

[emblem]
Ministry of Foreign Affairs

Jerusalem, 13 Elul 5727
18 September 1967

TOP SECRET

To : Mr Adi Yafeh, Political Secretary to the Prime Minister
From : Legal Adviser, Ministry of Foreign Affairs

Subject: Settlement in the Administered Territories

At your and Mr Raviv's request, I am enclosing herewith a copy of my memorandum of 14.9.67 on the above subject, which I submitted to the Minister of Foreign Affairs. My conclusion is that civilian settlement in the administered territories contravenes explicit provisions of the Fourth Geneva Convention.

Regards,
[signed]
T. Meron

Copy: Mr A. Shimoni, Director of the Minister's Office

Jerusalem, 16 Elul 5727
21 September 1967

TOP SECRET

Minister of Justice

Dear Minister,

Subject: Settlement in the Administered Territories

Please find enclosed a copy of a memorandum on the above subject, which was written by the Legal Adviser to the Ministry of Foreign Affairs after a conversation with me.

The Prime Minister has asked that your attention be drawn to the enclosed with a view to the establishment of outposts, army bases and settlement points and the settlement of refugees in the administered territories.

The Prime Minister will be grateful for your opinion.

Regards,

Aviad Yafeh
Head of the Prime Minister's Office

Copy: Dr Y. Herzog

TOP SECRET

14.9.67

TOP SECRET

Minister of Foreign Affairs
Legal Adviser

Most Urgent

Subject: Settlement in the Administered Territories

Mr Raviv wrote to me to say you had asked for my opinion “on restrictions and dispensations under international law for occupying states where it concerns the cultivation of lands”.

The above question is very general and difficult to answer but I understand it in the context of what I have heard from Mr Adi Yafeh, that is to say, in relation to the possibility of Jewish settlement in the [West] Bank and the [Golan] Heights as well as the settlement of Arab refugees from Gaza in El-Arish or the [West] Bank. In this opinion, I will deal only with the first question, which, from a political and legal point of view, seems to me to be the most delicate. I am afraid there is in the world very great sensitivity to the whole question of Jewish settlement in the administered territories and any legal arguments that we shall try to find will not counteract the heavy international pressure that will be exerted upon us even by friendly countries which will base themselves on the Fourth Geneva Convention. These countries may claim that, while they expect for Israel to settle Arab refugees, Israel is busy settling the administered territories with its citizens.

From the point of view of international law, the key provision is the one that appears in the last paragraph of Article 49 of the Fourth Geneva Convention. Israel, of course, is a party to this Convention. The paragraph stipulates as follows:

“The occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies”.

The Commentary on the Fourth Geneva Convention prepared by the International Committee of the Red Cross in 1958 states:

This clause was adopted after some hesitation, by the XVIIth International Red Cross Conference. It is intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories. Such transfers worsened the economic situation of the native population and endangered their separate existence as a race.

The paragraph provides protected persons with a valuable safeguard. It should be noted, however, that in this paragraph the meaning of the words “transfer” and “deport” is rather different from that in which they are used in the other paragraphs of Article 49, since they do not refer to the movement of protected persons but to that of nationals of the occupying Power.

The prohibition therefore is categorical and not conditional upon the motives for the transfer or its objectives. Its purpose is to prevent settlement in occupied territory of citizens of the occupying state. If it is decided to go ahead with Jewish settlement in the administered territories, it seems to me vital, therefore, that settlement is carried out by military and not civilian entities. It is also important, in my view, that such settlement is in the framework of camps and is, on the face of it, of a temporary rather than permanent nature.

Even if we settle an army and not civilians, we must, from the point of view of international law, have regard to the question of ownership of the land that we are settling. Article 46 of the Hague Regulations concerning the Laws and Customs of War on Land (Annexes to the Hague Convention (IV) of 1907), regulations that are regarded as a true expression of customary international law that is binding on all countries, states in relation to occupied territory that:

“private property ... must be respected. Private property cannot be confiscated”.

As regards state lands, Article 55 of the Hague Regulations stipulates that an occupying state is permitted to administer the property and enjoy the fruits of the property of the occupied state. Even here there are certain limitations on the occupying state's freedom of action, which derive from the occupying state not being the owner of the property but having merely enjoyment of it.

In relation to the property of charitable, religious or educational institutions or municipalities, they are treated under Article 56 of the Hague Regulations as private property.

It will be noted that an order concerning abandoned property (private property) (Order No. 58), issued by Brigadier Narkiss as IDF Commander in the West Bank region (and Order No. 59) concerning state property are in fact in keeping with the provisions of the Hague Regulations on the observance of property rights.

I will now go on to discuss a number of concrete issues pointed out by Mr Yafeh.

A. Regarding the possibility of engaging in any kind of agricultural activity and settlement on the Golan Heights, it has to be pointed out that the Golan Heights, which lie outside the area of the mandated Land of Israel, are unequivocally “occupied territory” and are subject to the prohibition on settlement. If it is decided to establish any settlements, it is essential that this be done by the army in the form of camps and that it does not point to the establishment of permanent settlements.

B. In terms of settlement on the [West] Bank, we are trying not to admit that here too it is a matter of “occupied territory”. We argue that this area of the Mandate on the Land of Israel was divided in 1949 only according to Armistice Lines, which, under the Armistice agreements themselves, had merely military, not political, significance and were not determinative until the

final settlement. We go on to say that the agreements themselves were achieved as a temporary measure according to Security Council action based on Article 40 of the United Nations Charter. We also argue that Jordan itself unilaterally annexed the West Bank to the Kingdom of Jordan in 1950 and that the Armistice Lines no longer exist because the agreements expired due to the war and Arab aggression. We must nevertheless be aware that the international community has not accepted our argument that the [West] Bank is not “normal” occupied territory and that certain countries (such as Britain in its speeches at the UN) have expressly stated that our status in the [West] Bank is that of an occupying state. In truth, even certain actions by Israel are inconsistent with the claim that the [West] Bank is not occupied territory. For example, Proclamation No. 3 of the IDF Forces Commander in the West Bank of 7.6.67, which brings into force the order concerning security regulations (in Section 35), states that:

“A military court and the administration of a military court will observe the provisions of the Geneva Convention for the Protection of Civilians in Time of War in everything relating to legal proceedings and where there is conflict between this order and the aforementioned Convention, the provisions of the Convention will prevail”.

With regard to Gush Etzion, settlement there could to a certain extent be helped by claiming that this is a return to the settlers’ homes. I assume that there are no difficulties here with the question of property although the matter requires close examination. With regard to Gush Etzion too, we have to expect, in my view, negative international reaction on the basis of Article 49 of the Geneva Convention. Furthermore, in our settlement in Gush Etzion, evidence of intent to annex the [West] Bank to Israel can be seen.

On the possibility of settlement in the Jordan Valley, the legal situation is even more complicated because we cannot claim to be dealing with people returning to their homes and we have to consider that problems of property will arise in the context of the Hague Regulations. I cannot go further into this question without having a lot more detail.

On the issue of the settlement of Arab refugees, which is, in my opinion, a less complex issue from both a political and a legal point of view, I will write separately.

Regards,
[signed]
T. Meron

Copy: Director-General
Mr S. Hillel

Translator's Note

1. Square brackets indicate where the original was unclear or illegible or where the translator has inserted an explanatory comment of his own.