received additional prerogatives in civic affairs and matters concerning welfare, inheritance, youth, and the like.

The budgets of the local authorities of the Israeli settlements in Judea and Samaria are subject to the approval of a central government-appointed overseer (memuneh) as are those of local authorities on the other side of the Green Line. At first, this was the same staff officer responsible for overseeing the budgets of the Arab local authorities in the region. Subsequently the functions were separated and in practice the local authorities of the Israeli settlements are subordinated to the Israeli Ministry of Interior which has

designated them as comprising an additional district for supervision.

The same situation applies to local bylaws. The local bylaws passed by a local authority are valid only after they have been authorized by the government overseer. Here, as well, the influence of the Israeli Ministry of Interior is discernible and, in practice, the local bylaws are copies of those used in Israel. Even the rates of taxation (real estate taxes) follow the Israeli tax tables and the annual rates are adjusted by employing the very same gauge (a percentage increase added onto the rate for the elapsed tax year) used in Israel.

In summary, the establishment of the Israeli local authorities in Judea and Samaria was formally the result of an order of the military commander of the region, but in practice these councils are under Israeli administration and are supervised by the Israeli Ministry of Interior. They receive disbursements from additional Israeli government bodies as well. For example, the Ministry of Religious Affairs funds the budgets of the religious councils which work alongside the local councils. The fact is that except for the original order which established the local councils, there is little difference between Ariel in Samaria and Kfar Saba near the coast or between the Jordan Valley Regional Council and the Beit She'an Regional Council in pre-1967 Israel. In day-to-day affairs, all are accorded the same treatment by the Israeli administration.

The Problem of Applying Israeli Law

As noted earlier, overall, in the area of Judea and Samaria it is the Jordanian law in force in June 1967 that is applied in the governance of the area. This law itself is comprised of a number of layers including Ottoman law and Mandatory law, as well as Jordanian law, and it has since been supplemented by the orders and regulations of the military commander of the region. The amount of this legislation is considerable; the number of orders, primary legislation promulgated since 1967, presently totals about 1,200. This application is territorial and applies to everything located in Judea and Samaria: territory, people, merchandise, activities, etc.

The Israelis living in Judea and Samaria arrived there from Israel and they view Israel as their state. They clearly feel that Israeli law and not Jordanian law or the orders of the military governor should apply to them. The application of the laws of Israel in their entirety to Judea and Samaria would be tantamount to annexation and this step has not yet been taken (except for East Jerusalem which was annexed on June 28, 1967). It is difficult to assume that annexation will be carried out in the near future since, according to the Camp David Accords, the final status of the area is to be determined after five years of autonomy by the unanimous decision of a number of bodies including Israel and the representatives of the Palestinian Arabs. Therefore, a unilateral Israeli annexation of Judea and Samaria would constitute a violation of the Camp David Accords, assuming that these are still valid although they remain unimplemented after ten years. Since Israel's formal position is to adhere to these Accords, it is difficult to assume that Israel will take such a unilateral step.

What is the solution to this problematic situation? Let us look at several alternatives that were used in the last twenty years.

Applying Israeli Law Through the Military Government

One method which has been applied in practice since 1967 is to have the military commander of the Judea and Samaria region promulgate orders that are based on Israeli legislation on the same subject. These orders are territorial and apply to Arabs and Jews alike with the end result being that on that given subject the law which applies in Judea and Samaria is identical to that which applies in Israel. This phenomenon began in 1967 with the promulgation of orders that govern auto insurance and persisted in the legislation

of a codex of transportation laws in Judea and Samaria that is identical to that of Israel (the wording of the codex is identical down to the paragraph numbers for the convenience of the police and the legal system).

This was also the case when the Israeli law on accident damage was reformed and a "no-fault" system was instituted. On the heels of the Israeli legislation, an identical order was enacted in Judea and Samaria. This procedure was also utilized regarding the requirement for wearing seat belts.

The application of Israeli legislation to Judea and Samaria also occurred in the wake of all the economic activities and the price freeze involved in Israel's 1985 economic reform program designed to halt the state's deteriorating economic situation. This policy of emulation was similarly employed in other areas lacking political import such as those involving dangerous drugs or restitution for lost property. Here, as well, the wording and numbering of passages in the law is identical.

Knesset Laws for Israelis in Judea and Samaria

Almost immediately in 1967 the need arose for a solution to questions of legal jurisdiction. Emergency ordinances were promulgated and were subsequently adopted by the Knesset that determine in principle that an Israeli who committed a crime in Judea and Samaria can be arrested, transferred to Israel, and tried there. In a decision by Supreme Court Justice Barak, these regulations were analyzed in depth and a precedent was established to the effect that there need be no jurisdictional conflict in such cases. If the offense which an Israeli citizen committed in Judea and Samaria is a crime in Israel, even if it is not a crime in Judea and Samaria, the accused may be brought to trial in Israel. One can convert those facts regarding the crime and its circumstances which are unique to Judea and Samaria to those which apply in Israel. This expansion of the regulations via the interpretation of the Supreme Court means that in practice Israeli penal law applies to Israelis residing in Judea and Samaria. (It should be noted that the possibility exists, at the discretion of the Attorney General, to place Israeli residents of the areas on trial before a military court in Judea and Samaria.)

Except for these regulations, the Knesset did not deal with Israeli settlements in Judea and Samaria throughout the entire period of the Labor government. Perhaps this can be ascribed to the apprehension that a Knesset law applying to Judea and Samaria would carry a hint of annexation. This concern was not shared by the Likud government. Immediately after its establishment, the government initiated a law amending the tax ordinance to apply Israeli tax law to the income of Israelis in Judea and Samaria, instead of the tax laws applying in the territories.

A similar amendment was passed in 1984 to the law on real estate profit taxes that essentially applied the law to Israelis in Judea and Samaria and determined that in such transactions in the region, the seller was obligated to pay real estate tax and the purchaser a purchase tax on real estate (a plot, an apartment, a house, etc.).

A similar amendment was enacted by the Knesset in 1986 regarding the Value Added Tax (VAT). This amendment applied the Israeli VAT law to persons and corporations operating in Judea and Samaria. The impact of this change was not so great since the VAT laws had already been applied in Judea and Samaria by a governor's order (although they had been called the excise added tax). Also, even prior to the Knesset law, Israelis had paid the VAT. However, the importance of the Knesset law lies in its administrative aspect: Israelis in Judea and Samaria are subordinated to the VAT authorities in Israel rather than to the military governor who administers the excise added tax.

An important Knesset amendment passed in 1984 determined that a number of Israeli laws governing such matters as social security and compulsory military

service would henceforth apply to Israelis in Judea and Samaria. What is remarkable about this law is not only its enumeration of laws which apply to Israelis in Judea and Samaria, but also the fact that it established a mechanism by authorizing the Knesset Law and Constitution Committee to add additional laws which would apply to Israelis living there. As of this writing, no actual use has been made of this authority, but it should be realized that this Knesset committee, in a particular constellation of circumstances, can apply a large number of Israeli laws to the Israeli citizens of Judea and Samaria and in effect de facto annex the Israeli residents of the region to Israel.

The Application of Israeli Laws Through Local and Regional Council Bylaws

A less blatant and therefore unfamiliar method for applying Israeli law to Israeli citizens in Judea and Samaria is the legislation of appendices to the bylaws of the local and regional councils which include the particular Israeli law which one seeks to implement in those territories. The appendix notes the number of those paragraphs which have been modified or applied to the situation in Judea and Samaria (for example, a change in the name of the authorized court). In this manner, Israeli laws in such areas as education, welfare, youth, adoption, and inheritance have been applied. This method, which has not received wide publicity, in fact constitutes a clear determination that Israeli law will apply in the area of Israeli settlement.

Areas Where No Application of Israeli Law Has Occurred

There are a number of areas in which there have been conscious and deliberate decisions not to apply Israeli law to the Jewish residents of Judea and Samaria. Thus, for example, in the sphere of planning and building, Jordanian law from 1966 continues to apply, but governor's orders, which did not change the law itself, established special planning authorities for Israeli settlements. Thus, even if the wrapping remained Jordanian, its substance was filled and continues to be constantly filled by the decisions of Israeli bodies.

In matters of public order and security, the orders of the military government remain in force. On a number of occasions Israelis have been placed on trial before military courts in Judea and Samaria for violation of those orders.

To avoid creating unnecessary controversy, there are subjects where Israeli laws have not been enacted but in practice Israeli principles apply. Thus, for example, in matters concerning water, all Jordanian laws remain in force and there are no orders or laws that are particular to Israelis. In practice, however, the authorities dealing with the subject of water deal with the Israelis according to regulations prevalent in Israel on such matters as water quotas or prices.

In the sphere of civil law, there has been no attempt to find an all-embracing solution to the problem and the subject is pending in the courts, which are dealing with such matters by invoking the principles of private international law. Therefore, one must assume that a contract between two Jewish residents in a community in Judea and Samaria which is drafted in Hebrew will be interpreted to the effect that the applicable law is Israeli law. On the basis of a precedent established by the Supreme Court ten years ago, the court empowered to deal with the subject will be a court in Jerusalem.

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In summary, there is no general, multi-staged, and all-embracing plan to either entirely or partially annex the territory of Judea and Samaria to Israel or to annex to Israel solely those areas of Jewish settlement. The legal solutions required to deal with daily life are a result of the personal application of Israeli laws to Israeli settlers. This has been effected partially by laws of the Knesset and its committees, partially by orders of the military governor, and partially through the local

and regional councils. This legal pattern follows no uniform and organized academic model but rather a patchwork of ad hoc solutions. Nevertheless, the cumulative result of this network is that the mesh is becoming more and more tightly woven and the holes in it have greatly diminished. Gradually this mesh will turn into a full-fledged legal garb, and slowly the Israeli residents and the areas in which they reside will come to constitute an expansion of Israel beyond its pre-1967 boundaries. This phenomenon will continue incrementally as required by life's exigencies, the pressures of the Jewish residents, or the needs of the military government. Hence there is no operative legal need (excluding political considerations) for a formal act annexing the region of Israeli settlement to the State of Israel in the future because a creeping annexation has already taken place.

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