

## Summary of the Opinion Concerning Unauthorized Outposts

At the request of the Prime Minister bureau, I have prepared a summary of the opinion. The summary does not include the entire opinion, which naturally deals with many more subjects, with further details.

The second chapter of the opinion is a brief of the findings, conclusions and recommendations. This summary is based upon this brief. However, considering that this summary is presented a part from the opinion, a few remarks must be added.

### Opening Remarks

#### A. The Commission

The commission issued by the Prime Minister is enclosed.

#### B. A Procedural Remark:

These are the main subjects the opinion deals with:

The opinion first explores the background for the growth of the unauthorized outposts phenomenon. Then it analyzes the legal background for establishing a legal settlement in the area of Judea, Samaria and Gaza, according to the local law (*lex locus*). In this context, a brief view of the laws governing Israel in its actions in the areas is presented. Following are the requirements for establishing a legal settlement. This includes the political, land, municipal (bounds of jurisdiction) and planning aspects.

In light of this legal background, a review of the unauthorized outposts is presented. This includes: the definition of an unauthorized outpost; numerical figures as far as I know them, including evacuation figures up to date; categorization of the outposts; the major ways of their establishment, as far as I know them.

A main chapter in the opinion deals with the involvement of state authorities and public authorities in the establishment of unauthorized outposts.

This framework reviews the involvement of the Settlement Division in their establishing and financing, as far as I know it.

It reviews the involvement of the Ministry of Construction & Housing - in financing infrastructure and public buildings for the outposts, financing the planning of unauthorized outposts, and the purchase of caravans affair in 2003.

It reviews the involvement of the Ministry of Defense in the matter of the unauthorized outposts, meaning the involvement of both the Civil Administration and the Assistant to Defense Minister - Settlement Affairs.

Following the factual findings is the chapter dealing with law enforcement in the territories. There I stressed the reasons for the failure of law enforcement, and recommended a legislative reform, concerning the law governing the territories, with an emphasis on actions concerning the establishment of unauthorized outposts.

As for recommendations:

Each chapter in the opinion includes recommendations concerning the findings presented in it. In addition, the opinion concludes with a general chapter of recommendations, some of which already mentioned. I enclose here the full recommendations chapter, although some of the recommendations already appear within this summary.

I further enclose to this summary the concluding chapter of the opinion, as presented at the end of the recommendations chapter.

#### C. The Authorities Reviewed in the Opinion, and the Authorities Not Reviewed

It should be emphasized what is not to be found in the opinion, and why I chose the authorities I dealt with:

An initial inquiry already lead me to the conclusion that the main relevant authorities involved in the matter of unauthorized outposts are the Ministry of Defense and the IDF, including the Civil Administration; the Ministry of Construction & Housing; the Settlement Division of the World Zionist Organization; the Ministry of Interior Affairs. Hence this opinion focuses on the information I gathered mostly in these offices.

Nevertheless, other bodies are involved in establishing the unauthorized outposts, including the aerial councils in Judea, Samaria and Gaza, and other governmental ministries. Due to the shortage of time allotted to me (which I even exceeded), my limited means, the many bodies involved, and the limited accessibility to information - I have not succeeded in the given time to examine all that requires examination. Therefore I have submitted an interim report.

#### D. Difficulties in Accessibility to Information Regarding the Establishment of the Unauthorized Outposts:

The relevant information regarding the unauthorized outposts is not to be found in a single office. On the contrary. Every office that supplied information to me holds partial information regarding the outposts. There is no office or body which gathers all of the relevant information concerning the matter of outposts, nor coordinates government activity regarding them.

Part of the information is accessible, but a major part of it is concealed. Even after inquiring and exploring, I cannot say that I have reached all the necessary information. This is sometimes due to bureaucratic complexity, the scope of the information, the number of authorities and offices involved in the matter, and the time passed. But in more than a number of occasions I was under the impression that the office or official in charge of the relevant information was not open to deliver it. I received parts of such information from other sources. The result is I could not reach all the required information.

Furthermore, some of the people I approached refused to converse with me. Some claimed to be too busy, some met with me but refused to give answers to the point to most of my questions.

As for Material Received from the Relevant Ministries:

Compared to the material I have asked for, the material handed to me by some of these ministries was partial. It was only by the end of January 2005 that the Ministry of Construction & Housing responded to my request for data concerning investments by the Ministry in unauthorized outposts over the last four years. This was only after correspondence starting September 2004, oral and written requests, reminders, an appeal to Minister Ms. Livni, her personal interference and demand to release the material - all of which was in vain (soon afterwards Ms. Livni left office to serve in the Ministry of Justice). Only after Mr. Herzog became Minister of Construction & Housing I received a response to my request, which I am not yet satisfied with, and which needs to be thoroughly examined (see detailed reference in section 8.3.1.1-d).

I might add, that in response to my last letter to the Ministry of Housing, in which I stressed that at least some of the data given to me was incorrect, the Ministry of Construction & Housing informed me, just less than a week ago, that it admits now the falseness of some of the data, and asked for further time to check it out. Needless to say, the false data is amounts, which are lower than the amounts actually allotted to unauthorized outposts.

Although requested, the Settlement Division of the World Zionist Organization has not yet delivered data concerning the amounts it invested in unauthorized outposts, which it took part in establishing. The Infrastructure Dept. of the Civil Administration has not yet delivered full data concerning unauthorized outposts, claiming this takes more time and requires much work.

#### E. Accuracy of Information Regarding Unauthorized Outposts

The data I hold was received from the Infrastructure Dept. of the Civil Administration. Possible errors may exist in this data, but I have no other source for certified information regarding the unauthorized outposts, including aerial photographs, valid and invalid programs, land privileges, etc.

#### F. Examination of the Outposts According Local Law

The opinion examines the legality of the unauthorized outposts only in the aspect of local law (*lex locus*), and not other possible aspects of international law.

#### G. Examination of Unauthorized Outposts and Not of Other Settlements

The opinion examines the unauthorized outposts, and not other settlements in Judea, Samaria and Gaza, nor unauthorized neighborhoods in existing settlements.

## H. Collecting the Information

The opinion followed research. Interviews were made with some 100 officials in different offices. The interviews were documented. In addition, numerous meetings were held in different ministries, in which I took part, and many documents were gathered.

I received great assistance from Brigadier General (Res.) Baruch Shpigel, Assistant to the Defense Minister, who supplied me with material regarding the unauthorized outposts, always with good spirit and full cooperation. Further assistance was given by the staff of the Legal Advisor to Judea and Samaria, the International Law Branch of the IDF, the State Attorney, the General Attorney and the Ministry of Justice.

A summary of the opinion, the findings, the conclusions and the recommendations follows.

### The Background for the Establishment of the Unauthorized Outposts

The expansion of the unauthorized outposts phenomenon began in the mid nineties, after the building in Judea, Samaria and Gaza was frozen by the Rabin Administration in 1993. Building in settlements was still approved, but the approval rate went decreasing as the negotiations with the Palestinian representatives accelerated.

The unauthorized outposts phenomenon began expanding, in light of the government's position opposing the authorizing of the building of settlements in the territories.

In fact, the unauthorized outposts phenomenon is a continuation of the settlement enterprise in the territories. But while in the distant past the Israeli governments officially acknowledged and encouraged the settlement enterprise, in some of the years, a major change took place in the beginning of the nineties. The Israeli governments were no longer officially involved in the establishment of settlements, apparently due to Israel's international situation, and the negative position of most nations towards the settlement enterprise. That was not the case for public authorities and other Israeli government bodies, who took, along with others, a major role in establishing the unauthorized outposts. Some of which were inspired by the political echelon, sometimes by overlooking, sometimes by actual encouragement and support, but never as a result of an authorized resolution by the qualified political echelon of the State.

### The Necessary Conditions for Establishing a Settlement in the Judea, Samaria and Gaza Territories

The local law requires the fulfillment of a number of basic conditions before establishing a settlement in the Judea, Samaria and Gaza territories.

First, the decision to establish a settlement must be made by the authoritative political echelon. Government resolutions have always declared that the establishment of a new settlement, either inside Israel or in the territories, requires a government resolution. Such

an establishment requires various considerations - economic, social, geographical, political, public and others.

The establishment of an Israeli settlement in the Judea, Samaria and Gaza territories requires additional considerations, including international and national policy and security considerations. The authoritative political echelon is the only one qualified to consider such considerations, and the only one who bears responsibility for such a decision.

The Second Condition concerns the interests (title) in the land to be settled.. After the High Court of Justice ruling in the case of Elon More, a 1979 Israeli government resolution states that Israeli settlements shall be established only on State land.

The Third Condition is that a settlement shall be established only according to a lawful designed building scheme. This means that a settlement in the Judea, Samaria and Gaza territories may be established only according to a detailed scheme, which has the power to produce a building permit. It must be clarified that according to the law in force in the territories, the approval of the political echelon is needed not only for establishing a settlement, but also in some of the steps in the plan approval. Meaning - as long as there is no approval for the plan for the settlement, or a part thereof - there is no political echelon approval for its establishment.

The Fourth Condition is that the bounds of jurisdiction of such a settlement was determined in an order by the Commander of the area. The Commander of the area may determine the bounds of jurisdiction only after receiving the approval of the political echelon.

These four conditions are accumulative. The lack of fulfillment of one of them makes the settlement illegitimate.

### Unauthorized Outposts

An unauthorized outpost is a settlement which does not fulfill at least one of the abovementioned conditions. And I must emphasize: an unauthorized outpost is not a “semi legal” outpost. Unauthorized is illegal. I mean that if the outpost were authorized, according to the conditions mentioned above, it was legal. Missing an authorization of the kinds mentioned above makes it illegal.

After studying all Government resolutions, Minister Security Committee meetings, Settlement Minister Committee meetings, whether named as so, or operating as sub-committees for settlements of Minister Security Committee - I have not found a single government or committee resolution, since the beginning of the nineties, to establish a new settlement in the territories, or to expand a neighborhood of an existing settlement.

Since many outposts were established in the Judea, Samaria and Gaza territories, it seems that it was not the result of government decision.

### The Characteristics of an Unauthorized Outpost:

- A. There was no government decision to establish it, and in any case no authorized political echelon approved its establishment.
- B. The outpost was established with no legal planning status. Meaning, with no valid detailed plan governing the area it was established upon, which can support a building permit.
- C. An unauthorized outpost is not attached to an existing settlement, but rather at least a few hundred meters distant from it as the crow flies.
- D. The outpost was established in the nineties, mostly from the mid nineties and on.

### The Number of the Unauthorized Outposts and Other Data Regarding them

I failed in finding out how many unauthorized outposts exist in Judea, Samaria and Gaza, since the source for the data is the Infrastructure Dept. of the Civil Administration, which has not delivered all the necessary information. I was informed that gathering the information requires much work and takes time.

The information I have so far shows that there are 105 unauthorized outposts (that I know of today). But this probably does not reflect the true number of outposts in the area. (As for the gap between this figure and data presented by the Ministry of Defense in the past – see sec. 5.4 of the opinion.)

Out of the number I know of: 26 outposts are located on State land; 7 are located on survey lands; 15 are located on Palestinian private property; 39 are located on “mixed” lands – part State, part survey, part owned by Palestinians.

In addition, a few outposts are located on lands which I failed yet to resolve its nature.

### The Implication of Establishing an Unauthorized Outpost Not on State Land

After the High Court of Justice ruling in the case of Elon More, a 1979 Israeli government resolution states that Israeli settlements in Judea, Samaria and Gaza shall be established only on State land. Hence, no settlement is to be established on other than State land (the definition for State land appears in the first chapter of the opinion). No Israeli settlement is to be established on survey land (to which the title is unclear). Surely no Israeli settlement is to be established on private Palestinian property.

It is absolutely prohibited to establish outposts on private Palestinian property. Such an action may in certain circumstances become a felony.

But first and foremost this is a serious prejudice of the right of possession. This right is a basic right in Israel - included in Basic Law: Human Dignity and Freedom, and was defined by the Israeli Supreme Court as a constitutional right. Israel High Court of Justice ruled that the Commander of the area must protect the fundamental rights of the

Palestinians in Judea, Samaria and Gaza. This means he must also protect their right of possession. It is the Commander's duty to prevent the intolerable prejudice of Palestinians' right of possession, which an establishment of outposts on their property causes.

There is no way to validate the establishment of an outpost on private Palestinian property, not even post factum. Such outposts must be evacuated, the sooner the better.

#### List of the Outposts by Date of Establishment

The list of the outposts may be divided into two lists: those established before March 2001, and those established afterwards, and were not evacuated, or were evacuated but returned. This division is based on political reasons, but has no legal implication. Accordingly, 71 outposts were established prior to March 2001, and 24 outposts were established afterwards. As for 10 more outposts – I have yet to find out when they were established. As mentioned above, this is probably not the full list of outposts in Judea, Samaria and Gaza (in lack of data).

#### Information Concerning Evacuation of Outposts

This information, concerning the evacuation of outposts established only after March 2001 was, delivered to me by the Ministry of Defense:

81 outposts were evacuated so far, only a few of them were manned. Some of them were re-occupied by the settlers, sometimes returning nearby the outpost. Some were evacuated again. Some were occupied again and not yet evacuated.

13 delimitation orders were issued so far, deriving from the Order Concerning Unauthorized Outposts (the main legal tool for evacuating outposts). Appeals were submitted against the delimitation orders. 12 appeals were granted. One is yet to be answered by the Ministry of Defense. Some of these outposts were evacuated (either willingly or by the IDF). A total of 7 outposts, 2 of which returned.

The legal proceedings before the High Court of Justice concerning 4 outposts have ended, and the petitions were denied. These outposts, plus two more that have returned, can be evacuated immediately. A total of 6 outposts can be evacuated effective today.

Requests for license according to a mandatory plan were submitted for a number of outposts. Most of them were denied. Delimitation orders may be issued against them, unless appeals are submitted. As for other outposts, delimitation orders may be issued (see details in sec. 5.5.1).

#### Neighborhoods Which are Not Outposts

It needs to be clarified that I have defined an outpost as a settlement not attached to an existing settlement. Civil Administration information shows that new neighborhoods attached to existing settlements were established and expanded. From the legal aspect this situation is sometimes similar to the establishment of unauthorized outposts.

I have not examined such unauthorized neighborhoods, in accordance with my jurisdiction.

### The Momentum of Thickening Outposts Still Goes On

I am not aware of new outposts established over the last months. But I know of unauthorized building taking place in existing outposts. The building momentum includes conveying caravans to the outposts (64 caravans were conveyed to unauthorized outposts between August and December 2004). But it also features other ways, such as making new infrastructure for future connection of caravans; land preparation, stiff construction in some outposts including permanent buildings (for example, 23 structures, 160 square meters each, were placed in the Bruchin outpost on 28 September, 2004); 9 habitats were built in the Ahuzat Shalhevet outpost near Yitzhar on October 2004; primary structures of 60 square meters were placed in Migron and in other outposts. Sheds and agriculture structures were built, lands were over taken, roads were paved. This is day to day activity. Illegal sites and new invasions report between 8 August 2004 and 5 December 2004 enclosed (annexes 1 & 2 of booklet C). I must add that the expansion continues to take place in outposts which delimitation orders were issued against them, even after approved by the High Court of Justice. For instance, 3 caravans were placed in Giv'at Haro'eh on January 2005, and preparations are made for two more caravans; iron elements are starting to be placed in Giv'at Hadelgel, a playground was built on December 2005 and two caravans were coated with stone; 5 caravans were placed outside the delimited area in Mitspe Asaf; two caravans and two containers were placed in Mitspe Yitzhar.. All delimited outposts, which the High Court of Justice allowed their evacuation, and were still thickened are listed in the report enclosed (see the abovementioned annexes 1 & 2).

### The Ways the Outposts were Established

The outposts are mostly established by bypassing procedure and violating the law, displaying false pretense towards some of the State authorities, and enjoying the cooperation of other authorities in harsh violation of the law.

One way to establish an outpost is first to falsely ask for an antenna to be placed up on a hill. Afterwards comes a request to supply electricity - only for the antenna. Then a cabin is placed, for the guard, and the cabin is also connected to the electricity. Then a road is paved to the place, and infrastructure for caravans is prepared. Then, one day a number of caravans arrive at the place - and an outpost is established.

Another way is falsely requesting to built an agricultural farm (either an acclimatization or a biosphere farm). The farm is supposedly built for agricultural needs. After a while, caravans arrive to the place and an outpost is established.

Another way is founding an educational institution. “Staff” families settle in the place and an outpost is established.

Another way is establishing outposts by “expansions” and “neighborhoods” in disguise, within an existing outpost. The new outpost is named as the old one, as though it were just a neighborhood, even when it is sometimes kilometers away as the crow flies; on the ground the distance is much greater). (In some cases this explains the variety of names given to a single outpost, for example Esh Kodesh N.G. 827 - Migdalim Southl; Nof Harim - Aley T., etc.) This enables financing the new outpost by the different authorities: the money supposedly goes to the old settlement, as known to the authorities. In fact, it goes to the new outpost.

After a while, when the outpost stands still, it is no longer convenient for its inhabitants to be considered just as a neighborhood of an existing settlement. They wish for direct connection to different sources; they are interested in an independent emblem given by the Ministry of Interior Affairs (which allows budget from the Ministry of Interior Affairs as a local authority). Therefore the Assistant to Defense Minister - Settlement Affairs requested the Settlement Division of the World Zionist Organization to acknowledge some of the outposts as independent settlements, eligible for an emblem and a budget. The former Director General of the Prime Minister Office (Mr. Lieberman) has also requested such acknowledgement regarding some of these outposts (these letters are included in annexes booklet C, enclosed to the opinion).

#### Involvement of Government Authorities in Establishing Outposts

A substantial number of outposts were built with the involvement of public authorities and State bodies, but with no authoritative decision by the Government of Israel.

These are the State authorities I succeeded to examine:

The Ministry of Construction & Housing;

The Ministry of Defense and the IDF: the Civil Administration, and several aspects of the Assistant to Defense Minister - Settlement Affairs;

In addition: the Settlement Division of the World Zionist Organization, which is a public authority.

These authorities have legitimate powers regarding the Israeli settlement in Judea, Samaria and Gaza, but they apparently use their powers unlawfully in connection with unauthorized outposts, as to be described.

As I have already mentioned, other authorities and government ministries are involved in establishing unauthorized outposts. I also know that the regional councils in Judea,

Samaria and Gaza take a major part in this activity. But due to the short time I was given and the scope of the research needed, I could not examine them as well.

## Authorities and Their Relevant Roles

### The World Zionist Organization - The Settlement Division

The role of the World Zionist Organization is to settle. It receives lands from the official in the Civil Administration (the Commissioner of Government and Deserted Property), for the purpose of planning or planning and development. It is supposed to allot the lands for building settlements, after receiving the approval of the qualified political echelon – to establish a new settlement or to expand an existing one. It is supposed to take care of planning for the land, establishing the primary camp and creating means for production.

### The Ministry of Construction & Housing

Involved in establishing settlements or expanding existing ones in Judea, Samaria and Gaza, through the Rural Building Administration of the Ministry of Construction & Housing. Finances the establishment of infrastructure and public buildings in Judea, Samaria and Gaza settlements. Plans new settlements and employs independent architects for planning and expanding settlements in Judea, Samaria and Gaza. Owns caravans for residence, which it transfers to others, especially to Judea, Samaria and Gaza.

### The Civil Administration

Responsible for locating lands for new Israeli settlements, and examining rights and privileges concerning them; registering titles to land. Responsible for allotting land to settling bodies, including the Settlement Division. Responsible for the planning and building registration process. Responsible for receiving the political echelon's approval for planning. Responsible for supervising illegal construction in the territories. Responsible for permitting connections of buildings to water or electricity. Responsible for permitting caravan conveyance in the territories, subject to the approval of the Ministry of Defence.

### The Ministry of Defense

Responsible for granting various permits, including: permit for initiating land survey; license for land planning prior to its allotment by the Commissioner to a settling body; permit to convey a caravan to the territories; approval of the political echelon (the Minister of Defense) for different stages of a plan.

Regarding law enforcement in the territories - the Ministry of Defense grants the political approval for security legislation in the area, including legislation concerning the establishment of unauthorized outposts and unlawful confiscation of lands. Approves the carrying out of destruction orders issued as a result of illegal construction. Issues

delimiting orders in order to evacuate outposts. Instructs the IDF directly to evacuate unauthorized outposts.

I shall specify my findings regarding each of these authorities. Following the findings, I shall describe my main recommendations for each authority. It should be noted that the recommendations chapter includes additional and more general recommendations.

#### Types of Recommendations According to My Commission

- A. Organizational recommendations
- B. Amendments to government resolutions and new resolutions to be taken
- C. Instructions to authorities in connection with all matters of establishing unauthorized outposts
- D. New legislation
- E. Reform in security legislation in the territories
- F. Recommendations for the Attorney General

#### The Settlement Division of the World Zionist Organization

The Settlement Division is a part of the World Zionist Organization, which is a settling body, according to a government resolution. The Division's role is to assist the government in establishing Israeli settlements in Judea, Samaria and Gaza. Its full budget comes from State treasury.

The Settlement Division took major part in establishing Israeli settlements in Judea, Samaria and Gaza. According the findings in the report, it built mostly many unauthorized outposts, without the approval of the qualified political echelon.

This reality shows that there is no more a political mechanism for establishing new settlements in the territories. The decision to establish settlements has “dropped one scale”, and became a decision made by officials who were not authorized to do so. It is no longer the decision of the elected echelon, who is accountable towards their voters.

The “engine” behind a decision to establish outposts are probably regional councils in Judea, Samaria and Gaza, settlers and activists, imbued with ideology and motivation to increase Israeli settlement in the Judea, Samaria and Gaza territories. Some of the officials working in the Settlement Division of the World Zionist Organization, and in the Ministry of Construction & Housing, cooperated with them to promote the unauthorized outposts phenomenon. After the mid nineties, these actions were apparently inspired by different Ministers of Housing, either by overlooking or by actual encouragement and support, with additional support from other Ministries, initiated either by officials or by the political echelon of each Ministry.

The Settlement Division is supposed to be an executive echelon, implementing decisions made by the political echelon. In this case it was the other way around, and the executive echelon became partners with the political one, contrary to its role.

The lands were allotted to the Division by the Commissioner of Government and Deserted Property of the Civil Administration, on the assumption that the Division act with good faith and according to allotment regulations. Apparently, the Division violated the agreement with the Commissioner in more than one aspects: it allotted lands a secondary allotment without the Commissioner's approval; it sometimes allotted lands which it received for planning purposes only. The Commissioner wasn't even informed of the allotment. It failed to regulate the settlers' status in the land against the Commissioner.

The Settlement Division established unauthorized outposts, disregarding the need for a valid detailed plan, and this not by accident, but rather as a system. This is a violation of the Jordanian Planning and Construction Law in force in the territories. The Division never even attempted to authorize a plan before starting building.

Some of the settlements established by the Division exceed the area allotted, and are partly located not on State land (part of the settlement is located within the area, and another part is outside of it, sometimes on survey land, sometimes on private property).

#### Response of the Settlement Division

- A. No political approval is required for the establishment of outposts.
- B. If it is indeed required, thus it was granted.
- C. The outposts were established without a valid detailed plan, since this is the way settlements are established regularly by the Division inside Israel.

This response does not settle with my findings. An establishment of an outpost requires the approval of the political echelon, according both government resolutions and the law in force in the territories. The claim that the political approval for establishing outposts was granted is false.

The attempt to justify the Division's actions, in contrary to the Planning and Construction Law, by claiming it to be its standard procedure inside Israel - is unacceptable. Actions violating the law cannot be justified. Surely continuous violation in one place cannot justify continuous violation in another.

It is my conclusion that a fundamental change in the operation of the Settlement Division must take place.

#### My Main Recommendations for the Settlement Division

A government resolution must be made as follows:

To cancel all land allotments made to the Settlement Division, if and to the extent they were not yet allotted to others, and to return them to the Commissioner; to cancel all land allotments made to the Settlement Division, which it further allotted to others in contrary to its license; to cancel all allotments made by the Division to others, and were not yet used, and to return them to the Commissioner; to cancel all allotments upon which unauthorized outposts were established, and to return them to the Commissioner; to cease all activity of the Settlement Division in establishing settlements, unless the Government authorizes ad-hoc the Division as a settling body for the purpose of establishing or expanding a specific settlement in Judea, Samaria and Gaza, that the Government has decided to establish or expand; the Ministry of Finance shall modify the Settlement Division budget in light of the necessary changes resulting this resolution.

### The Ministry of Construction & Housing

The Ministry of Construction & Housing is involved with establishing unauthorized outposts.

The main (but not the only) branch of this Ministry involved with unauthorized outposts is the Rural Building Administration. This administration is engaged for years in establishing new settlements in Judea, Samaria and Gaza and in expanding old ones. The Rural Building Administration executed the policy of Housing Ministers and Director Generals of this Ministry in the relevant years in which the outposts phenomenon flourished, meaning the mid nineties and on.

It seems that at least between 2000 and 2004, a substantial part of the Rural Building Administration budget was dedicated to building in the territories, including unauthorized outposts.

These are the activities of the Ministry of Construction & Housing in establishing unauthorized outposts known to me:

### Financial Aid for Infrastructure and Public Buildings in Unauthorized Outposts

The Ministry of Construction & Housing assisted regional councils in Judea, Samaria and Gaza, by financing foundations and infrastructure (such as land preparation, development, road break through and paving, connecting water, electricity and other facilities, preparing infrastructure for caravans, etc.), and establishing public buildings in unauthorized outposts. The aid was disguised as building new neighborhoods within existing settlements, in order to bypass the absence of a Government resolution to establish outposts. The Ministry of Construction & Housing was aware of the absence of a qualified political echelon approval for establishing the outposts.

The aid by the Ministry of Construction & Housing was indirect - through the regional councils. The Ministry of Construction & Housing did not engage directly with contractors. The regional councils did so, and the Ministry of Construction & Housing

financed it. It seems that this way was chosen in order to conceal the fact that the Ministry of Construction & Housing is financing building in unauthorized outposts.

In 2001 the Ministry of Construction & Housing created a special budgetary clause, named “general development misc.,” and used it for financing unauthorized outposts. In 2001 the amount in this section was 17 million shekels. In 2002 it was 34 million shekels. No criteria were set for the usage of this money. There is no public transparency concerning the goals and the exploitation of this budget.

According to the information the Ministry of Construction & Housing supplied (referring to a partial list it was given), between 2000 and 2004 the Ministry has spent an amount of NIS 71,870,000 on unauthorized outposts.

This is figure stated by the Ministry of Construction & Housing – the Rural Building Administration. It does not settle with information appearing in the Ministry’s working schemes for these years. In light of these working schemes it allegedly seems that the Ministry financed unauthorized outposts in much greater sums. Questions directed towards the Ministry of Housing were not yet answered to the point (see details in sections 8.3.1.1). The Ministry of Construction & Housing has informed me, only a few days before submitting the opinion to the Prime Minister, that after examining my last address it found the information earlier given to me to be partially wrong. They claim to be further examining the matter these days.

Be that as it may, it seems that the actual sum considerably exceeds the one mentioned above. I might add that the abovementioned sums are nominal.

The sum also does not include money the Ministry of Construction & Housing paid for infrastructure, public buildings and planning in unauthorized neighborhoods in Judea, Samaria and Gaza.

The Ministry of Construction & Housing was well aware of the fact that the construction work it financed was done without legal planning status. In other words, it was done in violation of the Planning and Construction Law.

The Ministry of Construction & Housing financed the establishment of unauthorized outposts, but never examined the interests (title) in the lands upon which the outposts were built. Some of the outposts built with the Ministry’s aid were located on private Palestinian property and on survey land. The Housing Ministry claims it was not aware of this fact. There is no dispute it never bothered to check it out.

#### Planning Unauthorized Outposts, Some of which on Private Palestinian Property

Architects of the Housing Ministry, as well as free lance architects, were employed in planning unauthorized outposts, after their establishment. The Ministry was aware of the absence of a government resolution or a qualified political echelon decision to establish them. Part of the unauthorized outposts planned were built on private Palestinian property.

## Acquisition of Caravans and Placing Them in Unauthorized Outposts in 2003

The acquisition of caravans by the Ministry of Construction & Housing in 2003 is a bold example of bad government, and it is also connected with unauthorized outposts.

In 2003 the Ministry of Construction & Housing has decided to finance the acquisition of caravans by the regional councils in Judea, Samaria and Gaza. The budget needed for this purchase: NIS 33,749,180.

The Ministry of Construction & Housing tried to exempt this sum from tender, so that the money could go to the regional councils for purchasing the caravans. The Ministry of Finance objected granting an exemption. The subject was brought to the Attorney General. His deputy determined that the Ministry of Construction & Housing must set criteria, as a pre-condition for supporting the regional council. But the Ministry of Construction & Housing did not wish to set such criteria, so it chose a bypass, to avoid confronting the legal barrier.

The Ministry of Construction & Housing has decided to purchase the caravans itself, to divide them only between the regional councils in Judea, Samaria and Gaza, with no explanation, with no criteria, and with nothing in return.

The Ministry of Construction & Housing published a frame tender for purchasing caravans. Two companies won the tender. The Ministry ordered 400 caravans from one company, and 120 from the other. I found that some of the caravans were ordered and produced much earlier – for the regional councils in Judea, Samaria and Gaza. These caravans were already placed in the area at the time the tender for their production was published. At the time a total of 140 caravans were placed in the territories, 90 of which in unauthorized outposts.

Apparently, the same company that won the Ministry of Construction & Housing's tender, and was requested to produce 400 caravans, was the one who produced the caravans for the regional councils, for which the Ministry of Construction & Housing paid.

The Ministry of Construction & Housing delivered all of the 400 caravans to Judea, Samaria and Gaza without any agreement to receive any consideration in exchange - either from the regional councils or from whoever received the caravans. A year and a half has passed by, and the Ministry of Construction & Housing has received nothing in return for the caravans.

## Main Recommendations Regarding The Ministry of Construction & Housing

1. A government resolution shall be made, as follows:
  - a. Regarding planning, budgeting and establishing unauthorized outposts and/or unauthorized constructions

The Ministry of Construction & Housing shall not plan a settlement, a neighborhood or any building in Judea, Samaria and Gaza, before running a thorough examination concerning the interests in the lands designated for planning. The Ministry of Construction & Housing shall not plan the establishment of a settlement or a neighborhood without a decision of the political echelon. The Ministry of Construction & Housing shall not plan post factum an unauthorized outpost. The Ministry of Construction & Housing shall not plan, budget or build in lands that are not State lands. For the avoidance of doubt, the Ministry of Construction & Housing shall never take any action mentioned above in survey lands or in private Palestinian property. The Ministry of Construction & Housing shall establish a data base with all the information concerning titles to land in Judea, Samaria and Gaza. This data base shall be accessible to all of the Ministry's departments, including the Rural Building Administration. The Ministry of Construction & Housing shall not finance nor built in Judea, Samaria and Gaza, either directly or through others, without first getting a building permit.

b. Regarding the purchase of caravans

Any purchase of caravans designated for the territories is equal to an approval for building houses in the territories. Therefore, any future purchase, by the Ministry of Construction & Housing or by any other Ministry, of caravans designated to the Judea, Samaria and Gaza territories, is subject to the approval of both the Prime Minister and the Minister of Defense, prior to the publication of a tender for their production or acquisition.

2. Administrative recommendations regarding the issue of caravans

A number of recommendations were given concerning the acquisition of caravans, including criteria for future purchase. The Ministry of Construction & Housing shall demand the caravans back from the regional councils. The Ministry of Construction & Housing shall demand restoration for their usage until their actual return to the Housing Ministry.

3. A recommendation to forward material in the report to the Attorney General

I have recommended to forward the report's findings in this chapter to the Attorney General, in order to consider whether to take legal action against State officials and others, who with regards to establishing unauthorized outposts knowingly acted while violating the law.

I further recommended to forward to the Attorney General all material in this report concerning publishing the tender for the manufacture of caravans, the winning thereof, their conveyance to unauthorized outposts, and all other matters concerning the caravan affair - in order to consider whether to take legal action against Ministry officials and others involved.

## The Civil Administration in Judea, Samaria and Gaza

I have examined various aspects of its authorities and activities concerning the establishment of unauthorized outposts.

### Main Findings

#### Locating Lands and Inquiring into Interests in Lands Designated for Israeli Settlements

I found that some of the lands allotted by the Civil Administration to the Settlement Division were survey lands, and some were private Palestinian property. Apparently this was a result of errors in marking State lands on maps. This is one of the reasons that some of the unauthorized outposts were established not on State lands.

I recommend that no lands shall further be allotted until a serious reexamination is made concerning interests in the land allotted, so that only State lands are allotted, according to the 1979 Government resolution. A systematic examination of titles to lands shall be made concerning old allotments. Planning committees shall be instructed not to approve any plan until the interests in the lands are reexamined, and the plan undoubtedly applies only State lands.

Survey land procedure regarding unauthorized outposts - It is my conclusion that survey land procedure shall not be taken regarding outposts for which delimiting orders were issued. These are outposts which the political echelon found illegal and has decided to evacuate. Survey land procedure for such lands is contradiction in terms. I therefore recommend that a Government resolution shall be made that no application for survey land procedure shall be submitted regarding outposts with delimiting orders, and if submitted - it shall not be examined. I further recommend that no application for survey land procedure shall be submitted nor examined, regarding an unauthorized outpost (even when there is no delimiting order), unless the Government decided it wishes it to be an acknowledged settlement, and this requires survey land procedure. I further recommended that from now on initiating survey land procedure shall be a decision made only by the Minister of Defense or his Deputy (instructions in this matter were given until now by the Assistant to Defense Minister - Settlement Affairs).

#### Building Permits According to a Mandatory Plan

I have found that it is possible to be granted with a building permit according to a mandatory plan which is in force in the area. While a political approval is necessary for a plan submitted according to security legislation, a building permit according to a mandatory plan requires no political approval. This crack allowed some of the unauthorized outposts to be established.

I recommend:

To instruct the Minister of Defense to direct the Commissioner of Government and Deserted Property, that the Commissioner shall from now on sign any application for

building permits according to a mandatory plan regarding State lands. Not the World Zionist Organization, which used to do it until now.

A license committee, authorized to grant building permits according to a mandatory plan, shall accept no application for such a building permit, unless signed by the Commissioner. The Commissioner shall sign only after getting the approval of the Minister of Defense. The result is that a building permit according to a mandatory plan can be received only after the approval of the Minister of Defense.

I further recommend that a license committee shall be instructed not to grant a building permit to an Israeli unless she has presented a certificate from the Commander of the Area indicating his consent to the permit.

In accordance with the Construction Supervision Order (Judea & Samaria) (No. 393), 1970, the Commander of the Area shall order that license committees may grant building permits according to a mandatory plan only to Israelis who hold an approval by the Area Commander for such permit. This is due to security implications of building one isolated Israeli house in the territories (which a mandatory plan allows).

As a result, no building permit according to a mandatory plan shall be granted, either in State lands or in Israeli purchased property, without the approval of the Minister of Defense and/or the Commander of the Area.

#### Application for Building Permits According to a Detailed Plan

The Commissioner of Government and Deserted Property in the Civil Administration represents the State as the owner of State lands, and allots lands to the World Zionist Organization. Since 1996, the World Zionist Organization is allotted with lands for planning purposes only. Apparently, the Organization allots the lands to others, for purposes of development and establishing of settlements, contrary to its permit.

It was also established that Civil Administration planning committees grant building permits on lands allotted to the World Zionist Organization, according to a valid detailed plan, without the signature of the Commissioner. The situation is different in Israel, where the Israel Lands Administration is required to approve any building permit as a pre condition for its issue.

As a matter of fact, as soon as the Commissioner allotted land to the World Zionist Organization, and signed an application for a detailed plan, the connection between him and the land was cut off, since his signature is not necessary for the building permit request. This is one of the reasons why no contractual relations were made between the Commissioner and the settlers in Judea, Samaria and Gaza, and the Commissioner was not paid for the usage of the land.

I recommended the Prime Minister to instruct the Minister of Defense to direct the Coordinator of Government Activities in the Territories and the Head of the Civil

Administration not to allow a planning committee to discuss a building permit application and not to issue a building permit according to a detailed plan regarding State land, without a written approval of the Commissioner of Government and Deserted Property. The Commissioner shall sign a building permit only after contractual relations were made between the Commissioner and the Division, and between the Commissioner and the settlers, and only after all payments involved were settled. The Commissioner shall not sign a building permit where the land was allotted to the World Zionist Organization for planning purposes only.

### Connection to Water and Electricity Network

Connections to the Mekorot water network and to the Electricity Company network are subject to a permit from the Water KMT and the Electricity KMT of the Civil Administration, respectively. I found that some of the unauthorized outposts were connected to these networks. I found the Electricity KMT to approve such connections without considering all circumstances. I found that some outposts were granted of such approval, and some were not, with no clear criteria. It is my judicial opinion, that as a rule a permit for electricity connection is not to be granted to an unauthorized outpost, with the exception of a special security need, according to fixed criteria. I believe that water connection permits shall not be granted, and I find it difficult to imagine a case to justify such a permit.

The Minister of Defense shares this view, and he has informed me of his instruction not to connect an unauthorized outpost to infrastructure, including water and electricity networks.

I recommended that the Minister of Defense instruct the Coordinator of Government Activities in the Territories and the Head of the Civil Administration to set criteria, which I suggest, when electricity will be connected. A connection would be the exception. The rule is no unauthorized outpost shall be connected to infrastructure, including electricity or water. These criteria, for connecting an outpost to electricity only when there is a special security need, shall be subject to the approval of the Attorney General. I further recommended legislative amendments, so as to be in accordance with the Israeli Planning and Construction Law and its regulations, which require "Form No. 4" as a precondition for water, electricity and telephone connections.

### The Supervising Unit

The Supervising Unit is the Civil Administration's law enforcement branch, responsible of illegal construction in Judea, Samaria and Gaza. The unit is supposed to supervise Israeli and Palestinian illegal construction. In 1998 the Commander of the Area (the present Chief of the General Staff Ya'alon) has limited the unit's scope of supervision. The unit was allowed not to supervise settlements within areas in which a valid detailed plan is in force (see response of Chief of the General Staff in sec. 9.1.8). However, the Supervising Unit "stretched" the limitation much more beyond this release, and ceased to supervise at all Israeli settlements in Judea, Samaria and Gaza, regardless of the existence

of a detailed plan. This is one of the reasons why the information the unit holds concerning what actually goes on is lacking. In many cases it has not reported of new neighborhoods, expanded neighborhoods and unauthorized outposts.

However, there are additional reasons for this informative deficiency, that are not the Supervising Unit's responsibility. Among others: the Supervising Unit is short of staff, and so is unable to fully report, real time, on what actually goes on; no aerial photography to trace illegal construction in the territories is taking place for the last 4 years. These are some of the reasons the Civil Administration lacks all the information it needs regarding illegal construction in the territories. Just lately these flights were resumed, but their pace is still unsatisfying.

On 24 January 2005, as a response to my letter, the Minister of Defense has informed me of his instruction to resume photography flights once a month (annex 3 of booklet C).

Destruction orders are not executed: the Supervising Unit issued thousands of destruction orders, according to Illegal Construction Procedure (see chapter 1, Opening Remarks, Definition of Terms - I.C. Procedure), but they were not executed. Apparently, these orders can be executed only at the instruction of the Minister of Defense. Ministers of Defense have avoided for years instructing the execution of destruction orders, except for single cases. I have presented this matter to the current Minister of Defense, Mr. Mofaz (see his response and my position, *ibid* - chapter 9, sec. 9.1.8).

Therefore, the unit works in vain.

To conclude, the Supervising Unit is insignificant and almost worthless as a law enforcing instrument over unauthorized construction. It fails to produce the benefit it is expected to produce, considering its role.

I recommended to increase the Supervising Unit's staff. The Minister of Defense has informed me of his instruction to resume aerial photography flights monthly, and I find it satisfying. However, a deciphering unit of aerial photography must be established; the Supervising Unit must expand its supervision over the Israeli settlement in Judea, Samaria and Gaza, and not settle with the supervision done so far. I further recommend the Prime Minister to instruct the Minister of Defense to order the execution of valid destruction orders.

### Caravan Conveying Permit

The typical way of establishing unauthorized outposts is conveying caravans, placing them on the ground and connecting them to networks. A caravan is "a house on wheels". Its mobility enables establishing a settlement overnight.

Conveying a caravan into and within the territories requires a permit. Placing one on the ground requires a building permit. Therefore, a permit to convey a caravan may be granted only when there is a valid building scheme in force at the caravan's destination, which allows placing the caravan on the ground.

It appears that the Assistant to Defense Minister - Settlement Affairs has approved the conveyance of caravans into the territories, even after informed there is no planning status at its destination. According to the State Comptroller Report and other documents, the former Assistant to Defense Minister did the same.

It also appears that caravans permitted to reach specific places have not arrived at their destination. An inspection in 2004 discovered that 70 out of 111 caravans inspected never reached their destination. In the meanwhile, caravans arrived at unauthorized outposts.

On July 2004 the Minister of Defense Mr. Mofaz ordered to strict the instructions regarding permits to convey caravans. He ordered that IDF soldiers escort caravans with permits, until they arrive at their destination. In spite of this instruction, caravans still arrive at unauthorized outposts.

I was informed that lately the Minister of Defense has stiffen further more the conditions for granting a caravan convey permit. The Minister demands proof of the necessity for a caravan, as a precondition for a conveyance permit.

In spite of the Minister of Defense's positive steps, caravans still arrive at unauthorized outposts.

To illustrate my point, according to "Report on Illegal Sites and Fresh Invasions in Judea, Samaria and Gaza", between 18 August and 5 December 2004 64 caravans were placed in unauthorized outposts, in spite of the criteria aggravation for conveyance.

I recommended that the terms already set, such as enclosing a valid building permit granted by a planning committee and a legal affidavit clarifying the need for the caravan, will be legislated in security legislation dealing with caravan conveyance permits. I recommend to issue an order requiring the applicant to enclose an aerial photograph of the caravan's destination, a valid detailed plan, and a written approval by the local council engineer assuring the caravan will be placed according to the plan. I further suggested that an applicant for a caravan conveyance permit will be required to deposit guarantees at an amount to be determined, to insure the caravan arrives at its destination and stays there. The guarantees will stand for 18 months after the arrival of the caravan to the Judea, Samaria and Gaza territories. If the caravan is found out of its place, the guarantee will be confiscated.

#### Setting Fixed Periods for Civil Administration Officials

Officials at the Civil Administration have a difficult duty, which exposes them to hard stress. On the one hand, they have a very broad authority, and on the other hand they have to deal with ideological passionate people. This puts them under pressure and lobbyism for permits and licenses. A lengthy service at these offices may wear them out and harm their functioning (see details and examples in sec. 9.1.11 of the report).

As opposed to the standard custom in IDF, Civil Administration officials remain at office for many years.

I recommend to set fixed periods for managing roles in the Civil Administration.

#### Assistant to Defense Minister - Settlement Affairs

The Assistant to Minister unit is subordinate directly to the Minister of Defense. The Assistant to Defense Minister - Settlement Affairs is the head of the unit. Office directives of the Ministry of Defense define his duties. His roles are mainly - assisting local authorities and settlements by allotting budgets for security purchases; initiating and assistance in security affairs inside settlements; supervising the execution of the Minister of Defense policy regarding settlements in Judea, Samaria and Gaza.

I found that the Assistant to Defense Minister - Settlement Affairs wrote letters to the Settlement Division confirming that specific outposts, that are unauthorized outposts, are independent settlements eligible for budgets and emblems. The Minister of Defense is not an addressee of these letters. Mr. Shechner, Assistant to Defense Minister – Settlement Affairs, has not informed the Minister of these letters. The Minister of Defense confirms he had no knowledge of the letters and of their content.

The Assistant to Defense Minister - Settlement Affairs claims these letters to engage only with security needs of the unauthorized outposts. I haven't found any security issues in these letters. However, other requests appear in them, concerning settlement emblems and budgets. It must be clarified, that a settlement is eligible for an emblem only if it has legal planning status. The emblem allows a settlement to receive budgets from the Ministry of Interior Affairs designated for local authorities.

These letters allegedly exceed the Minister Assistant's jurisdiction. It is not his duty to engage with settlement acknowledgement or budgeting by the Ministry of Interior Affairs.

These letters do not reflect the position of the Minister of Defense nor of the Ministry of Defense, since the Minister has declared at a Knesset committee session that some of the outposts mentioned in Mr. Shechner's letters are unauthorized outposts. It turns out that the Assistant to Minister of Defense acts contrary to the policy of the Minister of Defense, while his job is to implement the policy of the Minister and the Ministry, and not to create his independent policy, which is opposite to office policy.

These letters were sent as to instruct another authority (the Settlement Division of the World Zionist Organization). It seems the letters are misleading. The Settlement Division waves these letters, claiming them to be approval by the political echelon that the outposts mentioned are authorized, while in fact no authorized political echelon had decided to establish them. One of these letters found its way to Mekorot, but they refused to rely upon it, and did not connect an unauthorized outpost to the water network. A similar letter was presented in a Supreme Court proceeding. See sec. 9.2.2 of the report for the reference of the Supreme Court to this letter.

The Assistant to Defense Minister - Settlement Affairs also approved conveyance of caravans into the territories, although he was informed their destination has no legal planning status. This means the Assistant to Defense Minister - Settlement Affairs approved conveying caravans to illegal destination. In the meanwhile, the Civil Administration sent its Supervising Unit to issue termination orders, for the purpose of issuing destruction orders, for the same caravans.

The Assistant to Defense Minister - Settlement Affairs wrote the Settlement Division a letter concerning supplying electricity for circumferential lighting in unauthorized outposts. This is a general direction regarding a principal and problematic question. As I mentioned, in principal, connecting an unauthorized outpost to electricity is illegal. The Minister of Defense had no knowledge of this letter.

It concludes that The Assistant to Defense Minister - Settlement Affairs has allegedly acted in contrary to the policy of the Minister of Defense and of the Ministry of Defense, exceeding his jurisdiction; instructed other authorities in a manner which could be misleading; approved activities which were known in advance to result in violation of the law.

I have presented all of this information to Mr. Shechner and to the Minister of Defense (see their positions in sec. 9.2.2-4 & 9.1.6). The Minister of Defense has informed me that he was unaware of these letters, and stressed that they were inappropriate. He commented Mr. Shechner on his actions, and instructed him not to issue any more certificates concerning unauthorized outposts.

After considering the matter I have found it still unsatisfactory.

I therefore recommended to consider the necessity of an Assistant to Defense Minister dealing with Settlement Affairs. If there is a need, the office should be fulfilled by a person with no prior obligation to outposts and to the settlement enterprise, so that she can fulfill her roles objectively, following the Minister of Defense instructions. I further recommended the Prime Minister to deliver the report findings concerning the Assistant to Defense Minister - Settlement Affairs to the Attorney General, in order to examine whether legal proceedings should be taken against him.

#### Law Enforcement in Judea, Samaria and Gaza

A large part of the report was dedicated to the subject of law enforcement in the territories, with an emphasis on unauthorized outposts.

I find three main reasons for the failure of enforcing the law concerning unauthorized outposts:

- A. State authorities, State officials and public authorities were unlawfully involved in establishing the unauthorized outposts.
- B. Ineffective law enforcement.

C. Lacking of suitable legislation and legal tools to deal with building unauthorized outposts.

### The Legal Treatment of Derivative Offences Accompanying the Establishment of Unauthorized Outposts

Establishing unauthorized outposts involves criminal offences.

The legal treatment may be of two kinds. One - criminal; the other - administrative, by the IDF and the Civil Administration, i.e. removing the invasive caravan or the illegal construction, or evacuating the outpost, etc.

The criminal procedure comes up against many problems. Some because of no suitable legislation. (For example: conveying a caravan without a permit into Judea, Samaria and Gaza is an offence of 5 year imprisonment, but no court has jurisdiction over this offence. The result is criminal cases and investigations running in vain. Illegal construction is not a criminal offence in the territories. As a result, no one is brought to justice because of illegal construction in the territories. Etc.) A different problem is the difficulty in obtaining evidence in Judea, Samaria and Gaza. Another difficulty is the involvement of State and public authorities in breaking the law by establishing the unauthorized outposts.

The administrative procedure requires instructions from the political echelon. No destruction order will be executed without instruction from the Minister of Defense; no unauthorized outpost will be evacuated without a direction from the Prime Minister and the Minister of Defense, etc.

It has been years since Defense Ministers have instructed to execute destruction orders. Thousands of destruction orders are lying still.

Furthermore, no general political instruction to issue delimiting orders against the unauthorized outposts is given (an outpost can be evacuated only after such order is issued). Even outposts which their delimiting orders were approved months ago by the High Court of Justice were not evacuated (six outposts, four of which were previously evacuated and returned).

This gives a clear signal of no law enforcement in the territories.

Security legislation in the territories is the authority of the Commander of the Area. But in fact such legislation requires the support of the political echelon. Especially legislation regulating unauthorized outposts. Security legislation requires extensive amendment. Without such support, this cannot be done.

Over the last few months some work was initiated to amend legislation.

Law Enforcement Regarding Outposts is Mainly in the Hands of the Political Echelon

The conclusion is that, as opposed to Israel, law enforcement in the territories is partially in the hands of the political echelon, especially in the matter of unauthorized outposts.

### The Message Given by the Political Echelon Concerning Law Enforcement Regarding Unauthorized Outposts

As far as law enforcement is concerned, the political echelon sends a message of no enforcement, when it comes to the territories. Felons are not punished. The overall picture draws the conclusion that no one seriously wants to enforce the law:

Some of the land confiscation and illegal construction was done with the unauthorized aid of the Ministry of Housing and the Settlement Division, while violating the law publicly; the State of Israel finances at least part of the establishment of unauthorized outposts; the Civil Administration overlooks for years neighborhood expansions, either nearby or far away from settlements, done without a lawful detailed scheme, sometimes over private Palestinian property; does not supervise construction there; refuses to give information regarding outposts, with excuses such as the definition of an outpost, claiming not to have such information because of the limitation of its supervising powers - which it “stretched” as I mentioned way beyond its instructions; the Ministry of Defense sometimes permit caravans to enter Judea, Samaria and Gaza even when there is no legal planning for their destination; Assistant to Defense Minister - Settlement Affairs certifies other State authorities, that unauthorized outposts are settlements eligible for an emblem (which means eligibility for local authority budgets from Ministry of Interior Affairs), while the Minister of Defense publicly declares them as unauthorized; thousands of destruction orders remain unexecuted for years; the outposts keep increasing and getting thicker, while no delimiting orders are issued, not even regarding outposts mentioned in the March 2001 list, which Israel took upon itself an explicit political obligation to evacuate; delimiting orders issued and approved by the High Court of Justice remain unexecuted (four outposts, plus two more previously evacuated and returned); orders necessary for law enforcement are not legislated, as well as amendments to existing orders.

To this I should add the security concept that wherever an Israeli is placed in the territories - he should be protected. Thus, IDF soldiers will arrive at any place where someone decided to build an outpost, and protect him.

The result is that IDF is unwillingly dragged to give its “seal” to illegal settlements, by being present and protecting the settlers. In its presence, and by protecting law violators, IDF sets the situation, together with these violators. It gives them protection, instead of evacuating them.

Therefore it seems that law violation became institutionalized. We face not a felon, or a group of felons, violating the law. The big picture is a bold violation of laws done by certain State authorities, public authorities, regional councils in Judea, Samaria and Gaza and settlers, while false presenting an organized legal system.

This sends a message to IDF, its soldiers and commanders, the Israeli police and police officers, the settler community and the public.

And the message is that settling in unauthorized outposts, although illegal, is a Zionist deed. Therefore the overlook, the “wink”, the double standard becomes it.

This message has a very bad influence - both on the IDF and on the Israeli police.

The Role of IDF in Enforcing Law and the Influence of the Message Coming from the Political Echelon

The IDF soldiers’ main mission in the territories is taking care of security. The Israeli police’s role is to enforce the law. But sometimes law enforcement becomes IDF’s job, for several reasons.

Legally speaking, the Commander of the Area has sovereignty in the territories. This makes him responsible for the overall order and security in the territories. Judea and Samaria (JS) district of the Israeli police is his subordinate.

The overall responsibility is IDF’s not only because of formalities. IDF soldiers are the ones who are in fact in the area, as opposed to the small police force of the JS district. IDF is first to witness Israelis breaking the law. The police arrive at the place mostly later on. Sometimes, because of security reasons, the police cannot even get to the scene of the crime. Furthermore, any security event, in which IDF soldiers are involved, can turn out to be a criminal one, and vice versa.

Law Enforcement Procedure in the Territories, which is a part of IDF Commands, gives IDF soldiers the same enforcement powers as policepersons.

But in practice IDF soldiers do not enforce the law, have no knowledge of the Law Enforcement Procedure, and have no interest to function as cops. “The commander spirit”, as described to me, sees the settlers’ acts building outposts as Zionist deeds, although illegal, and asks them not to inspect such acts through the eyes of the law. This “commander spirit” is nourished by the involvement of State authorities and public authorities in establishing unauthorized outposts (see sec. 10.3 of the opinion for details on IDF officers’ statements in this matter).

The failure to execute delimiting orders gives a good example of the lack of enforcement coming from the political echelon. This is a matter of special severity, because it is not a case of neglect, but rather a process of enforcement that stopped after the Supreme Court approved the enforcement.

The attitude towards law breaking settlers is mostly forgiving. The result is a large increase in law violations (see details in sec. 10.5 of the opinion).

I might add that high ranked officers told me that the deterioration of the security in the territories over the last few years, plus the intensive occupation of IDF soldiers in defense missions, were sometimes abused by settlers to increase settling in unauthorized outposts.

#### Judea and Samaria (JS) District of the Israeli Police

The Israeli police find it difficult to handle the ongoing law violation, done also by State and public authorities. It might be added that the Israeli population in the JS district is partly hostile to the police and uncooperative. Sometimes harsh hostile actions are taken against police officers. For instance, young children throw eggs and even stones at police officers. Above all this, the JS staff is very small, and some of them are sometimes sent to other districts, to handle enforcement difficulties over there (see in detail - sec. 10.6 of chapter 10).

When dealing with land disputes, which are relevant to the unauthorized outposts phenomenon, JS police officers find it hard to collect necessary evidence. In order to accuse of trespassing, it needs to prove who holds the land, and sometimes who owns it. Most of the lands in Judea, Samaria and Gaza were not regularized, and therefore it is difficult to show ownership. Proving possession is also problematic.

Another difficulty is land law in the territories. It is based on Ottoman, Jordanian, and sometimes Mandatory sources, and on security legislation in the territories. This complexity is very difficult for JS police. In fact, its ability to handle it is minimal. This is part of the reason why legal proceedings were almost never taken against trespassers who unlawfully took over Palestinian property.

#### Summary of the Law Enforcement in the Territories Chapter

Almost all senior officials who I talked with, in the Ministry of Defense, IDF and the Israeli police, believe that the major difficulty with enforcing law in the territories, regarding unauthorized outposts, is the mixed message sent by Israeli governments along the years to executive echelons, both security and civil. As soon as the government decides upon a clear policy, this reality will stop and a solution will be found.

I recommend a change of the political message, by giving immediate instructions to the relevant offices, as I proposed; by making the necessary government resolutions; by evacuating those unauthorized outposts which legally may be evacuated; by issuing delimiting orders against unauthorized outposts; by instructing the Commander of the Area to initiate execute a legislative reform in security legislation, as I proposed; by allotting the necessary budgets to increase enforcement.

#### Reform Proposal in Security Legislation Concerning Law Enforcement in the Territories

I propose a legislative reform in security legislation in the territories. In the past few months the Legal Adviser to Judea, Samaria and Gaza, IDF International Branch and the Deputy Attorney General (Consulting) Mr. Mike Blass are engaged in preparing

proposals for changes in security legislation in the territories. My proposals are partly based, among other sources, upon their work. These are the main proposals:

A. AMENDING SECURITY LEGISLATION - ORDER CONCERNING UNAUTHORIZED BUILDINGS (TEMPORARY PROVISION) 1539.. THIS IS THE MAIN LEGAL TOOL USED TO EVACUATE UNAUTHORIZED OUTPOSTS. I PROPOSE CHANGING THE PUNISHMENT FOR VIOLATION, BY SETTING A SUBSTANTIAL IMPRISONMENT PUNISHMENT AND A BURDENSOME PENALTY. IN ADDITION, AN AUTHORIZED COURT MUST BE DETERMINED, TO WHICH ISRAELIS CAN BE BROUGHT (SEE THE FOLLOWING KNESSET LAW PROPOSAL).

B. As for evacuation of outposts - the existing legislations seems sufficient. If future evacuation encounters legal difficulties, an alternative way to solve it may be considered.

C. AMENDING SECURITY LEGISLATION BY ADDING PROVISIONS ENABLING CONFISCATION AND REMOVAL OF CARAVANS, PLACED ON THE GROUND OR CONNECTED TO INFRASTRUCTURE, THROUGH A QUICK ADMINISTRATIVE PROCEDURE, WITHIN A FIXED PERIOD OF TIME.

D. Amending security legislation - Adding to the following requirements for a caravan conveyance permit:

(1) A caravan conveyance permit shall be granted only after a valid building permit to place the caravan in its destination is presented; an aerial photograph of the caravan's destination is displayed; a valid detailed building scheme is presented; and a written approval by the local council engineer assuring the caravan will be placed according to the scheme.

(2) The petitioner for the permit must deposit an 18-month guarantee to insure the caravan arrives at its destination and stays there.

(3) The petitioner for the permit shall clarify, in a written legal affidavit, the necessity in conveying the caravan.

E. AMENDING SECURITY LEGISLATION IN ORDER TO EXTEND AUTHORITIES FOR TREATMENT OF ILLEGAL INVADERS TO PRIVATE PROPERTY. THE GOAL IS TO SUPPLY WITH EFFECTIVE PROTECTION AGAINST UNLAWFUL INVASION TO PALESTINIAN PRIVATE PROPERTY.

F. Amending the Jordanian Planning and Construction Act, by supplementing provisions, as similar as possible to Israeli legislation regarding "Form No. 4" as a precondition for connecting a building to water and electricity networks.

G. AMENDING THE JORDANIAN PLANNING AND CONSTRUCTION ACT, SO THAT BUILDING WITHOUT PERMIT IS A CRIMINAL OFFENCE. IT SHALL BE DETERMINED WHICH COURT IS AUTHORIZED TO JUDGE SUCH OFFENCES; AND PROSECUTORS SHALL BE AUTHORIZED.

H. Amending security legislation concerning limitations on construction in the territories, due to some incompatibility to government resolution 150.

## Knesset Legislation

I propose to amend sec. 2(a) of the Law Concerning the Extension of Validity of Emergency Regulations (Judea, Samaria and Gaza - Judgment of Offences and Legal Aid), 1967, in order to allow the prosecution of an Israeli who violated a law in the territories that is not an offense inside Israel, such as entering caravans into the area and conveying it not according to a permit; violation of a prohibition to enter closed military area; violation of a delimiting order according an order regarding unauthorized buildings, etc.

This is a vital and immediate amendment, since there is almost no legal way to prosecute an Israeli who violated the abovementioned (and more) laws in the territories. Alternatively, amending security legislation in order to allow prosecuting Israelis in local courts.

As mentioned above, the following is the full recommendation chapter in the opinion. It is followed by the conclusion chapter.

## Chapter Twelve

### Recommendations

- 12.1 Organizational Recommendations
- 12.2 Amendments to Existing Government Resolutions and New Resolutions
- 12.3 Administrative Instructions to State Authorities Regarding Unauthorized Outposts
- 12.4 Knesset Legislation Proposals
- 12.5 Reform in Security Legislation
- 12.6 Recommendations for the Attorney General

### Preface

While writing the opinion I decided to integrate relevant recommendations in every chapter. This does not make a recommendations chapter unnecessary. This recommendations chapter includes the same integrated recommendations, for convenience, and adds further recommendations. Aside the new recommendations, I explained why they are needed.

These are my recommendations.

#### 12.1 Organizational Recommendations

##### 12.1.1 Establishing a Coordinative and Instructive Directorate Regarding Outposts

One of the difficulties emerging from this report is the absence of one body which coordinates and instructs the different authorities regarding unauthorized outposts. One of the reasons for the systematic failure in the matter of unauthorized outposts is the fact that authority is given to many bodies. The bounds of jurisdiction are not clear; different bodies handle the same matters uncoordinated; relevant facts are inaccessible being only in the possession of the Civil Administration, in an unorganized and unsystematic manner. In fact, the qualified authorities, supposed to examine this information and decide upon it, do not have it; the connection between the executive and the political branches is inappropriate, and there is no clear guidance from one authoritative body. This harsh situation demands actions. Some of which are:

A central body must be established. It will guide and instruct all other bodies, coordinate them, and certify some of their actions. This body shall hold all information concerning Israeli construction in Judea, Samaria and Gaza, including up-to-date aerial photographs, full data on authorized and unauthorized schemes, titles in land, information about obligations made regarding land allotted, and more.

This coordinative and instructive body will be subordinate to the Prime Minister, and coordinated with the Minister of Defense.

The jurisdiction and authority of all bodies involved in this matter must be clearly defined.

It must be clearly instructed: which actions are completely prohibited, and which are allowed on discretion. Such discretion must be evident, equal and general. Ad hoc decisions, with no clear criteria or reasons, will not be acceptable any more.

The instructive body will check the implementation of government resolutions and this opinion's recommendations, if accepted.

The instructive body will examine money transference to the territories and to Israeli settlements and make sure it doesn't end in unauthorized outposts;

The instructive body will check whether the bodies and authorities mentioned in this opinion have ceased their illegal or improper activity, as mentioned above.

As for this body's jurisdiction and operating mechanism, I recommend an inter-official team, to present to you a detailed proposal.

#### 12.1.2 Distributing the List of Unauthorized Outposts to the Ministries

I recommend the distribution of the unauthorized outposts list to all government Ministries. They will be instructed not to take any illegal action, according the Attorney General direction of April 2004.

#### 12.1.3 Budgets for Law Enforcement in the Territories

A. The staff at the Supervising Unit of the Civil Administration must be reinforced, in order to actually supervise the illegal Israeli construction in the territories. The Head of the Civil Administration, together with the Coordinator of Government Activities in the Territories and the Legal Adviser to Judea & Samaria will prepare a proposal for the additional staff needed.

B. The proposed changes in security legislation requires new prosecutors to handle illegal construction offences in the territories (I believe three prosecutors are needed).

C. Additional staff is needed at the Legal Adviser to Judea & Samaria Bureau – in order to increase the involvement of the Legal Adviser staff in planning and licensing committees and other Civil Administration committees, to support the amendments to security legislation with the necessary legal advice, and to prepare the State's and the other authorities' responses in High Court proceedings. I believe 3 solicitors must be added for this.

D. Additional staff is needed for the Judea & Samaria Police District, to enable more effective law enforcement. Alternatively, as the Chief Inspector of the Police suggested, Magav police officers posted in Judea, Samaria and Gaza for special operations can be added to the JS District police force.

These changes require budgeting, and I recommend so.

## 12.2 Amendments to Existing Government Resolutions and New Resolutions

12.2.1 I recommend the abolishment of resolution 175, to be replaced by the following one:

This resolution concerns establishing and expanding settlements in Judea, Samaria and Gaza

A. The establishment of a new settlement or the building expansion of a settlement in the Judea, Samaria and Gaza territories (hereinafter: "expansion"), which was established by a government or a Settlement Minister Committee resolution - requires a government resolution.

B. An expansion of the jurisdiction of a regional, aerial or city council or of a settlement in Judea, Samaria and Gaza - requires a government resolution.

C. A settlement established according to a government or a Settlement Minister Committee resolution, and neighborhoods or buildings were unlawfully built nearby, no expansion is to be executed nearby such buildings until it is decided what will become of them.

D. The Minister of Defense shall not grant a planning permit, and a planning committee shall not consider a scheme before presented the appropriate approvals of the political echelon, as required according to this resolution.

### 12.2.2 Amending Resolution 150 of 1996

I propose some amendments to this resolution.

The resolution is as follows:

- a. With respect to settlement within Judea, Samaria and Gaza... government Ministries shall act as follows, subject to the authorities of the security system and the Minister of Defense in this field, and in the framework of the approved State budget's sections, according to the instructions of the Prime Minister.
- b. Any new licensing of planning and State land allotment for construction in the areas is subject to the approval of the Minister of Defense.
- c. Planning committees in the areas shall not consider a contour scheme before the approval of the Minister of Defense. Such scheme shall be valid only at the Minister's approval.
- d. The above provisions shall be implemented in security legislation in Judea, Samaria and Gaza.
- e. This resolution replaces resolution 360 of 22 November 1992...
- f. Following the above mentioned: all matters of overall policy regarding settlements, road paving and proposals for establishment of new settlements will be brought to the discussion and resolution of the government."

These amendments must be made:

- A. Application of Resolution 150 to Allotments Prior to 1996

This resolution does not consider old land allotments, prior to 1996, made to the Zionist Organization and to other settling bodies and were not yet sub-allotted to others. Indeed, I recommended the abolishment of all allotments made by the Commissioner to the Zionist Organization and not yet sub-allotted to others.

I do not know whether this recommendation is accepted. I also know there are other settling bodies. I do not know if they land were allotted to them and not yet sub-allotted to others.

Therefore, in addition to my recommendation regarding the Settlement Division, I recommend the amendment of resolution 150, in accordance with its purpose: land allotted prior to the 1996 resolution shall not be sub-allotted, unless it is so permitted by the Minister of Defense.

I therefore propose the following government resolution:

Any land allotment made by the Commissioner of Government and Deserted Property of the Civil Administration to a settling body before government resolution 150, where the land has not yet been allotted by the settling body to others - shall immediately be abolished, and the land shall return to the Commissioner.

Government resolution 150 (and other resolutions if to be made following this opinion) will apply to such land returned to the Commissioner.

## B. Land Allotment for Purposes Other Than Construction

Government resolution 150 deals only with land allotments for construction purposes:

b. Any new licensing of planning and State land allotment for construction in the areas is subject to the approval of the Minister of Defense.

Therefore it seems that the resolution does not apply to land allotment for agricultural purposes. This allows the Zionist Organization to allot lands for agricultural purposes without the approval of the Minister of Defense.

We have already witnessed how land allotted for agricultural purposes then becomes a place for building agricultural farms, and one day an unauthorized outpost appears on it.

One of the claims of such settlers is that they are not invaders, since the World Zionist Organization was the one who allotted their land.

I propose an amendment to government resolution 150, so that any allotment of any kind, either for construction, agricultural or any other purpose, is subject to the approval of the Minister of Defense.

I therefore suggest the following government decision:

Amending resolution 150:

Sub-section b shall be replaced as follows:

b. Any land allotment, either for construction, agricultural or other purposes, and any new licensing of planning, regarding State land in the areas, is subject to the approval of the Minister of Defense.

### 12.2.3 Government Resolution Regarding the Settlement Division of the World Zionist Organization

A government resolution shall be made ordering the Settlement Division:

a. To abolish all land allotments held by the Settlement Division and not yet allotted to others, if there are any, and return it to the Commissioner of Government and Deserted Property of the Civil Administration (hereinafter: the Commissioner). The Commissioner shall make a similar examination.

b. To abolish all land allotments made to the Settlement Division, and allotted by it to others violating its permit.

c. To abolish all land allotments made by the Settlement Division to others, and are still unused, and return it to the Commissioner.

d. To abolish all land allotments upon which unauthorized outposts were established, and return it to the Commissioner.

- e. To cease any activity of the Settlement Division in the territories, unless the Government authorizes ad-hoc the Division as a settling body for the purpose of establishing or expanding a specific settlement in Judea, Samaria and Gaza, that the Government has decided to establish or expand.
- f. The Ministry of Finance shall modify the Settlement Division budget in light of the necessary changes resulting this resolution.
- g. The Ministry of Finance shall check whether budgets transferred so far to the Settlement Division are directed according to this resolution.
- h. The Settlement Division must make every effort to settle the contractual relations between the Commissioner and the settlers in Judea, Samaria and Gaza, regarding land allotted to the World Zionist Organization.

In addition, even if these recommendations or parts thereof are not accepted, it shall be decided:

The Settlement Division shall not purchase generators nor supply them to unauthorized outposts.

#### 12.2.4 Government Resolutions Regarding the Ministry of Construction & Housing

Regarding planning, budgeting and establishing unauthorized outposts and/or buildings

- a. The Ministry of Construction & Housing shall not plan a settlement, a neighborhood or any building in Judea, Samaria and Gaza, before running a thorough examination concerning the interests in the lands designated for planning.
- b. The Ministry of Construction & Housing shall not plan the establishment of a settlement or a neighborhood without a decision of the political echelon.
- c. The Ministry of Construction & Housing shall not plan an unauthorized outpost post factum.
- d. The Ministry of Construction & Housing shall not plan, budget or build in lands that are not State lands. For the avoidance of doubt, the Ministry of Construction & Housing shall never take any action mentioned above in survey lands or in private Palestinian property.
- e. The Ministry of Construction & Housing shall establish a data base with all the information concerning titles to land in Judea, Samaria and Gaza. This data base shall be accessible to all of the Ministry's departments, including the Rural Building Administration.
- f. The Ministry of Construction & Housing shall not finance nor built in Judea, Samaria and Gaza, either directly or through others, without first getting a building permit.

Regarding future purchase of caravans for Judea, Samaria and Gaza

Any purchase of caravans designated for the territories is equal to an approval for building houses in the territories. Therefore, any future purchase, by the Ministry of Construction & Housing or by any other Ministry, of caravans designated to the Judea, Samaria and Gaza territories, is subject to the approval of both the Prime Minister and the

Minister of Defense, prior to the publication of a tender for their production or acquisition.

#### 12.2.5 Government Resolutions Regarding the Jurisdiction of the Minister of Defense and the Civil Administration

Initiating land survey procedure in Judea, Samaria and Gaza

(1) No application to declare survey lands as State lands, according to land survey procedure, shall be submitted, and no such application submitted in the past shall be examined, regarding unauthorized outposts if a delimiting order concerning them were issued according to the Order Concerning Unauthorized Buildings (Temporary Instruction) 1539.

(2) No application to declare survey lands as State lands, according to land survey procedure, shall be submitted, and no such application submitted in the past shall be examined, regarding lands on which unauthorized outposts are located, unless Government has decided to examine the possibility of turning the unauthorized outpost into an acknowledged settlement.

(3) No application to declare survey lands as State lands, according to land survey procedure, shall be submitted, and no such application submitted in the past shall be examined, unless Government has previously decided to establish an Israeli settlement in the same area.

(4) No application to initiate land survey procedure shall be submitted without the approval of the Minister of Defense or his Deputy. They may not delegate their authority.

An application according to land survey procedure shall not be promoted if the land is already examined by the Civil Administration, unless the Minister of Defense approves such promotion, and further certifies that this government resolution is implemented regarding it.

Acquisition of Land by Israelis in Judea, Samaria and Gaza

Acquisition of Land by Israelis in Judea, Samaria and Gaza requires the written approval of the Minister of Defense. The Minister of Defense may delegate this authority only to his Deputy.

The Order Concerning Land Transactions (Judea & Samaria) (No. 25), 1967 shall be amended so that the government resolution is implemented in security legislation.

#### 12.3 Administrative Instructions to State Authorities Regarding Unauthorized Outposts

##### 12.3.1 Instructions for the Ministry of Construction & Housing

Regarding planning of unauthorized outposts

The Minister of Construction & Housing shall be instructed to immediately cease further planning of unauthorized outposts in Judea, Samaria and Gaza, which are still in planning procedures. Since some of the planning is done by free lance architects, the Legal Adviser to the Minister, with the guidance of the Ministry of Justice, shall check for legal possibilities to cancel the contracts at the minimum cost for the State.

The Ministry of Construction & Housing shall receive a qualified unauthorized outposts list, to be updated from time to time. The Director General of the Ministry shall deliver the list to all branches of the office, especially to Rural Building Administration.

Regarding caravans purchased by the Ministry of Construction & Housing in 2003

The caravans shall not be delivered to others before determining criteria for their disposal. Only after appropriate criteria are set, and contracts are signed with their recipients, and payment arrangements to the Ministry are determined, to the satisfaction of the Legal Adviser of the office, the caravans may be rented or sold to third parties.

The Ministry shall demand the return of the caravans delivered to aerial councils in Judea, Samaria and Gaza.

The Legal Adviser of the office, with the guidance of the Attorney General, shall determine the appropriate legal manner to restore the caravans to the Ministry of Construction & Housing. They shall also determine the appropriate legal manner to demand and receive appropriate payment from these aerial councils or third parties the caravans were delivered to, for the period of possession.

### 12.3.2 Instructions for the Minister of Defense

I recommend the following instructions to the Minister of Defense:

Regarding allotment of lands by the Commissioner to settling bodies

a. I recommend the following instructions to the Minister of Defense:

Regarding new allotments:

(1) The Minister of Defense shall instruct the Coordinator of Government Activities in the Territories and the Head of the Civil Administration to cease the allotment of lands at this point.

(2) The Minister of Defense shall instruct the Coordinator of Government Activities in the Territories and the Head of the Civil Administration to initiate a serious examination concerning interests in the land to be allotted. No land shall be allotted if it is not State land.

(3) A new allotment decision shall be made only at the written approval from the Head of the Civil Administration to the Commissioner, that the land was reexamined, and after a new up-to-date examination the land was found to be State land. Without such a written approval, the Commissioner shall not allot lands.

Regarding old allotments:

(4) The Head of the Civil Administration shall be instructed to systematically examine all lands previously allotted by the Commissioner to settling bodies, including the Settlement Division, to determine whether the land is State land.

If the land is found not to be State land, any usage or plan thereof is to be prohibited.

b. Instructing Planning Committees

(5) The Head of the Civil Administration shall instruct planning committees not to approve any scheme for Israeli settlement unless a reexamination proved the relevant land to be State land. The Head of the Civil Administration shall certify that such a reexamination has taken place.

c. Setting Criteria for Land Allotment

(6) The Head of the Civil Administration, together with the Legal Advisor to Judea and Samaria, the International Law Branch of the IDF, and the Military Attorney General shall set criteria for the allotment of lands for various purposes. These criteria are subject to the approval of the Minister of Defense. The Attorney General may also approve the criteria, if he wishes to do so.

Regarding the requirement for the Commissioner's signature on the building permit as the owner

I recommend an instruction the Minister of Defense, to direct the Coordinator of Government Activities in the Territories and the Head of the Civil Administration as follows:

- a. A planning committee may not consider a building permit application and may not issue a building permit regarding State land, without a written approval of the Commissioner of Government and Deserted Property.
- b. The Commissioner shall sign a building permit only after contractual relations were made between the Commissioner and the Division of the World Zionist Organization, and between the Commissioner and the settlers, and only after all payments involved were settled.
- c. The Commissioner shall not sign a building permit where the land was allotted to the World Zionist Organization for planning purposes only.

Regarding the requirement for a written approval from the political echelon for considering a scheme

The Minister of Defense shall instruct the Coordinator of Government Activities in the Territories and the Head of the Civil Administration to direct planning committees not to consider a scheme unless presented with a certified political echelon resolution to establish a new settlement or to expand an existing one.

The certificate is required both for the construction applied for, and the expansion of the bounds of jurisdiction.

#### Building permit for an Israeli according to a Mandatory plan

- a. The Minister of Defense shall instruct the Commissioner, that the latter shall sign from now on any application of an Israeli for building permits according to a mandatory plan regarding State lands. The Commissioner must first receive the approval of the Minister of Defense.
- b. The Minister of Defense shall instruct the Coordinator and the Head of the Civil Administration to direct license committees not to consider applications for building permits without the written approval of the Commissioner on the application.
- c. The Commander of the Area shall be instructed to order that license committees may grant building permits according to a mandatory plan only to Israelis who submit an approval by the Area Commander for such permit.

#### Regarding the connection of unauthorized outposts to electricity and water networks

- a. The Minister of Defense has instructed, as a general rule, that no unauthorized outpost may be connected with electricity. Nevertheless, the Minister of Defense shall instruct the Coordinator of Government Activities in the Territories and the Head of the Civil Administration to propose criteria for exceptions, in which unauthorized outposts shall be connected to electricity, and only when there is a special security need, and subject to the approval of the Head of the Civil Administration.

The Attorney General may review and approve these criteria.

As for connecting an unauthorized outpost to water, the Minister of Defense is of the opinion that no such connection shall be done. This is his general instruction, and I find it satisfying.

- b. The unauthorized outposts list, which will be updated from time to time, shall be delivered to the Coordinator of Government Activities in the Territories and to the Head of the Civil Administration. They shall instruct the Electricity and Water Staff Officer not to approve of electricity or water connections to an unauthorized outpost. Where the Water or Electricity Staff Officer is uncertain whether the outpost is unauthorized, he must receive in advance an approval from the Head of the Civil Administration himself, for the connection.
- c. The Ministry of Defense shall inform the Director of the Electricity Company and its Jerusalem District Director, as well as the Director of Mekorot and its Center District Engineer, of these instructions, and send them the unauthorized outposts list.
- d. In case of an unauthorized outpost connected illegally to the electricity network of an acknowledged settlement, the Minister of Defense shall instruct the Head of the Civil

Administration to cut off such connection through the Supervising Unit and Electricity Staff Officer.

Regarding conveyance of caravans

I recommend instructing the Minister of Defense to regulate by the Order Concerning Transference of Goods (1252) and by the Caravan Conveyance Procedure the following provisions (if they are not yet regulated):

1. A precondition for receiving a caravan conveyance permit shall be: presenting a valid building permit issued by a planning committee, which will be attached to the application; presenting an aerial photograph of the caravan's destination, a valid detailed plan, and a written approval by the local council engineer assuring the caravan will be placed according to the plan.
2. In every application for caravan conveyance permit, the Civil Administration and the Coordinator shall examine whether the building permit was legally issued, and whether the caravan is to be located according to the plan. They shall submit their written opinion to the Minister of Defense.
3. A petitioner for a caravan conveyance permit shall clarify, in a written legal affidavit, the necessity in conveying the caravan into the territories.
4. A caravan conveyance permit shall be conditioned, as suggested in section 5 as follows.
5. An applicant shall deposit a guarantee to insure the caravan arrives at its destination and stays there. If one of the conveyance permit provisions is violated within 18 months after the arrival of the caravan to the Judea, Samaria and Gaza territories, the guarantee will be confiscated.
6. The Commander of the Area shall determine the amount of the guarantee by issuing an order.

Regarding the Supervising Unit of the Civil Administration

I recommend instructing the Minister of Defense to direct the Coordinator of Government Activities in the Territories and the Head of the Civil Administration as follows:

1. To define the supervising jurisdiction of the Supervising Unit as including the Israeli settlement in Judea, Samaria and Gaza in these places: the Supervising Unit shall supervise any area of Israeli settlement that a building permit cannot be issued in by the power of a detailed scheme; the Supervising Unit shall supervise any area where construction is done in contrary to the destination of the land. The Head of the Civil Administration shall regulate, with the approval of the Minister of Defense, supervising rules according to these instructions, for the Supervising Unit.
2. To considerably increase the Supervising Unit's staff, in light of its unit's deployment.
3. Since the Minister of Defense has agreed that aerial photography flights will take place once a month, a responsible body shall be determined to execute this instruction. The photographs will be delivered to a deciphering unit, and shall be used by the

Supervising Unit as an important tool for receiving information from the ground. The information gathered shall be delivered regularly to the Coordinator of Government Activities in the Territories and to Mr. Shpigel, Assistant to Defense Minister.

Regarding the execution of destruction orders

The Minister of Defense shall be instructed to examine all destruction orders valid today. He shall be instructed to execute all valid destruction orders, and to coordinate the implementation of existing delimiting orders.

A permanent forum shall be established for discussion, follow-up and supervision of the execution of destruction orders, headed by the Head of the Civil Administration.

Regarding regularization of planning status according to section 34a of the Jordanian Planning and Construction Law and granting caravan conveyance permit based upon it

I recommend instructing the Minister of Defense to regulate the abovementioned rules he has set (sec. 9.1.10) concerning the use of section 34a of the Planning and Construction Law. I recommend regulating an additional requirement for a legal affidavit clarifying the need for a building permit and the urgency for it.

Regarding setting fixed periods for Civil Administration officials

The Minister of Defense shall be instructed to direct the Coordinator of Government Activities in the Territories and the Head of the Civil Administration to set fixed periods for managing roles in the Civil Administration, in coordination with the Civil Service Commission.

Regarding the Assistant to Defense Minister - Settlement Affairs

I recommend considering whether there is a need for the office of an Assistant to Defense Minister - Settlement Affairs. If you decide there is a need, please consider instructing the Minister of Defense to appoint in the future someone who is objective and uncommitted to a particular sector.

#### 12.4 Knesset Legislation Proposals

Amending section 2(a) of the Law Extending the Validity of Emergency Regulations (Judea, Samaria and Gaza – Judgment of Offences and Legal Aid), 1977

I have proposed legislation regulating the prosecution of an Israeli who has committed the offence of conveying a caravan without a permit (or not according to a permit); and the prosecution of an Israeli who violated the Order Concerning Unauthorized Buildings (Temporary Instruction) 1539; and Israeli who violated a closed military area order; entering A zone without a permit; transferring dangerous materials without a permit.

Therefore I propose amending section 2(a) of the Law Extending the Validity of Emergency Regulations (Judea, Samaria and Gaza - Judgment of Offences and Legal Aid), 1977, by supplementing section 1a to the abovementioned section 2(a), as follows:

“In addition to any other law, Israeli courts are authorized to judge an Israeli for any action or omission done within the area if it were an offence according to security legislation in the area, and it is enlisted in the supplement”.

The supplement shall include offences according to security legislation, which are not considered offences in Israel. With no appropriate legislation - it is impossible to prosecute. For example: conveying caravans in Judea, Samaria and Gaza without a permit, a violation of the regulations concerning conveyance of movable buildings issued by the power of the Order Concerning Transference of Goods; Order Concerning Unauthorized Buildings (Temporary Provision) (1539); entering a sealed military area, a violation of the order concerning security instructions; conveying flammable material within the area to A and B zones with no permit, delivering flammables to the area and conveying them inside it, without a permit according to Regulations Concerning Transference of Goods (Conveying Flammables into A & B Zones) (Judea, & Samaria), 2002, issued by the power of the Order Concerning Transference of Goods.

## 12.5 Reform in Security Legislation

I propose reform in security legislation, which these are part of:

- A. Regarding evacuation of outposts - the existing legislation seems sufficient. At this time there is no need for alternative legislation.
- B. Amending the punishment provision of the Order Concerning Unauthorized Buildings (Temporary Provision) 1539. A specific punishment shall be set for violating this order. There should be a substantial imprisonment punishment and a burdensome penalty.
- C. Amending the Jordanian Cities Villages and Buildings Planning Law, Temporary Law 79 of 1966, so that building without permit is a criminal offence. An authoritative court is set and prosecutors authorized.
- D. Amending the Jordanian planning and building law, in order to apply a similar arrangement as the Israeli need for “Form No. 4” as a precondition for connecting a building to water, electricity and telephone networks. Provisions as similar as possible to section 157a of the Planning and Construction Law, 1965 and to section 5 of the Planning and Construction Regulations (Permits for Electricity, Water and Telephone Services), 1981 shall be legislated.
- E. Amending the Order Concerning Transference of Goods No. 1252, 1978 and Regulations Concerning Transference of Goods (Caravan Conveyance), to allow confiscating a caravan placed on the ground or connected to infrastructure and removing it without the need for a judicial process, within a fixed period of time.
- F. I further suggest supplementing conditions for a caravan conveyance permit, to the Order Concerning Transference of Goods No. 1252: (1) No caravan conveyance permit may be granted unless a valid building permit to place the caravan in its

destination is presented; an aerial photography of the caravan's destination; a valid detailed plan; and a written approval by the local council engineer assuring the caravan will be placed according to the plan. (2) The petitioner shall clarify, in a written legal affidavit, the necessity for the caravan. (3) The applicant shall deposit an 18-month guarantee to insure the caravan arrives at its destination and stays there.

G. Legislation granting more extensive powers to handle illegal invaders to private Palestinian property, by amending the Order Concerning Removal of Invaders (1472).

H. Amending the Order Concerning Approval of Planning and Construction Proceedings (No. 1445) (hereinafter: "Building Procedure Approval Order"), which validated government resolution 150 of 1996, according to security legislation.

I. The Order Concerning Land Transactions (Judea & Samaria) (No. 25), 1967 shall be amended. Acquisition of land by Israelis in Judea, Samaria and Gaza territories shall require the written consent of the Head of the Civil Administration.

## 12.6 Recommendations for the Attorney General

### Legal Measures

#### Ministry of Construction & Housing officials and others involved

I recommend delivering all the information gathered in this report to the Attorney General, in order to consider legal measures against State officials and others who were knowingly acted against the law, regarding the establishment of unauthorized outposts and the caravan affair in the Ministry of Construction & Housing, including all aspects of publishing the tender for caravan production, the winning bid, the conveyance of caravans into unauthorized outposts, and any other matter concerning the caravan affair.

#### As for the Assistant to Defense Minister - Settlement Affairs:

I recommend delivering all the gathered information concerning the function of the Assistant to Defense Minister – Settlement Affairs to the Attorney General, in order to consider legal measures against him.

#### Recommendation for Government Resolution to be Drafted by the Attorney General

I recommend the Attorney General draft a government resolution concerning budgeting a favored project: When a government office wishes to budget some special project out of special funds, and this project gives priority to one sector over others, the Ministry must set the criteria for such budgeting, and make them public.

#### Expanding the Jurisdiction of the Prof. Eyal Zamir Committee Regarding First registration

The Attorney General shall consider expanding the jurisdiction of the committee, to examine possible ways to prevent settlers who took unlawful possession of land from

gaining title to it by labor and possession, according to sections 78 & 20 of the Ottoman Land Law.

## Conclusion

The reality revealed is difficult.

For years Israeli governments have dismantled of their roles, not formally but in fact, and left the scene for the executive echelon. Instead of the government deciding on establishing settlements in Judea, Samaria and Gaza, others took its place, beginning in the mid nineties:

The “engine” behind a decision to establish outposts are regional councils in Judea, Samaria and Gaza, settlers and activists, imbued with ideology and motivation to increase Israeli settlement in the Judea, Samaria and Gaza territories. Some of the officials working in the Settlement Division of the World Zionist Organization, and in the Ministry of Construction & Housing, cooperated with them to promote the unauthorized outposts phenomenon. These actions were apparently inspired by different Ministers of Housing in the relevant times, either by overlooking or by actual encouragement and support, with additional support from other Ministries, initiated either by officials or by the political echelon of each Ministry.

The result was that the executive echelon, so to speak, became the deciding echelon, with no authorization, in contrary to government resolutions, baring no political or public responsibility, which by nature of things rests upon the political echelon.

All of this with massive financing by the State of Israel, with no appropriate transparency, no criteria.

The establishment of unauthorized outposts violates standard procedure, good governing rules, and especially an ongoing bold law violation.

Furthermore, the State authorities speak two voices. Sometimes grant, and sometimes prevent. Rules have become flexible. One hand builds outposts, the other invests money and force to evacuate them.

These actions were not done by individuals only. The problem is State and public authorities took part in breaking the law. They are the ones who financed construction without a resolution by the political echelon, in contrary to government resolutions, with no legal planning status, sometimes not on State owned land, sometimes on private Palestinian property or on survey land.

State authorities and public authorities broke the laws, regulations and rules made by the State.

The IDF, who has sovereignty in Judea, Samaria and Gaza, and is responsible for peace and security, and the Israeli police, who is responsible of law enforcement in these

territories - both fail to stand up to their missions. Law enforcement bodies cannot act against State authorities breaking the law. They cannot handle a mixed message, that the outposts are illegal but encouraged by the authorities.

The security concept, that wherever there is an Israeli person - IDF will be there to protect him, resulted in a very sad reality. Therefore, any settler who places his home wherever he chooses, even if unauthorized and against the law - gains the protection of the army. The outcome is that the settlers are the ones who set the army's deployment in the territories, not the army. Everyone is king. In order to protect one outpost, forces must be taken out of other places. The forces are not unlimited, and so the security level drops down.

The protection supplied by IDF to unauthorized outposts, its mere existence there, drags it unwillingly to give its "seal" to unauthorized outposts.

And as if all this is not enough, the law enforcement tools in Judea, Samaria and Gaza is lacking. The security legislation does not support law enforcing bodies with the necessary tools to handle law violations regarding unauthorized outposts. Long time needed legislation was not done, even though the bodies involved are well aware of it. A certain change appears, maybe, in the last few months.

The State of Israel is a democratic state. This is what the Declaration of Independence and the Basic Laws teach us. This is the glue that sticks all its citizens together, allows them to live together in one political entity.

Democracy and the rule of law are two inseparables. One cannot exist without the other.

The reality drawn up in this opinion shows that all of these deeds seriously endanger the principal of the rule of law. Even though the outposts are built in the Judea, Samaria and Gaza territories and not in Israel, the settlers and the authorities who take part in their establishment are Israeli. A continuing, bold, institutionalized law violation undermined the rule of law. When law violations become standard behavior it tends to spread into other areas.

The Jewish settlement in the Judea, Samaria and Gaza territories is a matter in great dispute in Israel. Some support it passionately, others oppose it. Settlement policy in the Judea, Samaria and Gaza territories is should be decided on by an elected government.

But any government policy must obey the law. All officials and politicians are governed by law.

The actions described are not a matter of political view. It is a matter of law enforcement, a question of the rule of law.

In order to maintain the democratic regime of Israel, urgent measures must be taken to change the reality I have described. It can no longer be accepted. It must be reformed, and I believe you have the power to do so.

I therefore suggest to implement my recommendations.

Talya Sason, Adv.

Cc: Attorney General