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Israel: Law for the Regulation of Settlement in Judea and Samaria, 5777-2017

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SUMMARY On February 6, 2017, the Knesset (Israel’s Parliament) passed a law for the regulation of land in Judea and Samaria (the West Bank). Land subject to the regulation is defined as that on which Israeli settlements were built “in good faith” or “with the consent of the state.” The law provides for registration of land ownership under the name of the government official in charge where ownership has not otherwise been established. Additionally, it provides for the expropriation of the rights of use and possession of privately-owned land in the region. Such expropriation will be in effect until a political resolution on the status of the region is achieved. Landowners whose property rights have been affected will be compensated.

Effective from the date of publication, the law suspends all pending administrative orders for the evacuation and destruction of settlements, except for those orders issued for the implementation of judicial decrees or court decisions. The law provides for the expiration of such suspended orders after a specified period.

I. Introduction

On February 6, 2017, the Knesset plenum approved the Law for the Regulation of Settlement in Judea and Samaria, 5777-2017.¹ The law passed with the support of sixty members with fifty-two objecting.²

The law applies to (Israeli) settlements that have been built “in good faith” or with “the consent of the state.”³ The law authorizes the registration of private land ownership, where ownership has not otherwise been established, under a government official appointed for this purpose within twelve months after the law’s date of publication in the official gazette.⁴

The law also allows for the expropriation of the rights to use and possession of land where the owners have been identified, if it is determined that the expenses incurred for building settlements on such land have exceeded, at the time of their construction, the value of the land

¹ Regulation of Settlement in Judea and Samaria Law, 5777-2017, SEFER HAHUKIM [SH] [BOOK OF LAWS (official gazette)] No. 2604 p. 394 at 410 (Feb. 13, 2017), available on the Ministry of Justice website, at <http://www.justice.gov.il/Units/Reshomot/publications/Pages/BookOfLaws.aspx> (scroll to issue no. 2604672), text of law archived at <https://perma.cc/8ZKO-3USL>.

² *Arrangement Law Passed in Second and Third Reading*, KNESSET, <http://main.knesset.gov.il/News/PressReleases/Pages/press6217g.aspx> (in Hebrew; last visited Feb. 6, 2017), archived at <https://perma.cc/ZKY8-3TWQ>.

³ Regulation of Settlement in Judea and Samaria Law, 5777-2017, § 3.

⁴ *Id.* §§ 3(1) & 4(a).

without the construction.⁵ The expropriation of rights to use and possession can be determined by the relevant area's authorities within six months from the date of publication of the law.⁶ The expropriation must be exercised, to the extent possible, in accordance with the provisions of the Jordanian land law, insofar as these provisions do not contradict the requirements under the law. Furthermore, the expropriation of these rights will be effective only until the adoption of a political determination on the status of the West Bank and Israeli settlements in it.⁷

The law allows for monetary compensation to be paid to Palestinian owners for the expropriation of their lands under the law at the rate of 125% of appropriate yearly usage fees as determined by an assessment committee, or compensation via allocation of alternative land.⁸ The law provides that the assessment committee will be appointed by the Minister of Justice in consultation with the Minister of Defense and will include a representative from the Ministry of Justice, from the Ministry of the Treasury, and from the military.⁹ A decision by the assessment committee can be appealed to an appellate committee.¹⁰

Except for the enforcement of judicial decrees and for the demolition of buildings that are endangering human life, all administrative orders for demolition of settlements built on land regulated by the law are to be suspended until the completion of "planning procedures," after which the suspension orders will expire.¹¹

The law provides a list of sixteen settlements for which all existing nonjudicial administrative enforcement procedures must be suspended. During this period a determination must be made under the authority to register land for which the owners have not been identified.¹² The law authorizes the Minister of Justice, with the approval of the Knesset Constitution, Law and Justice Committee, to add additional settlements to the list.¹³

Many have questioned whether the legislation will survive judicial review by the Supreme Court. Israel's Attorney General Avichai Mandelblit has reportedly declared that if the law is challenged in court, he would not defend it against arguments that it violates the Fourth Geneva Convention. In response, Justice Minister Ayelet Shaked, a senior member of the Habayit Hayehudi (Jewish Home) party, said that, if necessary, a private attorney would represent the government in court.¹⁴

⁵ *Id.* § 3(2)(a).

⁶ *Id.* § 4(b).

⁷ *Id.* § 3(2)(b).

⁸ *Id.* § 8.

⁹ *Id.* § 9.

¹⁰ *Id.* § 10.

¹¹ *Id.* §§ 6–7.

¹² *Id.* § 11 & App.

¹³ *Id.* § 11(b).

¹⁴ Allison Kaplan Sommer, *Explained: Israel's New Palestinian Land-grab Law and Why It Matters*, HAARETZ (Feb. 7, 2017), <http://www.haaretz.com/israel-news/1.770102>, archived at <https://perma.cc/94XM-BXSF>.

This report provides a translation of the law and analyzes some of the legal issues raised with regard to its impact under Israeli law.

II. Translation of the Law

The translation that follows was prepared by the author. It omits referenced citations appearing in the original Hebrew text. Titles of sections are in bold text for the reader's convenience.

Regulation of the Settlement in Judea and Samaria Law, 5777-2017

1. Objective

The objective of this law is to regulate Israeli settlement in Judea and Samaria [the West Bank] and to allow its continued establishment and development.

2. Definitions

In this Law-

“Area”- as defined in the Emergency Regulations (Judea and Samaria- Adjudication of Offenses and Legal Assistance), 5767-1967, as periodically extended and amended;

“Owner of rights in land”- a person who has proved that he/she is registered as the owner of rights in land or is eligible to be registered as the owner of rights in land;

“Planning procedures”- including the grant of building permits based on plans to be approved;

“Consent of the state”- expressly or implicitly, in advance or after the fact, including assistance in placing infrastructure, granting incentives, program planning, publishing advertising designed to encourage building or the development or participation in cash or in kind;

“Settlement”- including a neighborhood or an expansion of the same settlement, and including the totality of residential houses in it, the installations, agricultural areas used for its needs, public buildings, production means, as well as access routes, water infrastructure, telecommunications, electricity, and sewage;

“Appellate Committee”- Committee established under section 10;

“Assessment Committee”- Committee established under section 9;

“Jordanian land law”- the Land (Acquisition for Public Needs) Law No. 2 of 1953, as amended in the Land (Acquisition for Public Needs) (Decree No. 321) (Judea and Samaria), 5729-1969;

“The state”- the government of Israel or [one of the] government ministries, area's authorities, a local authority, or a regional council in Israel or in a region and a settling institution;

“Settling institution”- as defined in the Candidates for Agricultural Settlement Law, 5713-1953;

“The commissioner”- the commissioner of government property in the Judea and Samaria area according to the Decree on Government Property;

“Land requiring regulation”- land in an area where the regional authorities or the commissioner do not have rights of use and possession wholly or partially;

“Decree Regarding Government Property”- a decree regarding government property (Judea and Samaria) No. 2, 5727-1967.

“Area’s authorities”- whoever undertook all the governing authorities in accordance with section 3 of the order for Regulating Law and Control (Judea and Samaria) (No. 2), 5767-1967, or under another legal provision that might replace it.

3. Registration or Expropriation of Rights of Use and Possession of Land Requiring Regulation

When the regional authorities have found that in the period preceding the date of publication of this law a settlement has been built on land requiring regulation in good faith, or with the consent of the state, the following provisions shall apply to the whole land on which such a settlement was built:

- (1) Land over which no person has property rights- the commissioner shall register the property as government property under section 2c of the Decree Regarding Government Property;
- (2) (a) Land for which there is an owner of property rights- the area’s authorities shall take all rights to use and possession and transfer them to the commissioner, if they have determined that the amount that has been invested in the construction of the settlement exceeded, at the time of the construction, the value of the land without the settlement at that time;

(b) The expropriation of the rights to use and possession as stated in this subsection shall be exercised, to the extent possible, in accordance with the provisions of the Jordanian land law, inasmuch as [those provisions] do not contradict the provisions of this law, and will be valid until a political resolution regarding the area’s status and the settlement in it [is reached].

4. Timing of Registration of Land or Expropriation of Rights of Use and Possession

- (a) The commissioner shall register the land as government property in accordance with section 3(1) within 12 months from the date of publication of this law.
- (b) The area’s authorities shall expropriate rights to use and possession of land under section 3(2) within six months from the date of publication of this law.

5. Allocation of Rights in Land

Within 60 days from the date of registration or expropriation of rights as provided in section 4, as appropriate, the commissioner shall allocate the rights to use and possession

of land that has been registered or rights that have been expropriated as said, for the needs of the settlement that has been built on such land through a settling institution.

6. Completion of Planning Procedures

- (a) The state shall act for completion of planning procedures for land that was registered or from which rights under section 3 have been appropriated as soon as possible.
- (b) Planning procedures for land as stated in subsection (a) shall be done, to the extent possible, in consideration of the need for regulating existing construction.

7. Suspension of Proceedings and their Expiration

- (a) When the area's authorities have found that a settlement complies with all the conditions in the beginning of section 3, all existing enforcement procedures and administrative orders regarding such settlement shall be suspended until the completion of planning procedures under section 6, except for such procedures and decrees for which judicial decrees or court decisions were rendered for their implementation.
- (b) All enforcement proceedings and administrative decrees that have been suspended under subsection (a) will expire after completion of the planning procedures under section 6.
- (c) The provisions of this section shall not apply to a structure the destruction of which is required to prevent danger to human life.

8. Compensation

- (a) When the area's authorities have expropriated the rights to use and possession of land in accordance with section 3(2), the owner of rights in the land shall be entitled to [either] yearly use fees at the rate of 125% of their appropriate value as determined by the Assessment Committee under section 9(c) (hereafter their appropriate value), [or] to use fees paid for periods of 20 years each at a rate of 125% of their appropriate value, [or] to alternative land, where possible, according to his/her choice.
- (b) If the owner of rights in the land has not selected one of the options of compensation under subsection (a) by the date of the allocation of rights in land under section 5, he/she will be entitled to yearly use fees at a rate of 125% of their appropriate value.
- (c) The payment of compensation according to this section shall be made within 3 months from the date of determination of the appropriate value of the use fees under section 9(c)(2).
- (d) When the Commissioner has learned that land registered as government property under section 3(1) has an owner of land rights, the provisions of section 3(2) shall apply and the owner of land rights shall be entitled to compensation under this section.
- (e) There is nothing in the provisions of this section and sections 9 & 10 to delay proceedings under sections 3 to 6.

9. The Assessment Committee

- (a) The Minister of Justice, in consultation with the Minister of Defense, shall establish an Assessment Committee for implementation of this law, and these are its members:

- (1) A representative appointed by the Minister of Justice from his/her office's employees- who will be the chairperson;
 - (2) A representative appointed by the Minister of the Treasury from his/her office's employees;
 - (3) A representative of the region's authorities appointed by the Minister of Defense.
- (b) The Minister of Justice shall determine the procedures of the Assessment Committee.
- (c) (1) The Assessment Committee shall determine the appropriate value of the use fees or the alternative land that will be offered to the land rights owner after having heard the claims of the land rights owner- if he/she made claims, and having considered all the circumstances of the case.
- (2) The determination of the Assessment Committee under section subsection (1) shall be made within 3 months after the date it has finished hearing the claims of the land rights owner or the day on which the land owner had to make his/her arguments in accordance with the procedures determined under subsection (b).

10. Appellate Committee

- (a) The Minister of Justice, in consultation with the Minister of Defense, shall establish an Appellate Committee for the purpose of implementation of the provisions of this law, and these are its members:
- (1) A representative of the area's authorities who is qualified to be a judge of a circuit court that will be appointed by the Minister of Justice, with the consent of the Minister of Defense- who will be the chairperson;
 - (2) A representative appointed by the Chief Government [Land] Assessor among the employees of his/her office;
 - (3) A land assessor whose name is included in the list of assessors making determinations according to the provisions of section 202c of the Planning and Construction Law, 5725-1965, appointed by the chairperson of the land assessors' committee.
- (b) An owner of rights in land who sees himself/herself as harmed by the decision of the assessment committee under section 9(c)(1) may submit an appeal to the appellate committee over the decision.
- (c) Decisions of the appellate committee shall be made with a majority of the committee's members; in the absence of a majority [in support] of a decision, the chairperson's opinion will determine [the outcome].
- (d) The appellant committee will not be bound by the procedures and evidentiary rules that apply to courts and will act in the way it perceives as the most useful for the receipt of a just and speedily enforced decision.
- (e) The appellate committee may approve the decision that was received by the assessment committee, in full or in part, cancel or change it, return the subject matter for a new hearing in the assessment committee, or enter a different decision in its place.

11. Temporary Provision Regarding Settlements Listed in the Appendix

- (a)
- (1) In the period of 12 months from the date of publication of this law all existing enforcement procedures and administrative decrees regarding settlement in settlements listed in the appendix shall be suspended.

- (2) In the period defined in subsection (1) the area's authorities shall determine if the conditions under the beginning of section 3 exist in the settlements listed in the appendix.
 - (3) Once the regional authorities have determined that the conditions under the beginning of section 3 applied to the settlements listed in the appendix, the provisions of this law shall apply to them.
 - (4) The provisions of this subsection shall not apply to-
 - (a) Existing enforcement procedures and the administrative decrees regarding the settlements listed in the appendix for which judicial decrees or court decisions were rendered for their enforcement;
 - (b) Structures the destruction of which is needed to prevent danger to human life.
- (b) The Minister of Justice, with the approval of the Knesset Constitution, Law and Justice Committee, may add, by decree, additional settlements to the appendix.

Appendix (section 11)

- (1) Ofra
- (2) Netivei Haavot
- (3) Eli
- (4) Kokhav Hashachar
- (5) Mitspe Kramim
- (6) Elon Moreh
- (7) Maale Michmash
- (8) Shavei Shomron
- (9) Kdumim
- (10) Psagot
- (11) Beit El
- (12) Yitshar
- (13) Har Brahca
- (14) Modiin Eilit
- (15) Nokdim
- (16) Kochav Yaakov

Benjamin Netanyahu, Prime Minister

Ayelet Shaked, Minister of Justice

Reuven Rivlin, President

Yuli-Yoel Edelstein, Speaker of the Knesset

III. Legal Aspects

A. Objectives of the Law

According to the explanatory notes to the law's Draft Bill, the regulation of the status of Israeli settlements in Judea and Samaria (the West Bank) was necessary in order to allow the continued establishment and development of Israeli settlements in the region. In many cases, the explanatory notes provide, settlements were built with the consent, the encouragement, and the participation of the state. In other cases, settlements were built by Israeli citizens "in good faith" and without knowledge that the land on which the settlements were built was privately owned.

Accordingly, “leaving the situation in these settlements as it is today or destroying them might cause difficult and unjustified harm to those who have resided in them for many years.”¹⁵

B. Supreme Court Application of International Law of Belligerent Occupation to the West Bank

Following the 1967 Six-Day War, Israel acquired control of the West Bank, East Jerusalem, Gaza, and the Golan Heights. While extending Israeli sovereignty (annexation) to Jerusalem and to the Golan Heights, Israel has not extended its jurisdiction to the West Bank or to Gaza.¹⁶

In the absence of annexation, Israeli domestic law does not apply to the West Bank. Instead, Israel’s Supreme Court has recognized that the law that applies to the West Bank derives from military decrees subjecting the area to Israeli control and to international law of belligerent occupation.¹⁷ The Court thus specifically applied to the West Bank the Hague Regulations Respecting the Laws and Customs of War on Land (1907)¹⁸ (the Hague Regulations), and the 1949 Convention (IV) Relative to the Protection of Civilian Persons in Time of War¹⁹ (the Fourth Geneva Convention).²⁰

C. Legality of Settlement of Israeli Citizens in the West Bank

The Supreme Court has avoided adjudicating the policy aspects of the government settlement project in the West Bank, viewing the subject as a nonjusticiable political matter.²¹

¹⁵ Regulation of Settlement in Judea and Samaria Law 5777-2016, KNESSET DRAFT BILLS Issue No. 672, p. 44, explanatory notes for §§ 1 & 2 (Dec. 7, 2016), <http://knesset.gov.il/Laws/Data/BillKnesset/672/672.pdf> (in Hebrew), archived at <https://perma.cc/39G8-8XPG>.

¹⁶ Basic Law: Jerusalem, Capital of Israel, SH 5740 No. 980 p. 186, *as amended*, English translation available at <http://knesset.gov.il/laws/special/eng/BasicLawJerusalem.pdf>, archived at <https://perma.cc/75JN-B3QU>; Golan Heights Law, 5742-1981, SH 5742 No. 1034 p. 6, available at Nevo Legal Database, <http://www.nevo.co.il> (by subscription), archived at <https://perma.cc/7SFC-CDP8>.

¹⁷ See H CJ 390/79 Doakat v. Government of Israel (Oct. 22, 1979) (“the *Elon Moreh* decision”), available at <http://www.nevo.co.il> (by subscription) (in Hebrew), archived at <https://perma.cc/6MCZ-JJCF>; see also H CJ 69/81 Abu Ita v. Regional Commander in Judea and Samaria, 37(2) PISKE DIN [PD] [SUPREME COURT DECISIONS] 197 (5744-1983), available at <http://www.nevo.co.il>, archived at <https://perma.cc/BE5N-PBED>.

¹⁸ Hague Regulations Respecting the Laws and Customs of War on Land (1907) (published as Annex to the Convention), <https://www.loc.gov/law/help/us-treaties/bevans/m-ust000001-0631.pdf> (for recognition of application), archived at <https://perma.cc/KG7X-822V>.

¹⁹ Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949 (Fourth Geneva Convention), available at <https://ihl-databases.icrc.org/ihl/INTRO/380> (link to full text in PDF on right), archived at <https://perma.cc/ETU2-R5BG>.

²⁰ Amichai Cohen, *An Opinion Regarding the Regulation of Settlement in Judea and Samaria, Draft Bill 5777-2016*, ISRAEL DEMOCRACY INSTITUTE (Nov. 14, 2016), <https://www.idi.org.il/media/6457/opinion-hasdsara.pdf> (in Hebrew), archived at <https://perma.cc/V9KG-X2F9>.

²¹ H CJ 4481/91 Bragil v. Government of Israel, 47(4) PD 210 (5754-1993), available at <http://www.nevo.co.il> (by subscription), archived at <https://perma.cc/6M92-MFWD>.

According to an opinion article published by the Israeli Democracy Institute, however, as an area that is subject to the law of belligerent occupation, many countries have viewed the building of settlements in the West Bank as a violation of section 49 of the Fourth Geneva Convention. This article provides that “[t]he Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”²²

The view that the construction of settlements in the West Bank violates the Fourth Geneva Convention was opposed by the Director of the Institute for Contemporary Affairs at the Jerusalem Center who argued that

. . . both the text of that convention, and the post-World War II circumstances under which it was drafted, clearly indicate that it was never intended to refer to situations like Israel’s settlements. According to the International Committee of the Red Cross, Article 49 relates to situations where populations are coerced into being transferred. There is nothing to link such circumstances to Israel’s settlement policy.

A special regime between Israel and the Palestinians is set out in a series of agreements negotiated between 1993 and 1999 that are still valid—that govern all issues between them, settlements included. In this framework there is no specific provision restricting planning, zoning, and continued construction by either party. The Palestinians cannot now invoke the Geneva Convention regime in order to bypass previous internationally acknowledged agreements.²³

The Israeli government has so far objected to the view that Israeli settlements in the West Bank violate section 49 of the Fourth Geneva Convention and has argued that the provision is irrelevant, as it only prohibits the forceful transfer of citizens to the area, while Israeli citizens who settle in the West Bank do so on a voluntary basis.²⁴

According to the Israeli Democracy Institute’s article, however,

[t]he further Israel advances the settlements, when the settlements are done with very generous state support, the harder it will be for Israel to argue that it does not “transfer” its citizens. Utilization of the power of expropriation, which is one of the strongest forces bestowed on a state, greatly sharpens the argument that Israel “transfers” its residents.²⁵

The article further notes that under the Rome Treaty, “the transfer, **directly or indirectly**, by the Occupying Power of parts of its own civilian population into the territory it occupies”²⁶ constitutes a war crime. Considering the Draft Bill’s stated objective, “to regulate the Israeli

²² Cohen, *supra* note 20, referring to the Fourth Geneva Convention, *supra* note 19, § 46.

²³ Alan Baker, *The Settlements Issue: Distorting the Geneva Convention and the Oslo Accords*, JERUSALEM CENTER FOR PUBLIC AFFAIRS (May 4, 2012), <http://jcpa.org/article/the-settlements-issue-distorting-the-geneva-convention-and-the-oslo-accords-2>, archived at <https://perma.cc/V8U5-CW4M>.

²⁴ Cohen, *supra* note 20.

²⁵ *Id.*, para. (2) “Strengthening Support of the Settlements.”

²⁶ *Id.* (emphasis in original) (citing Rome Statute of the International Criminal Court, *as amended*, § 8(2)(b)(viii), <http://www.un.org/law/icc/index.html>, archived at <https://perma.cc/XTN7-SVVW>).

settlement in Judea and Samaria [the West Bank] and to allow its continued establishment and development,” the opinion’s author questioned whether Israel could argue that it does not transfer its citizens, even indirectly, to the West Bank.²⁷

D. Legality of Expropriation of Land

In its leading decision in the 1979 *Elon Moreh* case, the Supreme Court clarified that the building of settlements on privately-owned land, as compared with public land,²⁸ is unlawful, subject to the “military needs” exception. The Court emphasized that

[t]he principle of preserving an individual’s property also applies under the laws of war that are expressed in section 46 of the Hague rules. A military rule that wishes to harm an individual’s right to property must show a legal basis for it and cannot exempt itself from judicial review of its actions based on a claim of lack of justiciability.²⁹

According to section 52 of the Hague Regulations, any “[r]equisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation.”³⁰ Such needs are defined under section 43 as “to restore, and ensure, as far as possible, public order and safety.”³¹

Any justification that is not based on military needs, the Court held, would be rejected. Thus, the requisition of private property that is motivated primarily by “a Zionist world view of settling throughout the land of Israel” was held by the Court in the *Elon Moreh* case to not comply with the requirements of section 52 of the Hague Regulations and was therefore void.³²

E. Implications for the Rule of Law

A comparison of the text of the law that was passed by the Knesset plenum and its earlier Draft Bill version, as previously submitted on November 30, 2017, reflects a change in the scope of evacuation and demolition orders that can be suspended and voided by the area’s authorities.³³ The ability to suspend and repeal final court decisions, based on the Draft Bill, has been criticized as unprecedented in the Israeli legal system and as constituting serious damage to separation of powers and the rule of law.³⁴ The final version that passed, however, appears to

²⁷ *Id.*

²⁸ Cohen, *supra* note 20.

²⁹ H CJ 390/79 Doakat v. Government of Israel, decision by Justice Moshe Landau, *supra* note 17, at 16.

³⁰ Hague Regulations, *supra* note 18, § 52.

³¹ *Id.* § 43.

³² Doakat v. Government of Israel, *supra* note 17, at 16.

³³ Regulation of Settlement in Judea and Samaria 5777-2016, Knesset Draft Bills Issue No. 670 p. 27 (Nov. 30, 2016), http://fs.knesset.gov.il/20/law/20_ls1_363128.pdf (in Hebrew), archived as <https://perma.cc/JVU8-L9EL>.

³⁴ Cohen, *supra* note 20, para. (7), “Cancellation of Court Decisions Without Any Criterion.”

limit the suspension of procedures and the repeal of orders only to those that were not issued for the enforcement of judicial decrees or court decisions.³⁵

F. Constitutional Review

Palestinian owners of expropriated land will possibly claim that the law violates the protection of their right to property under Israel's Basic Law: Human Dignity and Liberty.³⁶ The success of this claim depends on whether the Supreme Court finds that the Basic Law applies beyond Israeli territory.

If it concludes that the Basic Law applies to the territory in question, the Supreme Court will then need to examine whether the new law meets the constitutional requirements of the Basic Law. Under the Basic Law, a law that violates an individual's right to property will not be repealed if, in addition to corresponding "to the values of the State of Israel . . . [, it] serves an appropriate purpose, and to an extent that does not exceed what is required."³⁷

IV. Calls for Full Annexation of the West Bank

In response to the December 2017 UN Security Council Resolution declaring Israel's settlements to be illegal and constituting a "flagrant violation of international law,"³⁸ Knesset Members from the Habayit Hayehudi (Jewish Home) and the Likud parties called for advancing legislation for the annexation of the West Bank.³⁹ This includes, for example, the Maale Adumim Draft Bill, 5776-2016, submitted in August 2016.⁴⁰

In case of adoption of the annexation legislation extending Israeli jurisdiction to the West Bank, wholly or in part, Israeli judges could be required to replace the application of military rule, and as a consequence the application of norms required under international law of belligerent occupation, with that of Israeli domestic law.

³⁵ Regulation of the Settlement in Judea and Samaria Law, 5777-2017, § 7.

³⁶ Basic Law: Human Dignity and Liberty (1992), § 3, SH 5752 No. 1391 p. 150, English translation available at <http://knesset.gov.il/laws/special/eng/BasicLawLiberty.pdf> (click on appropriate link), archived at <https://perma.cc/C3RJ-DA2X>. For an analysis of the merits of such a claim, see Cohen, *supra* note 20, under "The Constitutional Problem- the Right to Property."

³⁷ Basic Law: Human Dignity and Liberty § 8.

³⁸ *Israel's Settlements Have No Legal Validity, Constitute Flagrant Violation of International Law, Security Council Reaffirms*, UNITED NATIONS (Dec. 23, 2016), <https://www.un.org/press/en/2016/sc12657.doc.htm> (re: Security Council Resolution 2334), archived at <https://perma.cc/P76G-XEDD>.

³⁹ Tal Shalev, *Waiting for Trump: All Right [Parties] Bills for Annexation of Judea and Samaria*, WALLA NEWS, <http://news.walla.co.il/item/3025815> (in Hebrew; last visited Feb. 14, 2017), archived at <https://perma.cc/LL98-7UZW>.

⁴⁰ Maale Adumim Draft Bill, 5776-2016, Private Members Bill by Yoav Kish et al. (submitted Aug. 1, 2016), <http://main.knesset.gov.il/Activity/Legislation/Laws/Pages/LawBill.aspx?t=lawsuggestionssearch&lawitemid=2006097> (click on link at bottom left), archived at <https://perma.cc/7HJ3-PYJ7>.