Injustice and Folly

On the Proposals to Cede Arab Localities from Israel to Palestine

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With the participation of **Hadas Tagari**

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About the Authors

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About the Study

Proposals for ceding Arab localities from Israeli to Palestinian sovereignty, in the framework of a permanent status agreement, have recently taken root in Israeli public debate. The proposals are presented as an "exchange of populated territory". Since the events of October 2000, which resulted in the deaths of thirteen Israeli Arabs, there are indications of support for such proposals within the Jewish public, from all walks of the political spectrum. The Arab public and its leaders, as well as some Jewish figures, vehemently oppose proposals involving revocation of the citizenship of tens of thousands of Arabs against their will. This study examines and maps the Jewish voices in favor of the basic idea, the different plans for implementation according to various proposals, and the Arab discourse opposing the idea. The study further examines aspects of Israeli and International Law which are relevant to the possibility of ceding Arab localities from Israeli to Palestinian sovereignty, as well as analysing the demographic aspect of these proposals. The findings of the study serve to emphasize the infeasibility and the great danger involved in these proposals.

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Additional English Publications on Jews and Arab in Israel And Israel and its Arab Neighbors

- **Planning and Development of Localities in the Emerging Palestinian Entity**, Rassem Khamaisi, 1994.

- **New Palestinian Towns Alongside Existing Towns**, Rassem Khamaisi, 1996.

- **The Separation Barrier and Jerusalem's Arab Neighborhoods: Integrate or Separate but Don't Postpone**, Yaakov Garb, 2004.

- **Coordinated Disengagement: Opportunities and Barriers**, Yohanan Tzoref, 2005.

- **Urban Trauma in Jerusalem: Impacts and Possibilities for Recovery**, Yaacov Garb and Hank Savitch, 2005.

- **Non-State Peace Spoilers and the Middle East Peace Efforts**, Avraham Sela, 2005.

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Abstract

In recent years the focus of the Israeli-Palestinian conflict has been the future
control of the territories of the West Bank. Will Israeli rule continue, or will a
viable Palestinian State be established alongside the State of Israel, in a way that
ensures both states' existence, in peace and security? The major subjects on the
negotiation agenda are borders, refugees and East Jerusalem. The Arab citizens
of Israel,[1] who make up one fifth of its citizens and approximately one fifth of
the Palestinian people from the Jordan to the Mediterranean, were not listed
among Israel-PLO permanent status issues, and were not discussed.

The idea of (unpopulated) territorial exchange between Israel and the Palestini-
ans in the framework of the permanent status agreement, based on the precedent
in the peace treaty between Israel and Jordan in 1994, was expressly mentioned
in President Clinton's December 2000 proposal. The increase in tension and
alienation between the Jewish and Arab populations, especially after the events
of October 2000, reinforced the call within the Jewish population in Israel for
the transfer of territory inhabited by its Arab citizens to a Palestinian state, when
established. Talk of "demographic balance", which became the new strategy of
the Zionist left's public struggle to end the occupation and achieve a permanent
status agreement with the Palestinians, expanded into the borders of the State of
Israel. These voices are heard not only from the right wing of the political map

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[1]   This study will usually use the term "Arab Israeli citizens" or "the Arabs in Israel".
       The issue of the identity and self-definition of the Arab citizens of Israel, who are
       members of the Palestinian People, is complex, and has undergone many changes.
       Many today define themselves as "Palestinian citizens of Israel."

in Israel, such as Avigdor Lieberman, but also from circles far from it, such as former Prime Minister Ehud Barak. To date, no detailed program defining territory and population data has been presented, nor has any substantive discussion taken place regarding the feasibility, interests, and implications stemming from this idea.

The goal behind the idea of transferring Arab inhabited territories to the Palestinian state is primarily the reinforcement of the Jewish majority in the State of Israel, and some believe that such a transfer will also allow the State of Israel to retain a number of settlement blocs. The logic of the idea is identical to the 1947 partition principles – splitting the country into two nation states according to demographic and settlement layout, with the "green line" serving as a line of reference. However, the implications of implementing such an idea are the revocation of the Israeli citizenship of tens of thousands of citizens, against their will, due to their identity as members of the Arab-Palestinian people; turning them into citizens of another state; detaching them from the lives they built in the State of Israel; and transferring them to a new-old lifestyle. For some of its supporters, this idea is presumed to "kill two birds with one stone" – annexation of settlement blocs and reinforcement of the Jewish majority; for others, it is merely self defense on the part of the Jewish majority, against efforts by a part of the Arab minority to annul the Jewish character of the State of Israel.

The feasibility of this idea depends primarily upon Palestinian consent. The determination of the border between the states and the transfer of population cannot be undertaken unilaterally, rather only as a part of a bilateral agreement. Under the present circumstances, the idea has no Palestinian partner. The Palestinian side, represented by the PLO, has no interest in implementing such a plan. Nor does it appear that Palestinian leaders would agree to a step opposed by Arab citizens who are to become citizens of their state, especially when implementation of the plan is part of a territorial exchange which would leave settlement blocs deep within the Palestinian state.

Exchange of inhabited territory has no precedent in the post World War era, before the formulation of the various human rights conventions. From the legal standpoint, stipulated border changes are acceptable in international law, and even possible according to Israeli law, as long as they are authorized by the

Knesset. However, revocation of the citizenship of tens of thousands of people simply because they are Arabs living near the border, and transferring them to Palestinian sovereignty completely against their will, are not legal according to Israeli or international law.

The demographic argument at the base of this idea assumes that the Jewish majority in the State of Israel is endangered by the rising number of Arab citizens, and by the intensifying demands for de-Zionization of the state in a way which endangers its Jewish character. However, studies show that, barring alteration to the present borders of the State of Israel,[2] including East Jerusalem, the Jewish sector will still represent 74% of the population in 2050, and without East Jerusalem, a percentage yet higher. Not only has no detailed plan with clear data outlining the territory and the number of Arab citizens ever been presented; the precise examination which we present in this study also shows that the change which such a plan would bring about would likely be most marginal. The population of the Wadi Ara and Galil "triangle" of settlements, consisting of 228,000 people, is only 16.3% of the Arab population of Israel. However, a study of those potential settlements according to various strategic criteria shows that, practically, it is possible to speak of a maximum number of 162,200 and a minimum number of 130,200 people, who make up only 9.5%-10.5% of the Arab population of Israel (2.3% of the total population of the state). For the sake of comparison, the number of Palestinians expected to become Israeli citizens against their will, should East Jerusalem become part of the State of Israel, is 231,000 people: that is to say, double. The demographic argument seems to speak for preserving the democratic Jewish character of the State of Israel; yet it is far from clear why there are people who believe that revocation of the citizenship of tens of thousands of Arabs against their will, because they are Arabs, sits well with the Jewish character of the state, not to mention its democratic character.

Placing the issue on the internal Israeli political agenda even before it has become a part of any Israeli negotiation stance has many implications for Israeli

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[2]   That area governed by Israeli law according to internal law – "the Green Line" boundaries, the Golan Hights and East Jerusalem.

society in general, and for Arab society specifically. It seems that such a pro-posal will destroy the little which remains of Israeli Arabs' sense of belonging to the state, and of the chances of success of the trend of their integration into Israeli society. The Arab population in Israel labors consistently to achieve equality and to intensify its integration into general Israeli society. A plan to transfer territory and population is liable to be the final stage in the political and social process of civil de-legitimization of the Arab population of Israel, and the final stage of that population's exit from the Israeli system. As a result, the relations between majority and minority, and between the state and the Arab population, are liable to assume, once again, an old-new character: a violent nationalist character which craves conflict, not rapprochement.

In the external arena, including this issue in the peace negotiations with the Palestinians would turn the discussion from one of dispute over the 1967 bor-ders, into one of ethnic-settlement partition boundaries, and create a precedent for Israeli willingness to forfeit inhabited territories within the State of Israel. Adding the issue of the Arabs in Israel to other issues pending decision in the permanent status negotiations, would also lead to a discussion of other issues regarding that population, such as "the internal refugees",[3] expropriation of Arab lands, and majority-minority relations in the state, and initiate the interna-tionalization of majority-minority relations – a subject which, to date, has been an internal matter of the state.

In the absence of either internal or external Palestinian partners to the idea of populated land exchanges, invalid both under Israeli and international law due to its coercive nature, and given its marginal demographic significance, this proposal, which attempts to shift an Arab population to Palestinian sovereignty, should be viewed as part of a political discourse stirring Jewish society in Israel today. Seeing as there are no internal or external Palestinian partners for the idea

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[3]   Internal refugees are Palestinian Arabs who either departed in the course of the war of Independence or where deported, and barred by the State of Israel from re-turning to their homes. They became residents of other Arab localities which re-mained within the boundaries of Israel. See: Cohen Hillel, *The present Absentees: The Palestinian Refugees in Israel Since 1948*, the Center for the study of Arab Societyin Israel, The Van Leer Institute: Jerusalem, 2000.

of transfer of inhabited territories, (which cannot be done against the will of the transferees according to Israeli and international law, and is of most marginal demographic significance), such a proposal, by which Arab population would be transferred to Palestinian sovereignty, should be seen as part of a political process in Israeli Jewish society today, in which new political consensus and coalitions (hitherto unlikely) are being formed between figures from the left and right, on the basis of the principle of partition of the country into two nation states. Discussion of this idea is actually part of the debate on expanding the public legitimacy of the proposed final status agreement, and part of the dispute regarding the future of settlement blocs and the character of the Jewish nation state in the era after the peace treaties have been signed. This discussion is important, and legitimate, to the extent that it is faithfully presented; but not when voiced by those who wish to predetermine its results by taking steps which are at odds with international and Israeli law; are demographically mean-ingless, practically speaking; and come at the expense of the rights and future of the entire Arab population in the State of Israel, while dealing a fatal blow to Arab-Jewish relations and to the democratic character of the State of Israel. In order to discuss, and reach equitable and legal decisions regarding the character of the State of Israel in the era of peace between all involved parties, the Government of Israel must first implement an official emergency plan to redress discrimination and curtail the gaps between Jews and Arabs in the state, and thus to turn the latter into citizens of equal rights and obligations. Moreover, it should actively promote the establishment of an independent Palestinian state in the territories of the West Bank and Gaza Strip, in order to realize the Palestinian people's right to self determination. These two steps will allow all Arab citizens of Israel to define their identity and the extent of their affiliation to the State of Israel, and to choose, from an equal national standing, the state with which they identify and in which they choose to exercise the right of citizenship.

Preface

The idea of exchanging *unpopulated* territory between Israel and the Palestinians in the framework of a Permanent Status agreement was expressly mentioned in President Clinton's proposal of December 2000, and is based upon a precedent set in the 1994 Israeli-Jordanian Peace Treaty. In the Israeli-Palestinian context, the Americans wished to draw upon the idea of exchange in order to bridge the gap between Israel's demand to annex major settlement blocs and the Palestinian demand for full implementation of Security Council Resolution 242.

Against the background of the developments of recent years, the issue of the demographic balance between Jews and Arabs in *Eretz Yisrael** has begun to play a central role in the internal Israeli debate regarding the Israeli-Palestinian conflict, especially among centre-and-left Zionist circles. These circles have used the "demographic argument" as a new strategy in their public struggle to end Israeli control of the Palestinian Territories and to attain a Permanent Status agreement. Paradoxically, this trend has led to the intensification of voices in the Jewish public in Israel calling for the "transfer" of territories inhabited by Arab citizens from the State of Israel to the Palestinian State when the latter is established, in return for leaving Israeli settlement blocs in the West Bank under Israeli sovereignty.[4] These voices may be heard not only from the far right of

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*   In Hebrew, meaning "The Land of Israel". In the context of the Arab-Israeli conflict and of this study, the term refers to British Mandatory Palestine, not including Transjordan, and includes the territory of the current State of Israel, the West Bank, and the Gaza Strip – *translator's note*.

[4]   This study will usually use the term "Arab Israeli citizens" or "the Arabs in Israel". The issue of the identity and self-definition of the Arab citizens of Israel, who are members

the Israeli political map, as in the style of MK Avigdor Lieberman[5] who attempts to decrease the territorial price that Israel will need to pay in the framework of a Permanent Status agreement; but also from circles far from him, such as former Prime Minister Ehud Barak, who sees the Arab minority as a threat should the conflict continue. Support for exchange of populated territory has also been influenced by the Jewish population's awareness of the increased empathy of the Arabs in Israel for the Palestinian struggle; the intensified involvement of individuals among them in terrorist activity (even if this involves a negligible minority); and the growing trend of isolationist seclusion, such as is identified with the charismatic leader of the northern faction of the Islamic movement, Sheik Ra'ed Salah of Umm el Fahm. Arab voices delegitimizing the existence of the State of Israel as a Jewish-Zionist state also reinforce this trend. Thus, some proponents of the idea of populated territory exchange even contend that the proposal, despite the huge legal difficulty it raises, is a tool with which democracy can defend against those wishing to strike at the definition of the State of Israel as a Jewish state.

To date, no detailed plan has been published, and no legal, social, or operative process for its implementation has been described. Moreover, there is a lack of clarity regarding the way in which such a step would be implemented: whether it would be part of an agreement, or a unilateral step, and whether it would be conditional upon the citizens' consent, or take place even without such consent.

The name given to the proposal – "exchange of populated territory" – appears to present a reciprocal and agreed step between Israel and the Palestinians, which deals mainly with territory. The logic at the core of the proposal is the same as that upon which the partition plan of 1947 was also based: splitting the country into two Nation States on a demographic-national basis, with the addition in this case of the "Green Line" as a point of reference for the border. However, with-

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of the Palestinian People, is complex, and has undergone many changes. Many today define themselves as "Palestinian citizens of Israel."

[5]   "The Arab localities in Wadi Ara and 'The Triangle' will be transferred to sovereignty of the Palestinian Authority"; from the "Israel Beytenu" website, Population and Territorial Exchange – Main Points of the Political Program,
http://www.beytenu.org.il/content.asp?NID=2

out the consent of the Palestinians and of the Arabs in Israel, the *de facto* meaning of the idea is revocation of the Israeli citizenship of tens of thousands of Israeli citizens on the basis of the fact that they belong to the Arab-Palestinian people, turning them into citizens of another country and forcibly detaching them from the pattern of life which they have built for themselves in the State of Israel, and transferring them to a different pattern of life.

The objective of this study is to present the expanding support in the Jewish public for the idea of "exchange of populated territory" and to examine the *de facto* and *de jure* implications stemming from it, against the background of historical precedents and in connection to the unique history of the Arabs in Israel. This study attempts to prove that a forced exchange of populated territory is demographically meaningless, has no historical precedent, and is invalid according to international law and current Israeli law. The idea contradicts Israel's values, and carries extremely dangerous internal Israeli societal implications.

1   Historical Background

Partition – The Two State Solution

The Jewish-Arab conflict in Mandatory Palestine led the international community to view partition as a solution which would relieve the tension between the two basic assumptions which guided international policy: on the one hand, a unique recognition, which deepened due to the Second World War and the Holocaust, of the right of the Jewish People scattered around the world to establish its national home in *Eretz Yisrael*; and on the other hand, a recognition of the national aspirations of the Arab majority in *Eretz Yisrael*.

The partition idea was first raised by the British Royal Commission led by Lord Peel, which operated in the country in 1937. The British saw the idea as "the only method we are able to propose for dealing with the root of the trouble".[6] That was their answer to the contradictions created by conflicting promises toward the Arabs and the Jews expressed in the McMahon letters (1915) and in the Balfour declaration (1917).

This British initiative ran out of steam within a year, and the Peel Commission was replaced by the Palestine Partition Commission led by Sir Woodhead (November 1938), which buried the idea of partition. The idea of partition became more concrete and practical only when the United Nations Special Committee on Palestine (UNSCOP), which was appointed in 1947 at Britain's official request to the General Assembly, began to operate. The General Assem-

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[6]   *Palestine Royal Commission Report*, 1937, Chapter XXII, paragraph 1.

bly approached the problem of *Eretz Yisrael* with a similar understanding regarding the need to find a balance between the right of the Jewish People and the recognition of the Arabs' aspirations in *Eretz Yisrael*.[7]

The proposed border for partitioning the country into two states reflected an attempt to compromise between the Jewish and Arab claims, on the basis of the demographic outlay of the two populations, and included, of course, allocations of land for absorption of immigration in the Jewish state.[8] According to the partition resolution, the two states were to be built out of three tangential territorial units, which created winding boundaries and a close proximity of settlements. It seems that by drawing the borders in this fashion, the committee members wished to "force" the parties to cooperate in the future. The committee was keen to ensure that a substantial number of Jews remained in the Arab territory and a large Arab population remained in the Jewish territory, in order to guarantee cooperation between the two new states.

A majority of committee members believed that the proposal would bring about coexistence between the two peoples that were to attain independence, and called their solution "[political] partition with economic union". However, this plan was not ultimately realized. The Zionist movement, after a heated debate, accepted the partition plan, but the leaders of the Arab population opposed it. The chairman of the Arab Higher Committee, Haj Amin el Husseini, rejected all

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[7]   The majority opinion report of "The UN Special Committee on Palestine", 1947, chapter 6, part 1. "The basic premise underlying the partition proposal is that the claims to Palestine of the Arabs and Jews, both possessing validity, are irreconcilable, and that among all of the solutions advanced, partition will provide the most realistic and practicable settlement, and is the most likely to afford a workable basis for meting in part the claims and national aspirations of both parties… There are now in Palestine some 650,000 Jews and some 1,200,000 Arabs who are dissimilar in their ways of living and, for the time being, separated by political interests… Only by means of partition can these conflicting national aspirations find substantial expression and qualify both peoples to take their places as independent nations in the international community and in the United Nations."

[8]   The Jewish state was allotted 55%, and the Arab state 42%, of mandatory Palestine, despite the fact that the population ratio at the time was two thirds Arab and one third Jewish.

cooperation with the commission. In his speech before the commission, he noted that he had refrained from responding to the report since, in the opinion of the Arab Higher Committee, its main proposals (partition and federation) contradicted the UN Charter and the Covenant of the League of Nations, regarding the Arab right to self determination.[9]

The War of Independence

The General Assembly resolution on the partition plan on November 29, 1947 led to the outbreak of civil war in *Eretz Yisrael*. As the representative of the Arab Higher Committee testified at the Security Council session on April 16, 1948, the war was initiated by the Palestinians, with the assistance of the Liberation Army of the Arab League.[10]

The Arab rout in the battles against the Jews and the disintegration of the Arab League army, as well as the collapse of Palestinian society and the mass civilian flight,[11] led the Arab countries to invade *Eretz Yisrael* the day after the declara-

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[9] A. B. Yehoshua wrote on that subject: "The Arabs did not accept the partition plan. One can understand them without justifying them; no native people would accept such a resolution. Neither the Danes nor the Norwegians would be willing to hand over half of their country in order to solve the Jewish question…"; In: Ari Shavit, *Partition: Disengagement and Beyond*, Keter, 2005, p. 127 [Hebrew].

[10] *See* United Nations, *Security Council Official Records, The Third Year, Meetings* 261-285, Lake Success, New York, 1948, 16 April p. 19, In: Alexander Jacobson, Amnon Rubinstein, *Israel and the Family of Nations*, *id.* at p. 83, note 47 [Hebrew]: "The representative of the Jewish Agency told us yesterday that they were not the attackers, that the Arabs had begun the fighting, and that as soon as the Arabs stop shooting, the Jews will do so as well. In fact, we do not deny this fact… we have always said that we are not willing to have little Palestine partitioned… we told the entire world that this is aggression against our country and against our rights and interests, and that we intend to fight against it."

[11] There is a historiographic debate between the Jewish and Arab narratives regarding the terminology used to describe these events – uprooting, flight, expulsion, or abandonment. In our discussion, we shall not get into this debate.

tion of the establishment of the State of Israel. The Arab expeditionary forces were also routed, and the Arab world's attempt to prevent the establishment of the Jewish State failed.

The War of Independence was initiated by the Palestinians. During most of the war, up until the invasion as well as during the lulls in the fighting with Arab foreign armies, they were the Jews' most active enemy, and at the war's end they ultimately became its main victims. Modernization in Palestinian society came to a sudden halt. The elites were lost, and the social, economic, and political infrastructure was shattered. 80% of Palestinians became refugees. 350 of 450 villages were completely or partially abandoned. The total area of abandoned lands is estimated at 3.5 million dunams. Some of these lands were transferred to the ownership of the State of Israel, and some of them to the Custodian of Absentee Property, who later made them available for Jewish settlement. Haifa and Acre were emptied of most of their Arab residents. The society which remained behind was mostly an agricultural one, which had experienced a severe crisis and was focused upon survival.[12] The war created severe problems for residents who remained in their homes, as well as for those who moved to other villages and lost all they had.[13] The Arabs who remained in the State of Israel belonged to both of these groups, and became citizens of the state who saw themselves as being in a harsh dilemma regarding their identity and their sense of belonging.[14]

The Jewish public, still traumatised by the Holocaust in Europe, held the Palestinians who left as well as those who stayed, responsible for the Arab states' invasion and for the heavy price which the Jewish population paid for the war. The Arabs who stayed were considered a "fifth column", waiting for the ripe

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[12]   Azmi Bishara (1999), "The Israeli Arab: Analysis of a Divided Political Discourse" *Btween the "I" and the "We" – the Construction of Identities and Israeli Identity).* The United Kibbutz Movement and the Van Leer Institute: Jerusalem, pp. 170-171 [Hebrew]; *also,* Danny Rabinowitz and Haula Abu Baker (2002), "The Survivors", *The Stand Tall Generation: The Palestinian Citizens of Israel Today*, Keter: Jerusalem, pp. 25-34 [Hebrew].

[13]   **Supra** note 3.

[14]   Azmi Bishara, "The Dilemma of Israeli Arabs", *Los Angeles Times*, January 8, 2003.

moment to join the Arab side for a "second round", and not as a minority in a democratic state.[15]

The Armistice Agreements at Rhodes

In 1949, after the War of Independence, a series of armistice agreements between Israel and all of her neighbors went into effect, determining armistice lines. These lines were *de facto* international borders, which ensured complete separation between those living on both sides. Some of these boundaries overlapped the borderlines of *Eretz Yisrael* under British Rule, or were close to them, and some of them – in the Gaza Strip and in the West Bank– were substantially different than those determined in the partition plan of 1947.

The following are the central clauses of the armistice agreement with Jordan, signed in Rhodes, April 3 1949:

> Article II
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> 2. It is also recognised that no provision of this Agreement shall in any way prejudice the rights, claims and positions of either Party hereto in the ultimate peaceful settlement of the Palestine question, the provisions of this Agreement being dictated exclusively by military considerations.

> Article IV
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> 2. The basic purpose of the Armistice Demarcation Lines is to delineate the lines beyond which the armed forces of the respective Parties shall not move.

> Article VI
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> 6. Wherever villages may be affected by the establishment of the Armistice Demarcation Line provided for in paragraph 2 of this article, the inhabitants of such villages shall be entitled to maintain, and shall be protected in,

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15   Yoav Gelber (2004), *Independence Versus Nakbah: The Arab–Israeli War of 1948*, Kinneret, Zmora Bitan, Dvir: Tel Aviv, p. 396 [Hebrew].

their full rights ― of residence, property and freedom. In the event any of the inhabitants should decide to leave their villages, they shall be entitled to take with them their livestock and other movable property, and to receive without delay full compensation for the land which they have left. It shall be prohibited for Israeli forces to enter or to be stationed in such villages, in which locally recruited Arab police shall be organised and stationed for internal security purposes.

8. The provisions of this article shall not be interpreted as prejudicing, in any sense, an ultimate political settlement between the Parties to this Agreement.

9. The Armistice Demarcation Lines defined in articles V and VI of this Agreement are agreed upon by the Parties without prejudice to future territorial settlements or boundary lines or to claims of either Party relating thereto.

The armistice agreement between Jordan and Israel brought under Israel's control a strip of land located east of the IDF's front lines and west of the armistice line – later to be known as "the green line." As a result, a string of Arab villages and towns, from Umm el-Fahm and its sub-villages in the north of this strip to Kafr Qasim in its south, came under Israeli control. The Arab cities of Tul Karem and Qalqilya were not included in this strip, and remained east of the armistice line. However, large Arab localities such as Baqa el Gharbiya, Tira, and Taiyba, were brought under Israeli control (map 1).

Humanitarian and other non-military aspects were not even taken into account in determining the border in the heart of *Eretz Yisrael*. No referendum was held, and the standpoints of the relevant Arab residents were not sought out. The border separated the residents of 63 villages and towns on the Jordanian side, and 8 villages on the Israeli side, from lands owned by them.[16] Indeed, from the time the agreement was signed until the mid-1950s, a number of corrections have been made on the ground to the boundary, with the intention of normalizing life in a number of the villages which were harmed by the route of the

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[16] This data does not include the lands of villages abandoned and destroyed in the 1948-1949 war, which no longer exist.

border, such as Fakuah and Bartaa. Nonetheless, the new border severed the fabric of life of all those adjacent to it, like the swipe of a sword.

These border corrections increased substantially the number of Arabs under Israeli sovereignty, and blurred somewhat the ethnic separation which had characterized the result of the war. Approximately half of the Arab population of the State of Israel was concentrated in the new territories which were transferred to Israel. The Jewish state now controlled 78% of Mandatory Palestine [not including Transjordan], and at the end of 1948 635,000 Jews and 160,000 Arabs were living within it.[17]

The Situation of the Arab Minority in the State of Israel

The War of Independence and the armistice agreements signed in Rhodes at its close left a defeated, humiliated, and leaderless Arab minority in the young State of Israel. That population had been partner in the Palestinian-Arab attempt to forcibly annul the UN partition resolution of November 29, 1947, which had determined that two states were to be established in mandatory Palestine: one Jewish and one Arab. The Arabs who remained within the borders of Israel, the recently established Jewish nation state, were instantaneously transformed from majority to minority.[18] They had lost the societal framework in which they had lived, and many of them had also lost their homes and property. The date which marked the disintegration of all societal patterns to which they had been accustomed, and the uprooting of most of their people from their homes and country,

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[17]   In the census at the end of October 1948, 70,000 Arabs were recorded as residing in the territory of the State of Israel. In the census from a year later, there were already 160,000 Arabs. This increase stemmed partially from the boundary changes in the armistice agreement, and partially from refugee infiltration back into Israel.

[18]   In Mandatory Palestine the Arabs made up a majority of 66% (Benny Morris, *Righteous Victims: A History of the Zionist-Arab conflict,* Am Oved-Sifriyat Ofakim, 2004, p. 186 [Hebrew] and a minority of 19% in the State of Israel per the 1949 borders *The Arab Population in Israel*, *Statisti-kal* 26, July 2002, The Central Bureau of Statistics, p. 2 [Hebrew].

became the Independence Day of the state in which they were now citizens. Jewish national identity became a cornerstone of the state, which aimed to complete the Zionist vision, the vision against which the Palestinians particularly, and the Arabs generally, had struggled to the bitter end. The implementation of the Zionist idea in the State of Israel planted a determined realization among the Arabs in Israel that the State of Israel treats its citizens unequally on the basis of nationality, and proved in the eyes of many the interpretation that Israel is an ethnocracy and not a democracy.

The duality in the state's treatment of the Arab minority was manifest from its inception, in the declaration of the values of equality, liberty, justice and peace in the Declaration of Independence on the one hand, and in an immediate policy of military rule for the Arab citizens on the other.[19] Military rule, originally intended as a security solution to infiltrations into Israeli territory, generated a *de facto* "second class citizen" status for Arabs, who became subject to widespread expropriation of lands, social alienation, unequal allocation of resources, and, especially, perpetuation of the treatment of Arab citizens as a hostile group, a "fifth column", and a potential threat to the Jewish character of the state.

The sealing of the borders, determined in the Rhodes agreements, from 1948 until the Six Day War detached the Arabs in Israel from their people outside of those borders, and led simultaneously to their partial integration into the political-economic-social system in Israel. The borderline of 19 years created a new reality, which produced, *inter alia*, a separate subgroup within the Palestinian people, called, by the Jews in Israel and many in the western world, "Israeli Arabs"; until recently, that name was in fact acceptable to the Arabs in Israel as well. However, within the Palestinian Diaspora and the Arab world in general, this subgroup was labeled – with a great degree of alienation and superiority due to their being part of the Jewish state – "the Arabs of '48".

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[19]   Military rule was in force from 1948 to 1966.

Map 1

Arab Localities Transferred to Israel in the Israel-Jordan
Armistice Agreement, April 1949
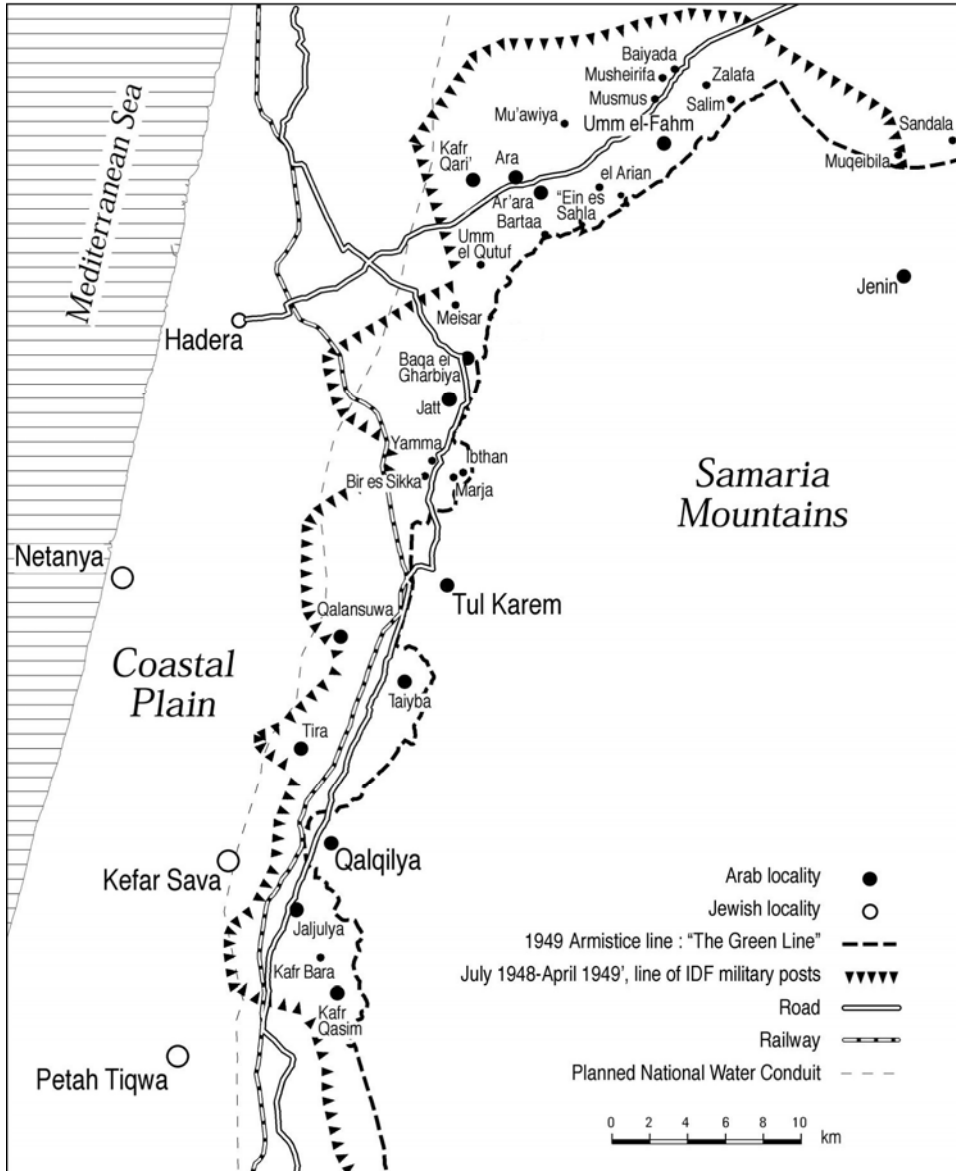
The opening of the borders of the "green line" in 1967 resulted in a renewed meeting between Israeli Arabs and their families and other members of their people in the West Bank and Gaza, which reinforced Palestinian national identity and culture. Concurrently, internal processes of relative economic stabilization, the building of local and national leadership, and the development of civil society organizations, began to take place among the population. The public-political agenda of the Arabs in Israel focused upon two paths: the path of struggle for the establishment of a Palestinian state alongside Israel in the framework of a permanent status agreement, and the path of struggle for civil equality inside the State of Israel.

The peace accords between Israel and Egypt, and Israel and Jordan, expanded and reinforced the links between the Arabs in Israel and the Arab world. "The Oslo Accords" between Israel and the PLO, which were ultimately intended to lead to Palestinian self determination in the form of a nation state beside Israel, did not distinguish the Arabs in Israel as a separate factor worthy of specific treatment, and left them, as they had been previously, outside the negotiations' agenda for a Permanent Status Agreement. In the framework of the Oslo process, the Israeli Arabs' identification with the idea of establishing a Palestinian state did not in fact go beyond the support of the Arab parties in Knesset votes, public support rallies, and in the provision of humanitarian aid to Palestinians in times of crisis and conflict escalation. The last official Israeli-Palestinian Permanent Status negotiations, which took place at Taba in January 2001 and marked the end of the Oslo process, also excluded the Arabs in Israel from the circle of agreement. Private initiatives by Israeli and Palestinian public figures to formulate a Permanent Status Agreement, such as the Geneva Initiative and "HaMifkad HaLeumi" ["The People's Voice"], which arose out of the political deadlock, were not innovative in this regard, and also left the Arab population in Israel out of the picture, both in terms of involvement in the process and as a distinct element of the territorial solution.

The Treatment of the Arab Minority in Israel

Background

The demographic issue in the Jewish-Arab conflict has two dimensions. The first is a national dimension, in which the two national movements wish to control the territory of *Eretz Yisrael* for the realization of their right to self-determination, and for the establishment of a nation state. In that context, pushing one population out of any area of the country serves the other population's claim to sovereignty over it. The second dimension regards the character of the state. The Jewish character of Israel stems directly from the character of the Jewish population living in it, which makes up the large majority of its citizens, and practices full hegemony over the public arena.[20] Accordingly, in all of the proposals for partitioning the country, the Jewish population wishes to have the advantage of a majority *vis–à-vis* the Arab population residing in the State of Israel. The basic point of departure accepted by the majority of the Jewish population in Israel, which also enjoys wide international support, is that the State of Israel is the nation state of the Jewish people, established in order to realize the Jewish people's right to a state of its own.[21] By force of this principle, the state grants a special status to Jews wishing to become citizens of the country and works to reinforce its Jewish character.[22] There is a consensus among the Jewish population that the Jewish cultural character of the state ought to be preserved (regarding its precise content, there are intense public struggles and debates between various Jewish groups), whilst assuming that the rights of the Arab population ought also to be preserved, due to Israel's commitment to democratic values and to the UN Charter, as well as to many Jewish values.[23]

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[20]   Jacobson and Rubinstein, **ibid** at p. 196.

[21]   **Ibid**, at p. 199.

[22]   For example, in the Law of Return, in land laws, and in the continued existence of various institutions like the Jewish Agency and the Jewish National Fund, which strive, by their very definition, to realize the Zionist vision and to reinforce the Jewish character of the state.

[23]   Regarding treatment of the minority and the principle of equality in Jewish ethics, see, e.g., "ye shall have one statute, both for the stranger, and for him that is born in the

Positions Prior to the Establishment of the State

Quite a few arguments arose between the main streams in secular Zionism prior to the establishment of the state, but there was a consensus that any Jewish entity which would be established in *Eretz Yisrael* would grant full equality of rights to the Arabs living within it. Ze'ev Jabotinsky, for example, who envisioned a Jewish majority in *Eretz Yisrael* on both banks of the Jordan River, not only believed in full civil equality for Arabs in the future Jewish state to be established in greater *Eretz Yisrael*, but even proposed anchoring the rights of the Arab population in a constitution in terms which bared more than a little similarity to a definition of a bi-national state.[24] Jabotinsky showed respect for the national aspirations of the Arabs and opposed the idea of pushing them out of *Eretz Yisrael*. The core of his view was equal rights, and thus he was willing to "promise in our name and in the name of our descendents" that "we shall never violate this equality of rights, and shall make no attempt to expel anyone".[25]

David Ben Gurion deals extensively with the question of the place of the Arab minority in the future Jewish state. Ben Gurion saw transfer as an empty promise, as opposed to Chaim Weitzmann who entertained hopes in the World War II years regarding the Philby Plan – a plan whose central idea was transferring the Arabs of *Eretz Yisrael* to the Arabian Peninsula and settling them there.[26] Ben Gurion – who unlike Jabotinsky supported the partition solution in the 1930s and believed that territorial compromise was inevitable in order for both peoples to be able to live side by side – also supported equal rights for the minority. For Ben Gurion, the main motivation for agreeing to the partition of *Eretz Yisrael* between two peoples was the democratic character of the Jewish state, and he chose not to ignore the fact that 750,000 Arabs were living in Mandatory Palestine.

And thus he wrote:

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land" (*Numbers* 9.14), "You shall also love the stranger, for you were strangers in the land of Egypt" (*Deuteronomy* 10.19), "loved is man who was created in the likeness of the almighty" (*Mishnah*, Avoth 3.14).

[24] Jacobson and Rubinstein, **ibid** at pp. 111, 140.

[25] **Ibid**, at p. 140; *also* Y. Nedava (ed.), *Jabotinsky in the Reflection of Generations,* Jabotinsky House, Tel Aviv 1985, p. 92 [Hebrew].

[26] Yoav Gelber, **ibid** at p. 389.

We must remember that these rights belong also to those already living in the country, and they are not to be violated. Both the vision of social justice and equality between peoples, which the Jewish people has carried for three thousand years, as well as the vital interests of the Jewish people in exile, and all the more so in *Eretz Yisrael* – decisively require that the rights and interests of the non-Jews living in the country be unconditionally preserved and honored, with an extra measure of care.[27]

And on the eve of the establishment of the state, Ben Gurion emphasized:

We must think in terms of statehood. In our state there will be not only Jews, and all will be equal citizens – completely equal with no exception, that is to say: the state will be their state as well.[28]

The UN partition plan of 1947 spoke of a "Jewish state" alongside an "Arab state" in mandatory Palestine, and demanded that both states establish democratic regimes. The Israeli Declaration of Independence was based upon the partition plan and spoke of the establishment of a "Jewish state in *Eretz Yisrael* – the State of Israel." The declaration does not expressly determine that Israel will be a democratic state, but it does determine that "it will be based upon the foundations of liberty, justice, and peace, in light of the vision of the prophets of Israel" and that "it will maintain total equality of social and political rights for all of its citizens, regardless of religion, race, or sex."[29] However, the War of Independence created a different reality: the existence of a large Arab population in the Jewish state. The sentiment amongst the Jewish population at the time, a short time after the end of the Second World War and the Holocaust (during which there were Arab leaders, including the Mufti of Jerusalem, who openly identified with Nazi Germany), was one of existential fear of the Arab majority in the country and in Arab states. Accordingly, the Arabs' hasty departure during the War of Independence, whether due to flight or expulsion, sat well with the blame which the Jewish population cast upon the instigators of the

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[27] David Ben Gurion, *Ourselves and Our Neighbors*, Davar, Tel Aviv 5698 [Hebrew].

[28] David Ben Gurion, *In the Struggle*, Vol. 4, part 2, p. 300 [Hebrew].

[29] The Israeli Declaration of Independence.

war and with the desire to take advantage of the opportunity to change the demographic balance within the borders of the newborn state.[30]

At the end of the War of Independence, in time for the elections for the first Knesset and against the sentiment of his advisors, Ben Gurion reiterated his decision to grant the right to vote to the Arabs who remained in Israel at the time of the establishment of the state. Simultaneously, military rule was imposed upon the Arab citizens.

Military Rule (1948-1966)

At the end of the war, a relatively small Arab population remained in the territory of the State of Israel, on which the full control of a governmental system with almost unlimited powers was instituted – the military rule system.[31] The military rule made it possible to control and regulate all areas of life of the Arab population.[32] The military rule restricted the freedom of movement and authorized expropriation of land and other property. This power led to massive expropriation of lands of Arab localities "for public needs". The "public" was identified solely as the Jewish public, which needed those lands in order to establish the many localities for absorbing immigrants. The military rule also restricted the cultivation of lands and building on them by Arabs, set restrictive

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[30]   Gelber, **ibid** at p. 285.

[31]   This is despite the fact that a clause of the armistice agreement with Jordan of April 3 1949 determined, regarding the Arab villages, that "Wherever villages may be affected by the establishment of the Armistice Demarcation Line… In the event any of the inhabitants should decide to leave their villages, they shall be entitled… to receive without delay full compensation… It shall be prohibited for Israeli forces to enter or to be stationed in such villages, in which locally recruited Arab police shall be organised and stationed for internal security purposes."

[32]   The objective of the military government was defined by the committee of examination established by Minister Shitrit in March 1949: to "greatly [ease] the existence of the desired land and demographic policies, and the process of inhabiting the abandoned cities and villages"; quoted from Yossi Amitai, "The Arab Minority in Israel: The Years of Military Rule", *Independence – the First 50 Years*, Anita Shapira (ed.), The Zalman Shazar Center, Jerusalem 1998 [Hebrew]; *also* Oren Yiftahel, *Lands, Planning and Inequality: Spatial Division between Jews and Arabs in Israel*, November 2000, Mercaz Adva [Hebrew].

municipal boundaries for Arab localities and transferred property of the Waqf (Muslim endowment) to the state. The military rule employed a separate legal system for Arabs,[33] and was even used as a mechanism for political surveillance and mobilization.[34] The story of martial law is a manifestation *par excellence* of the dual treatment of the Arab population by the system of governance in Israel, and indicates the gap between declarations and reality.

The result of the period of military rule was social and geographic isolation of the Arab localities from society at large in Israel, as well as from each other, and their exclusion from the state-building enterprise and socio-economic development.[35] This process also simultaneously reinforced the Arab population's isolation from the rest of the Palestinian people and the Arab world.

After the Six Day War

As a result of the Six Day War, the territories of the West Bank, which until that point had been held by Jordan, came under the control of the State of Israel, and the widespread settlement enterprise began. That enterprise benefited from the overlap between the security considerations of the secular parties on the one hand, and the ideological motivations of the religious-national elements on the other.

Despite the widespread settlement effort and the great investment in it by the State of Israel, Jewish dominance in the territories of the West Bank was not attained, neither in terms of population figures, nor in terms of the scope of

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[33]   Ilan Saban, *The Legal Status of Minorities in Deeply-Divided Democratic Countries*, L.L.D. thesis, The Hebrew University of Jerusalem, March 2000, chapter 6, pp. 233-235 [Hebrew].

[34]   Elie Rekhess "Foundations of the Policies towards the Arab Population in Israel", In: *Transition from "Yishuv" to a State – 1947 – 1949: Continuity and Change,* Vardah Pilovsky (ed.), University of Haifa and the Herzl Institute for the Research of Zionism, 1990 [Hebrew].

[35]   Ilan Saban, ibid at p. 532.

territory which the settlements covered. Over the years, Jewish settlement in the territories has created a scattered settlement constellation. Although managing to wedge itself between blocs of rural Arab localities, it has not done so in a way which would allow Israel to annex territory on the basis of a claim of border correction, except for three areas: western Samaria, the Etzion Bloc, and East Jerusalem. In these areas there is a Jewish majority, alongside a small Palestinian population.[36]

The PLO's 1988 decision to accept Security Council Resolution 242 on the one hand, and the high political, economic, social, and security price of Israel's control over the territories and the Palestinians on the other hand, have motivated the secular Zionist parties, each according to its beliefs, to reduce the territory under the control of the State of Israel, for the sake of the democratic regime of the state and to ensure its Jewish majority. The left wing parties have sought to do so via a political process agreed upon by both parties, such as the Oslo accords; and the right wing parties, via unilateral steps like the disengagement and the building of the "seamline" zone. On both the political right and left it has been understood that any annexation of West Bank territory will cast Israel into an equation with two main variables: the territory, and the Arab population within it. The greater the annexation area is, the larger is the Arab population annexed into Israeli sovereignty, with all the political and economic implications stemming from that. Thus, there is a great similarity between the Barak government's map of political proposals for annexation of territory to Israel at Camp David and Taba, and the routes of the Security Fence approved by the Sharon government in October 2003 and February 2005.[37] Both concentrate annexation efforts in areas with a Jewish demographic advantage: East Jerusalem, western Samaria, and the Etzion bloc.

The inability to reach a Permanent Status Agreement at the Camp David summit in July 2000 and in Taba in January 2001 led to reciprocal blaming and the renewal of violence between Israel and the Palestinians, and also reinforced

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[36] Elisha Efrat, *Geography of Occupation,* Carmel Publishing, 2002, p. 56 [Hebrew].

[37] The seamline area, according to the government decision of February 2005, covers 9% of the area of the West Bank (including East Jerusalem), whereas the Israeli proposal at Taba covered 8%, not including East Jerusalem.

expressions of identification with the Palestinian struggle on the part of the Arab population in Israel, as well as expressions of protest about discrimination against Arabs in the State of Israel. These expressions reached their peak during the events of October 2000, in which 12 Arab Israeli citizens were killed by the security forces (within the borders of the State of Israel), as well as in a certain increase in the involvement of individuals of the Arab population in terrorist activity against the State of Israel.

The result has been a great rift between the Jews and the Arabs in Israel. The Arab population now feels that the state perceives it to be a hostile factor and employs the security forces against its legitimate expressions of protest, applying the standards used in the territories against the Palestinians.[38] The Arab population has begun to feel that the Jewish population in general, and especially left wing circles believing in coexistence, have abandoned and boycotted them. On the other hand, the Jewish population now feels great existential fear of and threat from its Arab neighbors, who for the first time since the War of Independence have acted very violently, and in many places simultaneously, and made declarations against the State of Israel which are reminiscent of the intifada in the territories. The real possibility of blocking off roads with central security importance to Israel has reinforced terrifying scenarios of the Arab minority joining the pan-Arab effort during a military conflict with Israel.

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[38]   And the Or Commission provided a basis for such sentiments.

2   The Jewish Discourse

In the background of the Jewish debate is an idea that is considered to be a most severe threat among the Jewish population in Israel, which fans the flames of the "demographic concern" and even unites right and left: Arab citizens' denial of the legitimacy of the State of Israel as a Jewish state, and the latent potential for these citizens, due to their constituting a high proportion of the overall population, to democratically implement proposals to change the Jewish character of the state. The basic premise of Arab critics is that Israel's character as a Jewish-Zionist state negates the possibility of its being democratic, and that as such in order for it to become a genuinely democratic state, its Jewish character must be changed.[39]

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[39]   A reflection of this view can be found in the words of Dr. Adel Manna, Head of the Center for the Study of Arab Society at the Van Leer Institute, who links the debate on the character of the state to the expectation of equality, and does not harbor much hope in a Permanent Status Agreement's effect on attaining equality: "the marginal and inferior status [of the Arabs] in Israel is a direct result of the Jewish-Zionist character of the state. The Israeli-Arab conflict has been used by the leadership of the state merely as an excuse and justification for discrimination against the Arab citizens, and thus it will continue even after peace is reached between Israel and her neighbors.… The Jewish majority erects a hermetic wall in the face of any attempt to expose the intrinsic contradiction between the Jewish character and the democratic character of the State of Israel… the Arabs in Israel have shown patience and a realistic and moderate stance in their national and civil struggle since 1948… but they will not consent in the long run to a situation in which historic compromise between the two peoples passes them over and entrenches their status as second class citizens in Israel. The end of the conflict and the establishment of a Palestinian state will intensify the expectations of the Arabs in Israel for full civil equality". Adel Manna, "Identity in Crisis: The Arabs in

The great rupture in Israeli-Palestinian relations, which triggered a wave of violence during the October 2000 events, explains the turning point in the popularity of the debate among the Jewish public and academic figures on the option of exchanging populated territory. Despite this turning point, no one to date has published a comprehensive plan; the territory to be ceded has not been precisely defined by those proposing the cession of Wadi Ara or even by those proposing cession of Umm el Fahm, and no one has described the legal, social, and practical processes entailed in implementing such a proposal. Clarity is also lacking regarding the partners in implementing such a move: would it occur only in the case of an agreement between Israel and Palestine, or might it also take place unilaterally? Would it be conditional upon the consent of the citizens, or take place even without it? Therefore, there is a need to examine the components of the various proposals, as well as the implications inherant in them.

In this chapter, only the positions of proponents of an "exchange of populated territory" are presented and examined; opinions of Jews opposing the idea are not examined.

In January 1998, **Gideon Bigger**, a professor of geography at Tel Aviv University, raised the proposal that an exchange of territory and population between the State of Israel and the Palestinian entity would "include, first and foremost, cession to the Palestinian entity of the entire area of the Triangle from Kafr Qasim in the South to Barta'a in the North."[40]

Not only demographers and geographers have discussed the issue. Experts in strategy and international relations have dealt with it, and even philosophers and jurists. But the main arena for this debate has of course been the public political arena. Raising the "Wadi Ara question", and supporting the transfer of Israeli citizens to the Palestinian state, has now become a legitimate and openly expressed component of the public debate. It further appears that the idea is not being raised, as formerly, solely as a threatening whip to the Arab population in

Israel and the Israeli-PLO Agreement, In: Ruth Gavison and Dafna Hacker (eds.), *The Jewish-Arab Rift in Israel: An Anthology*, The Israeli Democracy Institute, 2000, pp. 125-132 [Hebrew].

[40]   Gideon Bigger, "New Lines of Engagement", *Haaretz*, January 7, 1998 [Hebrew].

response or deterrence to stances supporting the Palestinian struggle. Rather, it is an aspect of the geographic discussion on the future borders and the territories; a part of the demographic discussion of the numerical proportion between majority and minority in the State of Israel; and a part of the social-legal discussion on the status of the Arab minority in the State of Israel.

The debate regarding the possibility of determining the Permanent Status border between Israel and the Palestinian state which would include Israeli Arab localities within the boundaries of the Palestinian state began in the academic arena, especially on the part of demographers and geographers. From there it moved to the political arena, moving in recent years from its place on the fringe of the right wing of the political map to its current position as a legitimate, centrist concept.

Underlying the idea of "transferring territories populated by Arabs" is the wide consensus in the Jewish population on the necessity of ensuring a Jewish majority in Israel, as Daniel Ben Simon writes:

> The keyword in Israeli consciousness is Jewish majority. Israelis will do everything – make war and peace – in order to preserve a Jewish majority and preserve Israeli unity. For we came here in order to establish a Jewish state, and we shall not allow anyone to detract from its Jewish character. In our race to that lofty objective, there is no difference between secular and religious.[41]

The idea is based on three main arguments:

1. The first argument states that in the long run, the Jewish majority in the State of Israel will dwindle to an extent that will endanger the character of the State of Israel as a Jewish state.

2. The second argument perceives the Arab citizens in Israel as a "fifth column" and an "irredentist time bomb", threatening the existence of the State of Israel as a Jewish-Zionist state and denying the rights of the Jewish people to self determination.

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[41] Daniel Ben Simon, "The Dismal Statistical Future of the Jewish Majority in Israel", *Haaretz,* August 30, 2004 [Hebrew].

3. The third argument claims that leaving Israeli settlement blocs in the West Bank under Israeli control will be possible only in exchange for territory, and that therefore the "Jewish price" for such exchange should be minimised.

This way of thinking spawned an Israeli proposal to "kill two birds with one stone": to leave the settlement blocs of Ariel, Ma'aleh Adummim, and Gush Etzion under Israeli sovereignty, and to "pay" the Palestinian state for them with areas inhabited by Arab citizens of Israel, who will join the nation-state established by their national brethren.

Among supporters of this idea, two main approaches can be identified, with several variations, and one intermediate approach:

1. The first approach strives to ensure a Jewish majority in the State of Israel, and supports the plan on condition that it is implemented solely through mutually agreed-upon processes.

2. The second approach wishes to ensure a Jewish majority and is willing to employ coercive steps for that purpose, reasoning that the Arab minority in Israel constitutes an existential security threat.

3. The intermediate approach accepts the need to ensure a Jewish majority, but does not elaborate the way to attain it, and it is therefore difficult to categorize it as belonging purely to either of the two approaches.

Ensuring a Jewish Majority through Negotiated Agreement

Amongst all the central ideological streams of the Jewish population in Israel, there is wide consensus regarding the need for the existence of a Jewish majority in the State of Israel, in order to ensure the Jewish-Zionist character of the state. According to this approach, not only should action be taken to increase the number of Jewish citizens, by such means as encouraging a higher birth rate and increasing Jewish immigration, but steps should also be taken to decrease the

number of Arab citizens. The establishment of a Palestinian state alongside the State of Israel is an opportunity to encourage Arab citizens of the State of Israel to move to their nation state, thereby decreasing their numbers relative to the general population in Israel. This consensus is presented in **The Peace Index of the Tami Steinmetz Center for Peace Research** (December 2005), edited by Professors Yaar and Hermann:

> The idea of territorial exchange in the framework of the Permanent Status Agreement, in which in return for leaving large settlement blocs in Israel's hands, control of the Triangle, including large Arab localities like Umm el Fahm, will be transferred to the Palestinian Authority, enjoys the support of 48% of the Jewish population, with 37% opposing it (a prior survey in March 2002 yielded identical data).[42]

Similar results can also be found in **The Israeli Democracy Index** 2004 of the Israel Democracy Institute, edited by Professor Asher Arian and others, which examined the positions of the public in general, and those of the youth specifically, regarding the proposal to encourage Arab "emigration":

> Only about one third of Jewish youth oppose the policy of encouraging Arabs' emigration out of the country, as opposed to about 40% of the adults…[43]

This view was manifest in "**The Kinneret Convention**" (2001), written by about 60 Jewish public and cultural figures from various sectors, which expresses duality on the issue of the Arab minority. On the one hand, the convention defines the State of Israel as "a multifaceted, Jewish and democratic state" (emphasizing that there is no contradiction between the two concepts), yet on the other hand, its treatment of the demographic issue is as follows:

> In order to ensure the continued existence of a Jewish and democratic Israel, a substantial Jewish majority should continue to be maintained. This majority will be preserved solely by moral means.[44]

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[42] Efraim Yaar and Tamar Hermann, *2005 Peace Index*, The Tami Steinmetz Center for Peace Research, Tel Aviv University [Hebrew].

[43] Asher Arian *et al.*, *The Israeli Democracy Index 2004*, The President's Convention, the Israeli Democracy in the Test of the Times, The Israel Democracy Institute and The Guttman Institute, June 2004, p. 43 [Hebrew].

Already in his proposal of January 1998, Professor **Gideon Bigger** had determined that the proposal of territorial and population exchange between the State of Israel and the Palestinian entity would "create two states in the territory of *Eretz Yisrael*, one entirely Arab and the other entirely Jewish". He emphasizes that "such a step, cruel as it may be, ought only to take place through negotiations between the authorities of the State of Israel and the authorities of the Palestinian entity." He further adds that "international consent, which might be accompanied by financial aid to assist implementation of the agreement and a willingness to absorb part of the population, will be required for the implementation of such a step." [45]

Professor **Ruth Gavison** of the Hebrew University Faculty of Law, and formerly chairperson of the Association for Civil Rights in Israel, whose name was recently raised as a candidate for the Supreme Court, accepts that partition between the two states must be on a demographic basis. Gavison sees the aspiration to a Jewish majority as legitimate, and in her opinion it is legitimate for the state to employ an intentional demographic and territorial policy in order to advance it. However, Gavison recognizes Arab citizens' right to choose to remain in the State of Israel. Regarding equality in the Jewish state, Gavison says:

> The questions of political arrangement and of borders will be determined, ultimately, according to demographic concentration. Israel cannot prevent its Arab residents from living in Israel and residing in places where residency is legal according to the laws of the state. However, it may employ a housing policy which reduces the concern about losing the Jewish majority in parts of the state, and prevents the creation of a contiguous territorial concentration of Arab settlement – which might, in time, create claims for cession or territorial autonomy. [46]

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[44] "**The Kinneret Convention**" was signed on October 18, 2001, by the Forum for National Responsibility, under the auspices of the Rabin Center, for the purpose of creating national consensus on the identity of the State of Israel. Among its signatories were MK Prof. Yuli Tamir, Major General Uzi Dayan, MK Efi Eitam, Prof. Arnon Sofer, Bambi Sheleg, and others.

[45] Gideon Bigger, "New Lines of Engagement", *Haaretz*, January 7, 1998 [Hebrew].

[46] Ruth Gavison, *Implications of Seeing Israel as a Jewish and Democratic State,* The Center for the Study of Rationality, The Hebrew University of Jerusalem, document no. 383, February 2005, p. 47 [Hebrew].

Professor **Assa Kasher**, philosophy lecturer at Tel Aviv University, responding to a question regarding his view on Labor Party MK Dr. **Efraim Sneh**'s proposal on exchange of populated territory,[47] contended that exchanging citizenship in fact constitutes a right for Arab citizens; it would allow them to transform from being a minority group to being part of a majority, on the condition that they choose to do so:

> The idea of transfer is morally illegitimate… [however] Efraim Sneh's idea did not intend to uproot any person from anywhere. On the contrary: instead of being a member of a minority in the state of another people, a person becomes a member of the majority in his own nation state… the problem with the new idea is the revocation of citizenship which it would entail.[48]

A 2002 report by the Zionist Council, an organ of the World Zionist Organization which has established a "strategic forum" led by Professor **Yechezkel Dror** of the Hebrew University, dealt with measures to reduce the number of Arab citizens in Israel by way of exchanging populated territory. In this report, the forum stated:

> Ensuring a large and stable Jewish majority in Israel is a vital need of the Jewish people and Israel, as a Jewish and democratic state…the greatest of weight [should be given] to demographic considerations in political agreements or unilateral steps which can affect the borders and the rights of citizenship, including, *inter alia*: decisive rejection of "the [Arab] right of return"; considering exchange of populated territory; and great caution in granting rights of citizenship in Israel to non-Jews in territory to be annexed to Israel.[49]

This idea is shared by **Yossi Alfer**, former director of the Jaffee Center for Strategic Studies at Tel Aviv University, who writes that such a proposal is in Israel's interest:

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[47]   MK Dr. Efraim Sneh denies that he made such a proposal.

[48]   www.ynet.co.il, 12 May 2002 [Hebrew].

[49]   The Zionist Council in Israel, The Strategic Forum, *Policy Recommendations: Demography*, June 2002 [Hebrew]. The forum panel included Professor Yechezkel Dror – chairman, Moshe Ben Atar, Dr. Uzi Arad, Rabbi Yoel Bin Nun, Brigadier General (res.) Amos Gilboa, Major General (res.) Shlomo Gazit, Professor Arnon Sofer, and Dr. Dan Shiftan.

Indeed, when negotiations are resumed, there will be considerable sentiment on the Israeli side to compensate Palestine for the annexation of settlement blocs with at least a one-to-one land swap, on condition that the territories on the Israeli side of the green line that are included in Palestine contain some of the very same Arab towns and villages that Israel insisted on annexing in 1948.[50]

In the political arena, a proponent of the idea of reducing the Arab population by way of territorial exchange is the head of the Likud caucus in the Knesset, MK **Gideon Sa'ar**, who said during a debate in the Knesset in December 2003:

> In any future arrangement including territorial exchange, I shall propose Umm el Fahm as well… In return for the Jewish settlements in Judea and Samaria which will remain in our hands, we shall cede territories densely inhabited by Arabs living close to the green line, like Umm el Fahm, to the Palestinian Authority.[51]

Prof. **Uzi Arad**, a former high ranking Mossad official and a member of Benjamin Netanyahu's inner circle, who today serves as the head of the Institute for Policy and Strategy at the Interdisciplinary Center Herzliya, also supports this position:

> I support the idea that in the framework of an agreement, we shall draw the future border west of the villages of the Triangle.[52]

Arad explains his proposal as recognition of and respect for Palestinian identity:

> It is actually the Palestinian nationalist sentiment, which is especially prominent in the Triangle, which justifies enjoining that territory to the national Palestinian entity. There, obviously, they can realize their right to self determination – not as a minority, but rather as citizens of a democratic Arab entity.[53]

Recently, Arad wrote in an article published in *The New Republic* that the idea of territorial exchange is central in negotiations, since that principle is the very basis for attaining the Permanent Status Agreement, and will be discussed between Israel and the Palestinians (and apparently will not be discussed with the Arab citizens of Israel):

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[50]   Yossi Alfer, *Bitterlemons,* volume 6, February 26, 2003.

[51]   "Umm el Fahm First?", *Ma'ariv,* December 8, 2003 [Hebrew].

[52]   www.nfc.co.il , January 13, 2004 [Hebrew].

[53]   Uzi Arad, "Demographic Key", *Haaretz,* February 16, 2005 [Hebrew].

The various land swap plans proposing a tradeoff of territories aim to increase ethnic homogeneity and to preserve each side's basic territorial reach. In this context, land swaps allow an exchange of sovereignty over contiguous population blocs--Jewish population blocs in the West Bank proximate to the armistice line and Arab population blocs west and north of the armistice line. For example, the Gush Etzion and Ariel blocs and towns in the Jerusalem district could be exchanged for the towns and surroundings of Umm El Fahm, Arara, Barta'a, Qalansuwa, Tayibe, Tira, and Kfar Qasim. A land-swap plan must be part of a final status agreement between Palestine and Israel. Indeed, it appears that, without such territorial exchanges, a final agreement may not be reachable. …[54]

The Intermediate Approach –
Vagueness Regarding Implementation

Others, who believe that ensuring a Jewish majority in Israel is a vital necessity under demographic threat, propose a solution to that threat, but without presenting ways to implement it. The vagueness regarding implementation may lead them to the camp of the supporters of the first approach, which sees consent as a condition for implementation, or, alternately, to the camp of supporters of the second approach, which also accepts the idea of coercive implementation.

Professor **Arnon Sofer**, geographer from the University of Haifa, is considered to be one of the major promoters of "the demographic threat", and he is a regular participant in discussions and forums on the demographic issue. Although Sofer said in June 2005 that "within the green line there is no demographic threat",[55] in the past he has made completely different statements. On the internet site "The Demographic Problem" which is identified with him, one can read the essence of the idea:

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[54]   Uzi Arad, "Trading Land for Peace: Swap Meet", *The New Republic*, 18 November 2005.

[55]   The Conference of the Citizen's Accord Forum, June 22, 2005 [Hebrew].

> The current situation is that a population of a half a million Palestinians with blue identification cards [those for Israeli citizens and permanent residents] sits right on the "green line". By way of relatively minor border corrections, the whole area of Umm el Fahm and the Little Triangle will be transferred over to live with their brethren in the Palestinian state. In return for those territories ceded, along with their inhabitants, to the Palestinian Authority, large settlement blocs will be annexed. The main consideration will be demographic, and the border will be determined according to the demographic reality on the ground.[56]

In 2003 at a convention of the Truman Institute, Sofer called for "consensual-separation from part of the localities in the Triangle".[57]

Professor **Sergio DellaPergola**, a researcher at the Jewish People Policy Planning Institute in Jerusalem and a lecturer at the Hebrew University of Jerusalem, who is among the highest ranking demographers in Israel, writes in a report in 2004:

> The Jewish majority in *Eretz Yisrael* will reach its end in around 2010. The conclusion is that the country must be divided on a demographic-ethnic basis, with exchange of populated territory: the Palestinians will receive the localities of the Triangle, in exchange for the settlements proximate to Jerusalem and in western Samaria. Ma'aleh Adummim in exchange for Umm el Fahm.[58]

This vagueness can also be found amongst those in close proximity to Prime Minister **Sharon**. In early February 2004 *Jerusalem Post* published the comment of a "high official" that –

> Prime Minister Sharon is considering a proposal to redraw the borders in Israel in order to remove tens of thousands of its Arab citizens, who will be transferred to the sovereignty of the Palestinian state in a peace agreement.[59]

In the *Ma'ariv* newspaper Sharon was reported as having stated, in a debate in which Shimon Peres also participated, that –

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[56]   www.demographyproblem.com/page35.asp [Hebrew].

[57]   Arnon Sofer, "Demograpy and Territory – Main Factors in Jewish-Arab Relations", the Truman stage, February 11, 2003.

[58]   *Haaretz,* 27 January 2005 [Hebrew].

[59]   *Jerusalem Post*, 3 February 2004.

If we are exchanging territory, why exchange empty territory when we can exchange territory with Arab population? [Moreover] the Prime Minister himself confirmed yesterday that he had ordered a comprehensive legal examination of the subject. [According to that plan] whoever [of the inhabitants] wishes to continue to live in Israel will be invited to relocate within the newly defined borders of the state… the estimation in Sharon's circle is that less than half of the residents of the territories to be exchanged would prefer to stay on their land and in their houses, even if that means terminating their Israeli citizenship and receiving Palestinian citizenship instead.[60]

Apparently, as a result of these reports and the sharp reactions to them among the Arab population, the Prime Minister subsequently rejected the idea decisively. Visiting Kafr Qasim, he said:

The Arab population should see itself as an inseparable part of the population of Israel. The ideas of disconnecting ourselves from it should be weeded out at the root.[61]

And during a visit in Umm el Fahm a few weeks later he said:

There is no, and were no such plans [for exchanging the sovereignty over Umm el Fahm], you are citizens of Israel and we shall continue to live together.[62]

However, when Prime Minister Sharon presented his reasoning for the disengagement plan from Gaza, he spoke of his concern regarding change in the demographic balance due to the shared identity of the Palestinians and Israeli Arabs, and said:

The demographic consideration played an important role in determining the route of the separation barrier, due to concern about annexing hundreds of thousands of Palestinians who might link up with the Israeli Arabs. It is impossible to control densely populated areas for extended periods without ultimately granting their residents rights.[63]

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[60]   Ben Caspit and Omri Gilat "The Disengagement Plan from the 'Triangle'", *Ma'ariv* February 4, 2004 [Hebrew].

[61]   www.ynet.co.il, February 24, 2004 [Hebrew].

[62]   *Haaretz,* March 2, 2004 [Hebrew].

[63]   "Even King Solomon Relinquished Territories from Eretz Yisrael", *Haaretz*, April 22, 2005 [Hebrew].

In other interviews with sources close to Prime Minister Sharon, these ideas are expressed even more clearly. **Eli Landau**, who was a Knesset Member, the mayor of Herzliya, and the chairman of the national electricity company (and, in addition, a close friend of Sharon for many years), said in an interview in 2002:

> Since Arik {Sharon} is a creative person, I'll give an example of how I would arrange the situation on the seamline. There is a Jewish center in Ariel, let's take it as an example. That is an area of 17,000 dunams. I was Sharon's advisor in the 1980s and I was intimately close with the settlements… if you want to talk about a Palestinian state, there's no need for "transfer" for that. You need to take the segment between Taiyba and the Triangle area. Let's say that you have 17,000 dunams there. Let's give that to the Palestinian State. What's the big deal? There is Tira, and Taiyba, and Qalansuwa and all the Arab villages of the Triangle. We'll exchange territory. Why do we need to talk about Halutza? Why do I need an Arab majority in 20 years here in Israel? …We won't touch them, we won't "transfer" them, heaven forbid. Taiyba will simply become a part of the Palestinian state. Ariel will become a part of the Jewish state. We'll make a territorial exchange of large blocs, settled by tens of thousands of Jews. We'll exchange dunam for dunam. That is a creative solution.[64]

The proposals for territorial exchange – settlement blocs in exchange for Israeli sovereign territory – which arose at Camp David, at Taba, and in various other discussions, dealt with empty territory in the Negev. The residents of the Negev do not accept those proposals. **Shmuel Reifman**, head of the Ramat Negev regional council and a former member of the Labor Party who joined Sharon's new party "Kadima", responded to the idea saying –

> Halutza is part of the Negev, and so it must remain. I am willing to give the Palestinians Wadi Ara with Umm el Fahm – and to keep the Negev ours.[65]

In July 2005 **Yisrael Hasson** announced he was joining Lieberman's party. Hasson, who was deputy head of the General Security Service (*Shabak*) and a member of the Barak Government's peace negotiation team, announced that he supports exchange of territory containing large Arab populations with the future Palestinian state, does not see any violation of the rights of Arab citizens in Lieberman's proposal, and proposes that those Arabs who wish to remain citi-

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[64]   *Tel Aviv Magazine* (the *Yedioth Ahronoth* network), March 22, 2002 [Hebrew].

[65]   *Haaretz, May* 5, 2003 [Hebrew].

zens of Israel be given an opportunity to choose to do so under certain conditions:

> There is no intention here to remove any citizen from his house or to disenfranchise him of his rights. Whoever wants to continue to live within the borders of the State of Israel, must move within the borders after the border change, and will be required to make a pledge of allegiance to the state.[66]

Professor **Henry Kissinger,** formerly the American Secretary of State, also makes a connection between the territorial issue in the permanent status agreements between Israel and the Palestinians and the demographic-national issue. In December 2004 he wrote that Israel must return most of the West Bank, except for 5-8%, which will remain in Israel's hands for security reasons, and in return –

> …Israel would transfer some of its current territory to the Palestinian state. It would be best to transfer territory with significant Arab population from the northern part of Israel to improve the demographic balance.[67]

The issue's position at the heart of legitimate public debate is emphasized in the words of former Prime Minister MK **Benjamin Netanyahu**, who on the one hand stressed the element of threat that the Arab population poses for the Jewish population, and on the other hand characterized relationship between the state and the minority as one of "control". At the Herzliya Conference in 2003, Netanyahu said:

> We also have a demographic problem, but its focus is not the Arabs of Palestine, but rather the Arabs of Israel. We have no interest in controlling the Palestinian population, and therefore the demographic problem will not exist there, when the Palestinian population will come under Palestinian control.[68]

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[66]   *Ma'ariv*, July 12, 2005 [Hebrew]. It is interesting that Hasson is not considering to propose the pledge of allegiance within current borders, rather only after the border has been moved West.

[67]   Henry Kissinger, "A New Opening for Mideast Peace", *The Washington Post*, December 3, 2004.

[68]   The Herzliya Conference, December 17, 2003.
       www.herzliyaconference.org/_Articles/Article.asp?ArticleID=1103&CategoryID=170

The same idea is echoed by Labor Party figures, even if they don't often speak on the subject in the Israeli press. Thus, for example, **Ehud Barak** explains the failure of the Camp David Summit and his perception of Arafat's strategy by employing demographic reasoning and "the stages theory":

> What Arafat and his men want is a Palestinian state in all of *Eretz Yisrael*. They reject the need for a two state solution. At the moment Israel is too strong, so they therefore recognize it formally. But their plan is to establish a Palestinian state whilst leaving the door open for additional "legitimate" demands …they will take advantage of Israel's tolerance in order to turn it first into a "state of all its citizens", as the nationalist faction of Israeli Arabs and the extreme Israeli left demand. Then they will demand a bi-national state, and then demographics and attrition will lead to the establishment of a state with a Muslim majority and a Jewish minority. The meaning of this is the destruction of Israel as a Jewish state. That is their vision. Arafat sees himself as the new Salah a-Din, and Israel as just another crusader state.[69]

In the political and demographic context of the conflict, Barak was also worried by the problem of the Arab minority in Israel. Barak agreed that without a peace agreement with the Palestinians, the Arabs of Israel are an irredentist "time bomb" (that is to say, aspiring to join the national group to which it belongs), even if he refrained from using that term. In an interview published in 2002 in the *New York Review of Books*, he said that he is willing to "pay" a price in democracy in order to ensure the Jewish character of the state:

> Israel's Arabs will serve as [the Palestinians'] spearpoint in the struggle ... This may necessitate changes in the rules of the democratic game ... in order to assure Israel's Jewish character.[70]

Barak thus raises the possibility that in a future agreement, a number of areas with large concentrations of Arab citizens – such as the Little Triangle and

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[69]   Danny Rubinstein *et al.*, *Camp David 2000, Rashomon Camp David*, Sifrei Aliyat haGag, Yedioth Ahronoth and Sifriyat Hemed, 2003, p. 102 [Hebrew].

[70]   *See* Benny Morris, "Camp David and After: an Exchange – An Interview with Ehud Barak", *The New York Review of Books,* vol. 49, no. 10, June 13, 2002.

Umm el Fahm which are adjacent to the West Bank – will be ceded, along with their residents, to the future Palestinian state.[71]

The leaders of the settlements in Judea and Samaria are also beginning to accept the idea, as Yair Sheleg explains:

> Even in the newspaper *Nekuda*, prominent articles (like those of **Amiel Unger** and **Rabbi Chaim Navon**) have been published which even express willingness to uproot Jewish settlements in the territories, if it could be assured that, "in exchange", the foci of Arab populations would be ceded from the sovereign State of Israel to the Palestinian entity (primarily the residents of Wadi Ara). Put simply, the taboo has been broken, and now all that's left is the question of the price.[72]

Coercive Cession

Some view forcing Arab citizens of Israel to become citizens of the Palestinian state as a vital and immediate interest of the State of Israel, since these citizens threaten its existence as a Jewish state. That is not only in terms of the projections of a future change in the demographic balance, but also since Arab citizens strive *de facto* against Israel's existence as a Jewish state.

The Annual Survey of the Jaffee Center for Strategic Studies at Tel Aviv University, executed by Professor Asher Arian (2002) found that:

> 46% of the Jewish citizens of the State of Israel support transfer of Palestinians in the territories, and 31% support the transfer of the Arabs of Israel… 60% of those polled said that they currently support encouraging emigration of Israeli Arabs; **61% of all the Jewish citizens of the state believe that the Arabs of Israel pose a security risk to the state** [emphasis added]… Questions dealing with the Jewish citizens' stances regarding transfer are presented annually, and

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[71]   **Ibid**, ibid.

[72]   Yair Sheleg "The Dangerous Blunder of Wonderful People", *Eretz Acheret*, no. 10, May-June 2002 [Hebrew].

comparison of the data shows that there is an upward trend in support of the idea.[73]

The Peace Index of the Tami Steinmetz Center for Peace Research (December 2005), executed by Professors Hermann and Yaar, included a question regarding territorial exchange in a scenario in which "the Arab citizens of Israel living in the Triangle oppose the cession of their localities to Palestinian sovereignty". 33% of those polled answered that they would support territorial exchange even in the face of such opposition, 45% answered that they would oppose an exchange if there was opposition, and 21% had no opinion on the matter (these findings were similar to the results of a March 2002 poll). The researchers add that:

> Analysis of the distribution of support for territorial exchange according to voting patterns for the next Knesset elections shows that support for territorial exchange is higher in the left and center than it is in the secular and religious right.[74]

Rabbi **Eliezer Melamed**, the Rabbi of the Har Bracha community in the West Bank, presented the essence of the principle in February 2002:

> Since many of the Arabs do not accept our sovereignty, we are commanded to expel them.[75]

Whilst serving as Deputy Education Minister, MK **Tzvi Hendel** of the National Union party [*HaIchud HaLeumi*] said:

> Since the Arabs of Israel cling tightly to their Palestinian brethren in Judea, Samaria, and Gaza, I propose taking the area of the Triangle, with all the Arab citizens living in it, and giving it to the Palestinians as part of their future autonomy.[76]

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[73]   *Haaretz*, March 12, 2002 [Hebrew].

[74]   Yaar & Hermann, *The Peace Index, December 2005* **ibid** [Hebrew]**.**

[75]   Published in the magazine *A Little from the Light*, edited by Hanan Porat [Hebrew], as quoted by Sherry Makover, *Ma'ariv,* February 22, 2002 [Hebrew].

[76]   **Ibid.**

MK **Efi Eitam** expands the definition of the threat. Eitam, who headed the National Religious Party [*Mafdal*], and is a Brigadier General in the reserves, made the following statement in an interview with Ari Shavit in 2002:

> I say that the Arabs of Israel are to a large extent a ticking time bomb threatening the entire democratic and Israeli order within "the green line". Already now, in the Galilee and the Negev, their *de facto* autonomy is being established; and it is liable to turn the State of Israel into the '*Gush Dan* bubble', into a sort of "pipe-line-state": a state consisting of the Jerusalem-Tel Aviv-Haifa road. I therefore say that there is an existential threat to the State of Israel, which can be characterized as an elusive threat. And elusive threats, by their nature, tend to resemble cancer.[77]

Another advocate of this position is **Michael Kleiner**, who was formerly a Likud Knesset Member, until he left the party and established an independent right wing party called "Herut". Kleiner proposed a bill in 2001 which called for an active policy of encouraging citizens' emigration to Arab countries and recommended that "an Israeli citizen who wishes to emigrate to an Arab country shall be entitled to an emigration benefits package"[78]. Kleiner still supports this idea, and the "Herut" platform for the 2006 elections states:

> "The movement shall advance legislation to encourage emigration to Arab countries. According to such legislation, an emigration benefits package will be granted to any citizen who emigrates to an Arab country and is willing to forfeit his citizenship and/or right of residency in return for financial aid."[79]

The most prominent political figure who constantly feeds this discourse and has turned it into his unique political manifesto, is MK **Avigdor Lieberman**. Lieberman severed the right wing "National Union" [*HaIchud HaLeumi*] partnership, and came out with a call ― unusual for the right wing camp ― for the establishment of two states and for the cession of territories populated by Arab citizens to the Palestinian state. Later, and as a response to the disengagement from the Gaza strip, he introduced a national campaign for "disengagement

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[77]   *Haaretz,* March 22, 2002 [Hebrew].

[78]   MK Michael Kleiner's proposed bill (July 25, 2001).

[79]   Out of the "Herut" homepage – www.herut.org.il/hebrew_new/news.html [Hebrew].

from Umm el Fahm".[80] At the Herzliya Conference in December 2004, MK Lieberman presented his position, which is similar to the position of Professor Uzi Arad and MK Benjamin Netanyahu, which views the Arabs in Israel as constituting a danger greater than that posed by the Palestinians in the territories:

> When I speak again of that same population of a million people, I am speaking first of the entire area of Wadi Ara, and I am proposing that that whole bloc be ceded to them. We are taking no one out of his home, we are usurping the land of no one. There is no reason why we should not move the border to this side of Umm el Fahm and that a resident of Umm el Fahm should not receive his social security payments from Abu Mazzen… what worries me is not the Palestinians, but rather the problem of the Arab Israelis, which comes before the Palestinian problem. Be warned that if we establish a Palestinian state before we solve the problem of the Arabs of [Western] *Eretz Yisrael*, the linkage between Israeli Arabs and that Palestinian state, that internal and external pressure, will explode, sooner or later. On the contrary: as far as I'm concerned, the Palestinian problem is maybe in third or fourth place in terms of the real problems of the State of Israel.[81]

A few months later, in an interview in the *Yedioth Ahronoth* network's *Tel Aviv Magazine*, MK Lieberman presented as symmetrical the issue of the Arabs in Israel and that of the settlers, and expanded the concept of population exchange beyond its application to the Wadi Ara region, to include the entire Arab population of Israel:

> The Arabs of the Triangle, Umm el Fahm and 90% of the Arabs of Israel will have to end up in the Arab entity which will be established there, and not within the state [of Israel]. But also some of the Jews of Judea Samaria and Gaza will have to return into the State of Israel. If that principle is accepted, I am willing to accept evacuation, including evacuation of my own house in Nokdim.[82]

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[80]   *Ma'ariv*, November 1, 2004 [Hebrew].
[81]   The Herzliya conference, December 2004:
        www.herzliyaconference.org/_Articles/Article.asp?ArticleID=1687&CategoryID=228 [Hebrew]
[82]   *Tel Aviv Magazine* (the *Yedioth Achronoth* network), May 28, 2004 [Hebrew].

MK Avidgor Lieberman had already proposed in 2001 the transfer of "Arabs from Israel to the territories in return for transferring settlers to Israel", and lately, in summer 2005, he introduced a road sign campaign around the country: "We're Disengaging from Umm el Fahm".

Conclusion

The Jewish discourse supporting "exchange of populated territory" is widespread, and encompasses representatives from differing political camps who strive to ensure a Jewish majority in the State of Israel, but have different approaches to implement their aspiration.

Public opinion polls amongst the Jewish population indicate fear of the effect of a demographic change upon the Jewish character of the state. Whilst this threat is presented as challenging the character of the State of Israel as a Jewish state, the discourse around it is taking place within the framework of the debate regarding a Permanent Status Agreement, and not as an internal Israeli discussion between majority and minority. The existence of a Palestinian national minority in the Jewish state is presented as constituting at worst a threat to the state, or at best an undesirable reality.

The debate over the "exchange of populated territory" option has created a meeting point between left and right. The difference between the two camps' approaches lies in their respective proposals for implementation of the idea, which is significantly different. The former speak of a consensual act, whereas the latter speak of a coercive act. The common denominator between the two camps is that the discussion is based on the acceptance of the "two state solution" principle, and the idea of national partition: Jews in one state and Palestinians in the other state. It is an ethnic-national debate, not a civic debate.

In our estimation, the left wing's goal in advocating exchange of populated territory is to expand the support-base for a "two state solution". Demographics, which has in recent years become the left wing's argument for the necessity of ending Israel's control of the West Bank and Gaza, is fundamentally an argu-

ment which centres around ensuring a Jewish majority in the State of Israel within recognized borders. If ceding territory along with its Arab inhabitants to the Palestinian state, in return for leaving settlement blocs standing, will reinforce the Jewish support-base for a Permanent Status Agreement, it seems that such an idea may gain legitimacy even among central and left wing Zionist circles, at least as a price to be paid in order to reach a Permanent Status Agreement with the Palestinians. The objective of right wing supporters of the two state principle is to attempt to retain as many settlements as possible, and to bring them under the sovereignty of the State of Israel. To that end, they propose a sort of "package deal" – territory and people in exchange for territory and people, reduction of state territory in exchange for the reinforcement of the Jewish majority. More extreme right wing figures (and along with them, apparently, some figures of the Zionist center and left) expand the demographic argument, which was originally applied mainly to the territories of the West Bank and Gaza, to within the borders of the State of Israel, arguing that this is the answer to the security threat.

3   The Arab Discourse

The Debate in the Arab Public in Israel

Opposition to the proposals for ceding territory populated by Arab citizens to the Palestinian state crosses the Arab political spectrum in Israel. Civil equality in the State of Israel is presented by various political spokespeople and activists as being the central issue for the Arab population, with solutions to its various components to be provided by the State, and not as a result of peace negotiations with the Palestinian people. The various speakers emphasize their desire to integrate and their unequivocal opposition to being a bargaining chip in peace negotiations; conditional citizenship is not a possibility which is acceptable to them. The legitimacy of a reality of two nation states, one Jewish and one Palestinian, is acceptable to most of the Arab population. It is also the basis for the establishment of a Palestinian state, and it does not seem that this position will soon change. The main argument relates to the success or lack of success *de facto* of the correlation between "Jewish" and "democratic". Within the Jewish population, there are some who see this critique as being part of a legitimate political debate, and others who see it as a challenge to the legitimacy of the State of Israel.

The idea of altering the Jewish character of the State of Israel, which the Jewish population finds so threatening, is not accepted by the mainstream of the Arab population, which accepts the "two state solution" – a Palestinian state alongside a Jewish state. All the political camps of the Arabs in Israel are partners in the political struggle regarding the status of the Arab population in Israel, for personal and collective rights, and for the revocation of the inherent inequality

and favorable treatment of the Jews, but do not necessarily deny the legitimacy of Israel as the nation state of the Jewish people. The various stances are not always clear to the Jewish listener, and the difference between concepts is not always understood or accepted by the Jews. Professor **Sammy Smooha** writes on this topic:

> The Arabs in Israel differentiate between the existence of the State of Israel as a state, and its Jewish-Zionist character. They recognize Israel's right to exist, honor its territorial integrity as per her borders prior to the Six Day War, and accept their status as a minority within it. However, they reject Israel as a Jewish-Zionist state… the Jews do not understand, and cannot deal with, the subtle differentiation between the state and its character, between its Jewish character and its Zionist character.[83]

In the **Index of Arab Jewish Relations in Israel 2004**, published by Professor Sammy Smooha, he presents this difference as follows:

> 70% of the Arabs accept the existence of Israel as a Jewish and democratic state according to the "green line" borders, and only 13.8% accept it as a Zionist state (72% view Zionism as racism, "since it contains a policy for increasing the Jewish majority… and granting Jews preferential rights").[84]

The discussion regarding the exchange of populated territory option is not unique to Jewish society. Arab speakers from all the significant political camps totally oppose the idea of population exchange, and they relate to it from different points of departure. However, most of the Arab speakers in Israel do not present their clear desire to be part of the State of Israel as constituting recognition of the State of Israel as a Jewish and democratic state, but rather as resulting from their desire to continue being a part of the society within which they have been living since 1948, and into which most of them were born. Including the subject of "exchange of populated territory" in the agenda of the peace

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[83]   Sammy Smooha, "Ethnic Democracy: Israel as a Prototype", Gavison & Hacker (eds.), The Jewish-Arab Rift in Israel: An Anthology, The Israeli Democracy Institute, 2000, pp. 165-168 [Hebrew], *see also Index of Arab Jewish Relations in Israel 2004,* **ibid**, "Legitimiut shel Du Kium", pp. 22-26 [Hebrew].

[84]   Sammy Smooha, Jewish-Arab Relation's Index 2004, *Duet*, no. 6, June 2005, pp. 4-5 [*Hebrew*].

negotiations with the Palestinians is seen by Arab speakers as representing a continuation of the processes of civil de-legitimization of the Arab Israeli citizens that has taken place in recent years, including, for example, the attempt to disqualify Arab parties from participating in the elections, the amendment to the Citizenship Law[85], etc. Therefore, many oppose the mere participation in such discussion.

The searing criticism of discrimination and the demand for egalitarian policy are common to the decisive majority of the Arab population. It is a demand to be part of the State of Israel, but with conditions which are equal to those of the Jewish population. At the same time, there are also approaches found amongst the Arab population which do not accept the possibility of rendering compatible the concepts "Jewish" and "democratic", at least on the basis of past experience, and therefore challenge the definition of Israel as a Jewish state and call for a fundamental change in its character.

Amongst the Jewish population there are those who sometimes have difficulty differentiating between the civil-political struggle against discrimination and for equality on the one hand, and the national struggle against the State of Israel itself on the other. Thus writes Dr. **Dan Shiftan**:

> In this context, the negation of the legitimacy of the Jewish state by Arab leaders is presented under a cloak of pursuing civil equality… this is opposition to the Jewish character of the State of Israel, which will not disappear even after the realization of the Palestinian demands for Israeli withdrawal to the 1967 borders and the establishment of an independent Palestinian state… The mainstream of the Jewish population sees this as a threat, since it is convinced that the mechanism which Arab leaders in Israel wish to employ under the cloak of equality and pluralism is intended to erode the Jewish characteristics of the state and to make a dramatic change in its demographic makeup, in order to pave the way – on the ruins of Israel – for Arab sovereignty in Israel.[86]

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[85] An amendment preventing naturalization of Palestinian spouses of Arab Israeli citizens.

[86] Dan Shiftan, "The New Identities of The Arab MKs in Israel", *Tchelet*, no. 13, Autumn 2002 [Hebrew].

The struggle for equality of the Arab citizens of Israel is essentially political, and it is openly led by the political parties, local government heads, and civil society figures in general. The struggle takes place within the Israeli political game – in the Knesset, the press, and in the courts, whilst upholding its rules. The political strategy which the Arab parties and civil society organizations have adopted indicates that most of the Arab population is looking for various ways to be part of the State of Israel and actually to integrate into Israeli political, professional and social systems, and not to separate itself from Israel.[87]

Arab public opinion has voiced strong opposition in surveys to the "exchange of populated territory" proposal, and expresses fear regarding its place in the heart of the political debate in Israel. This fear stems from the Arab population's view of the proposal as being concrete. So indicates the data of Professor **Nadim Rouhana** (2004):

> The survey results show that the majority (96%) of respondents were aware of the plans and that 91% of respondents opposed the plans, 67% of the respondents registering strong opposition. … Of the 91% opposed to the plans, the reasons given for opposition were varied: 43% said that they opposed it since it would mean their having to leave their homeland; 33% reasoned that living in areas under the control of the Palestinian Authority would mean a fall in their standard of living; 22% said that the plans would lead to their losing their jobs; 17% did not want to lose their rights as Israeli citizens; 12% thought that the future under the Palestinian Authority is unstable; 11% said that the exchange would separate

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[87]   A survey by Dr. Elie Rekhess of the Moshe Dayan Center at the Tel Aviv University in November 2005 found that "according to the weighted results, Arab parties are expected to receive 51% of the Arab and Druze votes (as opposed to 70% in 2003), whereas the Zionist parties are expected to receive 48% (as opposed to 30% in 2003)… two additional findings which received considerable attention were the expected voter turnout (67%) and the fact that due to the raising of the ballot threshold to two percent, some of the Arab parties are likely to stay outside the walls of the Knesset". *Ballot Update 2006*, volume 1, February 6, 2006 [Hebrew]. The women's struggle to be listed high enough in their respective political parties to have a realistic chance of being Knesset Members in 2006 testifies to the importance of participation in this (Israeli) political arena.

them from their relatives and friends. … 75% of those opposed to the plan rejected the exchange under any circumstances. [88]

The Index of Arab Jewish Relations in Israel 2004, executed by Professor Sami Smooha, presented Arabs' and Jews' respective fears on the subject, perceived by the Jews as "demography" and by the Arabs as "transfer":

> Most Arab respondents (63.5%) fear "transfer" of Arab citizens or annexation of the Triangle to the Palestinian state against the will of the Arab residents. On the other side, most Jews fear a high birth rate which would change the demographic balance (66.7%), a struggle to change the Jewish character of the state (71.8%), initiation of a popular uprising (71.7%), assistance to the enemy (78.7%) and support of the Palestinian people's struggle (83%).[89]

Professor Smooha interprets the fears as follows:

> The Arabs' fears indicate repressed existential fears and a strong desire to normalize their status in the state… like the fears of the Arabs, so the fears of the Jews are baseless… other fears of the Jews fly in the face of reality… the fear of popular uprising is baseless.

The Peace Index of the Tami Steinmetz Center for Peace Research (December 2005), edited by **Professor Hermann and Professor Yaar**, found among Arab interviewees on the question of territorial exchange that 21% support it, 68% oppose it, and the others have no opinion. Implementation of territorial exchange despite inhabitants' opposition would have only 12% support and 81% opposition.[90]

The poet and journalist **Salem Joubran** demands recognition of Arab citizens as an original part of Israeli society:

> There is deep worry in the heart of the Arab population. That population lives here, and will continue to live here. We are not subtenants. We are not foreign

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[88]   Mada, http://www.mada-research.org/sru/press_release/survey_landPop.shtml [Hebrew].

[89]   Sammy Smooha, Jewish-Arab Relation's Index 2004.
   http://caf.org.il/assets/Indexheb.pdf pp. 19-20 [Hebrew].

[90]   Madad Hashalom Detzember 2005, **ibid** [Hebrew]**.**

laborers. We are not temporary residents. This has been our homeland for gen-
eration upon generation, our homeland and your homeland.[91]

Professor **Majid Al Haj**, Head of the Center for Multiculturalism and Educa-
tional Research at Haifa University, recently appointed Dean of Research at the
University, emphasizes the differences which have developed between Palestin-
ian society in Israel and in the territories, and the feeling of belonging which the
Arabs in Israel have:

> The orientation of the Palestinians in Israel is different from that of the Palestini-
> ans in the territories. The decisive majority of Israeli Arabs supports the estab-
> lishment of a Palestinian state beside the State of Israel as a solution to the
> Palestinian problem; however, they are not willing to move and live there if such
> a state should be established. They see Israel as their home, they have bound
> their future with it, and struggle for equal civil rights within it.[92]

All the various political movements – Chadash [The Democratic Front for
Democracy and Peace], Balad [The National Democratic Alliance], and the
Islamic Movement – oppose the idea, especially those living in the localities in
the area under discussion. However, there are those who tend not to even par-
ticipate in the discussion of the idea, in order not to grant it legitimacy.

Shauki Khatib, Chairman of the Highest Follow up Committee for Arab Af-
fairs, says:

> We are not even willing to think about this proposal, and it should be taken off
> the agenda once and for all… this is a proposal which emphasizes the attitude
> that sees the Arabs of Israel as a problem and not as citizens of the state.[93]

Former Knesset Member **Hashem Mahamid** of Chadash, who formerly served
as mayor of Umm el Fahm, opposes the idea and sees it as an undemocratic act:

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[91] Salem Jubran, "We are not Foreign Workers, We are not Temporary Residents",
      Panim, volume 29, Autumn 2004 [Hebrew].
[92] Majid al Haj "The Green Line – Where to? Trends in the Encounter and Orientation
      Between the Palestinians in Israel and the Palestinians in the Territories", *Medina
      v'Chevra* 4(1), December 2004, p. 830 [Hebrew].
[93] "Umm el Fahm Tchila", *Ma'ariv*, December 8, 2003 [Hebrew].

This story repeats itself each time. It should be known that there is no chance that such a thing would be accepted, and this racist and antidemocratic decision will go down the drain.[94]

Knesset Member **Jamal Zahalka** (of the Balad party), resident of Kafr Qara in Wadi Ara, says that the proposal brings into question the citizenship of all the Arab citizens, not only of those from Wadi Ara:

> I think that there is a challenge here to our very Israeli citizenship… they are turning us into citizens with a question mark. No Arab Israeli citizen will be willing to jeopardize his standard of living and to choose poverty of his own free will.[95]

Zahalka also thinks that there is no chance for the idea of exchanging the Triangle for a Palestinian concession in the Jerusalem area, and does not mention the settlement blocs in the heart of the West Bank:

> Israel wants to profit twice: both to benefit from handing over Umm el Fahm and also to benefit in Jerusalem… it is the irony of fate that in the past, if an Arab Israeli had brought up the idea of territorial exchange, he would have immediately been considered a traitor by the state. Today, the proposal is being raised by Zionist official and political figures, but most Israeli Arabs are not interested in the idea.[96]

MK **Abd al Malik Dahamshe** (The United Arab List), of the Southern Islamic Movement, also opposes the approach that sees Arabs in Israel as a sort of "bargaining chip":

> The Arabs of Israel are not merchandise to be passed from one hand to the other. We are not a box of vegetables or a sack of oranges which can be bartered. We shall never allow anyone to implement this plan... I am in favor of territorial compromise; the question is how and what… the issue of annexation of Umm el Fahm to the territories is out of the question. "Territorial exchange" refers to ter-

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[94] "Tochnit haHitnatkut mehaMeshulash", *Ma'ariv,* February 4, 2004 [Hebrew].
[95] **ibid.**
[96] **ibid.**

ritories which are unpopulated, or territories whose residents are interested in being annexed to the other side.[97]

Raja Agberiya, resident of Umm el Fahm and the chairman of the "Sons of the Village" [Bnei HaKfar] movement, does not agree with the symmetrical comparison between Jewish West Bank settlers and Arabs in Israel, and opposes the idea of exchanging settlement blocs for the annexation of Arab Israeli settlements to the Palestinian state. However, he does not oppose becoming a citizen of the Palestinian state should Umm el Fahm be annexed to it, on the condition that the annexation not be carried out in the framework of population exchange:

> We and the settlers are not comparable, as it is uncontested that they are occupiers. We aren't even of the same status. We are the sons of this country.[98]

The Interests and Positions of the Palestinian Side

Transferring the sovereignty over Israeli territories, with all their Arab residents, to the Palestinian state, cannot be realized without Palestinian consent. It is therefore necessary to examine the interests and the positions of the Palestinian side. It seems that the Palestinian leadership will certainly not consent to such a step as long as the residents of the proposed areas oppose it, and it is even possible that the leadership would oppose it even if the Arab residents consent to it. There are five central arguments to this opposition:

1. The principled position of the PLO (in which the Israeli Arabs are not represented), was, for years, that the issue of the citizens in Israel would be settled within the State of Israel, through democratic means. Within the PLO, there was a refusal to deal with the issue in the framework of the negotiations with Israel.

    In terms of strategy [for the Palestinian minority in Israel], most agreed that engagement with, rather than self-exclusion from, the Israeli political system and

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[97]   **ibid.**

[98]   **ibid**.

society was the only feasible way forward. This was viewed as necessary both to prevent the implementation of solutions defying the minority's rights (such as the annexation of the "little triangle" to the future state of Palestine) and to promote more effectively the Palestinian cause.[99]

2. Proposals regarding territorial exchange with Israel ought, according to the PLO's perspective, to allow the Palestinian state to increase the scope of lands available to absorb refugees who wish to return, and also as a compensation for landowners on whose land the settlements annexed to Israel stand. Receiving densely populated territory in localities in which most of the lands have already been expropriated and incorporated into Israel cannot serve those Palestinian ends. Cession of such territory in addition to exchange of unpopulated territory might be acceptable to the PLO, on the condition that those living on the ceded land consent to such a move.

3. The Palestinian side does not accept the Israeli demand to retain settlement blocs which are located far from Israel in the heart of the future Palestinian state, whether in the context of exchange of populated territory or not.

4. There is no significant advantage for the Palestinian side in annexing Wadi Ara to the territory of the Palestinian state. The integration of the residents of Umm el Fahm and the rest of Wadi Ara and the Triangle regions into the future Palestinian state would be extremely difficult, given that the new state would not be able to offer conditions comparable to those to which they have grown accustomed in Israeli society (life in a democracy, a relatively high standard of living, and the a certain economic and administrative culture). It is therefore to be expected that these residents would serve as a source of unrest and long term agitation in the Palestinian state and due to their ties to Israel and their residency near the border, that agitation would be liable to spill over into the State of Israel. That in turn could severely damage Israel-Palestine relations. On the

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[99]   *See The First Ramallah Conference: 10 Years of the Palestinian Authority,* March 2005, pp. 20-21.

other hand, this population is one of high economic ability, and can thus also affect the democratic nature of the Palestinian state.

5.   It seems that the interest of the Palestinian state is to ensure the existence of a large and consolidated Palestinian group inside of the State of Israel, which can democratically affect decision-making regarding Palestinian interests. There is therefore no logical reason to assume that the Palestinian state would have an interest in agreeing to a step which would reduce the number of Arab citizens of the State of Israel – primarily, the number of voters – weakening their ability to affect the Israeli system from within.

The Hamas movement, which won the Palestinian Legislative Council elections in January 2006, is aware of the Israeli idea of "exchange of populated territory", and attacks it. Mahmud a-Zahar, leader of the Hamas in the Gaza strip, put it this way: "The Israeli enemy threatens to return to the Gaza strip… threatens to expel the Arabs of '48".[100]

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[100]   Mamri, November 15, 2005, according to www.elaph.com, October 2, 2005.

4   The Legal Aspect*

Would a decision on ceding territory in Wadi Ara from Israeli sovereignty to Palestinian sovereignty be legal according to Israeli and international law? In order to answer this question, two dimensions must be examined:

1. **Alteration of the current borders of the State of Israel**, as they have been determined by Israeli and international law, in order to remove the specified territory from Israel's sovereignty and annex it to the territory of the Palestinian state (this question is relevant also to exchange of unpopulated territory).

2. The decision regarding **the status of the Israeli citizens and residents** living in these territories on the eve of the decision.

Border Alterations

The first dimension regarding **border alterations and transfer of sovereignty over state territory**, when isolated from the question of those inhabiting the territory, is the simpler of the two.

Indeed, the International Community views the "green line" as the border outlining the territory of the State of Israel (despite its being the product of an armistice

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agreement), on the basis of which the border between the State of Israel and the future Palestinian state will be determined. (For instance, Security Council resolutions 242 and 338, as well as the advisory opinion of the International Court of Justice at the Hague regarding the separation fence, which recognized these borders *de facto*, as is clear from its analysis of the building of the fence in the Occupied Territories).[101] However, there is nothing in International law to prevent both parties from stipulating a border alteration (especially in a way which reduces the territory of the State of Israel), and one can even assume that in the framework of any future agreement, there will be certain changes to the "green line" border. Such agreement can be reached by way of a treaty, and from the standpoint of Israeli law, it will require ratification by a Knesset decision.[102] Regarding state border alterations in the Wadi Ara area, this is sufficient, along with a *de facto* change of the state having effective control, in order for the new borders to be valid according to Israeli law as well; that is to say, from the standpoint of the application of the law, the jurisdiction, and the administration of the state.[103] Border alteration and transfer of sovereignty are likely to confront further legal difficulties if they are attempted in territories over which international law does not recognize Israeli sovereignty, and in which Israeli law was applied by way of statute. That is the case, for example, regarding East Jerusalem[104] and regarding the Golan Heights.[105] In such cases there would also be a need for appropriate statutory amendments.[106]

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[101]   *See Legal Consequences of the Construction by Israel of a Wall in the Occupied Palestinian Territory* (2004), Advisory Opinion, [2004] I.C.J. Rep. 131.
www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm

[102]   A. Rubinstein and B. Medina, The Constitutional Law of the State of Israel (Shoken Press, Tel-Aviv and Jerusalem, 6th ed. 2005), pp. 920-921, 934 [Hebrew]. *See also* The Administration of Rule and Justice Law (Annulment of Application of Law, Jurisdiction, and Administration), 5759-1999, which stipulates that a special majority of Knesset Members is required. However, the validity of such a requirement is doubtfull, and the frasing of the statute as a whole is problematic. *see* Rubinstein & Medina, **ibid**.

[103]   **Ibid**, at pp. 924-930.

[104]   Israeli law applies in East Jerusalem pursuant to article 11B of the Administration of Rule and Justice Ordinance, 5708-1948 (legislated on 26 June 1967) and the Administration of Rule and Justice Order (no.1) issued pursuant to it; and later also pursuant to **Basic Law: Jerusalem the Capital of Israel**, of 1980.

The Status of the Residents

The second dimension – that is, **the status of the citizens** living in the territories in which sovereignty would be transferred – is the complex and problem-laden one.

As the motivation behind the proposal to exchange territory is the desire to reduce the number of Arab citizens inside the borders of the State of Israel, it can be assumed that the proposal would differentiate between the status of Jewish and Arab citizens living in these territories:

Regarding the Jewish citizens living in these territories – to the extent that there are any – their civil status would remain unchanged, and they would be evacuated from the territory to be ceded, to within the borders of the State of Israel, supposedly with compensation, the provision of which would be assured by new legislation.

Regarding the Arab citizens, it can be assumed that their physical place of residence, having been ceded to Palestinian sovereignty, would not change. However, the State of Israel would decide upon revocation of their Israeli citizenship, presumably without their consent, and apparently in the framework of an agreement in which the Palestinian state would promise to grant them Palestinian citizenship. (There are also proposals for functional division of citizenship and partial and gradual revocation of various aspects of citizenship. We refer here to the entirety of the concept of citizenship). It is unclear what the proposal would determine regarding the status of those who are neither Arabs nor Jews, and regarding families including both Arabs and Jews.

Regarding Jewish citizens, the situation is actually similar to the evacuation of the Gaza Strip, although this case involves a strip of land recognized by international law as being part of the State of Israel, and not occupied territory. It is obvious that those required to evacuate their homes would be harmed to a

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[105]　Israeli law applies in the Golan Heights pursuant to the Golan Heights Law, 5742-1981.

[106]　*See* **ibid**, pp. 930-935.

certain extent, but such harm, if inflicted for reasons of national interest and with proper compensation, is similar to other kinds of harm permitted by statutes (expropriation of land for various causes) and is not necessarily unconstitutional. Note, in this context, that the evacuation of the Gaza Strip, which was anchored in a statute,[107] withstood the test of the High Court of Justice's judicial review.[108] Despite the personal harm to be inflicted upon these citizens, their civil status and the entirety of their civil rights will not be violated.

The most significant legal difficulties would therefore pertain to the alteration of the civil status of the Arab citizens living in the areas in which sovereignty is to be transferred, bearing in mind all the relevant implications for this population in terms of the fabric of their political, cultural, economic, and family lives, from the point of view of both Israeli law and international law. These difficulties pertain to the revocation of the citizenship of Israeli citizens and the state's renouncement of its ties and obligations toward them, as well as to the formulation and implementation of policy which explicitly discriminates between Arab citizens and Jewish citizens.

The Status of the Residents in Israeli Law

The relevant law relating to the revocation of citizenship is the Citizenship Law of 1952. According to this law, the possibility of revoking the citizenship of a citizen who has not forfeited it (pursuant to article 10 of the law), is restricted to only 3 types of circumstances, which **do not apply in the case under discussion:**

– A citizen who illegally left the country to an enemy state (article 11(a) of the law).

– A citizen who "committed an act constituting breach of confidence toward Israel" (article 11(b) of the law).

– Citizenship attained on the basis of false information (article 11(c) of the law).

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[107]   The Disengagement Plan Implementation Law, 5765-2005.

[108]   HCJ 1661/05 *The Gaza Beach Regional Council v. The Knesset* (yet unpublished).

Moreover, the Supreme Court has determined in its caselaw, in agreement with the position of Minister of the Interior, which was presented before it, that revocation of citizenship is a drastic and extreme act which should be avoided. The Supreme Court further ruled that despite the fact that the right of citizenship has not been granted explicit status in the basic laws, it is nevertheless a basic right, as it includes the right to vote and be elected, which are basic rights.[109]

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[109]   In the framework of the petition in HCJ 2757/96 <u>Elroi v. The Minister of the Interior</u>, 50 (2) PD 18, the Minister of the Interior decided not to use his discretionary power pursuant to article 11(b) of the law, and to refrain from revoking the citizenship of Yigal Amir, assassin of the late Prime Minister Yitzchak Rabin, despite the fact that he believed that Yigal Amir's act constituted a breach of confidence toward the state. Thus explained the Minister of the Interior, as per the judgment:

>   "The Minister of the Interior presented the various considerations which motivated him to decide against revocation of citizenship in this case before the court. Citizenship is a basic right. That is what is accepted in international law. For example, article 1 of the 1948 UN Universal Declaration of Human Rights states that a person is entitled to citizenship. Moreover, article 8 of the 1961 United Nations Convention on the Reduction of Statelessness prohibits, with certain qualifications, revocation of citizenship, if this will result in a person being devoid of any citizenship. This is also the custom in the law of many states, which have defined citizenship as a constitutional right. *See, e.g.*, Article 1 of the 14th Amendment (1868) of the Constitution of the United States of America. And although in Israel citizenship has not been enshrined in a Basic Law, there is no doubt that it is among the basic rights, *inter alia* since it is the foundation for the right to vote for the Knesset, from which democracy stems. As is known, every administrative agency has an obligation to refrain from violating basic rights, citizenship among them, except for a worthy purpose and to an appropriate extent; that is all the more so when dealing with revocation of citizenship as opposed to other impingements, and even more so when dealing with revocation of citizenship which will result in a situation of statelessness for a person who has had citizenship since birth" (**ibid**, p. 22 of the judgment).

And further on in the judgment –

>   "Against this background, so declared the Minister of the Interior, he sees fit to generally refrain from using the authority to annul citizenship, which he defines as a 'drastic and extreme step'. Indeed, it is an extreme step, as citizenship includes the right to vote and the right to be elected, which are basic rights – even more

Thus – even before we examine the additional aspects involved in such a decision – it is clear that the existing law does not allow the revocation of citizenship without consent and without one of the justifications set out in the Citizenship Law, which are clearly not present in this case. It is therefore clear that there will be a need for special legislation to revoke the citizenship of the Arab citizens living in the areas in question. However, such legislation will be annulled if it contradicts the basic laws on human rights, and especially **Basic Law: Human Dignity and Freedom** of 1992 and **Basic Law: Freedom of Occupation** of 1994.

Revocation of citizenship and the removal of Israeli sovereignty from citizens' place of residence, against their will and without allowing them to move to the territory which remains under the state's sovereignty, constitutes, on the part of the state, unilateral evasion of its obligations toward its citizens. Such evasion inherently involves damage to the entirety of the fabric of life and the entirety of other rights. These citizens would no longer be able to vote or be elected to the Knesset; would no longer be free to enter Israel and move within it without limits, would be cut off from their places of employment and commercial activity, which would harm their economic situation; would be cut off from family and community members, from recreational activity to which they are accustomed; and more. These are all impingements upon basic rights which are protected by the Basic Laws, including property rights and freedom of move-

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than basic. The result is, according to the Minister's position, that until today that authority has not been put to practice even once" (**ibid**, pp. 23-24 of the judgment).

Since the judgment was handed down, use has been made of the authority granted in article 11(b) of the Citizenship Law in one case only. On September 9, 2002, Minister of the Interior Eli Yishai revoked the citizenship of Nahed Abu Kishak, who was indicted for involvement in a suicide bombing (www.ynet.co.il September 9, 2002). Abu Kishak did not petition against the decision, so it was not put to a legal test. In one additional case, Minister of the Interior Eli Yishai announced, in a letter of July 21, 2002 to the family of Kais Obeid from Taiyba, who was suspected of activity in the Hizbollah, that he intends to revoke his citizenship, but it was not reported that his citizenship was ultimately revoked.

ment (including the right to enter and exit Israel), which are protected by **Basic Law: Human Dignity and Freedom**, and freedom of occupation, protected by **Basic Law: Freedom of Occupation**. A question also arises as to how the group selected for the revocation of citizenship would be defined: on the basis of national identity in the population registry, in addition to definition of area of residence? And what would happen if those citizens change their residential address prior to the definitive date? Would the legislation deny them that?

The fact that the citizens, whose citizenship would be revoked, would then fall under the sovereignty of another state, which would grant them citizenship, does not detract from the severity of the act and its implications, since the new citizenship and sovereignty would not alter the main implications described above. Moreover, conditions in their new state of citizenship – Palestine – are likely to be an additional blow, both in socioeconomic terms and with regards to civil and human rights provisions in the legal and governmental systems which will develop there and which will probably be substantially different than those in the State of Israel.

An especially difficult aspect from the legal point of view is the fact that the group slated for citizenship revocation is comprised of Arab citizens and the expressed desire to reduce their number in the State of Israel is in its very essence a discriminatory motivation. Such a motivation, and the proposed action prompted by it, expressly contradicts the right to dignity protected in **Basic Law: Human Dignity and Freedom**. According to the caselaw of the Supreme Court, discrimination on the basis of gender, nationality, or similar group background, constitutes humiliation and contravenes the right to dignity protected by this Basic Law.[110] Indeed, according to the wording of the Basic Laws, the

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[110]   For instance, HCJ 721/94 El-Al v. Danilovitch, 48 (5) PD 749; HCJ 454, 453/94 The Israel Women's Network v. The Government of Israel, 48 (5) PD 521; HCJ 4541/94 Miller v. The Minister of Defense, 49 (4) PD 94. Regarding the striking down of a policy which was discriminatory towards the Arab minority on the basis of nationality and religion see also HCJ 6698/95 Ka'adan v. The Israel Lands Administration, 64 (1) PD 258. The right to equality was entrenched in Israeli law prior to the Basic Laws, via the interpretive weight given by the Supreme Court's caselaw to the words of the Declaration of Independence: "The State of Israel… shall maintain total equality of social and

fundamental rights listed in them are not to be impinged upon except "in a law which is fitting to the values of the State of Israel, which was intended to advance a worthy cause, and to a degree which does not exceed the necessary extent; or according to such a law, by force of expressed authorization in it."[111] However, it is hard to imagine that the Supreme Court would find that group revocation of citizenship from Arab citizens, simply because they are Arab citizens resident in a certain geographic area – comply with the conditions mentioned in this clause of exceptions

To sum up this point, it is hard to see how the Supreme Court in its role as High Court of Justice would refrain from rescinding legislation which revokes citizenship from an entire group of Arab citizens on the sole basis of the state wishing to reduce the number of Arab citizens living in it. It is to be assumed that The High Court of Justice would not see such legislation as sitting well with "the values of the State of Israel as a Jewish and democratic state".[112]

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political rights for all its citizens, without differentiation on the basis of religion, race, and sex; shall ensure freedom of religion, conscience, language, education, and culture; shall safeguard the holy places of all religions and be loyal to the principles of the Charter of the United Nations". By force of this passage, the right to equality has been anchored in a long line of judgments, even prior to the Basic Laws. On this basis, it is also possible to strike down a discriminatory policy of the government, but only the Basic Laws have granted the Supreme Court the authority to annul laws legislated by the Knesset.

[111]   Article 8 of **Basic Law: Human Dignity and Freedom**; Article 4 of **Basic Law: Freedom of Occupation.**

[112]   Article 1A of **Basic Law: Human Dignity and Freedom**; Article 2 of **Basic Law: Freedom of Occupation**. It is important to mention, however, that the Supreme Court has refrained to date from rescinding amendments to the Citizenship Law which prevent naturalization of Palestinian residents of the occupied territories, spouses of Israeli citizens. The motivation behind the enactment of these amendmnets can be considered as preventing an increase in the number of Arab citizens in Israel (although in the framework of the hearings in petitions requesting rescindment, the State presented the motivation as security). However, it is important to remember that the issue has not yet been decided, due to the temporary nature of the first amendment to the law. In addition, these statutory amendments deal with refusing to grant Israeli citizenship to foreigners, and not with revoking the citizenship of Israeli citizens, an act far

The Status of the Residents in International Law

The rules of international law do not, according to the Israeli legal system, apply directly to internal law, unless they have been adopted in Knesset legislation, or are norms that have been recognized by courts in Israel as being part of customary international law. That is, an act thought to be illegal according to international law is not necessarily thought to be so according to Israeli law. However, the norms obligating Israel according to international law do affect the interpretation of the internal law even in the Israeli courts. In other words, Israeli statutes will be interpreted, to the greatest possible extent, in accordance with those obligations.[113] The caselaw of the Supreme Court indicates a substantial strengthening of this interpretative trend.[114] Essentially, the rules of international law do have an effect, albeit not a direct or full one, upon internal Israeli law, especially those rules which were determined in international conventions ratified by Israel.

The direct ramifications of infringement of international law are felt in the sphere of relations between states, but these ramifications are usually less concrete, direct or unequivocal than those of state perpetration of actions, which have been defined as illegal in the framework of internal law. Ramifications of violations of international law might include declaratory rulings regarding the illegality of the state's actions by authorized organs, such as legal tribunals and organs of the UN, and respectively, embarrassing condemnation in the interna-

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more severe. The Citizenship and Entry into Israel Law (temporary provision), 5763-2003, was replaced by the Citizenship and Entry into Israel Law (temporary provision), 5765-2005 of August 1, 2005, which was in force until March 31, 2006 and can be extended. HCJ 7052, 7082, 7102, 7642, 8099, 8263/03 *Adalah v. The Minister of the Interior* (pending – see comment).

Comment: On May 12, 2006, subsequent to the publication of the Hebrew version of this study, the Supreme Court rejected these petitions to annul the amendment to the Citizenship Law by a majority of 6 Justices to 5.

[113] *See, e.g.*, HCJ 2599/00 Yated v. The Ministry of Education, 56 (5) PD 834; CrimApp 3112/94 Sofian Abu Hassan v. The State of Israel, 53 (1) PD 422.

[114] *See* Daphne Barak-Erez, "The International Law of Human Rights and Constitutional Law: a Case Study of an Expanding Dialogue", *I-CON* 2 (2004), p. 611.

tional arena. In certain cases, which tend to be rare, such illegality leads to legal, economic, political, and even military sanctions.[115]

The historical precedents surveyed below[116] have not created unequivocal legal rules regarding the situation with which we are dealing here. This is so because they either occurred prior to the formulation of the relevant international conventions (surveyed below), or because they dealt with physical expulsion of citizens from their land or with a situation in which residents living in a territory being ceded asked to change their citizenship.

International law has no clear legal system applying specifically to the issue at hand. However, it is clear that group citizenship revocation constitutes a violation of many of the liberties safeguarded in various human rights conventions to whose provisions Israel is legally obligated – either due to its ratification of them or since they are part of customary international law. Included among these are the right to citizenship (which includes the state's obligation to protect the individual and his or her rights, and therefore disallows the possibility of "handing citizens over" to foreign sovereignty and thus abandoning them); the right to vote and to be elected; the right to social security and an adequate standard of living, health, and education; the right to self determination; the right to equality (especially in light of membership in a national minority); the right to equality before the law, and to equal protection by the law.

Thus it is, for example, according to the following conventions, which Israel has ratified:

1.   The International Covenant on Civil and Political Rights (1966)[117]

This covenant safeguards, *inter alia*, the right to equal benefit from the rights ensured in the covenant[118], a person's right to enter his country[119],

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115   *See* Barak-Erez, **ibid**.

116   *See* the discussion of historical precedents worldwide, p. 76.

117   *International Covenant on Civil and Political Rights* (1966).

118   Article 2 of the covenant.

119   Article 12(4) of the covenant.

the right to vote and be elected[120], as well as the rights of ethnic, religious, or linguistic minorities to maintain their culture, to profess and practice their religion, or to use their own language, amongst themselves or together with other members of their group.[121]

2. The International Convention on the Elimination of all Forms of Racial Discrimination (1966)[122]

This convention forbids all kinds of discrimination between people on the basis of race, color, or ethnic origin. The signatory states pledge to take any action necessary in order to review national or local policy and to annul any law or bylaw which may create or perpetuate racial discrimination. The convention details civil, political, economic, social, and cultural rights which the signatory states are obliged to ensure their citizens without any discrimination on the basis of race, including the right to nationality,[123] the right to vote and to be elected,[124] the right to freedom of movement inside the state,[125] and the right to exit the state and return to it.[126]

3. The International Covenant on Economic, Social, and Cultural Rights (1966)[127]

This covenant recognizes, *inter alia*, the right to social security including social insurance,[128] the right to an adequate standard of living,[129] the

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[120] Article 25 of the covenant.

[121] Article 27 of the covenant.

[122] *International Convention on the Elimination of all Forms of Racial Discrimination* (1966). Israel signed the convention in 1966 and ratified it in 1979. The convention came into force, regarding Israel, in 1979. Published in *Treaty Series* 861.

[123] Article 5(d)(3) of the convention.

[124] Article 5(c) of the convention.

[125] Article 5(d)(1) of the convention.

[126] Article 5(d)(2) of the convention.

[127] *International Covenant on Economic, Social, and Cultural Rights* (1966). Israel signed the covenant in 1966 and ratified it in 1991. The covenant came into force, regarding Israel, in 1992. Published in *Treaty Series* 1037.

[128] Article 9 of the covenant.

right to health,[130] and the right to education.[131] The covenant prohibits discrimination in guaranteeing the rights recognized in it for any reason including national origin, language, political opinion, color, sex, *et cetera*.[132]

The Israeli Supreme court also grants significant weight to other human rights conventions, which Israel has not ratified, as well as to documents which are not covenants and therefore not legally binding. Relevant to the subject under discussion are, for example:

1. The Universal Declaration of Human Rights (1948)[133]

The declaration ensures the right to equality,[134] and equal protection by the law, as well as equal protection of the rights determined in the declaration without discrimination on the basis of race, color, national origin and the like,[135] the right to freedom of movement and the right to enter and exit the country of citizenship,[136] and the right to nationality without arbitrarily being deprived of it.[137]

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129   Article 11 of the covenant.
130   Article 12 of the covenant.
131   Article 13 of the covenant.
132   Article 2 of the covenant.
133   *The Universal Declaration of Human Rights* (1948). As a declaration, and not a convention, there is no procedure in Israeli law for ratifying it, and its provisions are not formally binding. However, the *Universal Declaration* is a fundamental document in the recognition of human rights.
134   Article 2 of the declaration.
135   Article 7 of the declaration.
136   Article 13 of the declaration.
137   Article 15 of the declaration.

2. The International Convention on the Reduction of Statelessness (1961)[138]

This convention requires nationality to be granted to any person born in a given state, whether at the time of birth or by way of lodging an application. The application can be conditional upon a number of factors, including place of residence, lack of a criminal record, age restrictions, or a situation in which a person was always stateless. The convention also determines that a person's nationality must not be renounced if, as a result, he or she will remain without any nationality whatsoever.

3. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)[139]

This declaration was inspired by article 27 of the *International Covenant on Civil and Political Rights*, concerning the rights of persons belonging to ethnic, religious, or linguistic minorities.[140] The declaration states that the promotion and protection of the rights of those persons contribute to the political and social stability of their states of residence, and emphasizes that promotion and re-alization of their rights, as an integral part of the development of society and within a democratic framework based on the rule of law, will contribute to the strengthening of, and cooperation be-tween, peoples and states. The convention states that the UN has an important role in protecting the rights of minorities.

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[138] *International Convention on the Reduction of Statelessness* (1961). Israel signed the convention in 1961 but did not ratify it. Therefore it does not necessarily have binding validity in Israel, unless its provisions have become part of customary international law, a question which does not have an unequivocal answer. In any case, it has been given weight in the caselaw of the Supreme Court, *see, e.g.,* HCJ 2757/96, **ibid**, ibid.

[139] *See Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* U.N. G.A. Res 47/135 of December 18, 1992. For referral to it in the caselaw of the Supreme Court, *see e.g.* HCJ 4112/99 Adalah v. The City of Tel Aviv-Yafo, 56 (5) PD 393.

[140] *International Covenant on Civil and Political Rights* (1966).

Although it is unclear whether, according to international law, a decision on transferring sovereignty is **conditional upon** a referendum among the population in the area slated for sovereignty transfer, at the very least, the **custom** which has developed regarding a situation of transfer of populated territory from one state to another indicates that the transferring state must allow its citizens to choose between retaining their citizenship and/or choosing to move to territory remaining under the sovereignty of the state, in order to keep the social rights they previously enjoyed.[141]

The conclusion is that the entirety of human rights protected by the conventions discussed above, as well as the right to self-determination,[142] raise great doubt regarding the legality, from the standpoint of international law, of forced transfer of population from the sovereignty of one state to the sovereignty of another, causing fundamental change to every aspect of the fabric of life.

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[141]   The existence of such a custom was found by a committee of jurists of The Council of Europe, The European Commission for Democracy through Law ("The Venice Commission"), which surveyed the history of the various cases of transfer of sovereignty over populated territory amongst a large number of states. The results of this examination were consolidated in a declaration of September 14, 1996 of the Venice Commission regarding "the Consequences of State Succession for the Nationality of Natural Persons" *see* **Rubinstein and Medina**, **ibid**, pp. 411-412. *See also* UN General Assembly Resolution no. 55/153 of 12 October 2000, Nationality of Natural Persons in Relation to the Succession of States, which deals with the question of the nationality of people living in territory over which sovereignty has been transferred. The decision determines, *inter alia*, the state's obligation to grant citizens, appropriately affiliated to those states, the option of choosing the citizenship they desire, and prohibits any discrimination or arbitrariness in decisions regarding preservation or revocation of citizenship by the relevant states. UN General Assembly resolutions have no binding status, and they are merely recommendations (article 10 of the Charter of the United Nations 1945).

[142]   *International Covenant on Civil and Political Rights*, **ibid**, article 1, as well as *International Covenant on Economic, Social, and Cultural Rights*, **ibid**, article 1.

Historical Precedents Around the World

In the 20th Century there were only a small number of mass population transfers from state to state,[143] the most prominent among them was between **Greece and Turkey** in the 1920s. This population transfer occurred as a result of the victory of the Turkish army over the Greek army in 1922, and the conquest of Izmir, which led to "a massacre of hundreds of thousands of Greeks as revenge for the oppression of the Turkish population… in September 1922 the Greeks were ordered to leave Turkey within an extremely short period. From that time until January 1923, the date of the commencement of the Lausanne Convention… approximately 1,150,000 Greeks were expelled. The forced population exchange treaty gave legal validity to a process which had already taken place among the Greek population (only 150,000 Greeks moved after the agreement)… as opposed to the Greek minority, the Turkish minority – numbering 400,000 to 450,000 people – emigrated almost entirely, in an organized fashion, as a result of the agreement." [144]

The Greek-Turkish precedent was discussed in the Zionist Movement in 1937, as a result of the recommendations of the British Royal Commission led by Lord Peel, which proposed partitioning the country into two states, a Jewish one and an Arab one, as well as the forcible transfer of Arab population where necessary from the area slated to be part of the Jewish state, according to the

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[143] The Research and Information Center of the Knesset on November 3, 2002 found, per the request of MK Lieberman, eight transfers of population in the 20th century: "*Eight Population Exchanges in the 20's Century*" (by Hodaya Kain and Rachel Wartzberger) [Hebrew]. 1) Population transfers between Greece and Turkey at the end of the First World War. 2) Between Turkey and Bulgaria: 1928-1933, 1951-1952. 3) The expulsion of the Chechens during the Second World War. 4) Expulsion of German Sudetens from Czechoslovakia after the Second World War. 5) Population exchange in Cyprus, 1974. 6) Population transfers between China and Mongolia after 1947, and expulsion of Chinese population from Outer Mongolia after the fall of the Soviet Union. 7) Migration of minorities who had come to the Baltic States after the Second World War, after the fall of the Soviet Union. 8) Population transfers in Croatia and Bosnia-Herzegovina as a result of the Balkan war.

[144] **Ibid**, at p. 71.

Greek-Turkish model. The British government rejected that proposal and instructed the partition commission established as a result of it, the Woodhead Commission (1938), to examine only consensual population exchange.[145]

Most population exchanges took place between the two World Wars,[146] and before the framing of international conventions against population transfers which were signed as a result of the Second World War and especially after the Nuremberg trials, which determined the principle that population transfer is a war crime.[147]

However, the precedents of "population transfer" do not reflect the conditions of the proposal under discussion, as our discussion is not about population transfer, but rather about transfer of sovereignty over populated territory, with all that this entails – the inhabitants stay where they are, but their citizenship is revoked and they are disconnected from the fabric of their lives. Nor does our discussion cover the cases in which national minorities requested autonomy and acted, at times very violently, in order to disconnect themselves from the majority state and to attain self rule, as occurred, for example, in Indonesia and former Yugoslavia. There are but a few examples from the 20th century of transfer of sovereignty over territory between states and resulting consensual citizenship change, and they are as follows[148]:

- The **Schleswig-Holstein** area was annexed to Germany as a result of war between Denmark and Germany in 1864. In 1920, after the German defeat in the First World War, and according to the Versailles Convention decision,[149] 75% of the residents of northern Schleswig-Holstein (South Jutland) voted for annexation to Denmark, and 80% of the residents of central Schleswig-Holstein preferred to remain part of Germany. A few

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[145] Yossi Katz, *A State in the Making: Zionist Plans for the Partition of Palestine and the Establishment of a Jewish State*, Magnes Press and the Hebrew University, Jerusalem 5760, pp. 68-70 [Hebrew].

[146] *Eight Population Exchanges in the 20's Century*, **ibid**.

[147] Constitution of the International Military Tribunal, Article 6(c).

[148] Rubinstein and Medina, **ibid**, p. 411, note 376.

[149] The Versailles Treaty, January 1920, article 6.

months later, in June 1920, the northern part was brought under Danish sovereignty. The free city of Lübek and the Oldenberg province were integrated into Schleswig-Holstein in 1937. After the Second World War, the partition between Germany and Denmark remained as it was, and the state of Schleswig-Holstein became part of the Federal Republic of Germany (West Germany). In 1990, it became a state in unified Germany[150].

- **Saarland**, on the border of France, Germany, and Luxembourg, was autonomous following the Versailles Treaty (1919), under the auspices of France and under international supervision. In 1947, the inhabitants voted in a referendum for economic union with France, which continued until the end of the 1950s and was a source of great tension between France and Germany. In an additional referendum in 1957, most inhabitants indicated their desire to belong to West Germany, while preserving certain French rights for a limited number of years. Today, the area is an integral part of Germany.[151]

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[150] *See The Columbia Encyclopedia*, Sixth Edition, Columbia University Press, New York 2001-2005.
[151] **Ibid**, ibid**.**

5   The Demographic and Geographic Aspect

The Nationwide Demographic Aspect*

According to the Central Bureau of Statistics, the population of Israel on the eve of 2006 was approximately 7 million (including approximately 231,000 residents of East Jerusalem). 76% of the residents of Israel are Jews (5,308,300), 20% are Arab (1,375,600), and 4% are neither (302,400).[152] In the West Bank and the Gaza Strip live 3-3.5 million Palestinians. According to Professor DellaPergola,[153] the percent of Jews (including non-Jewish immigrants) between the Jordan River and the Mediterranean Sea will decline by 2010 to 51%, by 2020 to 47%, and by 2050 to 37%.

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*   Some see as immoral and undemocratic the very concept of a demographic argument, which counts the number of Arab citizens in Israel and sees them as a "threat". Nevertheless, there is great importance in examining the data of supporters of the "localities transfer/exchange of populated territory" approach.

[152]   "At the Outset of the Year 2006", The Central Bureau of Statistics, December 28, 2005, press release no. 286 [Hebrew]. Dr. Aziz Haider argues that including in Israel's population count the residents of East Jerusalem and the Golan Heights, who are not citizens, and who constitute 28% of the Arab population in Israel, is of profound significance, feeds the demographic debate, shapes public opinion and the public and political debate, and affects policymaking. *See* Aziz Haider (ed.), *Arab Society in Israel: Population, Society, Economy*, The Van Leer Institute and HaKibbutz HaMeuchad Publishing House 2005, p. 14 [Hebrew].

[153]   Sergio Della Pergula, "The Demograpics of Israel and the Territories: Scenarios and their Significance, *Meimad*, May 2003, pp. 7-11 [Hebrew].

Table 1
Forecast of Percentage of Jews in *Eretz Yisrael*

Year	Without Separation	With Separation at the '67 lines
2010	51%	79%
2020	47%	77%
2050	37%	74%

Source: DellaPergola, 2003 [154]

Professor DellaPergola presents demographic data according to which if the non-Jewish immigrants, the foreign workers, and the other non-Jews residing in Israel are counted as a collective, that non-Jewish group will reach 71% of the total population residing in the territory between the Jordan River and the Mediterranean Sea by 2050, leaving less than 30% Jews. [155] In other words, in a scenario of *Eretz Yisrael* (from the Jordan River to the Mediterranean Sea) constituting one political entity, on the eve of Israel's centennial, Israel's population distribution in all of *Eretz Yisrael* will be similar to the situation that existed in the country on the eve of its establishment – one third Jewish and two thirds non-Jewish. In a scenario in which the State of Israel (including East Jerusalem, with almost a quarter of a million Palestinian residents) is separated from the Palestinian population in the territories, the percentage of Jews in the 2050 population will reach 74%, and without East Jerusalem, that percentage will be even higher. DellaPergola says that "among the youth up to age 15, the Jewish majority [in Jerusalem] is expected to shrink to only 55% in 2020". [156]

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[154]   **Ibid**, ibid**.** The data also include non-Jewish immigrants and foreign workers.

[155]   This relies on data of the Central Bureau of Statistics.
www1.cbs.gov.il/popisr/table5.pdf

[156]   www.ynet.co.il 10 December 2003.

Table 2

Forecasts for Population in Israel for the Years 2010-2025
According to Population Group

Middle Alternative, Year's End

Population Group	Base Year	Forecast Year		
	2000	**2010**	**2015**	**2025**
Absolute Numbers in Thousands				
Total:	6365.8	7542.3	8122.2	9261.7
Percentages:				
Jews and others	81.4	78.9	77.7	74.9
Of which: Jews	77.8	74.5	73.0	70.3
Arabs	18.6	21.1	22.3	25.0

Source: The Central Bureau of Statistics, www1.cbs.gov.il/popisr/table5.pdf

These numbers are based on several assumptions. The first assumption is stability in the Jewish population's fertility rate, which stands at an average of 2.6 children per family, alongside a gradual decrease in the Arab population's fertility rate — from the current average of 5 children per family to reach by 2050, the same rate as currently exists among the Jewish population. The second assumption is a net immigration balance of zero; namely, an assumption that the potential for Jewish immigration from among the 8 million Jews living outside of Israel has been exhausted. (More than 90% of those Jews live in the first world of North America and enjoy a standard of living similar or higher to that of Jews living in Israel, and will not in the near future wish to immigrate to Israel). On the other hand, the experience of the 1990s shows that it is difficult to predict demographic change, and indeed the arrival of a population of about a million people from the former Soviet Union was not previously forecasted by the various demographers.

In sum, it appears from this data that political separation from the Palestinians in the West Bank, including East Jerusalem, will ensure a solid Jewish majority in the State of Israel even in another fifty years. That figure may rise with Jewish immigration from western countries, especially North America, as a result of the positive change in the security and economic situation of Israel due to the completion of peace treaties with all its neighbors.

The Regional Demographic and Geographic Aspect

Proponents of populated territory exchange do not attach a map to their declarations. For the regional demographic and geographic analysis we shall assume, for argument's sake, that the territory in question is the area of Wadi Ara and the Northern Triangle, from Umm el Fahm to Marja in the Zemer Regional Council, with a currently resident population of 131,000, as well as the area of the southern Triangle – from Taiyba to Kafr Qasim – containing a population of 97,000 people. In total, we are dealing with a population of 228,000 people constituting 16.3% of the Arab citizens of the State of Israel (map 2, table 3).

Ignoring all the issues presented above, these numbers constitute, *prima facie*, a significant drop in the relative number of Arab citizens in the State of Israel. However, meticulous examination of each locality in these areas significantly lowers the population numbers in the areas under discussion. We shall examine these numbers according to four parameters, and for the purposes of the current discussion, we shall employ as liberal an approach as possible:

- **Highway no. 6 ("Trans-Israel"):** The assumption is that the State of Israel will not wish to cede Arab localities lying west of the road to the Palestinian side, but it is possible that localities adjacent to the road to its east might be turned over to the Palestinian state (map 2). This is due to the fact that Palestinian Tul Karm and Qalqilya are adjacent to the road on the eastern side.

- **Israeli-Jewish Localities:** The State of Israel will refrain, as much as possible, from evacuating Israeli-Jewish localities west of the "green line".

- **The Seperation Fence Route:** "The Seamline Zone" reflects, *inter alia*, Israel's intentions in terms of border alterations vis-à-vis the Palestinian state. The location of settlements east of the "green line" and inside the boundaries of the separation fence will prevent the cession of Arab localities lying west of the separation fence to the Palestinian state (map 2).

Map 2

**Territory Populated by Arabs Proposed to be Ceded
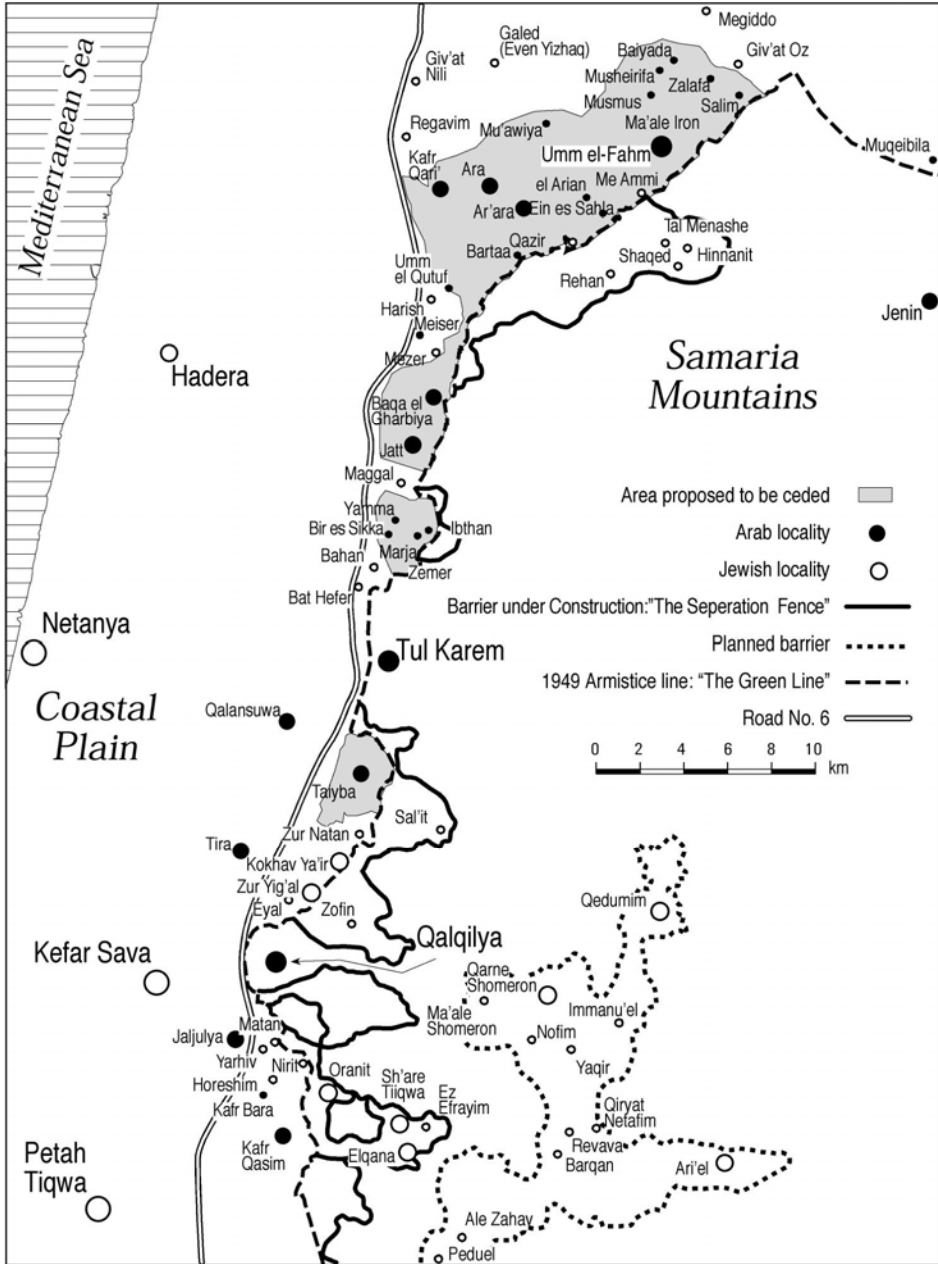from Israel to Palestine**

Mediterranean Sea

Megiddo

Galed
(Even Yizhaq)

Giv'at
Nili

Baiyada

Giv'at Oz

Musheirifa

Zalafa

Musmus

Salim

Regavim

Mu'awiya

Ma'ale Iron

Muqeibila

Kafr
Qari'

Ara

Umm el-Fahm

el Arian

Me Ammi

Ar'ara

Ein es Sahla

Bartaa

Qazir

Tal Menashe

Shaqed

Hinnanit

Umm
el Qutuf

Rehan

Jenin

Harish

Meiser

Samaria
Mountains

Hadera

Mezer

Baqa el
Gharbiya

Jatt

Maggal

Yamma

Bir es Sikka

Ibthan

Bahan

Marja

Zemer

Bat Hefer

Area proposed to be ceded

Arab locality ●

Jewish locality ○

Netanya

Tul Karem

Barrier under Construction:"The Seperation Fence"

Coastal
Plain

Qalansuwa

Planned barrier

1949 Armistice line: "The Green Line"

Road No. 6

Talyba

Sal'it

0   2   4   6   8   10
                              km

Tira

Zur Natan

Kokhav Ya'ir

Qedumim

Zur Yig'al

Eyal

Zofin

Qalqilya

Kefar Sava

Qarne
Shomeron

Ma'ale
Shomeron

Immanu'el

Jaljulya

Matan

Nofim

Yaqir

Yarhiv
Horeshim

Nirit

Oranit

Sh'are
Tiiqwa

Ez
Efrayim

Qiryat
Nefafim

Kafr Bara

Revava
Barqan

Ari'el

Petah
Tiqwa

Kafr
Qasim

Elqana

Ale Zahav

Peduel

Table 3

**The Population in the Arab Localities
Proposed to be Ceded to the Palestinian State**

Locality	Municipal Status	Residents (30.9.2005)
Umm el Fahm	City	40,800
Salim, Zalafa, Musheirifa, Musmos, Baiyada	Localities in the Ma'aleh Iron Local Council	11,500
Ara-Ar'ara	Unified Local Council	15,400
Kafr Qari	Local Council	14,100
Baqa el Gharbiya - Jatt	Unified City	30,800
Yamma, Ibthan, Marja, Bir es Sikka	Localities in the Zemer Local Council	5,100
West Bartaa, Ein es-Sahla, Mu'awiya	Localities in the Basmah Local Council	7,400
Meiser	Arab locality in the Menashe Regional Council	1,500
Muqeibila	Arab locality in the Jezreel Regional Council	3,000
Sandala	Arab Locality in the Jezreel Regional Locality	1,400
Total for Localities in the Northern Triangle		**131,000**
Taiyba	City	32,700
Tira	City	20,500
Qalansuwa	City	16,700
Jaljulya	Local Council	7,500
Kafr Bara	Local Council	2,500
Kafr Qasim	Local Council	17,100
Total for Localities of the Southern Triangle		**97,000**
Total for the Localities of the Northern and Southern Triangle		**228,000**

Source: The Central Bureau of Statistics, "Population in Localities at the End of 2005", press release, November 9, 2005.

- **The Municipal Territory of the Arab Localities:** this territory has been greatly reduced due to expropriations over time. Consent of the Arab localities to be ceded solely with the territory presently annexed to them assumes that they are forfeiting all the lands which were expropriated from them by the State of Israel. For the sake of this discussion, and despite its negligible chances, we shall assume that the territory of the Arab local authorities east of Highway no. 6 is the minimum to which they will consent to transfer to Palestinian sovereignty.

Meticulous examination of the territory under discussion in light of these four parameters indicates that:

- The location of the localities of **Jaljulya, Tira, and Qalansuwa**, west of Highway no. 6, removes them, with their 44,700 residents, from the potential cession list.

- The proximity of the [Arab] locality of **Meiser**, with its 1,500 residents, to Kibbutz Metzer, on its west, removes it from the list as well.

- Reasonable territorial cession of the northern Wadi Ara settlements (**Umm el Fahm, Ma'aleh Iron Local Council, Ara-Arara**) is impossible without forfeiting Road no. 65 (the Wadi Ara Road) and without evacuating the three Israeli localities of **Katzir, Mei-Ami, and Harish.** Cession of that territory also reduces the possibility of maintaining Israeli sovereignty in the bloc of settlements **Shaked, Reichan, and Hinanit**, east of the "green line", and eliminates them from the negotiation table, upon which they were placed at Camp David and Taba. Despite this, we shall assume here that Israel will wish to cede this territory even at the price of evacuating the three Israeli localities inside the "green line" and waiving the demand for a border adjustment in the northern settlement bloc.

- Another possibility is that Israel would wish to keep the three Israeli localities west of the "green line" and to annex the three localities east of it, but to do so it must retain under its sovereignty the following Arab localities: **Ein es Sahla, Ar'ara, Ara, and Kafr Qari**, with their 32,000 residents.

- The location of **Kafr Bara and Kafr Qasim** west of the western Samaria settlement bloc of **Oranit, Elqana, Etz Efraim, and Shaarei Tiqva**. This bloc has been the subject of demand by Israel in each of the negotiation stages, and agreed upon in the informal Geneva Initiative. This suggests that they too must be removed from the list along with their 19,600 residents.

Thus, the entire Arab population constituting potential for cession, for the minimal evacuation price of three Israeli localities west of the "green line" (Katzir, Mei-Ami and Harish), while losing Road no. 65 (the Wadi Ara road),[157] is, according to this maximal scenario, 162,200 people, who are 11.8% of the Arab population in Israel and 2.3% of the total population of Israel. The territory outlined by these parameters is 122 square kilometers. The size of this territory (2% of the West Bank) cannot "balance" the demand which is usually heard, for annexation of 15-30% of the territory of the West Bank.

According to a more minimal alternative, in which Israel would wish to refrain from evacuating Jewish localities west of the "green line" and to hold on to the Hinanit-Shaked bloc, the number of potential Arab Israeli citizens who would come under Palestinian sovereignty is 130,200, constituting 9.5% of the Arabs of Israel, on territory smaller than 100 square kilometers. Neither the maximal nor the minimal alternatives can make any significant change in the numeric ratio between Jews and Arabs in the coming years.

Given that the Arab population vehemently opposes the proposal, and in light of the negligible demographic weight of these Arab localities, coercive moves on the part of the State of Israel to realize this minimal and insignificant potential (with or without the consent of the PLO/the Palestinian state), would be pure folly in comparison with the internal and international price which Israel would be forced to pay for their implementation.

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[157]   Assuming that segment 18 of Highway no. 6 will compensate for that loss.

Conclusions and Recommendations

The idea called "exchange of populated territory" has been repeatedly raised in Israeli political debate during recent years, sometimes publicly, and sometimes behind the scenes. The essence of the idea is to establish the border between Israel and the Palestinian state on the basis of the layout of Arab and Jewish localities which are adjacent to the "green line", on either side of it. Such a step would include, on the one hand, cession of Arab localities, with tens of thousands of citizens of the State of Israel, to the sovereignty of the Palestinian state, and on the other hand the retention of Israeli settlement blocs in the West Bank under Israeli sovereignty. Israeli proponents of the idea wish to implement it even against the will of the Arab citizens involved, whose citizenship will need to be revoked, in order to "improve" the numerical ratio between Jews and Arabs in the country. The territory to be transferred is intended as the Israeli compensation to the Palestinian state for the territory used for the Israeli settlements, which will remain under Israeli sovereignty. These "two birds" will, "with one stone", bring about a situation in which the Jewish state will have a larger Jewish majority, as well as benefiting from a larger piece of land for Jewish settlement in *Eretz Yisrael.*

Presently, at least, these proposals are not part of the negotiation process with the Palestinians. The Palestinian leadership, which has completely refrained from dealing with the fate of the Arab citizens in Israel during the entire conflict, has not attempted to include the issue in any of the permanent status agreements which have been discussed. The leadership has always preserved a clear differentiation between the Palestinians and the Arabs of '48, and has demanded that the problems of the Arab population in Israel be solved in the

framework of the Isreali political and social systems. The Palestinian leadership has no interest in bringing tens of thousands of former Israeli citizens under its sovereignty, certainly not against their will.[158] The proposal, which is presented as "territorial exchange" – Wadi Ara and the Triangle in exchange for settlement blocs – will be rejected *outright* by the Palestinians. The Palestinians have no interest in leaving Israeli settlement blocs deep inside Palestinian territory, in a way which will detract from the territorial contiguity of the Palestinian state. If territorial exchange occurs, the Palestinian side will demand territory in which it can settle refugees, and not territory which is already inhabited.

In any event, any inclusion of Arab Israeli localities inside the border of the Palestinian state will obviously create a situation of instability and security pressure on the border area. A situation will be created in which Palestinian population centers, particularly hostile due to the coercive act, will be close to Jewish city centers. Due to the relatively high standard of living in the Palestinian border cities, they will pull in population from farther Palestinian localities, and even returning refugees.

The Arab population in Israel is anxiously following the development of the debate, as well as the quiet consensus settling around it in the Jewish population. First and foremost among those concerned are the Arab residents of the Wadi Ara and Triangle areas, who for years have expressed, along with their leaders, strong and consistent opposition to the idea of losing their Israeli citizenship and becoming part of the Palestinian state. Most of the Arabs in Israel were born into the Israeli reality and do not know any other.[159] For them, the events of 1948 are an ethos told by the elders of the family. This plan is liable to be a traumatic experience for them, their "nakbah", and yield a most severe reaction.[160]

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[158]   This message was relayed to the authors by high ranking members of the Palestinian negotiation team.

[159]   51% of the Arab population of Israel are aged between 0-19; only 3% are above 65; *see* "The Arab Population in Israel" *Statisti-kal 26,* The Central Bureau of Statistics, June 2002, p. 3 [Hebrew].

[160]   Dr. Badi Hasisi, interview of November 2005.

The general Arab population vehemently opposes the proposal. In their opinion, the proposal is part of a wider process of civil de-legitimization. This process includes, of course, the events of October 2000, in which Arab protesters were killed by the Israeli police, and the response of the Jewish establishment and populace to the events. These reinforced the Arab population's sense of alienation from Israeli society, and obscured the differences between the Arab population in Israel and the Palestinians in the West Bank.[161] Their basic sentiment is that they are conditional citizens, over whom a whip is raised at all times – the threat of being ceded from the borders of the state.

The de-legitimization is manifested in the political arena as well,[162] for example in the attempts, which did not stand up to the legal test, to disqualify Arab parties and candidates in the recent elections. In the civil-personal arena, the amendment to the Citizenship Law, which impinges upon Arab citizens' right to marry Palestinians and bring their spouses to live with them in Israel, is also noteworthy.[163] However, gravest of all is the campaign initiated by MK Avigdor Lieberman, to cede Umm el Fahm to the Palestinian state, which has not met with any serious opposition in the Jewish population in Israel.

For the present, the Arab leadership in Israel – political and civil alike – is not taking an active part in this discussion, mainly due to the argument that the citizenship of the Arabs is not subject to negotiation, and to the refusal to grant legitimacy to the very discussion of the proposal.

The position supporting "exchange of populated territory" examines the issue broadly, and presumes to do so on a nationwide level, completely ignoring the implications on the personal and community levels: revocation of the citizen-

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[161]   Mohammed Amarah, "The Political Aspect of Jewish-Arab Relations in Israel", In: Shlomo Hasson and Khaled Abu Asbah (eds.), *Jews and Arabs in Israel Facing a Changing Reality: Dilemmas, Trends, Scenarios and Recommendations*, The Floersheimer Institute For Policy Studies, Jerusalem, 2004, p.47 [Hebrew].

[162]   Ofer Kenig, "Israel's Arab Parties from a Comparative Perspective", *Tarbut Democratit*, vol. 8, 5764-2004, pp. 109-143 [Hebrew].

[163]   It is interesting to note that this amendment was enacted during the terms of two Ministers of the Interior – one from the Shinui party and the other from the Labor party.

ship of tens of thousands of citizens, their detachment from life patterns and their incorporation into other patterns against their will. The impression has been created that there is a widening Jewish consensus to remove the Arab citizens from the State of Israel. This impression feeds responses of alienation and anger in the Arab population, which are liable to yield critical results.

In its Basic Laws, the State of Israel defines itself as "Jewish and democratic". Starting from its Declaration of Independence, it promised to be based on "the foundations of freedom, justice, and peace". The Declaration explicitly calls "the members of the Arab people who live in the State of Israel to keep the peace and take part in the building of the state, on the basis of full and equal citizenship". The state, however, is in fact having a hard time backing up that call. The demographic argument presumes to preserve the Jewish character of the State of Israel, but it is doubtful whether revoking the citizenship of tens of thousands of Arabs, against their will and because they are Arabs, sits well with the Jewish character of the state, its democratic character notwithstanding. The proposal will put both the Jewish and the democratic values of the State of Israel to a most trying test, and it is difficult to estimate how Israeli society as a whole will endure that test.

The State of Israel does not act in a void. We live today in an age in which the widely held universal view is that the state has responsibilities and obligations toward its citizens. There is no precedent in the modern international system of a state abandoning its citizens, revoking their citizenship, and passing them over to the sovereignty of another state, while critically impinging upon their human rights, their political and economic rights, and their rights as a national minority in its own homeland.[164] There is also no legal precedent to allow it – neither

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[164]   "Cases of citizenship revocation on a political basis *par excellence* have met very angry international reactions, and are subject to international judicial supervision. Thus, for example, the cases of Peru (revocation of the citizenship of people connected to the army or the opposition) and Indonesia (revocation of the citizenship of the residents of East Timor in 1999, prior to that strip's independence), as well as the Czech Republic's refraining from granting citizenship to Gypsies after the political regime change (the split of the Czech Republic and Slovakia in 1993)"; *see* "Revocation of Citizenship", *Senate*, information page no. 187, October 2002 [Hebrew].

under Israel's internal law nor in international law. According to Israeli law, the Government of Israel is permitted, with the approval of the Knesset, to cede its sovereign territory to the sovereignty of another state, and to determine a new political border. Such an act would be recognized by international law if it were done with the consent of the neighboring country to whose sovereignty the territory is passing. However, that is not the main subject of the proposal under discussion in this study, as the proposal does not speak of territorial transfer alone, but rather of the transfer of Arab citizens for the purpose of reducing their number in Israel. Existing law and custom in the State of Israel do not allow such an act. Any attempt to legislate laws to allow it would run into the objection of the High Court of Justice, due to its violation of the Basic Laws. Nor would international law recognize such an act. The few precedents in the 20th century occurred either before the signing of international conventions which obligate Israel and define such acts as illegal, or with the consent of the population involved. There is no reason to assume that the State of Israel can force such a step on the Arab population without a severe international response, which would be very reminiscent of the attitude toward South Africa during the apartheid era. Although world reaction might be more ambivalent if the State of Palestine were to agree to such a step, and if the step were to stand between achieving an agreement or not, the chances that it would be met with consent on the part of the international system are extremely low.

Even when the demographic argument is examined separately, the result is that the demographic advantage is marginal. Firstly, according to the data presented, inside the "green line", even without the transfer of populated territory and without separation from East Jerusalem, the Jewish majority is set to stand at 74% in 2050. The establishment of an independent Palestinian state and the division of Jerusalem would lead to an even greater Jewish majority. Second, if the plan were to be implemented and the Israeli citizenship revoked of the Arabs brought under the sovereignty of the Palestinian state, this population would constitute 2.1% of the general population of the State of Israel, approximately 8.2%-10.5% of the general Arab population in Israel – less than 150,000 people – certainly an insignificant number. On the other hand, inclusion of East Jerusalem and its residents inside the border of the State of Israel would bring into the population of Israel more than 230,000 Palestinians (constituting 19% of the

Arabs in Israel), the decisive majority of whom are not citizens of the state and do not aspire to be citizens.

Therefore, the proposal must not become the basis for expansion of public support for a Permanent Status agreement with the Palestinians. Those who envision a Jewish and democratic liberal state must not see the proposal as "the price we must pay in order to reach a peace agreement". Indeed, discussion of the proposal is slowly becoming part of the internal Jewish political discourse between right and left, but it must be assured that we will not pay for a few tens of square kilometers with our democratic values and the future of our relations with the Arab minority, the Arab world, and the international community.

Aside from the serious moral dilemmas for the State of Israel and the inability, *de facto,* to implement the plan, the very penetration of the idea into the legitimate political debate in Israel might lead to far reaching implications on a number of levels:

1. **Introducing the subject of the Arabs in Israel into the Permanent Status Agreement equation and opening the '48 files**

During the long years of negotiations, efforts were made by both sides to leave the subject of the Arab citizens outside the agenda. Discussion of this proposal, needless to mention acceptance of it, would bring the subject of the Arab citizens of Israel into the permanent status agreement equation. From Israel's standpoint, it can be assumed that the following issues would therefore be placed on the agenda:

A. Additional pending issues on the subject of the Arab population of Israel, such as the internal refugees, the land and property which were expropriated, the status of the Arabs in Israel after the permanent status agreement, *et cetera.*

B. Drawing the map according to demographic characteristics would bring back onto the agenda the issue of the 1947 partition borders, by which Israel was to benefit from 55% of Mandatory Palestine, and not 78% as per the "green line". It should be understood that a substantial deviation from the "green line" on a demographic basis, as proposed, might create

a precedent regarding Israel's willingness to put the issue of territory inside the borders of the state on the table, including, by that same principle, future forfeit of territory in areas with large Arab populations (such as the Galilee or the Negev).

2. Internationalization of the relations between the State of Israel and the Arab minority

The subject of the Arab minority in Israel has for quite a while been making its way into the international arena, especially as a part of the globalization agendas of civil society organizations in general and the discussion of native minorities' rights in particular. Today, this process is still marginal. The permanent status issues between Israel and the Palestinians, which today are a central and well-founded part of international processes, will immeasurably increase the interest of other countries and international organizations in the relations between the State of Israel and its Arab minority.

3. Creation of a new agenda in the relations between the State of Israel and the Arab minority

An additional and almost certain result of the proposal to revoke the citizenship of tens of thousands of Arab citizens in order to reinforce the Jewish identity of the State of Israel would mark a significant turn for the worse in the relations between Arabs and Jews in Israel. The whip has been raised and threatens to strike. The proposal would essentially say to the law abiding Arab population, which has passed difficult tests of loyalty during wars between the Arab people and the State of Israel, that it is unwanted in the State of Israel. Of course, as a result, it would be very difficult to reinforce trends of integration in Israeli society. Until now, the Arab population's political and public struggle has been driven by a two-pronged strategy: the struggle for peace, which has been led mainly by the parties in the Knesset, and the struggle for equality, which has been led primarily by the municipal government heads and civil society organizations which have been working for social change, in the hope that such change is possible. It is likely that the proposal for exchange of populated territory and revocation of the citizenship of tens of thousands of Arabs would bring about the collapse of this strategy, which has recognized the Israeli sys-

tem, and has been working inside it and aspiring to change it from within. It is to be expected that the responses in the Arab population would be a total loss of faith in Israeli democracy and an abrupt and irreparable abandonment of cooperation. It is safe to assume that there would be an intensification of trends of alienation and isolationism, which would be liable to deteriorate into a strategy of violence.

However, should there still be willingness and hope in the Arab population to remain part of the State of Israel, they would demand a principled and egalitarian debate. That debate would focus on the character of the state, the way it interprets the concept "Jewish" and connects it to the term "democratic", on the Arab national minority's place in Israel, and on minority-majority and minority-state relations. This debate would be accompanied by a debate about Israel's links to the Jewish Diaspora. These are all central issues which until now have been pushed off the top of the Israeli public agenda in subordination to issues of security and the Israeli-Arab conflict.

4. Internal Processes in Arab Society in Israel

To date, the reaction of the Arab leadership in Israel has been to refrain from entering the debate, due to its view that the debate itself is not legitimate and that the citizenship of the Arabs in Israel is not up for negotiation. If the idea should develop into a policy plan, they will probably have to take a stand. However, even if the idea is rejected at an early stage, Arab public and cultural figures will have to deal with the issue of the Israeli Arabs' duality and address questions regarding the desired meaning of Israeli citizenship and belonging to the State of Israel; the implications of the establishment of a Palestinian nation state alongside the State of Israel; and their opposition to being a part of this Palestinian state. In addition, they will have to address their responsibility for the equation of the relations between their community and the Jewish population, which perceives the Arabs as a foreign body in their own homeland and state.

Our recommendation is not to fear this debate. However, it must also be understood that it is not part of the debate regarding the peace process and the borders of the state. Rather, it is part of the central debate relating to the character of the

state, the relationship between its "Jewish" and "democratic" aspects, and the historic duality of the conduct towards the Arab minority in the state. Such a debate has still not taken place in Israel in a true and candid way, and it is laden with concerns and fears on the part of both parties.

Revocation of the citizenship of tens of thousands of people should not be used to reach the permanent status agreement and establish an independent Palestinian state. It is not in the best interest of Israel to severely harm its Arab citizens. The wide public support for the principles of two nation states for two peoples must be based upon international decisions, and upon the Palestinians' consent to territorial exchange with a 1:1 ratio. Such consent, and the expectation that the Palestinian state and the Palestinian nation in general will recognize the right of the State of Israel to exist as the nation state of the Jewish people in the permanent status agreement, would relieve both parties of many fears and limitations. It would also serve as a fitting platform for an egalitarian debate between Jews and Arabs on the future of the State of Israel in an era of peace.

A prerequisite for such a debate to take place is acceptance of responsibility by the Government of Israel. The Government of Israel must design a national emergency plan to implement the many promises made by every one of the Prime Ministers of Israel, for equality between Jewish and Arab citizens.

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