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APPLICATION OF ISRAELI LAW TO THE GOLAN HEIGHTS IS ANNEXATION

Asher Maoz*

I. INTRODUCTION: AN ASSESSMENT OF PROFESSOR SHELEFF'S ARGUMENT

Are the Golan Heights a part of Israel? The debate centers on a very narrow issue: did the Israeli legislature intend to annex the Golan Heights, and if so, did it succeed in carrying out its intention? The parameters of the dispute having been thus outlined, the question is which is the most appropriate interpretation of the Golan Heights Law.

I concur with Professor Sheleff¹ regarding three issues, and take issue with one. I concur with his claim that as a matter of principle, international law does not recognize unilateral annexation by an occupying state of the territory captured by it as a result of war.² I also agree with his assumption that

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1. Leon Sheleff, *The Application of Israeli Law to the Golan Heights Is Not Annexation*, 20 BROOK. J. INT'L L. 333 (1994).

2. *Id.* at 336 n.10. Sheleff relies on the summary of the topic as it appears in YORAM DINSTEIN, *THE LAW OF WAR* 210-11 (1983); see also YORAM DINSTEIN, *WAR, AGGRESSION AND SELF DEFENCE* 157-58 (1988); 1 LASSA OPPENHEIM, *INTERNATIONAL LAW: A TREATISE* (Robert Jennings et al. eds., 1992); MALCOLM N. SHAW, *INTERNATIONAL LAW* 284, 287 (3d ed. 1991).

Regarding the question of the applicability of this principle to the territories conquered by Israel during the Six Day War, see ESTHER R. COHEN, *HUMAN RIGHTS IN THE ISRAELI OCCUPIED TERRITORIES, 1967-1982*, at 43 (1985); John N. Moore, *The Arab Israeli Conflict and the Obligation to Pursue Peaceful Settlement of International Disputes*, in 2 *THE ARAB ISRAELI CONFLICT: READINGS* 739, 760-63 (John N. Moore ed., 1974). Moore discusses the question of the rights of Egypt and Jordan over the Gaza Strip, East Jerusalem and the West Bank; territories that they had conquered in the course of the War of Independence in 1948. He concludes that, in the absence of an arrangement that can guarantee Palestinian-Arabic self-determination in those territories, "[n]ineteen years of *de facto* control may nevertheless give rise to substantial expectations" of a right, under international law, "to protect . . . the 'ownership' expectations of a deprived state." Moore, *supra*, at 762-63.

Professor Lauterpacht suggested that, since a distinction is made between a war of aggression and a war of self-defense, the rule regarding unilateral changes in territory resulting from the use of force is applicable only to the illegal use of force. As a result, there is no prohibition to the annexation of territories that were captured in a war of self-defense. ELIHU LAUTERPACHT, *JERUSALEM AND THE HOLY*

in passing the Golan Heights Law, 5742-1981,³ the Knesset purposely avoided openly declaring the annexation of the Golan.⁴ Finally, I am a partner to the view that if indeed the Golan Heights Law contains ambiguity and is unclear as to the status of the Golan Heights, then it should be interpreted in accordance with the declared principles of international law, given the inherent assumption of Israeli law⁵ that the legisla-

PLACES 51-52 (1968). This view is shared by at least one other commentator. S.M. Schwebel, *What Weight to Conquest?*, 64 AM. J. INT'L L. 344, 347 (1970). Contextually, however, it would seem that Schwebel, and possibly Lauterpacht, is referring to the right of the defending state to retain possession of the captured territories only for as long as they are necessary for its security. Its withdrawal therefrom is conditional upon security arrangements that will guarantee that the territories never again constitute a threat to its security. *Id.* at 345-46.

There are, moreover, expert opinions that the annexation of the Golan Heights was illegal regardless of whether Israel acted in self-defense in response to Syrian aggression. See, e.g., Peter Malanczuk, *Das Golan-Gesetz im Lichte des Anaxionsurebots und der Occupatio Bellica*, 42 ZAÖRV 261 (1982). Malanczuk concedes that "whereas there is general agreement that international law prohibits annexation after the illegal use of force, there are different views on the question whether and under which conditions the attacked victor may incorporate territory of the aggressor under the right to self-defense in the sense of Article 51 of the United Nations Charter." *Id.* at 294. Additionally, Malanczuk states that "it is necessary to distinguish the legality of the acquisition of territory from its validity in international law." Nevertheless, Malanczuk concludes that "none of the possible rules under which Israel could have gained title to the Golan, in spite of the illegality of the act, apply in this case [T]he Golan therefore, under international law is still Syrian territory under belligerent occupation." *Id.*

Parallel to the issue of the legality of Israel's annexation of the Golan Heights is the dispute whether Israel is required to withdraw from all of the territories it conquered during the 1967 war. Jurists adopting the position that Israel is not required to withdraw claim that according to Security Council Resolution 242, *Concerning Principles for a Just and Lasting Peace in the Middle East*, U.N. SCOR, 22d Sess., 2d mtg. at 8-9, U.N. Doc. S/8226 (1967), Israel is required to withdraw from "territories" and not from "the territories," notwithstanding the repeated efforts to introduce the proper article "the" into the accepted version. See EUGENE V. ROSTOW, *PEACE IN THE BALANCE: THE FUTURE OF U.S. FOREIGN POLICY* 163-64 (1972); JULIUS STONE, *NO PEACE-NO WAR IN THE MIDDLE EAST* 39 (1968); Eugene V. Rostow, *Legal Aspects of the Search for Peace in the Middle East*, 64 AM. J. INT'L L. 64, 69, reprinted in Moore, *supra*, at 891; Schwebel, *supra*, at 345 n.5. However, reference should also be made to the French version of the UN Security Council Resolution 242 referring to a withdrawal from "des territoires occupés lors du récent conflit." It should also be emphasized that the decision recognizes the rights of all the states in the region to exist within "recognized and secure boundaries." Cf. Karl J. Partsch, *Israel and the Arab States*, in *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* 140, 147 (Installment 12, 1990).

3. 1981-1982 SEFER HACHUKKIM [S.H.] 61, translated in 36 LAWS OF THE STATE OF ISRAEL [L.S.I.] 7 (1981-1982).

4. See Sheleff, *supra* note 1, at 336.

5. See *Eichmann v. Attorney General*, 16 Piskei Din [P.D.] 2033, 2041, trans-

ture did not intend to contravene the provisions of international law.

Notwithstanding these statements, I am unable to accept Professor Sheleff's main thesis, that the legislature did not intend, and was not successful in annexing, the Golan Heights to Israel.⁶ In my opinion, the legislature intended to annex the Golan Heights to Israel, and was effective in doing so according to Israeli law, even if it should turn out that Israeli law is inconsistent with the provisions of international law.⁷

The Golan Heights Law, 5742-1981, in the section relevant for our purposes, states that "[t]he law, jurisdiction and administration of the state shall apply to the area of the Golan Heights as delineated in the schedule." Professor Sheleff argues: "The Golan Heights Law does not amount to annexation because it does no more than what is written therein; apply Israeli law, administration and government to the Golan Heights."⁸

This claim rests on Professor Sheleff's assumption that with the conquest of the Golan Heights a "legal vacuum"⁹ formed, and that the Israeli legislature intended to fill that vacuum. Sheleff further argues that in reality, the Syrian jurisdiction had "ceased to be an effective legal instrument" even prior to the enactment of the Golan Heights Law, and in that sense the law did not effect any real change.¹⁰

His central argument in this context is that in legislating the Golan Heights Law, the Knesset introduced the Israeli legal system to a place where it was not previously valid.¹¹

According to Sheleff, nothing more was done, and the law has no ramifications regarding the legal status of the Heights.¹² Sheleff brings support for his claims from far and wide—from Britain, the European Community, Scotland, Ja-

lated in 36 I.L.R. 5, 281 (Isr. Crim. App. 1961).

6. See Sheleff, *supra* note 1, at 335.

7. See *Eichmann*, 36 I.L.R. at 280 ("But where such a conflict does exist it is the duty of the Court to give preference to and apply the laws of the local Legislature.")

8. See Sheleff, *supra* note 1, at 337.

9. See Sheleff, *supra* note 1, at 337.

10. See Sheleff, *supra* note 1, at 338.

11. See Sheleff, *supra* note 1, at 337.

12. See Sheleff, *supra* note 1, at 338.

pan, and the Native American tribes in the United States.¹³

According to Sheleff, by joining the European Community, Britain agreed that its laws would, in certain areas, be subject to the law of the European Community, and the decisions of the Court of the Community, and it is undisputed that this did not cause "the elimination of British sovereignty."¹⁴ Sheleff draws a similar conclusion from the recognition granted by the United States government to the applicability of tribal law to the Native American tribes in certain areas: "generally," recognition of tribal laws was not construed as "a waiver of United States sovereignty in the tribal territory, or as a recognition of tribal sovereignty."¹⁵ Finally, Sheleff adduces proof from the fact that despite the Scottish unification with England, in a manner that ostensibly constituted its annexation to England, the Scottish legal system continued to be regarded as "a separate jurisdiction that continued to be valid in that part of the country."¹⁶

None of the examples offered by Sheleff are convincing with respect to the correctness of his thesis, and none of them are analogous to the application of Israeli law to the Golan Heights.

Even if we ignore the possible implications for state sovereignty of the application of a foreign law to the state in question in Sheleff's examples,¹⁷ the case of the Golan is not analogous. In each of the examples, the application of the foreign law was effected with the consent of the state concerned. Thus, the application of the foreign law in those situations would not impair the affected state's sovereignty. To reach that conclu-

13. See Sheleff, *supra* note 1, at 346-48.

14. See Sheleff, *supra* note 1, at 347.

15. See Sheleff, *supra* note 1, at 347.

16. See Sheleff, *supra* note 1, at 348.

[17. Sheleff refers to two decisions of the United States Supreme Court and questions the thesis according to which the granting of legal autonomy does not constitute the forfeiting of American sovereignty. Sheleff, *supra* note 1, at 347-48 & n.56. The doubt becomes more pronounced still with regard to the conclusion to be drawn from the British joining the European Community. According to Sheleff, "in doing so the Parliament waived some of the sovereignty of the state." Nonetheless, it did not go to the extent of "the elimination of British sovereignty." Sheleff, *supra* note 1, at 347. Compare LAWRENCE COLLINS, EUROPEAN COMMUNITY LAW IN THE UNITED KINGDOM 129-35 (4th ed. 1990) with STANLEY A. DE SMITH, CONSTITUTIONAL AND ADMINISTRATIVE LAW 96-108 (Rodney Brazier ed., 6th ed. 1989) and EMLYN C. S. WADE AND ANTHONY W. BRADLEY, CONSTITUTIONAL AND ADMINISTRATIVE LAW 120-43 (Anthony W. Bradley et al. eds., 10th ed. 1985).

sion, it is not necessary to bring support from abroad. The example drawn from local experience, cited in Sheleff's article, is sufficient: with the establishment of Israel, the Temporary Council of the state determined that the law which existed in Palestine as of the day of the establishment of the state, shall remain in force in Israel.¹⁸ It cannot be disputed that this did not constitute a waiver of the sovereignty of the newly born state.¹⁹

This is not the case, however, when a state unilaterally applies its own law to territory conquered from another state. This kind of unilateral application constitutes a quintessential act of sovereignty by the occupying state.

II. APPLICATION OF THE LAW OR ANNEXATION? - THE ANALOGOUS CASE OF EAST JERUSALEM

A. The Legal Context of the Annexation of East Jerusalem

In determining whether application of Israeli law to the Golan Heights amounts to annexation, it is illustrative to examine the analogous situation of the application of Israeli law to East Jerusalem. In 1967, the Knesset passed section 11B of the Law and Administration Ordinance, 5708-1948, which states that "[t]he law, jurisdiction and administration of the state shall extend to any area of Eretz Israel²⁰ designated by the Government by order."²¹ This provision is basically similar to section 1 of the Golan Heights Law. When presenting the amendment to the Law and Administration Ordinance for the first reading in the Knesset, the Minister of Justice stated:

It is the Government's opinion . . . that in addition to the control exercised by the I.D.F [Israel's Defence Forces], a clear act of sovereignty exercised by the state is necessary for the application of the law of the state in such a territory Consequently, the government decided to request that the Knesset pass the law that I am proposing, determining that the law, jurisdiction and administration of the state shall

18. Law and Administration Ordinance (§ 11), 5678-1948, 1948 ITON RISHMI [I.R.] 1 (Supp. I), *translated in* 1 L.S.I. 7 (1948).

19. See Sheleff, *supra* note 1, at 348.

20. Eretz Israel is the Hebrew name for Palestine.

21. Law and Administration Ordinance (Amendment No. 11), 5727-1967, 1966-1967 S.H. 74, *translated in* 21 L.S.I. 75 (1966-1967).

apply to any part of Eretz Israel designated by the government by order.²²

Following the enactment of section 11B, two additional enactments were passed. First, the government issued the Law and Administration Order (No. 1), 5727-1967,²³ applying Israeli law to East Jerusalem, which was formerly under Jordanian control. Second, the Municipalities Ordinance (Amendment No. 6) Law, 5727-1967²⁴ was passed. This law was designed to empower the Minister of the Interior to extend the municipal jurisdiction of Jerusalem by way of a shortened procedure of proclamation, and include therein all the areas in which the government was to apply Israeli law.

The essence of the two laws was correctly described by M.K. Shmuel Mikunis: "The two draft bills . . . in fact authorize the government to annex not only the Old City of Jerusalem . . . but other cities as well. This is the legal authorization for the government to perform a unilateral act without asking or taking the other side into consideration."²⁵

The legal literature has debated whether this was the necessary outcome of the law. In attempting to interpret the law in a manner consistent with the principles of international law, Professor Yoram Dinstein pointed to the legislative omission of the term "annexation" as evidence that the application of Israeli law in East Jerusalem does not constitute its annexation, "although it is a far reaching measure."²⁶ Professor

22. 49 DIVREI HAKNESSET [D.K.] 2420 (1967).

23. 1966-1967 KOVETZ HATAKKANOT [K.T.] 2690.

24. 1966-1967 S.H. 74, translated in 21 L.S.I. 75 (1966-1967); see also Proclamation on the Enlargement of the Area of Jerusalem Municipality, 5727-1967, 1966-1967 K.T. 2694.

25. 49 D.K. 2425 (1967).

26. Yoram Dinstein, *Zion by International Law Shall Be Redeemed*, 27 HAPRAKLIT 5, 7 (1971-1972); see also YORAM DINSTEIN, *INTERNATIONAL LAW AND THE STATE* 125 (1971). It is clear from Professor Dinstein's articles that he made every effort to conclude that the law does not lead to the annexation of East Jerusalem in order to avoid "as much as possible any confrontation with the principles of international law." In Professor Dinstein's opinion, such a confrontation would be disastrous, a veritable "red flag waived in the face of the bull in the international arena." In the same vein, Professor Feinberg wrote: "Israel did, it is true, decide upon the administrative union of East Jerusalem and West Jerusalem; but it did nothing that could be regarded as annexation of the territories occupied in the defensive war of June 1967." NATHAN FEINBERG, *THE ARAB-ISRAEL CONFLICT IN INTERNATIONAL LAW: A CRITICAL ANALYSIS OF THE COLLOQUIUM OF ARAB JURISTS IN ALGIERS* 116-17 (1970); see also JULIUS STONE, *THE MIDDLE EAST UNDER*

Yehuda Zvi Blum on the other hand argued that in the application of Israeli law to East Jerusalem by virtue of the Law and Administration Order (Order No. 1), 5727-1967,²⁷ East Jerusalem was conferred the same status as that of West Jerusalem.²⁸

Furthermore, the justices of the Supreme Court did not agree regarding the consequences of this measure.²⁹ The question arose whether East Jerusalem is "abroad" with respect to the West Bank, and as such, whether the export of an antique thereto would require a certification of the appropriate authorities.³⁰ Justice Haim Cohn refused to rule on the issue, stating that it was "not a legal question, but rather a political one." Justice Cohn did, however, note that "the thesis that the application of Israeli law to a particular area, is equivalent to the annexation of the area to the state of Israel, still requires proof." In the Justice's opinion "there is . . . nothing to prevent the application of the law of Israel to the occupied territories even in the absence of any intention to annex them to the area of the state."³¹ On the other hand, Justice Yitzhak Kahan ruled unequivocally that "East Jerusalem . . . was annexed to the state of Israel and constitutes part of its area."³² According to Justice Kahan, this ruling is the consequence of the application

CEASE FIRE 11 (1967); cf. LAUTERPACHT, *supra* note 2, at 50-51.

27. 1966-1967 K.T. 2690.

28. Yehuda Z. Blum, *Zion Was Redeemed by International Law*, 27 HAPRAKLIT 315, 317-18 (1971-1972). For a summary of the differing views on the matter, see COHEN, *supra* note 2, at 38-42.

29. Ravid v. Military Court, Hebron Zone, [24] 2 P.D. 419 (1969) (Isr.).

30. In accordance with the Jordanian Law, § 31 of the Provisional Ordinance of Antiquities (No. 51), 5726-1966, and according to the Order Concerning the Antiquities Ordinance (The West Bank Zone) (No. 119) 5727-1967. PROCLAMATIONS, ORDERS AND APPOINTMENTS OF THE I.D.F. COMMAND IN THE WEST BANK ZONE (No. 7) 259.

31. Ravid, [24] 2 P.D. at 423. In an article published in 1988, Justice Cohn, however, noted the following:

[B]oth the proclamation of the Minister of Defence according to the order issued in 1948 and the order of the government according to the law passed in 1967, are both acts of state *par excellence*, and as such require prior consideration as well as a political decision, for both of the actions were intended to convert the areas to which they related into part of the area of the state of Israel.

Haim H. Cohn, *The Status of Jerusalem in the Legal System of the State of Israel*, in TWENTY YEARS IN JERUSALEM, 1967-1987, at 246, 249 (Joshua Prawer & Ora Ahimeir eds., 1988), reprinted in 1 HAIM H. COHN, SELECTED ESSAYS 361 (1991).

32. Ravid, [24] 2 P.D. at 424.

of Israeli law to East Jerusalem. He therefore had no doubt that "the legislative intention was to authorize the government to annex the territories of Palestine to the state of Israel."³³ Justice Kahan's statement echoed opinions voiced by other justices of the Supreme Court in previous cases.³⁴ This decision, however, differs from previous decisions because in this case the characterization of the application of Israeli law as annexation was made by the majority of the justices presiding over the case, while in previous cases the characterization was made by individual justices.³⁵ Moreover, in contrast to previous petitions, the ruling on the question of annexation constituted an essential component of the Court's decision that East Jerusalem was legally "abroad" in relation to the West Bank.³⁶ In fact, in a later decision of the Supreme Court, it was stated unequivocally that the meaning of the application of Israeli law to East Jerusalem was "the annexation of East Jerusalem to the state and making it a part of the state."³⁷

There is, moreover, a consensus among Israeli constitutional jurists that the order made East Jerusalem "a territory which for all intents and purposes is part of the area of the state."³⁸ This conclusion is also accepted by the international

33. *Id.*

34. See *Hanzalis v. Greek Orthodox Patriarchate Religious Court*, [23] 1 P.D. 260, 269 (1968) (Isr.) (Halevi, J.), translated in 48 I.L.R. 93, 98, 5 ISR. L. REV. 120, 122 (1970); *Nationalist Circles v. Minister of Police*, [24] 2 P.D. 141, 174 (1968) (Isr.) (Berenzon, J.), translated and abridged in 6 ISR. L. REV. 257 (1971); see also *Ben Dov v. Minister of Religious Affairs*, [22] 1 P.D. 440, 442 (1967) (Isr.) (Pres. Agranat, J.), translated in 7 I.L.R. 472, 473.

35. The representative for the State argued specifically that the application of the law, jurisdiction and administration "is equivalent to the annexation of East Jerusalem to the territory of the State of Israel." *Ravidi*, [24] 2 P.D. at 421. Nor did the representative for the petitioner dispute the annexation. *Id.* at 442. It was for this reason that Justice Cohn decided to issue his ruling based on the mutually acceptable assumption, without adopting the position himself. *Id.* at 423. Justice Kahan expressly ruled in favor of the annexation without requiring an official certificate from the Foreign Minister, and without relying on the agreement of the parties. *Id.* at 424. Justice Alfred Witkon, on the other hand, determined the fate of the petition by accepting the annexation of East Jerusalem "as an existing fact," and one which even the attorney for the petitioner did not dispute. *Id.* at 422.

36. Cf. Dinstein, *supra* note 26, at 6.

37. *Awad v. Prime Minister and the Minister of the Interior*, [42] 2 P.D. 424, 429 (1988) (Isr.) (Barak, J.) (relying on *Ravidi*).

38. AMNON RUBINSTEIN, THE CONSTITUTIONAL LAW OF THE STATE OF ISRAEL 85 (4th ed. 1991); see also 2 CLAUDE KLEIN, *Israel*, in INTERNATIONAL ENCYCLOPEDIA OF LAWS, CONSTITUTIONAL LAW 16-17 (Andre Alen ed., 1992); MENACHEM HOFNUNG, ISRAEL-SECURITY NEEDS VS. THE RULE OF LAW 285 (1991); Asher Maoz,

community, and has given rise to a spate of decisions in the institutions of the United Nations denying the legality of the Israeli steps and calling for their revocation.³⁹

It should be emphasized that the borders of Israel were never defined by law. Instead, Section 1 of the Area of Jurisdiction and Powers Ordinance, 5708-1948,⁴⁰ provides the following:

Any law applying to the whole of the state of Israel shall be deemed to apply to the whole of the area including both the area of the state of Israel and any part of Palestine which the Minister of Defence has defined by proclamation as being held by the Defence Army of Israel.⁴¹

There can be no disputing the fact that the application of the law of Israel to territory so defined constitutes an annexation of that territory to the area of the state. As a matter of fact, this section of the law was enacted to enable annexation to Israel—being the Jewish State as defined in the United Nations General Assembly's partition of Palestine⁴²—of any part of Palestine located outside the boundaries of Israel.⁴³ That being the case, it is hardly conceivable that the territory of Palestine as defined by the government in an order under Israeli law should have a different status than the same piece of territory defined by the Defence Minister as being occupied

Between the Allenby Bridge and the Western Wall, 3 IYUNEI MISHPAT 200, 205-07 (1973-1974). *But see* Dinstein, *supra* note 26.

39. *See* G.A. Res. 2254 (ES-V), U.N. GAOR, 5th Emergency Special Sess., Supp. No. 1, at 4, U.N. Doc. A/6798 (1967); G.A. Res. 2253 (ES-V), U.N. GAOR, 5th Emergency Special Sess., Supp. No. 1, at 4, U.N. Doc. A/6798 (1967); S.C. Res. 298, U.N. SCOR, 26th Sess., at 6, U.N. Doc. S/INF/27 (1971); S.C. Res. 252, U.N. SCOR, 23rd Sess., at 9-10, U.N. Doc. S/INF/23/Rev.1 (1970); S.C. Res. 267, U.N. SCOR, 24th Sess., at 3-4, U.N. Doc. S/INF/24/Rev.1 (1970); *see also Report of the Secretary-General under General Assembly Resolution 2254(ES-V) Relating to Jerusalem*, U.N. SCOR, 22d Sess., Supp. for July-Sept. 1967, at 232-33, 239, 248-56, U.N. Doc. S/8146 (1967).

40. 1948 I.R. 61 (Supp. I), *translated in* 1 L.S.I. 64 (1948).

41. *Id.*

42. G.A. Res. 181 (II), U.N. GAOR, 2d Sess., at 131-32, U.N. Doc. A/519 (1947).

43. *See* COHEN, *supra* note 2, at 40; RUBINSTEIN, *supra* note 38, at 80; Dinstein, *supra* note 26, at 6; Maoz, *supra* note 38, at 205; *cf.* Peter Malanczuk, *Israel: Status, Territory, and Occupied Territories*, in *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW*, *supra* note 2, at 149, 164; *see also* Attorney General v. Anonymous, 5 Psakim Mechoziim [P.M.] 123, 127 (1951) (Landau, J.) (Israeli criminal case).

by the I.D.F. Professor Dinstein notes that "the Government did not adopt the constitutionally correct method for the annexation of territory: the application of the Area of Jurisdiction and Powers Ordinance, 5708-1948,"⁴⁴ and emphasizes that section 11B of the Law and Administration Ordinance, in contrast to the Area of Jurisdiction and Powers Ordinance, does not mention the extension of the "territory of the state of Israel,"⁴⁵ but rather the application of its law, jurisdiction and administration alone.⁴⁶

It is unclear to me how there can be a unilateral application of the law of a state to the territory occupied from another state, without intending thereby to bring about the annexation of the same territory. Moreover, the wording of section 11B of the Law and Administrative Ordinance is so strikingly similar to that of section 1 of the Area of Jurisdiction and Powers Ordinance that it is evident that they were intended for the same purpose.⁴⁷

The transfer of power from a minister of the government to the government in its entirety, in order to confer Israeli law on East Jerusalem does not change the resulting annexation.⁴⁸ The fact that, due to political considerations, the

44. See Dinstein, *supra* note 26, at 6.

45. See Dinstein, *supra* note 26, at 6.

46. See Dinstein, *supra* note 26, at 6.

47. Cf. COHN, *supra* note 31, at 40; Malanczuk, *supra* note 43. On the face of it the language of § 11B is even broader than that of § 1 of the Ordinance. Cf. HAIM HOLTZMAN, *SECURITY LEGISLATION IN THE OCCUPIED AREAS* 27 (1968); Maoz, *supra* note 38, at 206.

Dinstein and Blum disagree regarding the implications of the 1949 ceasefire agreement between Israel and Jordan. Professor Dinstein is of the opinion that this agreement, which determined the eastern border of the state, "has the force of a peace treaty" which "created a permanent situation." Yoram Dinstein, *Zion Was Not Redeemed or "No Demonstrations but Deeds,"* 27 HAPRAKLIT 519 (1971-1972). Professor Blum, on the other hand, maintains that "the ceasefire lines did not form international borders, and the parties had no intention of turning them into those kinds of borders." Yehuda Z. Blum, *East Jerusalem Is Non-Occupied Territory*, 28 HAPRAKLIT 183, 185 (1972-1973); see also Yehuda Z. Blum, *The Juridical Status of Jerusalem*, in 2 JERUSALEM PAPERS ON PEACE PROBLEMS (1974). The dispute is of significance in evaluating the effect of the annexation of East Jerusalem to the territory of the State in the eyes of the international law. However, it does not reflect upon the intention of the Knesset in the adoption of the stated pieces of legislation.

48. Arguably, this may compensate for the absence of the terms "Area of Jurisdiction and Powers" appearing in the title of the 1948 Ordinance. See Law and Administrative Ordinance (§ 11), 5708-1948, 1948 I.R. 1 (Supp. 1), translated in 1 L.S.I. 7 (1948); cf. Maoz, *supra* note 38, at 206 n.42.

Knesset refrained from resorting to the existing ordinance, and Israeli representatives in international forums denied the government's intent to annex,⁴⁹ makes no difference to the meaning of the law. In his explanatory remarks when presenting the law to the Knesset, the Minister of Justice stated unequivocally that the use of section 11B was intended to obtain the same result as would have been obtained by the Minister of Defence exercising his authority by virtue of the Area of Jurisdiction and Powers Ordinance;⁵⁰ this, therefore, was the

49. See comments in letter from Foreign Minister Abba Eban to the Secretary-General of the United Nations, *Report of the Secretary-General on Measures Taken by Israel to Change the Status of the City of Jerusalem*, U.N. SCOR, 22d Sess., Supp. for July-Sept. 1967, at 73, U.N. Doc. S/8052 (1967). In relating to General Assembly Resolution 2253(ES-V), Eban writes the following: "The term annexation used by the supporters of the resolution is out of place." *Id.* The Foreign Minister further clarifies the point that the measures adopted by Israel relate exclusively to the unification of Jerusalem "in the administrative and municipal sphere" and provide a basis for the protection of the Holy Places of Jerusalem. *Id.* Commentators regarded Eban's statement as "a refusal to admit an unwelcome legal characterization of the measures taken in 1967 on the international plane and qualify it as rhetoric in Israel's defence, making distinctions which were merely semantic." Peter Malanczuk, *Jerusalem*, in *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW*, *supra* note 2, at 184, 189.

50. 49 D.K. 2420 (1967). Justice Cohn presents an interesting argument for the Knesset's decision to resort to special legislation in order to apply the law, jurisdiction and administration of the state of Israel to East Jerusalem, and in order to adjoin it to the territory of Israeli Jerusalem. According to Cohn:

If the Legislator felt that there was a need for a new piece of legislation, it could only have been because the proclamation of the Minister of Defence with regard to the occupation of the territory by the Israeli Defence Force was no longer appropriate for Jerusalem; the legal result attained by the proclamation of the Minister of Defence should really be attained by an Order issued by the Government; the legislation passed by the Temporary Council of State with regard to the territories occupied by the Israeli Defence Force, should really be passed again by the Knesset in legislation relating to the areas of Eretz which are in our control, even if not under the direct control of the Israeli Army.

Both the proclamation of the Minister of Defence according to the Ordinance of 1948 and the order of the Government according to the Law enacted in 1967, are Acts of State *par excellence*, and as such require prior consideration as well as a political decision. Both of the actions were intended to convert the areas to which they related into part of the area of the State of Israel.

Cohn, *supra* note 31, at 248.

It has moreover been suggested that by transferring the power to issue such an order from the Minister of Defense to the Government in its entirety, the Knesset was attempting to emphasize that the Government action in the issuing of the order "was not necessarily based exclusively upon the rights of the State as a conquering State." This, on the face of it, would have been the meaning of the

assumption of the Knesset in passing the stated section.

It is therefore not surprising that experts in international law interpreted the law as not bringing about the annexation of East Jerusalem to Israel, and indeed as having been enacted without any intention on the part of the Knesset to do so.⁵¹ Experts in constitutional law, however, offered an opposing opinion.⁵² Consequently, it was almost natural that while the leaders of the state were making it clear both within and without the Knesset that East Jerusalem had been annexed to Israel,⁵³ the representatives of the state in international forums fervently denied that this was the result.⁵⁴ Despite the denials to the international community, the official position of the Israeli government regarding the status of East Jerusalem was made clear by Prime Minister Menachem Begin in a letter accompanying the Camp David accords: "On the basis of [section 11B of the Law and Administration Ordinance], the government of Israel decreed in July 1967 that Jerusalem is one city, indivisible, the capital of the state of Israel."⁵⁵

Any possible dispute was ultimately overtaken by events with the passage of the Basic Law: Jerusalem the Capital of Israel.⁵⁶ For this law specifically and expressly effected the inclusion of "Jerusalem, complete and united" within Israeli borders.⁵⁷ From now on, there can no longer be any argument regarding the "sovereignty of the state of Israel" over the united city of Jerusalem, and regarding Jerusalem's constituting "part of the territory of the state of Israel."⁵⁸

use of such power by the Minister of Defense, whose action could have been interpreted as being "in the name of the High Command of the Conquering Army, which is not based upon other rights - natural, historical or political." HOLTZMAN, *supra* note 47, at 29.

51. See *supra* note 26 and accompanying text.

52. See *supra* note 38.

53. See *supra* text accompanying note 22 (statement of the Minister of Justice).

54. See *Report of the Secretary-General on Measures Taken by Israel to Change the Status of the City of Jerusalem*, *supra* note 49; see also Malanczuk, *supra* note 49.

55. DEPT ST. BULL., Oct. 1978, at 10.

56. 1979-1980 S.H. 186, translated in 34 L.S.I. 209 (1979-1980). For the reaction of the UN to the passing of the Basic Law, see G.A. Res. 35/169, U.N. GAOR, 35th Sess., Supp. No. 48, at 26, U.N. Doc. A/35/48 (1980); S.C. Res. 478, U.N. SCOR, 35th Sess., 2245th mtg. at 14, U.N. Doc. S/INF/36 (1980).

57. Compare § 1 of the Basic Law, 1979-1980 S.H. 186, translated in 34 L.S.I. 209 (1980) with COHEN, *supra* note 2, at 42.

58. Temple Mount Faithful v. Attorney General, No. 4185/90 (1990) (Isr.) (un-

Returning to the question of the Golan Heights, the fact that Israeli representatives in international forums emphasized that the status of all territories occupied in the Six Day War was open for negotiation would seem to indicate that there was no intention to annex them to Israel.⁵⁹ However, it is questionable whether this is the correct interpretation of those statements. First, such statements are based upon political, as opposed to legal, considerations. Second, there is nothing to prevent the agreed transfer of territory under the sovereignty of one state to its neighbor. The point was clarified by Prime Minister Menachem Begin in his response during the second and third readings of the Golan Heights Law.⁶⁰ The Prime Minister was addressing the reservation to the law expressed by M.K. Amnon Rubinstein.⁶¹ In his reservation, Rubinstein called for the inclusion of a specific provision in the law, clearly stating that "[n]othing in this law shall prevent Israel from engaging in peace negotiations with Syria, when it expresses its willingness to recognize Israel and to live with it in peace."⁶² Begin proposed that the reservation be rejected, emphasizing that "this is a political matter" which does not belong in the wording of the law. The Prime Minister further elaborated, stating:

Politically speaking I declare before all of the members of government seated here, that the moment the President of Syria states that he is prepared to engage in negotiations with Israel for a peace treaty, at that moment the negotiations for a peace treaty with Israel shall begin, and nothing shall stand in our way.⁶³

This position was not limited to the Golan Heights. Similar statements were made by the Prime Minister in relation to the Basic Law: Jerusalem Capital of Israel,⁶⁴ as being "mat-

published).

59. This point has been considered in the comments of some of the writers as proof of the fact that Israel did not intend to annex the area of East Jerusalem. See, e.g., LAUTERPACHT, *supra* note 2, at 51.

60. 92 D.K. 784 (1981-1982).

61. 93 D.K. 1694 (1982).

62. *Id.*

63. *Id.*

64. *Id.*

ters that are obvious."⁶⁵

B. The Analogy to the Golan Heights: A Response to Professor Sheleff

Professor Sheleff claims that the status of the Golan Heights is different from that of Jerusalem, and provides several reasons. "First, the application of the law in East Jerusalem was effected by an administrative act and not by an act of direct legislation, as was the case with the Golan Heights."⁶⁶ I find this argument hard to accept. Does the legislature's failure to empower the government or one of its ministers with the authority to implement the law, deciding instead to implement it itself, derogate in any way the validity of the act? And, if the government can act on the basis of the empowerment of the Knesset, cannot the Knesset perform the same act directly? I would have thought precisely the opposite: the very fact that the legislature itself openly and explicitly applied Israeli law to the Golan Heights is a very clear indication of the legislature's intention.⁶⁷

Second, Professor Sheleff maintains that the rule for the Golan Heights differs from that of East Jerusalem, since the latter was a part of the territory of Palestine, and was illegally annexed to the territory of Trans-Jordan, whereas the Golan Heights were outside its borders.⁶⁸ Admittedly, it is this historical difference between the territories that prevented Israel from exercising section 11B—the applicability of which is restricted to the "territory of the Land of Israel,"⁶⁹ and forced it to pass a special law. Even so, this distinction does not warrant the conclusion that Sheleff seeks to derive from it.

In presenting the proposal to add section 11B to the Law

65. *Id.*

66. See Sheleff, *supra* note 1, at 342.

67. In a similar vein, the Minister of Justice emphasized that there can be no doubt that whatever the Minister of Defense is empowered to do by virtue of his authority according to the Area of Jurisdiction and Powers Ordinance, the government can also do by virtue of § 11B of the Law and Administration Ordinance. 49 D.K. 2427 (1967).

68. See Sheleff, *supra* note 1, at 342.

69. For the same reason it was not possible to resort to the Area of Jurisdiction and Powers Ordinance. Cf. *Lahis v. Minister of Defence*, 2 P.D. 153, 162 (1948) (Isr.), translated in 16 I.L.R. 96. The relevant passage was omitted from the translator's report. See also *Blau v. Israel*, 22 P.M. 37 (Isr. Crim. Ct., Haifa 1958).

and Administration Ordinance, the Minister of Justice emphasized that "the legal conception guiding the state of Israel was . . . that the law would apply to the parts of Palestine currently subject to the sovereignty of the state."⁷⁰ However, this fact per se did not bring about the application of the law in these territories. In order to obtain that result, in the words of the Minister of Justice, "a clear act of state sovereignty" was required.⁷¹ This requirement receives its concrete expression in the Government's designation by order of any of these territories as areas to which Israeli law applies in exactly the same manner as was necessary to attain the same result in the Golan Heights. In fact, the words of the Minister of Justice were really only apologetic, intended to facilitate the presentation of the annexation in the international arena. By the same token, his comments were also intended to appease those who felt that this normative step constituted a negation of the view that the territories of Judah and Samaria had been liberated from the illegal Jordanian occupation and granted, ex post facto, the status of territories "occupied" by Israel.⁷² As was the case with the amendment of section 11B, it was clear to

70. 49 D.K. 2420 (1967).

71. See *supra* note 22. Similarly, the occupation of any particular area by the I.D.F. did not, per se, convert the territory into one in which the Law of the State of Israel applied, purely by virtue of the Area of Jurisdiction and Powers Ordinance. An essential condition was that in addition to the actual occupation, the territory was to be defined by the Minister of Defense, in a proclamation, as being under occupation by the I.D.F. Compare *Lahis*, 2 P.D. at 153 with Cohn, *supra* note 31, at 249:

This is not to say that any area of the areas of the state of Israel, occupied by the Israel Defence Forces, becomes part of the area of the state purely by virtue of the act of occupation; both the proclamation of the Minister of Defence according to the order issued in 1948 and the order of the government according to the law passed in 1967 are both acts of state *par excellence* and as such require consideration and a political decision

72. As a result of which in presenting the draft bill, the Minister of Justice prefaced his comments with the determination that "[t]he Israeli Defense Forces liberated parts of the Land of Israel from the yolk of foreigners." 49 D.K. 2420 (1967). One commentator intended to provide a basis for this claim, as well as for the claim that as a result, there is no place for the use of the term "annexation" with regard to the application of Israeli law, jurisdiction and administration to East Jerusalem. See Blum, *supra* note 28, at 316-18. Another commentator notes that some authors regard the annexation of East Jerusalem to have taken place "when Israel designated Jerusalem as her capital after 1948." See Malanczuk, *supra* note 49, at 189.

the members of the Knesset that the Golan Heights Law was intended to annex the Golan to Israel. When presenting the draft bill, the Prime Minister said:

For many generations the Golan Heights were an integral part of the Land. It was therefore clear that the northern border of the Land of Israel . . . would pass through the Golan Heights. I can determine that historically speaking the Golan Heights were and will be an integral part of the state of Israel.⁷³

This recognition of the significance of the Golan Heights Law was common to both the supporters of the law and its detractors.⁷⁴ Yet it would seem that the most convincing and

73. 92 D.K. 764 (1981-1982); see Eliav Shochman, *Israel's Right to the Golan Heights*, 396 MIDSTREAM 15-16 (1993) (regarding the historical connection between the Israeli people and the Golan Heights, and the political connection between the Heights and Palestine) [hereinafter]; Eliav Shochman, *The Legal Status of Israel in the Golan Heights*, 6 NATIV NO.6, 5 (1993).

74. See, e.g., the remarks of M.K. Amnon Rubinstein, 92 D.K. 852 (1981-1982) ("Only a week ago the Knesset, one bright morning, in a state of shock adopted the decision of the Prime Minister to annex the Golan Heights in three reckless, senseless readings."); cf. the comments of M.K. Meir Wilner, 93 D.K. 1698 (1982) (commenting on "the Knesset's decision of 14 December 1981 to annex the Syrian Golan Heights to Israel").

Sheleff emphasizes the fact that the Knesset rejected a proposal by one of its members to change the title of the Golan Heights Law into "The Law for the Annexation of the Golan Heights." Sheleff, *supra* note 1, at 336-37 n.11. Based on this Sheleff states that the omission of the term "annexation" was not done "merely because of some oversight." Sheleff, *supra* note 1, at 336-37 n.11. I agree with Sheleff that the Knesset intentionally avoided referring to the unequivocal term "annexation." The Knesset did so, at the government's urging, in order to minimize international reaction to the passage of the law.

The reasoning forwarded by the chairman of the Foreign Affairs and Defence Committee of the Knesset in rejecting the proposal is more problematic. M.K. Moshe Arens stated that the proposal was "not compatible with the spirit nor with the content of the law." 92 D.K. 784 (1981-1982). Yet, as Sheleff correctly states, the proposal was made with the sole intention "to embarrass" the government. Sheleff, *supra* note 1, at 337 n.11. It was that embarrassment in the international arena that Mr. Arens attempted to avoid. Arens was speaking with an eye to the international community, in the same way that Israeli politicians spoke with two voices when referring to the annexation of both East Jerusalem and the Golan Heights. Arens, however, made his position clear on the implication of the Golan Heights Law: "[T]he day on which the draft bill is presented is a day of celebration for [Israel]. We have long awaited this day." 92 D.K. 765 (1981-1982). Arens added that "the security of the entire state depends on the continuation of Israeli control over the Golan Heights." *Id.* Arens also expressed his confidence that only a very few of the members of the Knesset "might foresee a possibility that one day an area of such importance to the security of the state will be re-

decisive of Sheleff's claims is based upon the wording of the Basic Law: Jerusalem: the Capital of Israel, stating that "Jerusalem, complete and united, is the capital of Israel."⁷⁵ According to Sheleff, "it was this legislation that probably altered [East] Jerusalem's internal status with regard to the Israeli legal system."⁷⁶

I cannot accept this claim. For the Basic Law to have the meaning attributed to it by Sheleff, he must first prove that prior to its passage East Jerusalem was not a part of Israel, and with all due respect, he has not sustained the burden of proof. Prime Minister Begin's statement that "Jerusalem is one city, indivisible, the capital of Israel" was based on the 1967 enactments and preceded the Basic Law by two years.⁷⁷ All the court opinions quoted above⁷⁸ recognizing the annexation of East Jerusalem were also handed down prior to the passage of the Basic Law. This was also the position adopted in the legal literature.⁷⁹ From that point of view the law had no

turned to the Arab state which is perhaps the most persistent of all in fighting against the state of Israel, and in its objection to the existence of Israel in any borders." *Id.*

Finally, Arens stated that the Golan Heights Law would unequivocally clarify to all inhabitants of the Golan "what is the future of the area, and as a result, what is their future." *Id.*

Sheleff argues further that the hastiness with which the Golan Heights Law was passed in the Knesset leads to the conclusion that it did not bring about a change in the status of the territory. Sheleff, *supra* note 1 at 334. I fail to see the logic behind the inference. If anything, I would have thought the contrary; given the secrecy in which the draft bill had been prepared and rushed through the Knesset, one could hardly regard it as having been targeted at the innocent goal of furnishing the Golan Heights with a legal system. If such secrecy were needed to further military and diplomatic preparation for reactions to the law, the flurry of activity would point to an operation of some magnitude, such as annexation.

75. 1979-1980 S.H. 186, translated in 34 L.S.I. 209 (1979-1980).

76. Sheleff, *supra* note 1, at 344. Sheleff attributes major significance to the fact that the declaration concerning East Jerusalem was made via a Basic Law while the application of Israeli law to the Golan Heights was made through ordinary legislation. Sheleff maintains that the impact of a Basic Law is different from that of an ordinary law, and it is only the former that may introduce a change in the legal status of the territory. Sheleff, *supra* note 1, at 333 n.4, and accompanying text. I disagree with Sheleff's position because the Supreme Court has ruled that there is no special status conferred on a Basic Law which would lead to a different outcome than the application of an ordinary law. Shtanger v. Israel [35] 4 P.D. 673, 680 (1980) (Isr.).

77. See *supra* note 55.

78. See *supra* notes 29-37 and accompanying text.

79. See AMNON RUBINSTEIN, *THE CONSTITUTIONAL LAW OF THE STATE OF ISRAEL* 66-68 (3d ed. 1980). This book was one of the proof texts for Dr. Hofnung in

practical significance, since, in the words of Rubinstein, "It was a law affirming something that was already affirmed."⁸⁰ The law's significance was essentially declarative,⁸¹ and as such, the political damage incurred may have outweighed its advantages.⁸² Consequently, Sheleff's contention that only the "passing [of] a Basic Law: The Golan Heights that would explicitly establish the status of the Golan Heights as part of Israel,"⁸³ is not convincing. And, if further proof is required, Sheleff himself states that the Basic Law: Jerusalem the Capital of Israel, "indisputably made East Jerusalem a part of Israel, at least as far as Israeli law is concerned."⁸⁴ In other words, the law did not bring about a change in the status of East Jerusalem, but rather made the status indisputable; the change had already been effected by virtue of section 11B of the Law and Administration Ordinance.

An additional distinction made by Sheleff in relation to the Golan Heights as opposed to East Jerusalem, is that unlike the situation in the West Bank where the governmental and judicial framework did not collapse as a result of the Israeli conquest, the I.D.F. forces reaching the Golan found themselves in a crisis situation when they realized that "Syrian law had ceased to be an effective legal instrument."⁸⁵ It was for this

his comments. See also RUBINSTEIN, *supra* note 38; AMNON RUBINSTEIN, *THE CONSTITUTIONAL LAW OF THE STATE OF ISRAEL* 49 (1st ed. 1969); AMNON RUBINSTEIN, *THE CONSTITUTIONAL LAW OF THE STATE OF ISRAEL* 65-66 (2d ed. 1974); Maoz, *supra* note 38. Similarly, the as yet unpublished decision in *The Temple Mount Faithful v. Attorney General* relied upon the rulings that had predated the Basic Law-Jerusalem the Capital of Israel. *Temple Mount Faithful v. Attorney General*, No. 4185/90 (1990) (Isr.) (unpublished).

80. RUBINSTEIN, *supra* note 38, at 86; cf. 89 D.K. 4045 (1980) (statement of M.K. Yehuda Ben-Meir) ("The law does not introduce any change, it rather affirms the existing situation."). As a matter of fact, the jurists maintaining that East Jerusalem was annexed to Israel adopt the same opinion regarding the Golan Heights. Compare RUBINSTEIN, *supra* note 38, at 86 with COHEN, *supra* note 2, at 42-43 and KLEIN, *supra* note 38.

81. Compare to the words of Justice Cohn, who stated the following: "The Basic Law does not bring about any normative changes; all of the signs indicate that its purpose was purely declaratory." COHN, *supra* note 31, at 246.

82. Many of the members of the Knesset expressed themselves in this manner during the debate regarding the Basic Law proposal, even though they could not but vote for it. See, e.g., 89 D.K. 4042, 4049-50 (1979-1980) (comments of M.K. Zalmon Shuval and the remarks of M.K. Amnon Rubinstein).

83. Sheleff, *supra* note 1, at 333-34.

84. Sheleff, *supra* note 1, at 334.

85. Sheleff, *supra* note 1, at 338. For a description of the situation in the Golan, see Meir Shamgar, *Legal Concepts and Problems of the Israeli Military*

reason that it became necessary to apply Israeli law to the Heights, or, in Sheleff's terminology, to affirm the situation that already existed, even though the particular measure lacked any political significance.⁸⁶

This argument is also not convincing. Even if we accept the author's assumption regarding the urgent need to apply Israeli law in the Heights, there was no need to adopt such a measure by way of legislation in the Knesset. The laws of war authorize military commanders to enact laws in occupied territories when the need arises.⁸⁷ Legislation of this kind, according to the strictures dictated by international law, lacks any element of sovereignty by the occupying state. But this is not the case when the occupying state unilaterally applies its law to the occupied territory. Similarly, international law permits the occupying power to appoint its own judges to preside in the local courts when necessary; it further permits structural adjustments of the existing judicial system to the system familiar to the judges appointed by the occupying state. Nonetheless, these courts continue to be regarded as local courts and not as courts of the occupying power.⁸⁸

Needless to say, the Golan Heights Law does not comply with these strictures. This in fact was the purport of the words of Justice Kahan in the *Ravidi* case:⁸⁹ "on the face of it, nothing prevents the application of Israeli law to a particular territory, without having any intention to annex the territory to the state of Israel."⁹⁰ The Justice further elaborates: "Were the military government to declare by virtue of its powers that Israeli law shall apply to the Gaza Region or to the occupied

Government - The Initial Stage, in 1 *MILITARY GOVERNMENT IN THE TERRITORIES ADMINISTERED BY ISRAEL 1967-1980: THE LEGAL ASPECTS* 13, 55 (Meir Shamgar, ed., 1982).

86. Sheleff, *supra* note 1, at 337.

87. See Hague Regulations Respecting the Laws and Customs of War on Land, Annex to Hague Convention, 1899 (No. 11), 1907 (No. IV), Article 43; *Tabib v. Defense Minister*, 36 P.D. 622, 629-32, (1981) (Isr.), translated and abridged in 13 I.Y.H.R. 364 (1983); Yoram Dinstein, *Legislative Power in Occupied Territories*, 2 IYUNEI MISHPAT 505 (1972); Amnon Rubinstein, *Israel and the Territories: The Jurisdiction of the Courts*, 14 IYUNEI MISHPAT 415 (1989); E.H. Schwenk, *Legislative Power under Article 43, Hague Regulations*, 54 YALE L.J. 393 (1945).

88. See YORAM DINSTEIN, *THE LAW OF WAR* 218-19 (1983).

89. *Ravidi v. The Military Court, Hebron Zone*, [24] 2 P.D. 419, 424 (1969) (Isr.).

90. *Id.*

territory of Sinai, there would be no room for doubt as to whether the application of the law was tantamount to its annexation to the state, but such an application of the law cannot be compared to the act of legislation under discussion."⁹¹

III. CITIZENSHIP AND THE OBLIGATION OF MILITARY SERVICE

Sheleff argues that two Israeli government policies offer decisive proof that the Golan Heights was not annexed to Israel, and that "the Israeli legal and administrative system does not generally relate to the Golan as if it was really a part of Israel."⁹² The policies to which he refers are the fact that Israel did not "automatically" grant citizenship to the Druze residents of the Heights, and the fact that Israel does not enlist them for military service, an obligation otherwise applying to all of the permanent residents of the state.⁹³

I am unable to see the link between the obligation of military service and the question of annexation. The fact is that even the Arab residents of Israel within the 1967 borders, who constitute one fifth of the population, are not subject to this obligation.⁹⁴ Nor were the members of the Circasian community enlisted for military service until many years after the establishment of the state.⁹⁵ Can this fact be of any relevance with regard to the determination of the territory of the state? Moreover, there is a broad consensus that the decision to exempt the Arab residents from the obligation of military service for the duration of the state of war between Israel and the Arab states, is indeed a "decision both correct and just."⁹⁶ Nor does Sheleff disagree with it. Even so, he maintains that the Druze are not to be equated with the Arabs, for "it is also well known that one of the characteristic features of this community is that their loyalty is invariably given to the state in which they are a resident."⁹⁷

The very least that one can say about this claim is that it

91. *Id.*; cf. Malanczuk, *supra* note 2, at 288-93.

92. Sheleff, *supra* note 1, at 338.

93. Sheleff, *supra* note 1, at 346 n.50.

94. See DAVID KRETZMER, *THE LEGAL STATUS OF THE ARABS IN ISRAEL* 98 (1987); RUBINSTEIN, *supra* note 38, at 314.

95. See ORI STENDEL, *THE MINORITIES IN ISRAEL* 29 (1973).

96. RUBINSTEIN, *supra* note 38, at 314.

97. Sheleff, *supra* note 1, at 346 n.50.

obviously does not reflect the view of those charged with the enlistment of minorities into the Army. Army authorities understood that the border separating the Golan Heights from Syrian territory divides members of families related to each other in the first degree. It may even have occurred to them that the residents of the Golan view themselves as owing allegiance to Syria, as opposed to the Druze in Israel, who have bound their fates to that of the state since its earliest days. Furthermore, the uncertainty surrounding the final fate of the Golan Heights that has continued since its occupation by Israel causes its residents to hesitate in expressing loyalty of any kind to "the state in which they reside."⁹⁸

Indeed, it would appear that the military authorities are correct, and it is doubtful whether Sheleff's description of the residents of the Golan reflects their own self perception. In a statement issued on February 31, 1982, Druze residents of the Golan Heights made the following declaration: "We demand that our national sentiments be respected by applying Israeli civil law neither to us, nor to the land, nor to the nation, and that we be related to as Syrian citizens living on their lands under the Israeli occupation since 1967."⁹⁹

Finally, even if the military authorities are mistaken in their approach, and the truth lies with Sheleff, how is it relevant to the question of annexation? Several years ago, a Druze citizen of Israel petitioned against his enlistment into the army, claiming that being a member of a minority community he could not be forcibly enlisted. The answer of the High Court was short and succinct: "It is not for us to investigate and decide what motivated the authorities not to apply the law until today to any particular group of people."¹⁰⁰

On the face of it, the failure to grant automatic citizenship to the residents of the Golan Heights is more disturbing. Professor Dinstein raised the point in an analogous context, questioning whether the intention of the Knesset was to annex

98. See 91 D.K. 2230 (1981-1982) (remarks of M.K. Shafik Asad).

99. The text of the statement was produced by M.K. Meir Wilner, in a proposal for the daily agenda, relating to "the current situation in the Golan Heights." 93 D.K. 1698 (1981-1982); see also 91 D.K. 2231-32 (1981-1982) (remarks of M.K. Tufik Tubi).

100. *Hassuna v. Prime Minister*, 10 P.D. 710 (1956) (Isr.). See also Yoran Shachar, *The Elgazi Trials-Selective Conscientious Objection in Israel*, 12 I.Y.H.R. 214, 221 n.26 (1982).

East Jerusalem to Israel.¹⁰¹ He also pointed out that when a state acquires territory, whether by virtue of its creation, transfer or annexation, "citizenship is generally speaking automatically granted to all of the residents permanently residing there."¹⁰² Sheleff is thus correct in his assumption that there is a defect in the annexation of territory without the automatic granting of citizenship to the residents therein, and that "[t]his is especially true with regard to democracies."¹⁰³

However, this defect does not derogate the act of annexation. The result of such a situation is only that "it allows the application of Israeli law in new territories, without ensuring that the residents of those territories are guaranteed equal rights with respect to their status as citizens."¹⁰⁴ Just as this defect does not derogate the applicability of Israeli law to those territories, similarly it does not affect the fact of the annexation of those territories. We would have come to the same conclusion even had we accepted Sheleff's assumptions in their entirety. In his opinion, with the acceptance of the Basic Law: Jerusalem: the Capital of Israel, the internal law of Israel, effected an act of annexation.¹⁰⁵ The status of Jerusalem after the passing of the Basic Law is essentially not different to that of the Golan Heights. In both of them the percentage of original local residents who have been granted Israeli citizenship is negligible. Furthermore, Dinstein notes that "to the extent that the issue is one of acquisition according to an international agreement of a part of a state (that continues to exist), it is customary to grant an option to the residents of the piece of territory changing hands—to either accept the new citizenship, or to reject it and retain the old citizenship."¹⁰⁶

The considerations of Israel with regard to the granting of citizenship to the residents of the Golan Heights were motivated by politics and security. The Knesset had addressed the problem of the residents of the Golan Heights prior to the passing of the Golan Heights Law. In the Nationality Law

101. See COHEN, *supra* note 2, at 42 (quoting Yoram Dinstein, Lecture at the Institute for Jerusalem Studies (June 14, 1979)).

102. YORAM DINSTEIN, *THE INTERNAL POWERS OF THE STATE* 27 (1971).

103. Sheleff, *supra* note 1, at 344 n.43.

104. RUBINSTEIN, *supra* note 38, at 691.

105. Sheleff, *supra* note 1, at 341-44.

106. Dinstein, *supra* note 87.

(Amendment No. 4), 5740-1980,¹⁰⁷ the Knesset added section 6(e) to the Nationality Law, 5712-1952.¹⁰⁸ The section empowers the Minister of the Interior to grant citizenship "to a resident of full age of a zone occupied by the Defense Army of Israel," while waiving the requirements for naturalization.¹⁰⁹ One of the prerequisites for the section's implementation is that the Minister is convinced "that the applicant identifies with the state of Israel and its objectives and he or a member of his family has performed a significant act to further the security or economy or some other important interest of the state, or that the grant of citizenship as aforesaid is of especial interest to the state."¹¹⁰ Although the law refers in general terms to "a zone occupied by the Defense Army of Israel," it was clear during the vote on the amendment that it was specifically designated for the Golan Heights.¹¹¹ Thus, instead of granting automatic citizenship to all of the residents of the Heights, the legislature chose to limit it to those residents who were loyal to the state. Furthermore, if complaints had been raised against Israel concerning the granting of citizenship to the residents of the Heights, they would not have been the result of citizenship withheld from the residents but rather of citizenship forced upon them.¹¹²

Summing up, the arguments raised by Sheleff to the effect that the Golan Heights has not been annexed are unconvincing. In contrast, the approach adopted by the Knesset seems to lead to the opposite conclusion; the Golan Heights was indeed annexed to Israel.

107. 1979-1980 S.H. 222, *translated in* 34 L.S.I. 254 (1979-1980).

108. 1951-1952 S.H. 146, *translated in* 6 L.S.I. 50 (1951-1952).

109. *Id.*

110. *Id.*

111. See the remarks of M.K. Meir Wilner, who regarded the amendment as "a step towards annexation." 89 D.K. 4200 (1979-1980). M.K. Moshe Amar suggested omitting the words "a zone occupied by the Defense Army of Israel," in order to prevent the intention of the enactment from being "clear to the world," and thus liable "to provoke thoughts as to the intention in applying the Nationality Law, which is a fundamental law." *Id.* at 4199. The reservation of M.K. Moshe Amar was echoed by other Knesset members, amongst them the Minister of the Interior. The Chairman of the Internal Affairs and Environment Committee, M.K. Shlomo Hillel chose not to relate explicitly to this reservation, being content to call upon the Knesset members "in this matter, to rely on the discretion of the committee." *Id.* at 4205.

112. See *The Druze Residents of the Golan Heights*, 91 D.K. 2230-32 (1981-1982) (proposal for the daily agenda of the Knesset).

IV. THE KNESSET POSITION ON THE GOLAN HEIGHTS LAW

In the cases of several statutes, the Knesset has revealed its position that as a result of the enactment of the Golan Heights Law, the status of the Golan was transformed from a territory held under belligerent occupation into a part of Israel. This section will briefly discuss two of these legislative acts.¹¹³

In the first case, the Minister of Defense, immediately after the Six Day War, enacted emergency regulations intended to grant jurisdiction to the Israeli courts over persons in Israel who had committed an offense in the "zone," as well as to grant similar jurisdiction to the Israeli Police Force and to the Attorney General. "Zone" was defined as including "the Golan Heights, the West Bank, the Gaza region and Southern Sinai."¹¹⁴ The regulations were extended yearly by the Knesset, and the definition of "zone" went through numerous revisions from 1967 through 1981, though each version retained jurisdiction over the Golan Heights.¹¹⁵

113. For a detailed description of additional legislation relating to the Occupied Territories, see RUBINSTEIN, *supra* note 38, at 104-07; Amnon Rubinstein, *The Changing Status of the Territories: From Trust Deposit to Legal Hybrid*, 11 IYUNEI MISHPAT 439, 447-50 (1985-1986); see also *supra* note 79.

114. Emergency Regulations (Offences in the Occupied Territories - Jurisdiction and Legal Assistance), 5727-1967, 1966-1967 K.T. 2420. The Law and Administration Ordinance, 5708-1948, (§ 9), 1948 I.R. 1 (Supp. 1), empowers the government to enact emergency regulations to regulate urgent matters of national interest. This authority exists for as long as the Knesset declares that "a state of emergency exists in the State." Such declaration was made on May 21, 1948, following the establishment of the Israeli state and the Arab attack on it (see 1948 I.R. 6) and has not been revoked since. Emergency regulations may alter, suspend or modify any law. Yet the regulations will expire after three months unless extended by a law of the Knesset.

115. In the Emergency Regulations (Offences in the Occupied Territories - Jurisdiction and Legal Assistance) (Extension of Validity) Law, 5728-1967, 1967-1968 S.H. 20, translated in 22 L.S.I. 20 (1967-1968), the definition of the term "zone" was changed to include "any of the areas held by the Defense Army of Israel."

In the 1977 extension law, the title of the emergency regulations was changed to: Emergency Regulations (Judea and Samaria, Gaza Region, Golan Heights, Sinai and Southern Sinai-Criminal Jurisdiction and Legal Assistance) (Extension of Validity) Law, 5738-1977, 1977-1978 S.H. 48, translated in 32 L.S.I. 58 (1977-1978). The definition of the term "zone" was changed accordingly.

After several additional extension laws, an amendment bill was proposed in 1981 for the amendment and the extension of the Emergency Regulations (Judea and Samaria, The Gaza Region, The Golan Heights, Sinai and Southern Sinai - Criminal Jurisdiction and Legal Assistance), 5742-1981, 1981-1982 HATZA'OT HOK [H.H.] 4.

During the first reading of the 1981 extension law draft, M.K. Abraham Katz-Oz demanded that the Golan Heights be removed from the language of the amendment.¹¹⁶ His reasoning was that the Knesset "must act as soon as possible to apply Israeli law to the Golan Heights,"¹¹⁷ through formal legislation passed by the Knesset, rather than through regulations issued by the Minister of Defense. Responding to the demand, the Minister of Justice noted that "the matter of the application of Israeli law, jurisdiction and administration to the Golan Heights is a matter of timing . . . the government shall determine the right time."¹¹⁸ He rejected Katz-Oz's request, the meaning of which was, in his words, "the immediate application of Israeli sovereignty, law, jurisdiction and administration to the Golan Heights."¹¹⁹

Nevertheless, "the Golan Heights" was ultimately deleted from the 1981 amendment to the regulation because the second and third readings of the draft were presented after the passing of the Golan Heights Law,¹²⁰ making specific mention of the Golan Heights unnecessary.¹²¹

It is illustrative that in a 1984 revision of the regulation,¹²² the words "Sinai and Southern Sinai" were also deleted from both the title of the regulations and the definition of "zone."¹²³ The explanatory note to the draft regulation¹²⁴ specified that the omission was "the result of the return of the

116. 92 D.K. 397 (1981-1982).

117. *Id.*

118. *Id.* at 414-15.

119. *Id.*

120. *Id.* at 877; see also *id.* at 875 (comments of the Chairman of the Constitution, Law and Justice Committee of the Knesset).

121. Thus, in the final version of the draft regulation originally entitled Emergency Regulations (Judea and Samaria, Gaza Region, Golan Heights, Sinai and Southern Sinai - Criminal Jurisdiction and Legal Assistance) (Amendment and Extension of Validity) Law, 5742-1981, 1981-1982 S.H. 18, translated in 36 L.S.I. 16 (1981-1982), the words "the Golan Heights" were deleted from the title of the regulations and from the definition of the term "zone." *Id.* at 877. This provision was given retroactive validity, as of December 14, 1981, which was the date that the Golan Heights Law came into force.

122. Emergency Regulations (Judea and Samaria, Gaza Region, Golan Heights, Sinai and Southern Sinai - Criminal Jurisdiction and Legal Assistance) (Amendment and Extension of Validity) Law, 5744-1984, 1983-1984 S.H. 36, translated in 38 L.S.I. 43 (1983-1984).

123. *Id.*

124. 1983-1984 H.H. 117.

Sinai and Southern Sinai to Egypt in the wake of the implementation of the peace agreement."¹²⁵

There are therefore two reasons, in essence identical, for the removal of the two areas from the zone to which the regulations apply, being "the areas held by the Defense Army of Israel."¹²⁶ Thus, Sinai and Southern Sinai were removed because they had been returned to Egyptian sovereignty, and had therefore been taken out of Israel's possession as an occupying power. For exactly the same reason—having been transferred into formal Israeli sovereignty, and thus removed from the possession of Israel as an occupying power—the Golan Heights was also removed from the purview of the regulations.

The second legislative act demonstrating the Knesset's intent in applying Israeli law to the Golan Heights is the Income Tax Ordinance [New Version].¹²⁷ The Ordinance imposes tax on "income of any person accruing in, derived from, or received in Israel."¹²⁸ In the Income Tax Ordinance (Amendment No. 32) Law, 5738-1978,¹²⁹ the basis of chargeable income of an Israeli national was expanded, and it was determined that it would include income that was accrued, produced or received in a zone. "Zone" was defined as "any of the following: Judea and Samaria, the Gaza Region, the Golan Heights, Sinai and Southern Sinai." In a 1990 amendment,¹³⁰ the words "Golan Heights, Sinai and Southern Sinai" were omitted from the definition of the term "zone," for the very same reasons that lead to their omission from the Regulations for Jurisdiction and Legal Assistance discussed above.

V. THE POSITION OF THE SUPREME COURT IN RELATION TO THE GOLAN HEIGHTS LAW

The relevant rulings of the Israeli Supreme Court are also consistent with the conclusion that the Golan Heights was annexed to Israel.

125. *Id.*

126. See *supra* note 115 (addressing the wording of the first Extension Law).

127. 6 DINEI MEDINAT YISRAEL (NUSACH CHADASH) 120 (1961), translated in 1 L.S.I. NEW VOLUME [N.V.] 145 (1967).

128. *Id.*, translated in 1 L.S.I. N.V. at 146.

129. 1977-1978 S.H. 216, translated in 32 L.S.I. 277 (1977-1978).

130. Income Tax Ordinance (Amendment No. 81), 5750-1990, 1989-1990 S.H. 52.

In *Kang Abou Tzalach v. Minister of the Interior*,¹³¹ a petition was filed by residents of the Golan Heights against a regulation forcing them to carry identity cards.¹³² The petitioners claimed that according to the language of the law, the obligation to carry an identity card applies only to "a person . . . legally situated in Israel," and thus does not apply to the Golan Heights.¹³³ They reasoned that "the Golan Heights Law did not convert the Golan Heights into a part of Israel, and thus a person legally situated in the Golan Heights is not legally situated in Israel, and is consequently not subject to the obligation of receiving, carrying and presenting an identity card."¹³⁴ In rejecting the petition Justice Aharon Barak determined that, "[b]y virtue of the Golan Heights Law, all of the legal norms applicable in the state were applicable to the Golan Heights, so that any mention of the terms 'Israel,' 'the state,' or 'the state of Israel' in the legislation also includes the Golan Heights."¹³⁵

Sheleff is correct in pointing out that "the High Court preferred to leave the question [of annexation] as one requiring further examination,"¹³⁶ at least explicitly. Yet it would appear to me that the recognition of annexation is implied by the ruling, and at all events derives from it.

In the *Kang* ruling, Justice Barak avoided going into the "questions arising in the area of public international law" and "questions of political science, with respect to the definition of the state." His ruling was restricted to "the interpretative question relating to the legal effect of the Golan Heights Law."¹³⁷ Furthermore, in his ruling he endorsed the thesis that "the application of a particular Israeli legal norm to a particular place outside the territory of the state, does not, ipso facto convert that particular place into a part of Israel."¹³⁸ He therefore rules that "everything is dependent upon the aim,

131. [37] 2 P.D. 718 (1982) (Isr.).

132. The identity cards were required by the Emergency Regulations (Possession and Presentation of Identity Certificate) (Extension of Validity) Law, 5731-1971, 1970-1971 S.H. 109, translated in 25 L.S.I. 108 (1970-1971).

133. See *Kang Abou Tzalach*, [37] 2 P.D. at 720.

134. *Id.*

135. *Id.*

136. Sheleff, *supra* note 1, at 351.

137. *Kang Abou Tzalach*, [37] 2 P.D. at 720.

138. *Id.*

language, actions and effect of the norm being interpreted."¹³⁹ Justice Barak did not explain what the effect of the particular norm under discussion was with respect to the Golan Heights becoming a part of Israel. Even so, it seems to me that this conclusion is consistent with the ruling in the matter of *Kang*, and, with Barak's referral to the *Ravidi* decision¹⁴⁰ by which the application of Israeli law to East Jerusalem brought about its annexation to Israel. This would appear to be the reasonable conclusion regarding the Golan Heights too, given that Justice Barak expressly stated that "there can be no doubt that both the intention of the legislation and the language of the provision was to equate the Golan Heights with Israel itself, in terms of law, jurisdiction and administration."¹⁴¹ These words echo Justice Barak's opinion in the *Awad* case¹⁴² in which he wrote:

[B]y proclaiming that East Jerusalem is an area of the Land of Israel to which the law, jurisdiction and administration of the state apply, the government created an integration of the area and of its inhabitants into the system of the law, jurisdiction and administration of the state. East Jerusalem was unified with West Jerusalem. This is the meaning of the annexation of East Jerusalem to the state, and making it a part thereof. With the application of the law, jurisdiction and administration there was a synchronization between the law, jurisdiction and administration of the state and East Jerusalem and those dwelling there.¹⁴³

This result is also consistent with the ruling that was established in the matter of the *Temple Mount Faithful v. Attorney General*.¹⁴⁴ In that case, the question discussed was whether the laws of Israel apply to the area of the Temple Mount. The Supreme Court ruled, in an opinion given by D.P. Menachem Elon:

It is clear, and goes without saying, that as a result of the sovereignty of the state of Israel over united Jerusalem gen-

139. *Id.*

140. See *Ravidi v. Military Court, Hebron Zone*, [24] 2 P.D. 419 (1969) (Isr.).

141. See *Kang Abou Tzalach*, [37] 2 P.D. at 721.

142. See *Awad v. Prime Minister and Minister of the Interior*, [42] 2 P.D. 424 (1988) (Isr.) (Barak, J.).

143. *Id.* at 429.

144. No. 4185/90 (1990) (Isr.) (unpublished).

erally and over the area of the Temple Mount specifically, all of the laws of the state of Israel are applicable to the area of the Temple Mount.¹⁴⁵

This is not merely a matter of semantics. Several enactments confer on the state of Israel ownership interests in various properties. Section 3 of the State Property Law, 5711-1951,¹⁴⁶ states: "Ownerless property situated in Israel is property of the state of Israel as from the day of its becoming ownerless"¹⁴⁷ Since under the *Kang* ruling we are supposed to read the words "Israel" and "state" as including the Golan Heights, it follows that such property, located in the Golan, becomes the property of the state of Israel. I submit that the forcible acquisition of property, including land, situated in the Golan Heights, is a clear indication of Israeli sovereignty over the Heights.¹⁴⁸

145. *Id.* at 39.

146. 1950-1951 S.H. 52, translated in 5 L.S.I. 45 (1950-1951).

147. Section 1 of the same law provides that "property" includes movables as well as immovables. *Id.* Section 108 of the Land Law, 5729-1968, 1968-1969 S.H. 169, translated in 13 L.S.I. 173 (1968-1969) similarly provides that "property situated under waters of lakes in Israel belong to the state of Israel and are public property." The Water Law, 5719-1959, 1958-1959 S.H. 169, translated in 13 L.S.I. 173 (1958-1959) provides that the water resources in the state are public property subject to the control of the state. Another example is provided by the Sand Drift Ordinance of 1922; 2 LAWS OF PALESTINE 1314 (1933). This Ordinance empowers the Chief Forest Officer to demand a registered owner of land to cooperate in stopping sand from drifting over farm land or in reclaiming such land covered by sand drift. If such owner declines to cooperate in the work and his land is covered by sand drift "any interest which he may have therein shall be extinguished and shall vest in the Government." See also § 17 of the Succession Law, 5725-1963, 1963-1964 S.H. 63, translated in 19 L.S.I. 58 (1963-1964), which provides that "[w]here there is not heir . . . the State shalt succeed as an intestacy."

148. This is obviously so with regard to the Golan Heights (Transitory Provisions) (No. 3), 5742-1982, 1981-1982 K.T. 529. The provisions were enacted by the Minister of the Interior, under the authority conferred upon him by the Golan Heights Law. These regulations provide that any property in the Golan Heights, which belonged to Syria, shall be submitted to the control of the Israel Lands Administration. *Id.* The Israel Lands Administration Law, 5720-1960, 1959-1960 S.H. 57, translated in 14 L.S.I. 50 (1960) states that the Administration shall be established "to administer Israel [sic] lands." *Id.* The law refers to the Basic Law: Israel Lands, 1959-1960 S.H. 56, translated in 14 L.S.I. 48 (1960) for the interpretation of "Israel [sic] lands" The Basic Law defines "Israel [sic] lands" as the "lands in Israel of the state" *Id.* This definition clearly indicates that in the opinion of the Minister of the Interior, by enacting the Golan Heights Law and applying Israeli law to the Golan, the ownership of Syrian state lands was surrendered to Israel. As the opinion of the Minister of the Interior obviously reflects

VI. THE POSITION OF THE INTERNATIONAL COMMUNITY REGARDING THE GOLAN HEIGHTS LAW

The Arab states, headed by Syria, as well as other states and international organizations, viewed the Golan Heights Law as being designed to bring about the annexation of the Heights to Israel. In a harshly worded statement issued by the Syrian government after the passing of the law,¹⁴⁹ a request was made for an urgent convening of the Security Council in order to adopt a decision nullifying the Israeli measures and imposing sanctions upon Israel. In its statement the Syrian government made it clear that "this Israeli decision means the annexation of the occupied Syrian territories, a declaration of war on Syria and the annulment of the ceasefire."

In its declaration the Syrian government stated that it would spare no effort "to defend its territory and its national interests."¹⁵⁰ These declarations were reiterated by the chairman of the Syrian parliament during a session of parliament.¹⁵¹ On the same day the Syrian representative to the United Nations filed a request for an emergency session of the Security Council to debate the "decision of the Israeli Government to apply Israeli law to the Occupied Golan Heights."¹⁵²

The next day an additional statement was issued by the Jordanian government, in which it condemned "Israel's decision to annex the occupied Arab Golan Heights."¹⁵³ Jordan defined the Golan Heights Law as a new measure "in its

government opinion, it is hard to imagine any clearer indication of annexation.

149. Statement Issued by the Syrian Government After the Israeli Decision to Annex the Syrian Golan Heights (December 14, 1981), 11 J. PALESTINE STUD. 199 (1982) [hereinafter Statement Issued by the Syrian Government]. An interesting argument to the effect that the Golan Heights Law was null and void was raised in the Syrian application to the Inter-Parliamentary Association (IPU): "Because the so called Israeli Parliament . . . holds its meetings on land which does not belong to it but is the property of Arab Jerusalem." IPU Asked To Expel Israel, in FOREIGN BROADCAST INFORMATION SERVICE-MIDDLE EAST ASIA [FBIS-MEA]-81-243, Dec. 18, 1981, at H-2.

150. Statement Issued by the Syrian Government, *supra* note 149.

151. Further Reaction to Israeli Decision on Golan, in FBIS-MEA-81-242, Dec. 17, 1981, at H1.

152. *Letter from the Representative of the Syrian Republic to the President of the Security Council* (Dec. 14, 1981), U.N. SCOR, 36th Sess., Supp. for Oct.-Dec. 1981, at 60, U.N. Doc. S/14791 (1981).

153. Statement Issued by the Jordanian Government After the Israeli Decision to Annex the Golan Heights (Dec. 15, 1981), 11 J. PALESTINE STUD. 200 (1982) [hereinafter Statement Issued by the Jordanian government].

[Israel's] aggressive and expansionist policy aimed at Judaizing and annexing the occupied Arab territories."¹⁵⁴ According to the statement, these measures include "the usurpation of precious parts of Palestine in 1948, the occupation of other Arab territories in 1967, the Judaization and annexation of Arab Jerusalem, and the establishment of settlements."¹⁵⁵

Egypt also condemned the annexation of the Golan by Israel. The Egyptian representative to the United Nations condemned "this creeping annexation" as resembling "the similar measure taken by the Israeli government of illegally annexing Arab Jerusalem."¹⁵⁶

Additional Arab states and other member states of the Arab League joined in the condemnation of Israel for its annexation of the Golan Heights.¹⁵⁷

154. *Id.*

155. *Id.*; see also Government Issues Statement on Golan Heights, in FBIS-MEA-81-241 (Dec. 16, 1981), at F1; Ad-Duster on Need for Joint Arab Action, FBIS-MEA-81-243 (Dec. 18, 1981), at F1 (condemnation by the Jordanian Senate of the Israeli Law annexing the Syrian Golan Heights).

156. U.N. Delegate's Reaction, in FBIS-MEA-81-242 (Dec. 17, 1981), at D4; see also Mubarak Talks to Newsmen, FBIS-MEA-81-241 (Dec. 16, 1981), at D1 (reaction of President Mubarak); Foreign Ministry Statement, FBIS-MEA-81-240 (Dec. 15, 1981), at D2; Reaction to Israeli Annexation of Golan Heights, FBIS-MEA-81-241 (Dec. 16, 1981), at D1, 9 (reaction of the Egyptian Cabinet).

157. See President Confirms Solidarity with Syria, FBIS-MEA-81-241 (Dec. 16, 1981), at Q1 (reactions of the Lebanese Foreign Minister); Skaf Denounces Israeli Decision on Golan, FBIS-MEA-81-243 (Dec. 18, 1981), at G5 (Lebanese Minister of Defense); Israeli Decision on Golan Heights Denounced, FBIS-MEA-81-240 (Dec. 15, 1981), at C2 (Kuwaiti Minister of State for Cabinet Matters); Cabinet Discusses Israeli Annexation of Golan, FBIS-MEA-81-242 (Dec. 22, 1981), at C6 (Council of Ministers of Saudi Arabia, headed by Prince Fahd); People's Assembly Condemns Golan Annexation, FBIS-MEA-81-243 (Dec. 18, 1981), at Q1 (President and Parliament of Algeria); Boucetta Condemns Israeli Annexation of Golan, FBIS-MEA-81-241 (Dec. 16, 1981), at Q6 (Minister of State in Charge of Foreign Affairs of Morocco); FBIS-MEA-81-241 (Dec. 16, 1981), at Q1 (Tunisian and Sudanese Foreign Ministers); Communique Rejects, Condemns Golan Annexation, FBIS-MEA-81-242 (Dec. 17, 1981), at Q7 (Sudanese Foreign Ministry); Israeli Annexation of Golan Heights Scored, FBIS-MEA-81-241 (Dec. 16, 1981), at C3 (Minister of State for Foreign Affairs of Qatar); Foreign Ministry: Golan Annexation 'Invalid,' FBIS-MEA-81-241 (Dec. 16, 1981), at C4 (Foreign Minister of the United Arab Emirates); Official Statement Condemns Golan Annexation, FBIS-MEA-81-241 (Dec. 16, 1981), at C5 (Foreign Ministries of the Democratic Popular Republic of Yemen); Government Issues Statement on Golan Issue, FBIS-MEA-81-241 (Dec. 16, 1981), at C6 (Foreign Ministry of the Arab Republic of Yemen); Official Statement Condemns Golan Annexation, FBIS-MEA-81-242 (Dec. 17, 1981), at C5 (spokesman for the Foreign Ministry of Oman); Somalia Denounces Israeli Golan Decision, FBIS-MEA-81-243 (Dec. 18, 1981), at R3 (Foreign Ministry of Somalia); Ministry Denounces Israel, Urges Arab Solidarity, FBIS-MEA-81-242 (Dec. 17, 1981), at Q5 (Deputy

Arab organizations and terrorist organizations also condemned the annexation. The Central Council of the PLO convened in Damascus and condemned the decision that had been adopted "by the Zionist enemy's Knesset" to annex the Golan, emphasizing that "coming as it has after the decision to annex Jerusalem, this decision is an embodiment of the Zionist enemy's expansionist policy and the design on the Arab world as a whole."¹⁵⁸

The foreign ministers of the European Community as well expressed distress at "the decision of Israeli government and Knesset to apply the law, jurisdiction and administration of Israel to the occupied Syrian territory in the Golan Heights." They perceived the application as being "tantamount to annexation," as contradicting international law "and therefore [being] invalid in [their] eyes."¹⁵⁹

The United States also regarded the Golan Heights Law as the annexation of the Heights to Israel, a fact that posed an additional obstacle to peace in the region.¹⁶⁰

In the aftermath of the Syrian complaint, the Security Council convened and after reaffirming its prohibition against the forcible acquisition of territory, it determined that the Israeli decision to apply its law "in the occupied Syrian Golan Heights" was null and void.¹⁶¹ The Security Council demanded that Israel immediately repeal its decision and requested that the Secretary-General of the United Nations report to it regarding the execution of the decision.¹⁶²

Minister for Foreign Affairs and Cooperation of Mauritania); Government Condemns Golan Heights Annexation, FBIS-MEA-81-242 (Dec. 17, 1981), at R1 (Foreign Ministry of Djibouti).

158. Statement Issued by the PLO Central Council at the End of Its Meeting in Damascus (December 29, 1981), 11 J. PALESTINE STUD. 202 (1982); see also PLO Issues Statement on Golan Annexation, FBIS-MEA-81-241 (Dec. 16, 1981), at A1; The General Secretariat of the League of Islamic and Arab People, FBIS-MEA-81-242 (Dec. 17, 1981), at A1; OIC Condemnation, FBIS-MEA-81-241 (Dec. 16, 1981), at A1 (reactions of the OIC-Organization of Islamic Conference); Gulf Council Official on Golan, Saudi Plan, FBIS-MEA-81-243 (Dec. 18, 1981), at C1 (GCC-Gulf Cooperation Council); The General Secretary of the Popular Democratic Front for the Liberation of Palestine, FBIS-MEA-81-241 (Dec. 16, 1981), at D4.

159. Statement Issued by the EEC Foreign Ministers on the Extension of Israel, in BULL. EUR. COMMUNITIES 69 (No. 12 1981).

160. Reagan's Reaction to Golan Report, FBIS-MEA-81-243 (Dec. 18, 1981), at I-10.

161. S.C. Res. 497, U.N. SCOR, 36th Sess., 2319th mtg. at 6, U.N. Doc. S/INF/37 (1981).

162. G.A. Res. 36/226A, U.N. GAOR, 36th Sess., Supp. No. 51, at 47, U.N. Doc.

On the same day a decision was adopted by the United Nations General Assembly¹⁶³ reaffirming its previous decisions and those of the Security Council determining that Israel's decision to annex Jerusalem and to make it its capital, and its actions in changing the character, status and composition of the city were all null and void. It called upon Israel to revoke these measures immediately.

In another section, the General Assembly severely condemned "Israeli annexation policies and practices in the occupied Syrian Golan Heights" and the steps adopted there, including the forced granting of citizenship to the Syrian subjects living there. The Assembly determined that these steps were null and void.¹⁶⁴

In an additional decision adopted on the same day¹⁶⁵ the General Assembly once again condemned "the persistence of the Israeli policy of annexation" and demanded that it revoke the decision to apply Israeli law to the Golan Heights, a decision that it once more defined as "null and void and without any legal validity whatsoever." The General Assembly called upon the Security Council to act according to Section 7 of the UN Charter, should Israel fail to execute and comply with the said request, and called upon the General Secretary to report regarding the implementation of this decision.¹⁶⁶

The reports of the Secretary-General stated the Israeli position, and described the circumstances surrounding the passage of the Golan Heights Law. The reports also contained an Israeli assurance that it desired to negotiate with Syria, as with its other neighbors, without any preconditions, and toward a lasting peace in accordance with resolutions 242 and 338 of the Security Council. Israel made it quite clear that "the Golan Heights Law does not preclude or impair such negotiations."¹⁶⁷

A/36/51 (1981).

163. *Id.*

164. *Id.*

165. G.A. Res. 36/226B, U.N. GAOR, 36th Sess., Supp. No. 51, at 49, U.N. Doc. A/36/51 (1981).

166. *Id.*

167. *Report of the Secretary General*, U.N. SCOR, 36th Sess., Supp. for Oct.-Dec. 1981, at 73, U.N. Doc. S/14821 (1981); *see also Report of the Secretary General*, U.N. SCOR, 36th Sess., Supp. for Oct.-Dec. 1981, at 64, U.N. Doc. S/14805 (1981) (incorporating U.N. Doc. S/14805/corr.1 (1981)).

Following the report of the UN Secretary-General, the Jordanian delegation presented a draft resolution for the Security Council decision.¹⁶⁸ In its proposal Jordan maintained that the continued occupation of the Syrian Golan Heights since June 1967, and its annexation by Israel on December 14th, 1981, constituted an ongoing threat to international peace and security. The proposal determined that the Israeli decision to apply its law to the occupied Syrian Golan Heights constituted "an act of aggression" according to section 39 of the UN Charter, and further called upon all of the member states to adopt effective measures "in order to nullify the Israeli annexation of the Syrian Golan Heights."

The proposal to impose sanctions on Israel in order to coerce it into revoking the Golan Heights Law was vetoed by the United States. As a result, the matter was raised for discussion in the General Assembly in an emergency session. In its decision, the General Assembly harshly condemned Israel for its failure to comply with the General Assembly's earlier decision. Once again the General Assembly made clear that the application of Israeli law to the Golan Heights, together with the steps adopted for their implementation "are illegal and invalid and shall not be recognized." The General Assembly decision expressly refers to the "continued occupation of the Syrian Golan Heights since 1967 and its *effective annexation* by Israel on December 14, 1981, following Israel's decision to apply its laws, jurisdiction, and administration on that territory."¹⁶⁹

It is thus clear that even though the Arab states and the international community contested the legality of the Golan Heights Law, they were united in the opinion that, like the legislation on Jerusalem, the law was intended to annex the Golan Heights to Israel.¹⁷⁰ The UN General Assembly even recognized the "effective annexation," albeit illegal, of the Golan Heights to Israel as a direct result of the law. And, while it may be argued that the Arab states tended to exagger-

168. *Jordan: Revised Draft Resolution*, U.N. SCOR, 37th Sess., Supp. Jan.-Mar. 1982, U.N. Doc. S/14832/Rev. 1 (1982).

169. U.N. GAOR ES-9/1, 9th Emergency Special Sess., Supp. No. 1, at 3, U.N. Doc. A/ES-9/7 (1982) (emphasis added).

170. Cf. Malanczuk, *supra* note 43, at 176; Malanczuk, *supra* note 2, at 265-69. Malanczuk unequivocally states that "the Golan Heights Act is clearly an act of annexation." Malanczuk, *supra* note 2, at 294.

ate the significance of the Golan Heights Law for the sake of reaping political capital, the declarations and decisions cannot be overlooked. They unequivocally regarded the Golan Heights Law as unilaterally annexing the Heights to Israel. Israel did not revoke the law despite the international pressure, thus lending force to the inference that was universally drawn from the application of Israeli law to the Golan Heights.

VII: THE GOLAN HEIGHTS LAW AND THE PEACE TALKS WITH SYRIA

The dispute between Sheleff and myself regarding the question of the annexation of the Golan cannot be considered in isolation from the political events relating to its future. The political dispute arose in the media when the peace talks between the Syrian and Israeli governments began, inevitably centering on the fate of the Golan. Once the peace talks began, a public controversy arose regarding the question of whether the Israeli government had a mandate to conduct negotiations with Syria, such negotiations involving possible concessions on the status of the territories of the Golan Heights. The controversy ended with the filing of a complaint to the police against the Government and Prime Minister Rabin and against those conducting the negotiations, as well as the filing of a petition to the High Court of Justice against the same.¹⁷¹ These measures were grounded in the view that "the conduct of negotiations by the executive authority . . . with respect to the Golan Heights, with the intention that any part of the territory of the Heights is to be removed from Israeli sovereignty, is an act performed without authorization, constituting an offence under the Penal Law, 5737-1977,¹⁷² and the Golan Heights Law, 5742-1981."¹⁷³ The offenses attributed to the respondents were the offenses specified in Chapter Seven, Article B of the Penal Law, dealing with treason—the offence being the "impairment of the sovereignty or integrity of the state"¹⁷⁴ and of

171. *Movement of the Faithful of the Temple Mount and the Land of Israel v. Prime Minister*, [47] 1 P.D. 37 (1992) (Isr.).

172. 1976-1977 S.H. 108.

173. *Movement of the Faithful of the Temple Mount and the Land of Israel*, [47] 1 P.D. at 39.

174. 1976-1977 S.H. 243, translated in L.S.I. SPECIAL VOLUME [S.V.] 34 (1977).

"evincing resolve to betray."¹⁷⁵

It was in reaction to these measures that Professor Sheleff published a newspaper article noting that "in the Golan Law there is no annexation of the Heights . . . as a result, a person conducting negotiations with the Syrians need not be concerned that he may be committing the serious offense of the forfeiting of territory under Israeli sovereignty."¹⁷⁶ Reacting to the comments of Sheleff, I also published a newspaper article presenting the position that the Golan Heights Law is to be interpreted as annexing the Heights to Israel.¹⁷⁷ Nonetheless, I also added: "This does not mean that there is no valid legal method for withdrawing from the Golan, but it must be done by the Knesset by way of legislation. Consequently, any agreement reached by the Prime Minister within the framework of the peace talks with Syria, is subject to the approval of the Knesset."¹⁷⁸

Meanwhile, on January 10, 1993, judgment was rendered in the petition of the Movement of the Faithful of the Temple Mount and the Land of Israel,¹⁷⁹ regarding the peace talks. The petition was rejected.

In his article Sheleff presents the petition as having been rejected out of hand for the reason that the topic was non-justiciable.¹⁸⁰ These remarks are not accurate. It is true that the Court noted that "a petition of this nature . . . its clear intention being the manner of conduct of foreign policy of the state of Israel by the authority empowered to do so . . . does not belong in this Court." However, the Deputy President, who gave the main opinion, addressed the issue at hand in order "to expunge the respondents from any suspicion of a criminal offense . . . of treason . . . and not to rest content with the rejection of the petition by virtue of the reason that this topic is not worthy of inclusion in the community of petitions coming

175. *Id.*, translated in L.S.I. S.V. 35 (1977).

176. Leon Sheleff, *There is a Limited Legal Arrangement in the Golan*, YEDIOTH AHRONOT, Sept. 14, 1992. For a similar view, see ARYEH SHALEW, ISRAEL AND SYRIA: PEACE AND SECURITY IN THE GOLAN 86 (1994) ("Notably, the application of Israeli law on the Golan Heights should not be construed as the area's annexation. The fact is that Israel and Syria were to begin peace negotiations.").

177. Asher Maoz, *The Status of the Golan is Identical to That of Jaffa and Jerusalem*, MAARIV, Sept. 20, 1992.

178. *Id.*

179. [47] 1 P.D. 37 (1992)

180. Sheleff, *supra* note 1, at 333 n.2.

before this Court."¹⁸¹

Justice Elon continued and examined the relevant sections of the Penal Law, and determined that the commission of these offenses is dependent upon the act being committed "without any legal authorization." The Deputy President was of the opinion that "negotiations being conducted by the respondents are legally authorized, by virtue of the very nature of their roles."¹⁸² Justice Elon concluded:

Summing up, the said provisions of the Law do not limit the power of the executive authority to conduct political negotiations according to the manner and means it deems suitable for negotiations of this kind. This is its authority, and even its obligation by law. It may be assumed that the government of the state of Israel shall act within the framework of the laws of the state, and if it arrives at any kind of agreement in the political negotiations, the agreement shall be brought for the approval of the Knesset.¹⁸³

Do these words carry ramifications with respect to the question of the annexation of the Golan Heights?

The answer depends on the nature of the Knesset approval required for the agreement reached by the Government in its negotiations with Syria. One possibility is to regard the international agreements, or at least those involving the withdrawal from territories occupied by the state, as requiring the approval of the Knesset. This approach is supported by the fact that the peace agreement with Egypt, involving the withdrawal from the Sinai peninsula, was presented for the approval of the Knesset.¹⁸⁴ The agreements signed between Israel and the PLO leading to Israel's withdrawal from the Gaza Strip and Jericho were also presented for the Knesset's approval. However, this approach is contradicted by the ruling of the Supreme Court, according to which the authority to ratify international agreements lies with the government and not the

181. *Movement of the Faithful of the Temple Mount and the Land of Israel*, [47] 1 P.D. at 37, 39.

182. *Id.* at 41.

183. *Id.* at 43.

184. 85 D.K. 1882 (1979). *The Camp David Agreements on A Framework For the Conclusion of a Peace Treaty Between Egypt and Israel and A Framework for Peace in the Middle East*, have been approved by the Knesset. 83 D.K. 4059 (1979).

Knesset. This view was summed up by Justice Cohn in the *Kamiar* case¹⁸⁵ as follows:

The establishment and maintenance of international relations in general, and the conclusion of international treaties in particular, are typical functions of the executive branch and have nothing to do with the legislative branch. In this respect, our constitutional position is different from that of those states in which international treaties have the standing of law, even of special law. In those countries the conclusion of international treaties has a legislative implication. This is not the case here, where no international treaty possesses legislative effect so long as it is not accompanied by specific legislation by the Knesset. It follows that the division of powers is properly maintained. In the event that an international treaty requires legislation, whether because its provisions might have an influence on the existing law, or because it contains obligations which cannot be implemented without legislation, the Knesset will be asked to pass the necessary legislation or to confer on some other organ the power to promulgate the appropriate subsidiary legislation, otherwise the treaty will be incapable of implementation. But a treaty which can be implemented by the government in the course of the normal transaction of public business or which reflects the existing laws no longer concerns the Knesset but is the business of the government alone.¹⁸⁶

In its judgment in the *Temple Mount Faithful*, the Court did not explain the nature of the approval by the Knesset required for possible agreements that may be reached by the Government in its contacts with Syria. Even so, bearing in mind the laws relating to the power to draw up international

185. *Kamiar v. Israel*, [22] 2 P.D. 85 (Isr. Crim. App. 1967), translated in 44 I.L.R. 197.

186. *Id.* at 97, translated in 44 I.L.R. at 255; see also Ruth Lapidot, *On the Validity of the Convention on Extradition Between Israel and Switzerland*, 22 HAPRAKLIT 328, 341 (1966); Yehuda Z. Blum, *The Ratification of Treaties in Israel*, 2 ISR. L. REV. 120, 126 (1967). But see RUBINSTEIN, *supra* note 38, at 82-83: "Over the years a practice has developed by which the Government brings any agreement involving the forfeit of territories currently in its possession, for the debate and ratification of the Knesset." Section 4 of the Government Rules of Procedure, approved on March 25, 1984, provides that "the ratification of an international treaty shall be brought to a Government meeting, ten copies of it having already been sent to the Secretariat of the Knesset for a period of two weeks, for the information of the Members of Knesset, unless the submission of the copies of the Treaty to the Secretariat is impossible due to reasons of urgency or secrecy."

agreements in the name of the state, and the conditions under which the involvement of the Knesset is required in order to make them executable, it would seem that the Court was of the opinion that the Golan is legally a part of Israel, and that in the absence of an amendment being introduced by the Knesset into the law, the state is unable to forfeit any of its territories.¹⁸⁷ This conclusion is also in harmony with the fact that my article *The Status of the Golan is Identical to that of Jaffa and Jerusalem*,¹⁸⁸ in which the above opinion was expressed in language echoing that used in the judgement, was submitted to the Court by the parties' advocates. Thus, Justice Elon was aware of the article when writing his opinion. This conclusion also seems likely given the fact that the Court directed the petitioners "to bring about the debate and deliberation . . . of this matter by the legislature and the executive authorities."¹⁸⁹

VIII. EPILOGUE

The interesting, perhaps even ironic point in the dispute between Sheleff and myself is that the question of whether it was the intention of the legislature in passing the Golan Heights Law to annex the Heights to Israel, and if it succeeded in doing so, while being a matter of far reaching political significance, is of marginal importance when it comes to municipal law.¹⁹⁰ For the jurist only has what the law determines. The Golan Heights Law brought the Golan Heights under the wings of Israeli law. Regardless of the interpretation of the law, it is indisputable that what has been enacted by the legis-

187. This conclusion is not necessary if we accept Rubinstein's opinion with respect to the evolution of a convention regarding the forfeiting of territory currently in the possession of the State. RUBINSTEIN, *supra* note 38. However, it would appear that this is not a binding legal practice. The law is that "the Government is entitled to decide according to its own discretion, that a certain treaty, of particular importance, shall be presented for the approval of the Knesset, as was done with the Camp David Accords, and the Peace Agreement with Egypt." International Treaties: Process of Ratification - The Knesset and the Government, DIRECTIVES OF THE ATTORNEY GEN. No. 64,000A.

188. See Maoz, *supra* note 177.

189. Movement of the Faithful of the Temple Mount and the Land of Israel v. Prime Minister, [47] 1 P.D. 37 (1992) (Isr.).

190. Arguably, this may explain why Professor Dinstein called for the avoidance of the word "annexation" and for concentration on "actions" rather than "demonstrations." Dinstein, *supra* note 47, at 522.

lature may not be revoked by the government. In order to arrive at this conclusion, we could rest content with the formula presented in *Kang*,¹⁹¹ (which in Sheleff's opinion does not constitute "judicial recognition of the fact of annexation") according to which "any mention of the terms 'Israel' or 'the state' or 'the state of Israel,' in the legislation refers to the Golan Heights."¹⁹² In view of this formula we should take note of section 97(b) of the Penal Law that was discussed in the *Temple Mount Faithful*.¹⁹³ The section refers to a person who "with intent that any area be withdrawn from the sovereignty of the state or placed under the sovereignty of a foreign state commits an act calculated to bring this about." There can be no doubt that the "area" referred to in this sub-section is "any area of Israel" or of the "state" or of the "state of Israel." As a result thereof, section 97(b) would be applicable with regard to the area of the Golan Heights, which is also within the purview of "area of Israel." The conclusion must be that for as long as the Knesset fails to adopt measures to remove this "area" (namely - Golan Heights) from the definition of "area of Israel" sub-section 97(b) referring to the offense of "impairment of sovereignty or integrity of state" remains applicable.¹⁹⁴

Furthermore, if indeed the ownership of Syrian land was transferred to Israel, then the Basic Law-Israel Lands, would also prevent the Government from returning this land to Syria. Section 1 of the Basic Law provides that "[t]he ownership of Israel Lands, being the lands in Israel of the state . . . shall not be transferred either by sale or in any other manner."¹⁹⁵

Now, since we are obliged to read the term "lands in Israel" as including lands in the Golan Heights, this provision may prevent the government from making any territorial concessions in the Golan for as long as the Golan Heights Law remains in force.

Moreover, even if we accept the minimalist approach of

191. See *Kang Abou Tzalach v. Minister of the Interior*, [37] 2 P.D. 718 (1983) (Isr.).

192. *Id.* at 720.

193. See *Movement of the Faithful of the Temple Mount and the Land of Israel*, [47] 1 P.D. at 37.

194. Indeed, in view of this conclusion, it is unclear how one may reconcile *Kang Abou Tzalach*, [37] 2 P.D. at 718, with the argument that it does not constitute recognition of the annexation of the Heights.

195. 1960-1961 S.H. 56, translated in 14 L.S.I. 482 (1961).

Sheleff, that the law "does no more than what is written therein; apply Israeli law, administration and government to the Golan Heights,"¹⁹⁶ what the law has done cannot be reversed except by virtue of another law that revokes that action. Sheleff's assumption that the government has the authority to withdraw from the Golan Heights "without explicit Israeli legislation" is different from the further question of whether the Golan Heights was in fact annexed to Israel.¹⁹⁷

I have my doubts as to whether the question of the annexation shall necessitate judicial discussion, even if the Government attempts to withdraw from areas in the Heights, without receiving the blessing of the Knesset. In order to avoid that result, there is no need for such a determination. For the necessity of "the approval of the Knesset" for the forfeiting of areas in the Golan Heights was clearly recognized by the Supreme Court in the *Movement of the The Faithful of the Temple Mount and the Land of Israel v. Prime Minister*,¹⁹⁸ and is necessary according to any interpretation that may be given to the Golan Heights Law.¹⁹⁹

I have similar doubts that "those legal bodies involved in the negotiations" really need "the legal community to correctly define the situation."²⁰⁰ It is entirely possible that those conducting the negotiations on the part of Israel, will prefer to continue the negotiations, while maintaining the vagueness of the current legal situation, unless they deem it profitable to make political use of the fact of annexation; diplomacy and law do not necessarily coincide.

196. Sheleff, *supra* note 1, at 337.

197. See Sheleff, *supra* note 1, at 333.

198. [47] 1 P.D. 37 (1992) (Isr.).

199. An original method of avoiding the need to obtain the Knesset's approval for the ceding of the Golan was suggested by Shalew. SHALEW, *supra* note 176, at 86-87. After noting that "new legislation would be required . . . to annul the Golan Heights Law," Shalew observes that such a move "would almost certainly generate considerable parliamentary opposition." SHALEW, *supra* note 176, at 86-87. He therefore raises a scenario under which Israel would withdraw from the Golan, and subsequently "Syria might forego the law's repeal, as it would no longer have practical significance." SHALEW, *supra* note 176, at 86-87. I am unable to understand Shalew's opinion, as it seems to propose that the Israeli Government strike a deal with the Syrian Government in order to circumvent the Knesset. Needless to say, in view of the above analysis, this suggestion, besides its other basic defects, is illegal.

200. See Sheleff, *supra* note 1, at 333 n.2.

The issue of a peace agreement with Syria together with the issue of the withdrawal from any of the areas of the Golan Heights, and of their transfer to Syrian authority, are and shall remain at the forefront of the political arena. These issues will have to find their solution in the Knesset and the government, not in the works of legal scholars.²⁰¹

201. I will not address an additional question at this juncture, namely does the step of receiving the Knesset's approval require the ratification of the citizenry whether by elections to the Knesset or via a referendum? From my point of view this question also belongs to the area of politics and not to the domain of law. For discussion of the point see Schochtman, *supra* note 73, at 17-18. In his article, Professor Schochtman further recommends that the best way for this to occur is to entrench the subject of sovereignty by requiring a special majority of at least two thirds of the Members of the Knesset on a matter as fateful for the future of the Jewish people and the state of Israel as amending the Golan Heights Law. Schochtman, *supra* note 73, at 18.

Indeed, several draft bills for the entrenchment of the Golan Heights Law were recently presented to the Knesset and rejected by it. The authority of the Knesset to entrench its laws against changes by a simple majority of the Knesset stems from its constituent powers. See Asher Maoz, *The System of Government in Israel*, 8 TEL AVIV U. STUD. L. 9, 15 (1988). The question of whether the Knesset may achieve this goal by way of regular laws as opposed to Basic Laws is outside the scope of this paper. It was addressed by Justice Aharon Barak in his article *The Constitutional Revolution: Protected Human Rights*, 1 MISHPAT UMIMSHAL 9, 6-20 (1992).