

Israel: Title Matters

By: LEONARD GRUNSTEIN

The Torah records that title to the Land of Israel is vested in the Jewish People as an inheritance, as more fully discussed below.

This is no idle or haphazard statement. As Rashi¹ explains, the story of the Jewish People's title to the Land of Israel is alluded to in the first verse of *Bereishit*.² Rashi notes from a strictly textual point of view, there was no reason for the Torah to begin with recounting that G-d created the world. After all, the Torah is dedicated to reciting the commandments and the first is not set forth until later in *Shemot*.³ He asks, why then not begin there?

Rashi's answer is prescient and most instructive. He posits that the nations of the world would question Israel's title to the Land of Israel. They would assert that the Children of Israel were robbers, because they took the land of the seven nations of Canaan by force. The purpose of the extended recitation in the Torah of the provenance of the world was to establish that the entire world belonged to G-d, who created it. G-d could give all or any part to whomever G-d pleased and G-d chose to give the Land of Israel, including Jerusalem, to the Jewish People.⁴

¹ Rabbi Shlomo Yitzhaki, an 11th-century sage and one of the preeminent commentators on the Torah.

² Genesis 1:1.

³ Exodus, Chapter 12.

⁴ *Midrash Tanpuma*, *Masei* 10:1 and *Genesis Rabbah* 1:2, as well as *Yalkut Shimoni*, *Remez* 187. See also BT *Sanhedrin* 91a. Interestingly, Rashi interprets the word *dimusana'ei* (typically translated as usurpers), as used in the Talmudic text, to mean “*ba'alei hamas*” (violent robbers), who wanted to steal a share in Judea and Jerusalem. The use of the term “*Hamas*” is also curiously prescient given its

Leonard Grunstein is a retired attorney and banker. He founded and served as chairman of Metropolitan National Bank and then served as chairman of Israel Discount Bank of NY. He's also a founder of Project Ezra and Beit Midrash of Teaneck, serving as its chairman. He also serves on the board of Bernard Revel Graduate School of Jewish Studies at Yeshiva University and on the AIPAC National Council. He has published articles in the *Banking Law Journal* and *Real Estate Finance Journal*, as well as op-eds and other posts at *Crain's*, *The Times of Israel*, *Newsmax*, *Israel National News*, *JNS*, and other publications.

When viewed from this enlightened perspective, the Torah is an extraordinary record of title. It is reputedly the oldest written record of title in the world.⁵ Most other written title records are relatively new by comparison.⁶ It is thus an incomparable documentary source, which has stood the test of time.

Thus, as a careful reader of title would note, the Canaanites had no legitimate claim to the Land of Israel. As the Hizkuni⁷ explains, the Land of Israel was a part of the inheritance Noah bequeathed to his son Shem.⁸ Interestingly, the Torah reports, Malchi-Tzedek, who the Talmud and Midrash consider to be Shem,⁹ lived in and was the king of the city of Salem,¹⁰ or, as we know it, Jerusalem.

modern usage by the contemporary terrorist organization seeking, G-d forbid, to accomplish the same malign goal. See further *Megillat Ta'anit*, Sivan 6, for a parallel report of the same incident.

⁵ While some might scoff at our belief in the Divine origin of the Torah, it is undeniable that the Torah is ancient in origin, with verifiable texts dating back more than two thousand years (see, for example, the Dead Sea Scrolls, at Israel Museum, Shrine of the Book (IMJ.org), which includes fragments of Biblical texts dating back to the 3rd century B.C.E.). There is also other evidentiary support dating back more than three thousand years. (See, for example, “The Three Oldest Biblical Texts,” by Bryan Windle, in *Biblical Archeology Report*, dated 2/6/2019; “3,000-year-old inscription bearing name of biblical judge found in Israel,” by Rossella Tercotin, in the *Jerusalem Post*, dated 7/13/2021, and “An Early Israelite Curse Inscription From Mt. Ebal?” by Nathan Steinmeyer, in *Torah History Daily*, dated 4/25/2022). The mere fact that the Torah, including the *Humash*, *Nevi'im*, and *Ketuvim*⁵ were uttered at the time is probative. Like any other ancient source, the Torah should at very least be accorded scholarly respect for what it says. So too, the authoritative commentators, who have recorded their profound understanding of these works, including the meaning of sometimes abstruse passages. Taken together, this body of literature is matchless and the provenance is unparalleled. It would be foolhardy to ignore or disdain it just because of some bias against those who treasure it as sacrosanct.

⁶ See, for example, *The History and Value of Land Records*, by Amanda Farrell, at PropLogix, tracing recording of title back to 13th-century Scotland. There is also William the Conqueror's 11th-century Domesday Book (National Archives.gov.UK).

⁷ Rabbi Hezekiah ben Manoah, a 13th-century Torah commentator.

⁸ *Hizkuni*, *Genesis* 1:1. See also *Tur Ha-Arukh*, *Genesis* 10:5.

⁹ See Rashi commentary on *Genesis* 14:18, as well as BT *Nedarim* 32b, *Genesis Rabbah* 56:10, *Midrash Tehillim* 76:2, and *Pirkei D-Rabbi Eliezer* 8:4. See also *Zohar Hadash*, *Noah* 128 and *Midrash Tehillim* 76:2.

¹⁰ *Genesis* 14:18.

Abraham is a descendant of Shem,¹¹ and as the Torah records, he and his descendants were vested with title to the Land of Israel, as their inheritance.¹² Thus, the Torah often uses the terms “*Nahalah*,” “*Ahuzab*,” and “*Yerushbah*,” meaning inheritance, in describing the Nation of Israel’s vested title to the Land of Israel.¹³

Title then passed to his son Isaac¹⁴ and then to his son Jacob¹⁵ (also known as Israel). Jacob then vested title in his progeny, known as the Children of Israel.

Therefore, as the Torah declares,¹⁶ when the Children of Israel enter the Land, then known as Canaan, it is the land that was vested to them as a part of their inheritance. This is no passive statement or optional prerogative; it is a duty entrusted to and an obligation binding on the descendants of Jacob, the Children of Israel. Indeed, Ramban, in his version of *Sefer Ha-Mitzvot*, lists and describes the obligation to inherit and take possession of the Land of Israel as the fourth of the Positive Commandments.¹⁷

Ramban also notes the Land of Israel should not be forlorn or left barren and desolate. In this regard, the accounts of Mark Twain¹⁸ of his visit to Jerusalem and other parts of the Holy Land in 1867 and others over the years and photographs of Jerusalem, including even during the Jordanian occupation until the liberation of Jerusalem in 1967, are revealing and most compelling. They depict a forlorn and near desolate land. It is noteworthy that little had changed in the six hundred years since Ramban’s arrival in Jerusalem in 1267 and Twain’s visit in 1867. He also describes the barrenness of the land he encountered.¹⁹

Ramban describes how this is a part of the miraculous quality of the Land of Israel, which resists cultivation by all who seek to settle it other

¹¹ Genesis 11:10-27. Shem was one of Noah’s sons (Genesis 10:1). Abraham’s lineage is traced from Shem (as noted in Genesis 11:10-27), as follows: Shem to Arpakhshad, to Shelah, to Ever, to Peleg, to Reu, to Serug, to Nahor, to Terah, and then to Abraham.

¹² Genesis 12:7.

¹³ See, for example, Genesis 17:8, Deuteronomy 26:1, and Deuteronomy 6:8.

¹⁴ Genesis 26:3-4.

¹⁵ Genesis 28:13.

¹⁶ Numbers 34:2 and Deuteronomy 17:14.

¹⁷ Nahmanides, *Hasagot Ha-Ramban* on Maimonides’ *Sefer Ha-Mitzvot*, *Positive Commandments* 4.

¹⁸ *The Innocents Abroad*, by Samuel Clemens (aka Mark Twain).

¹⁹ In a letter to his son, Nahman, from Jerusalem in 1267.

than the Jewish People. As Isaiah²⁰ prophesized, “For G-d has comforted Zion, comforted all its ruins; and has made its wilderness like Eden and its desert like the garden of G-d.” The evidence supporting Ramban’s dictum and the fulfillment of Isaiah’s prophecy is overwhelming. The Jewish People have made the desert bloom and developed the Land of Israel as no one else did in the history of the Land; it is irrefutable.

The survey description of the Land granted as an inheritance to the Jewish People is set forth in the contractual commitment G-d originally made to Abraham, as recorded in the Torah.²¹ Abraham even did a walkthrough.²²

Title to the Land of Israel was reconfirmed again to Moshe and the Jewish People,²³ including in a more detailed description in *Bemidbar*,²⁴ Indeed, as a part of Moshe’s penultimate testament in the Torah, he called upon the Heavens and the Earth to bear witness²⁵ that, among other things, the Land of Israel was the inheritance of the Jewish People.²⁶ The Torah also reconfirms that it is the inheritance of Jacob²⁷ to the exclusion

²⁰ Isaiah 51:3.

²¹ Genesis 15:18-21.

²² Genesis 13:17. See also *Targum Yonatan* thereon, which describes how Abraham thereby exercised his dominion and control over the length and breadth of the Land of Israel.

²³ Exodus 23:31.

²⁴ Numbers 34:1-13

²⁵ Deuteronomy 32:1 and see Rashi and *Kli Yakar* commentaries thereon.

²⁶ Deuteronomy 32:8-9 and see the Rashi, Ibn Ezra, Rashbam, Bekhor Shor, Rosh, and Hizkuni commentaries thereon.

²⁷ This reference is made to negate any unfounded claims by Ishmael and Esau. Abraham vested title to the Land of Israel solely in his son Isaac (Genesis 25:5). Abraham’s son Ishmael and the children Abraham fathered with Keturah received other gifts from Abraham (Genesis 25:6. See also Genesis 21:10, as well as Radak commentary on Joshua 24:3). Isaac had two sons, Jacob and Esau. Jacob was solely vested with title to the Land of Israel as noted above. Esau settled in the hill country of Seir (Genesis 36:8), which was given to Esau as an inheritance (Deuteronomy 2:5). Rav Yitzhak Hutner recounted how he was among those on a plane hijacked by Arab terrorists to Jordan and then launched into a discussion of the Torah’s description of the nature of the family of Ishmael versus that of Esau (see *Sefer Ha-Zikaron L-Moran Ba’al HaPahad Yitzhak*, at pages 69-70, in 4th edition-2008, on *Otzar Ha-Hochmah*). He noted, when referring to Esau, the Torah (Genesis 36:43) states that these are the clans of Edom, in their settlements, in the land of their inheritance, he is Esau the father of Edom. On the other hand, when referring to Ishmael, the Torah (Genesis 25:16) states that these are the children of Ishmael and these are their names, by

of any other progeny of his forbearers Abraham or Isaac.²⁸

Interestingly, the Torah makes use of the term *bevel* (measuring rope²⁹) in connection with the recording of Jacob's inheritance of the Land. This unusual reference is cogent, because the *bevel* was used to measure out a metes and bounds description of a parcel of land. Moshe is then allowed visually to survey the Land and, as the Torah records,³⁰ this is the inheritance of the Children of Israel.

The Canaanites were the descendants of Noah's son Ham,³¹ and were illegally occupying the Land of Israel. As the Torah notes,³² when Abraham came to Israel, the Canaanites, at the time, were also in the Land. The otherwise superfluous reference to "at the time" is not casual or coincidental. Maharal³³ explains it was meant to allude to the fact that the Canaanites were not there before, because it was not their land and they were not entitled to be there. Rather, they came to rob the Children of Israel of their heritage.

their encampments and strongholds. Rav Hutner explained that Esau had a legitimate legal title to the land of Seir as an inheritance (as confirmed in Deuteronomy 2:5 and Joshua 24:4). In striking contrast, Ishmael received no fixed land as an inheritance (Genesis 21:10); rather, his children had only temporary settlements. He notes this might help explain their overwhelming jealousy and anger relating to the Jewish People's legal title to the Land of Israel as their inheritance. It is the plaintive cry of someone who has no inheritance of land, unlike the other progeny of Abraham, and, therefore, comes to take the share of the inheritance of those who did. He goes on to posit that this is the source of the murderous rampage and anger by descendants of Ishmael regarding the Jewish People's inheritance of the Land of Israel we have witnessed in our time. It is important to put this all in context. Abraham disposed of all his property during his lifetime by way of inter vivos gifts. He gave Ishmael and the other children of Keturah gifts and everything else, including the real estate, to Isaac (see Radak on Genesis 25:6, Hizkuni on Genesis 21:14 and *Targum Yonatan* on Genesis 25:1-6). Indeed, as Radak notes, Abraham did this during his lifetime, so that no one could interfere with his intended disposition of his estate to Isaac. In modern parlance, Abraham sought to avoid any will contests or frivolous litigation post mortem about who would receive what inheritance; it was all personally dealt with by him during his lifetime.

²⁸ See the (authoritative Tannaic Midrash Halakhah) *Sifre* (Deuteronomy 312:1).

²⁹ See, for example, *Bekhor Shor* and Ibn Ezra commentaries on Deuteronomy 32:9.

³⁰ Deuteronomy 32:49 and see the *Aderet Eliyahu* commentary of the Vilna Gaon thereon.

³¹ Genesis 10:6.

³² Genesis 12:6 and see Rashi commentary thereon.

³³ Rabbi Judah Loew ben Bezalel, a 16th-century sage, known as the Maharal of Prague or Maharal, in his *Gur Aryeh* commentary on Genesis 1:1.

*Haamek Davar*³⁴ notes the Torah, in *Shemot*,³⁵ uses the term “*Mekom*” HaCanaani (place of the Canaanites), as opposed to *HaAretz* (land), to emphasize that it was truly not their land from the beginning of creation; rather, it was just a place they were occupying at the time.

The Torah³⁶ explicitly describes the boundaries of Canaanite territory as extending only as far as Sidon in the north, the approaches to Gaza in the south, and as far as the approaches to Sodom, Gomorrah, etc. in the east; but not extending into the Land of Israel proper. To the west of the Land of Israel is, of course, the Mediterranean Sea and, hence, not a concern in delineating the boundaries of Canaanite territory in terms of not encroaching on the Land of Israel.

It is bracing to appreciate how timeless these survey and boundary considerations are in delineating a title description with landmarks and markers. In this light, consider too the gravity of the commandment, set forth in the Torah,³⁷ “not to move a neighbor’s boundary landmarks (markers), set up by previous generations, in the inherited property vested in you, in the land that G-d has given you as an inheritance.”

Rashi³⁸ describes how the Canaanites were gradually conquering the Land of Israel from the descendants of Shem. It had been allotted to Shem, when Noah apportioned the Earth among his sons. Hence, the Torah³⁹ makes reference to Malchi-Tzedek (also known as Shem, as noted above), as the king of Salem (Jerusalem).⁴⁰ Therefore, G-d assures Abraham that in the future, the Land of Israel would be returned to his descendants, the Children of Israel, who, as noted above, are also lineal descendants of Shem and the rightful inheritors of title to the Land of Israel. Interestingly, this was so both patrilineally and matrilineally. This includes Rachel and Leah, as well as Bilhah and Zilpah who were all daughters of Laban.⁴¹ It should also be noted that Judah’s wife Tamar was also a descendant of Shem.⁴²

³⁴ By Rabbi Naftali Zvi Yehudah Berlin.

³⁵ Exodus 3:8.

³⁶ Genesis 10:19 and see also Rashi commentary thereon.

³⁷ Deuteronomy 19:14.

³⁸ Rashi commentary on Genesis 12:6.

³⁹ Genesis 14:18.

⁴⁰ BT *Nedarim* 32b notes Abraham, a descendant of Shem, was also invested with the hereditary priesthood originally conferred on Shem.

⁴¹ *Pirke D-Rabbi Eliezer* 36.

⁴² *Genesis Rabbah* 85:11. As an aside, as descendants of Shem, the Children of Israel or Jewish People are categorized as Semites. In this regard, it should be noted that while Ishmael was the son of Abraham, his mother Hagar was a descendant

The Torah is, thus, the record of title that shows from the beginning of the world, through Israel's miraculous retaking of the land from the illegal occupiers and since, the Jewish People's legal title to the Land of Israel, as a fully vested inheritance. As *Kli Yakar* notes, it is just and right,⁴³ as G-d intended. There is no comparable source of record legal title to the Land of Israel.

The Torah⁴⁴ also reports the basis for Jerusalem becoming the capital of Israel. It states that Jerusalem is the city G-d chose to establish the House bearing G-d's name, under the stewardship of David, leader of the Nation of Israel.

The Torah records⁴⁵ that King David established Jerusalem as the capital of the Kingdom of Judea and Israel in the ancient Land of Israel more than three thousand years ago. He insisted on buying the land set aside for the First and Second Temples for cash and refused it as a gift. The transaction is recorded in the Book of Samuel⁴⁶ and in Chronicles.⁴⁷ The Midrash⁴⁸ explains that recording of this title⁴⁹ was critical so that the nations of the world could not defraud Israel and say that this was stolen property in Israel's hands. Amazingly, this statement, attributed to Rabbi Yudan bar Simon, was likely made almost two thousand years ago.

Despite being conquered a number of times by foreign empires and invaders, the Jewish connection to and presence in Jerusalem continued throughout the vicissitudes of thousands of years of history, a miracle in its own right.

It should also be noted that no nation has ever actually situated its capital in Jerusalem other than the Nation of Israel. In this regard, it

of Mitzraim, a son of Ham (Genesis 10:6). According to *Midrash Genesis Rabbah* (45:1), Hagar was an Egyptian princess.

⁴³ *Kli Yakar* (by Rabbi Shlomo Ephraim ben Aaron Luntschitz, a 17th-century Biblical commentator) on Genesis 1:1.

⁴⁴ II Chronicles 6:5-6.

⁴⁵ II Samuel 5:5-7.

⁴⁶ II Samuel 24:24.

⁴⁷ I Chronicles 21:25. The Talmud (BT *Zevachim* 116b) reconciles the apparent contradiction between the price described in the Book of Samuel (II Samuel 24:24) of 50 shekels and the one in Chronicles, noted above, of 600 shekels. The total price King David paid was 600 shekels. He then divided it 12 ways so that each of the Twelve Tribes would have a share in title to the land. See also *Sifre, Numbers* 42:3 and Deuteronomy 35:13.

⁴⁸ *Genesis Rabbah* 79:7.

⁴⁹ As well as the title to the Cave of the Patriarchs (*Me'arat Ha-Machpelah*) in Hebron, which is recorded in Genesis 23:16 and the Grave of Joseph (*Kever Yosef*) in Nablus, which is recorded in Genesis 33:19.

should be noted that during the entire period of the Muslim occupation of Jerusalem, beginning with Caliph Omar and throughout the Ottoman period, Jerusalem was not a capital city. Even when Jordan occupied a portion of Jerusalem from 1948 to 1967, it did not move its capital to Jerusalem; but, rather, maintained its capital in Amman.

Moreover, the Jewish People never ceded or voluntarily gave up their right to the Land of Israel. There are no treaties extant where the Jewish People legally surrendered their rights.⁵⁰

Yet, as the Midrash and Rashi predicted, there would be those who would nevertheless seek to challenge Israel's title to the Land of Israel. The fact of the matter is that the issue of Jewish sovereignty over the Land of Israel has been litigated and decided in favor of the Jewish People on more than one occasion. It is not some novel legal question raised for the first time in a case of first impression, and the propaganda efforts directed at disassociating Jews from Israel are absurd.

One of the first such legal actions⁵¹ was brought approximately 2,350 years ago by descendants of the Canaanites,⁵² who as noted above were ancient occupiers of the Land of Israel. The judge was no less a personage than Alexander the Great.

The question arose as to who would represent the Jewish People in the defense of this momentous and extremely risky case. After all, the fate of the Jewish People hung in the balance. An adverse verdict would have meant the dispossession of the Jewish People from the land of their ancestors, the Land of Israel.

Geviha⁵³ presented himself to the Sages and suggested he could handle the case. He counseled that sending him might afford the Sages some downside risk protection. Since he was not a recognized member of the presiding body of the Sages, therefore, his role might be disavowed if

⁵⁰ See, for example, *The Rape of Palestine*, by William B. Ziff (Martino Publishing, 2009), pp. 23-24.

⁵¹ *Megillat Ta'anit*, Sivan 25; BT *Sanhedrin*, at p. 91a; and *Bereishit Rabbah* 61.

⁵² See Jerusalem Talmud (JT) *Shevi'it* 6:1, at p. 18a of the Zhitomir edition, as well as the Maharsha, in his commentary on the BT *Sanhedrin* (p. 91a) text noted above. The plaintiffs were descendants of the Girgashites, who left the land of Canaan, as Joshua and the Jewish people entered it. They resettled in a country, known as Afrikiya (see the Jerusalem Talmud, *Shevi'it* text, noted above). They are referred to as the children of Afrikiya in the *Sanhedrin* text noted above and as Canaanites in the *Megillat Ta'anit* (Sivan 25) and *Bereishit Rabbah* (61) texts noted above.

⁵³ He is referred to as Geviha ben Pesisa in the BT *Sanhedrin* (p. 91a) and *Megillat Ta'anit* (Sivan 25) texts noted above and Geviha ben Kosem in the parallel account in the *Bereishit Rabbah* (61) text noted above.

things went sideways. He was just an ordinary proverbial country lawyer taking his chances against a world-class prestigious law firm on the other side. Therefore, the credibility of the Sages would not be on the line.

At the trial, Geviha examined the plaintiffs and asked what proof they had to support their claim to title to Israel. They testified the Torah⁵⁴ was their proof of record title. Well, Geviha handily countered that assertion. He cited the very same Torah⁵⁵ to defeat the Canaanites' claim. As noted above, the Torah reports title to the Land of Israel was vested in the Children of Israel as an inheritance. The Canaanites had no legitimate claim to title to the Land. Moreover, the Canaanites had compounded their illegal occupation of the Land by sinning mightily and G-d assured the Jewish People the Canaanites would be dislodged.⁵⁶

Geviha moved for summary judgment dismissing their claims. He also asserted a counterclaim.⁵⁷ Alexander turned to the Canaanite plaintiffs and said he was granting the motion and ruling in favor of the Jewish People, including on Geviha's counterclaim, unless they could provide a compelling and convincing answer to the case presented by Geviha.

The Canaanite plaintiffs had no response and so they asked for an adjournment of three days. It just delayed the inevitable, because they could not formulate any answer, since they had none. The fact was the very same Torah they relied on as evidence actually proved title was properly vested in the Jewish People. It also supported the counterclaim asserted by Geviha against them for non-performance of services. Thus, judgment was rendered in favor of the Jewish People both dismissing the Canaanite claim and on Geviha's counterclaim. It would appear that the Canaanites used the three-day adjournment as a subterfuge. It permitted them time to flee the jurisdiction. Perhaps, this was in order to avoid the enforcement of the counterclaim.

⁵⁴ Numbers 34:2. It is interesting to note that this Biblical verse cited by the Canaanite plaintiffs actually defeats their claim. It describes how the land of Canaan, according to its borders, is the land that shall belong to the People of Israel.

⁵⁵ Genesis 9:25. The Maharsha, in his commentary on the *Sanhedrin* (91a) text noted above, also explains there are other verses in the Torah evidencing the Jewish People's title to the Land of Israel. Some examples are cited below. He also refers to the Rashi commentary on Genesis 1:1, summarized above.

⁵⁶ See, for example, Deuteronomy 7:1 and 20:16.

⁵⁷ For all the many years of services they failed to provide to the Nation of Israel. See, for example, the Gibeonites, who as a part of their peace arrangement with Israel, agreed to perform certain services for the community and in support of the Temple services (Joshua 9 and see also JT *Kiddushin* 4:1 and *Sanhedrin* 6:7).

If, as some so-called Palestinians claim,⁵⁸ they are descendants of the Canaanites, then the matter of title to the land of Canaan, including Jerusalem, has already been resolved in favor of the Jewish People. Their purported ancestors were parties to the lawsuit before Alexander the Great, noted above. The matter was adjudicated; they lost and the Jewish People won. I cannot help but wonder if these pretenders to the mantle of the Canaanites realize they are also thereby assuming the status of being among the most notorious sinners⁵⁹ in the Torah?

Others argue they are descendants of the Philistines. It is a clever, albeit contrived, subterfuge. It attempts culturally to appropriate the history of the Philistines that is the source of the name Palestine given to the Land of Israel by the Romans in an attempt to erase its identity as a Jewish country. However, this claim fares no better. As the Torah records, the Philistines invaded the Land of Israel and illegally occupied portions. The Jewish People were forced to defend against the Philistine invasion. In a series of climactic battles,⁶⁰ David, first as a young warrior in King Saul's army and then, as the King of Israel, defeated the Philistine invaders and re-conquered the Land. It should also be noted that the Philistines were of Greek origin and not Arabs.⁶¹

The descendants of Ishmael and Keturah, as plaintiffs, also brought a legal action⁶² against the People of Israel. Once again, Alexander the Great was the judge and Geviha was the attorney for the Jewish People. The plaintiffs argued that they too were children of Abraham like Isaac and cited the Torah⁶³ in support of their position. Therefore, they asserted they too were entitled to a share of the Land of Israel, as an inheritance from their father Abraham. Indeed, the children of Ishmael argued they were entitled to a double portion, as the first-born.⁶⁴

⁵⁸ See Camera, February 19, 2014, *Saeb Erekat's Fabrication Exposes 'Palestinian Narrative.'*

⁵⁹ See, for example, Deuteronomy 9:5, Leviticus 18:24-25, and Deuteronomy 18:9 and 12.

⁶⁰ See, for example, I Samuel 17:26 and 19:8, as well as II Samuel 8:1.

⁶¹ See, for example, "The Philistines Were Likely of Greek Origin, According to DNA," by Philip Chrysopoulos, in the *Greek Reporter*, dated 5/18/2022 and "Ancient DNA may reveal origin of the Philistines—Historical accounts and archaeology agree that the biggest villains of the Hebrew Torah were 'different'—but how different were they really?" by Kristin Romey, in *National Geographic*, dated 7/3/2019. The Torah (Amos 9:7) records the Philistines came from Caphtor.

⁶² *Megillat Ta'anit*, Sivan 25; BT *Sanhedrin*, at p. 91a; and *Bereishit Rabbah* 61.

⁶³ Genesis 25:12 and 19.

⁶⁴ Deuteronomy 21:17.

At trial, Geviha also adduced evidence from the Torah.⁶⁵ In essence, it records that Abraham gifted all his property during his lifetime. He gave Isaac all he owned. He gave his other children gifts of money⁶⁶ and/or ancestral property⁶⁷ in the land of the east. He also sent them there, far away from Isaac and the Land of Israel, because he wanted to avoid any disputes or quarrels about inheritance among his sons, after he passed on.⁶⁸ Hence, he settled all matters relating to his property during his lifetime, preferring not to rely on a will and someone else having to carry out his instructions.⁶⁹ Thus, Geviha asserted, as the Torah records, title to the Land of Israel belonged wholly to Isaac and his progeny, the Children of Israel. Once again, Geviha won the lawsuit.

If, as many Palestinian Arabs claim, they are descendants of Ishmael,⁷⁰ then the matter of title to the land of Canaan, including Jerusalem, has already been resolved in favor of the Jewish People. Their ancestors were parties to the lawsuit before Alexander the Great. The matter was adjudicated; once again, they lost and the Jewish People won. In this regard, it should also be noted, the Qur'an⁷¹ itself recognizes that the Land of Israel belongs to the Jewish People.

Yet, the matter of title to Jerusalem and the Land of Israel continues to be re-litigated. As noted above, Rashi predicted this would be the case. Rashi's answer is reminiscent of a land title legend, involving an opinion of title issued by a Louisiana attorney to a bureaucrat at the FHA. It seems that the federal official did not accept title being traced back only 194 years; he wanted it traced back to its origin. In a somewhat sarcastic reply, the attorney reportedly proceeded to discuss the origin of title to the land, for the edification of the uninformed FHA bureaucrat, in the manner paraphrased below. He noted, as most school children know, the United States acquired ownership of Louisiana from France, in 1803, in what is commonly known as the Louisiana Purchase. France acquired the land by Right of Conquest from Spain. It, in turn, acquired it by Right of Discovery in the year 1492, through the efforts of a sea captain named Columbus. He did this in the course of his mission seeking a new route to India, as authorized by Queen Isabella of Spain. Before the Queen granted this authority, she obtained the sanction of the Pope. In essence, his sanction, as the supreme religious authority in Europe, was deemed to represent

⁶⁵ Genesis 25:5-6.

⁶⁶ See Ibn Ezra, as well as Rashbam commentaries on Genesis 25:6.

⁶⁷ See Hizkuni commentary on Genesis 25:6

⁶⁸ See Radak and Sforno commentaries on Genesis 25:6.

⁶⁹ Ibid., Sforno.

⁷⁰ See *The Arab Claim to Palestine because they are descendants of Ishmael*, by Robert Morey.

⁷¹ Qur'an 5:21, 17:104, 7:137, 26:59 and 10:93.

approval of G-d for the expedition. Of course, the Louisiana attorney declared, it is commonly accepted that G-d created the world and it is safe to assume that Louisiana was a part of the world. The attorney concluded that G-d would, therefore, be the owner of origin. He said he hoped to (expletive deleted), the FHA bureaucrat would find this original claim to be satisfactory and his client could now have his (expletive deleted) loan.

Whether this legendary tale was true or not, it provides a real-world context for Rashi's remarks at the very beginning of Genesis and those of the other Biblical commentators, summarized above. It also adds contemporary color to the deep understanding and amazing insights Rashi possessed so long ago. Frankly, saying Rashi is a profoundly respected Biblical commentator and authority is an understatement. His pithy comments continue to resonate through the ages.

In modern terms, the Torah provides a title abstract, which traces the chain of title to the Land of Israel and shows that it is properly vested in the Jewish People. Many things have changed since Rashi's times. He lived in the period of the Crusades, when European Christian powers fought with Islamic ones over control of the Land of Israel. Jews were living there at the time and, thereafter, to date. They also lived there for thousands of years before that, as noted above. This despite all the hardships they have endured. Empires rose and fell. A good portion of the Middle East, including the Land of Israel, was conquered and controlled by the Ottoman Empire during the period 1517-1917. The Ottoman Empire was on the losing side of World War I. This set the stage for the establishment of new or reconstituted sovereign states, out of the portions of its former empire, which it ceded to the victorious allies, as summarized below.

Today, the Jewish State of Israel governs the Land of Israel. However, some things have not changed. As Rashi anticipated, there are still those who continue to rehash the same old bogus claims that they and not the Jewish People are the rightful owners of the Land of Israel.

Having summarized how these title claims were adjudicated in ancient times, we come now to the early 20th-century version. This time the context was the end of World War I. Representatives of the victorious allies, including the United States, Britain, Italy, France, and Japan, met in Paris in 1919. They had triumphed over the central powers, Germany, the Austro-Hungarian Empire, and the Ottoman Empire and they received presentations by various delegations of all sorts of claims to lands previously comprising a part of the German, Ottoman, and Austro-Hungarian Empires. Thus, for example, in Europe, Poland was reborn, the borders of Czechoslovakia and Romania were fixed and recognized, and the country of Yugoslavia was created.

The Jewish People also presented their claim to an area that had been a part of the Ottoman Empire, which was referred to as Palestine, at the time. The Jewish delegation included Dr. Chaim Weizmann, the future first president of the State of Israel. The Arab people also presented their claims. Emir Feisal led the Arab delegation.

Thereafter, in 1920, the Supreme Council of Allied Powers met in San Remo, Italy, to resolve many of these claims. The context is important. The Central Powers ceded control of portions of their empires to the Allied Powers, under the peace treaties signed with them. This included the area referred to as Palestine (now the country of Israel), as well as the areas that would become Turkey, Armenia, Iraq, Syria, Lebanon, and Saudi Arabia.

Under International Law, the Supreme Council had the power to dispose of these various territories that were formerly a part of the Ottoman Empire. It was in this capacity that the Supreme Council dealt with the claim of the Jewish People to an area referred to as Palestine (now the country of Israel). The claim was based on their historic title to the Land of Israel. The Jewish People sought to reconstitute their national home in Palestine, as an autonomous commonwealth. The Arab people also presented their claims.

The Minutes of the Meeting of the Supreme Council⁷² on the matter of Palestine are most illuminating. They reflect that representatives of the United States, British Empire, France, Italy, and Japan were present. The meeting also considered the matter of determining the borders of Turkey and Armenia, as well as issues related to Syria and Mesopotamia (current-day Iraq).

The Supreme Council Minutes record the discussions regarding the area denominated as Palestine and it being a national home for the Jews. In this regard, it is important to appreciate that presentations were made by Jewish as well as Arab delegations, asserting claims to Palestine. Members of the Syrian Delegation⁷³ met with the Supreme Council on February 13, 1919.⁷⁴ They argued that Palestine should be a part of Syria. On

⁷² Minutes of Palestine Meeting of the Supreme Council of the Allied Powers Held in San Remo at the Villa Devachan, April 24, 1920.

⁷³ The Syrian Delegation included Chekri Ganem, an Arab Maronite Christian and Jamil Mardam Bey, an Arab Muslim, who helped organize the Arab Congress of 1913 in Paris and eventually became a Prime Minister of Syria.

⁷⁴ See, *America and Palestine: the attitude of official America and of the American people toward the rebuilding of Palestine as a free and democratic Jewish commonwealth*, prepared and edited by Reuben Fink, New York: American Zionist Emergency Council (1944), at pp. 445-446.

February 6, 1919, Emir Feisal, as head of the Hedjaz Delegation, is reported to have said, Palestine should be left on the side, for the mutual consideration of all parties concerned.⁷⁵

Reference was made to the new projected State in the area denominated as Palestine and its borders. Consideration was also given to the civil and religious rights of the non-Jewish communities residing in Palestine.

The Supreme Council considered the claims of the various parties, deliberated and decided title to Palestine was vested in the Jewish People.⁷⁶

In furtherance of the foregoing, the Supreme Council determined that Palestine would be reestablished as a national home for the Jews and a mandatory would be entrusted with implementing the foregoing, under Article 22 of the Covenant of the League of Nations. The terms of the mandate were to be formulated by the Principal Allied Powers, who constituted the Supreme Council and submitted to the Council of the League of Nations for approval. This occurred and the terms of the mandate were approved, as noted below. The effect was to confirm, as a matter of International Law, the reestablishment of Palestine as a national home for the Jewish People.

The Council of the League of Nations⁷⁷ unanimously adopted the San Remo Resolution⁷⁸ on Palestine.⁷⁹ It thereby became an international agreement, binding on all the member countries, which, in effect, confirmed title to Palestine (Israel) in the People of Israel, under International Law. It recited that recognition had been given to “the historical connection of the Jewish People with Palestine and to the grounds for reconstituting their national home in that country.”⁸⁰

Interestingly, Rabbi Meir Simchah of Dvinsk (known for his seminal work, the *Meshekeh Hochmah*) referenced San Remo and the League of Nations’ reaffirmation of San Remo in a letter,⁸¹ citing it for the proposition

⁷⁵ Ibid., at p. 442.

⁷⁶ See *Sovereignty Over the Old City of Jerusalem: A Study of the Historical, Religious, Political and Legal Aspects of the Question of the Old City*, by Jacques Paul Gauthier (2007).

⁷⁷ By Resolution, dated July 24, 1922.

⁷⁸ Adopted on April 25, 1920.

⁷⁹ The very same resolution provided for the establishment of Syria and Mesopotamia (Iraq).

⁸⁰ In the Preamble to the Resolution unanimously adopted by the Council of the League of Nations.

⁸¹ The letter is reproduced in *Ha-Tekufah HaGedolah*, by Rav Menachem Kasher, Volume I, at p. 207, et seq.

that it represented the legal sanction of the nations of the world to reestablish the Jewish State of Israel and vitiating any concerns under the so-called *Shalosh Shavnot* (Three Oaths) referenced in *Ketubot*.⁸²

There are a number of very important legal concepts embodied in this provision of the Council resolution. It effectively confirmed the Jewish People as the recognized indigenous people of Palestine for over three thousand five hundred years and, as noted above, rejected the claims of others. This absolutely demolishes the fallacious claim that Jews are just modern-day colonialists.

The Council resolution also did not purport to grant the Jewish people a newly minted right to Palestine; rather, it recorded that recognition had been given to the “grounds for” reconstituting their national home in that country. Thus, it was a pre-existing legal right that was recognized and acknowledged. Consistent with this principle, it called for “reconstituting” the Jewish People’s national home in their homeland of Palestine, not building a new national home there, which had no prior existence.

The use of the term “country” in the Council resolution is also cogent. It was no longer referred to as a geographical territory in the former Ottoman Empire; rather, Palestine was now referred to as a country. The sovereignty and legal title to the country of Palestine was vested in the Jewish People.

Article 4 of the resolution provided for a Jewish agency to be recognized as a public body and putative government to assist in the reestablishment of the Jewish national home, including taking part in the development of the country.

Article 6 of the resolution provided for settlement of Jews on the land, including State lands.

Article 11 of the resolution provided for the Jewish Agency to be able to construct or operate public works, services, and utilities and develop any of the natural resources of the country.

The Council entrusted a Mandate to Britain to implement the resolution of the League of Nations. Of course, the civil and religious rights of existing non-Jewish communities in the country were not to be prejudiced and the granting instrument so provides.

Thus, Article 2 of the resolution provided for the Mandatory to place the country under such “political,” administrative, and economic conditions as shall enable the reestablishment of the Jewish National Home and the development of self-governing institutions. Political rights were reserved only to the Jewish People. As to all the inhabitants of Israel, their

⁸² BT *Ketubot* 111a.

civil and religious rights were to be safeguarded, but only the Jewish People were granted political rights.

Article 7 of the resolution expressly provided for the administration of Palestine to be responsible for enacting a nationality law, which shall include provisions framed to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine. In essence, International Law expressly provided for a law of return for Jews to their native homeland of Palestine [Israel]. No similar provision was made for anyone else.

As Eugene Rostow⁸³ makes clear,⁸⁴

By protecting Arab “civil and religious rights,” the mandate implicitly denies Arab claims to national political rights in the area in favor of the Jews; the mandated territory was in effect reserved to the Jewish People for their self-determination and political development, in acknowledgment of the historic connection of the Jewish people to the land. Lord Curzon, who was then the British Foreign Minister, made this reading of the mandate explicit.

Lest there be any doubt, Article 5 of the Council’s resolution provided that “no Palestine territory shall be ceded or leased to, or in any way placed under the control of the Government of any foreign Power.” In essence, the title to the country of Palestine granted to the Jewish People at San Remo could not be revoked or granted to another by the Mandatory authority or the League. This legally includes the UN, as the successor to the League. Palestine belongs to the Jewish People.

The San Remo Resolution was also a part of the Treaty of Sevres⁸⁵ with the Ottoman Empire and, in effect,⁸⁶ ratified by the Treaty of Lausanne of 1923 with Turkey.

⁸³ Eugene V. Rostow, Sterling Professor of Law and Public Affairs Emeritus, Yale University; Distinguished Research Professor of Law and Diplomacy, National Defense University; Adjunct Fellow, American Enterprise Institute, and Honorary Fellow of the Hebrew University of Jerusalem. He was also the Dean of Yale Law School and served as the Under Secretary of State for Political Affairs under President Lyndon B. Johnson.

⁸⁴ “The Future of Palestine,” by Eugene V. Rostow, McNair Paper 24, November 1993, *Institute for National Strategic Studies*, National Defense University, Washington, D.C.

⁸⁵ Article 95.

⁸⁶ Article 16.

The Resolution of the Supreme Council of Allied Powers at San Remo was also endorsed in the Anglo-American Treaty on Palestine.⁸⁷ It actually incorporated the text of the resolution of the Council of the League of Nations, referred to above. It should be noted that the Anglo-American Treaty, among other things, provides as follows:

Whereas the Principal Allied Powers have agreed, for the purpose of giving effect to the provisions of article 22 of the Covenant of the League of Nations, to entrust to a Mandatory selected by the said Powers the administration of the territory of Palestine, which formerly belonged to the Turkish Empire, within such boundaries as may be fixed by them;

Whereas recognition has thereby been given to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country;

Article 5. The Mandatory shall be responsible for seeing that no Palestine territory shall be ceded or leased to, or in any way placed under the control of, the Government of any foreign Power.

Article 6. The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage, in co-operation with the Jewish agency referred to in article 4, close settlement by Jews on the land, including State lands and waste lands not required for public purposes.

Article 7. The Administration of Palestine shall be responsible for enacting a nationality law. There shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine.

The Treaty was concluded and signed by the respective representatives of the US and UK in London on December 3, 1924. The US Senate ratified it, under its power to advise and consent, on February 20, 1925, and President Calvin Coolidge approved it on March 2, 1925. It was formally ratified by Great Britain on March 18, 1925. The respective ratifications were exchanged and the Treaty formally proclaimed on December 5, 1925.

⁸⁷ It was also known as the Anglo-American Convention. It was signed on December 3, 1924, and ratified by the U.S. Senate on February 20, 1925, as noted below.

The Treaty, thus, formally and legally recognized the right of the Jewish People to sovereignty over all of Palestine, between the Jordan River on the East and Mediterranean Sea on the West,⁸⁸ including, of course, Jerusalem. Notwithstanding that the British Mandate over Palestine was terminated,⁸⁹ nevertheless, the rights granted under the Treaty to the Jewish People survive, as confirmed by the Vienna Convention on the Law of Treaties.⁹⁰ Therefore, it is respectfully submitted, it was and still is US Law that Jews have the right to settle in Judea and Samaria, including, without limitation, Jerusalem. This right was recognized by the President and is embodied in US law. In this regard, it is also submitted that the US may not promote a so-called Palestinian state that prohibits Jewish settlement in any part of the area of the original Mandate,⁹¹ which perforce includes Jerusalem.

The United States Constitution provides that the President “shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur.”⁹² Treaties are binding agreements between nations and become part of International Law. Treaties to which the United States is a party that are approved by the Senate also become the “supreme Law of the Land” under the Constitution⁹³ and those that are self-executing automatically have the force of federal legislation.⁹⁴

⁸⁸ See Article 25 of the Treaty, which only allows some flexibility as to the areas, which are a part of the Mandate that are east of the Jordan River; not west, which is all set aside for the reestablishment of the then nascent modern State of Israel.

⁸⁹ After the UNGA adopted Resolution 181, on November 29, 1947, Britain announced the termination of its Mandate for Palestine, which became effective on May 15, 1948. At midnight on May 14, 1948, the State of Israel declared its independence.

⁹⁰ Article 70, Consequences of the termination of a treaty, Section 1(b), of the Vienna Convention on the Law of Treaties (1969).

⁹¹ See Chapters I and II above, as well as “Legal Rights and Title of Sovereignty of the Jewish People to the Land of Israel and Palestine under International Law,” by Howard Grief, at Nativ online, *A Journal of Politics and the Arts*, Vol. 2 of 2004 (acpr.org.il).

⁹² US Constitution, Article II, Section 2.

⁹³ US Constitution, Article VI, Section 2.

⁹⁴ See United States Senate-About Treaties, at senate.gov. and Treaties and Other International Agreements: The Role of the United States Senate, A Study Prepared for the Committee on Foreign Relations, United States Senate, by the Congressional Research Service, Library of Congress, January 2001. Self-executing treaties are those that do not require implementing legislation. They automatically become effective as domestic law immediately upon entry into force.

In ratifying the Treaty, the US legally recognized the terms of the Palestine Mandate, pursuant to the San Remo Resolution, and the historical connection of the Jewish People with Palestine, as well as the reconstitution of their national home there. In this sense, this was the first US law that recognized the Jewish People's right to Jerusalem.⁹⁵

Interestingly, when the British illegally adopted the White Paper in 1939, restricting immigration by Jews to then Mandatory Palestine, a bipartisan group of fifteen⁹⁶ (out of the twenty-five) members of the House Foreign Affairs Committee urged the State Department to protest the British White Paper⁹⁷ and advise the British Government that it would be regarded as a violation of the 1924 Anglo-American Treaty. The group declared that the British plan to limit Jewish immigration to the Holy Land and attempt to fix the Jews as a permanent minority was a clear repudiation of the Treaty. They also said it was the duty of the American Government to see to it that the treaty was carried out in good faith.

Other treaties do not become effective as domestic law until implementing legislation is enacted and then technically it is the legislation, not the treaty unless incorporated into the legislation, which is the law of the land.

⁹⁵ The Jewish People never gave up their title to the Land of Israel, including, of course, Jerusalem. There is no recorded treaty of surrender or abandonment of the Land of Israel by the Jewish People. Not only did the Jewish People never renounce their claim to Jerusalem, the references to Jerusalem in the Jewish prayer rituals are, in effect, a continuing protest that disputes the occupation of the Land of Israel by others. See, *Zionism, Palestinian Nationalism and the Law 1938-1948*, by Steven E. Zipperstein (Routledge: 2021). It should also be noted that the Arabs living in Judea and Samaria, who now call themselves Palestinians, did in fact renounce any claims to sovereignty over the areas of Judea and Samaria, including Jerusalem, which were illegally annexed by Jordan, as more fully discussed below, in this book.

⁹⁶ Seven Republican and eight Democrat Congressmen, including Sol Bloom, New York; Luther A. Johnson, Texas; John Kee, West Virginia; James P. Richards, South Carolina; James A. Shanley, Connecticut; Ed. V. Izac, California; Robert G. Allen, Pennsylvania; W. O. Burgin, North Carolina; Hamilton Fish, New York; George Holden Tinkham, Massachusetts; Edith Nourse Rogers, Massachusetts; Bruce Barton, New York; Robert J. Corbett, Pennsylvania; John M. Vorys, Ohio; and Andrew C. Schifiler, West Virginia.

⁹⁷ See Congressional Record, May 25, 1939, at page 6167 and 15 of House Foreign Affairs Body Hold White Paper Breaks Anglo-American Pact, at JTA, dated 5/28/1939.

President Franklin D. Roosevelt also later noted⁹⁸ that the US had never given its approval to the White Paper and reaffirmed support for the recreation of the Jewish commonwealth in Israel.

This was consistent with US policy as expressed by Presidents Wilson, Harding, Coolidge, and Hoover before him.⁹⁹ President Teddy Roosevelt, when he was a private citizen, in 1918, wrote,¹⁰⁰ “it seems to me that it is entirely proper to start a Zionist state around Jerusalem.” He also wrote a letter¹⁰¹ outlining how he believed it was critical that the Jews be given control of Mandatory Palestine.¹⁰²

The UN did not and could not change the legal status of the Land of Israel as unanimously confirmed by the League of Nations, as noted above. The UN Charter¹⁰³ expressly provides that it has no authority to do so.¹⁰⁴ The invasion by Jordan of the State of Israel in 1948 and its occupation of portions of Judea and Samaria, including the Old City of Jerusalem, containing the Temple Mount and Western Wall, was contrary to International Law and clearly illegal. This state of affairs continued until June of 1967, when, during the Six Day War, Jordan attacked Israel. In this defensive war with Jordan, Israel re-captured the eastern portion of

⁹⁸ See “Roosevelt Receives Zionist Leaders; Says U.S. Never Approved White Paper,” in *JTA*, dated 3/10/1944.

⁹⁹ See “America and Palestine: The attitude of official America and of the American people toward the rebuilding of Palestine as a free and democratic Jewish commonwealth,” prepared and edited by Reuben Fink, New York: American Zionist Emergency Council (1944), at pp. 87-88. See also, Letter by Congressman Dingell (Michigan) to Secretary of State Hull, dated 5/20/1939, reproduced on page 283.

¹⁰⁰ Cited by Michael Oren, in his book “Power, Faith, and Fantasy: America in the Middle East 1776–the Present” (W.W. Norton: 2007), at p. 359.

¹⁰¹ Letter from Theodore Roosevelt to Lioubomir Michailovitch, the Serbian Minister, dated July 11, 1918, which can be found in the Theodore Roosevelt Center.org, digital library.

¹⁰² Jerusalem was an integral part of Mandatory Palestine and it is, therefore, fully a part of the Land of Israel. There was no carve-out for Jerusalem in any of the foregoing sources of International Law confirming title to the country of Palestine in the Jewish People. To be clear, there were provisions made regarding respecting the rights of worship at the Holy Places. These, though, are indicative of sovereignty over Jerusalem, like the rest of Mandatory Palestine, being fully vested in the Jewish People. Otherwise, why speak of respecting only certain rights? Indeed, the fact remains, it is only under Jewish sovereignty and control that these rights were and continue to be respected.

¹⁰³ Article 80.

¹⁰⁴ The famous UN General Assembly Resolution 181 (Partition Plan for Palestine) was really nothing more than a recommendation.

Jerusalem and the other areas west of the Jordan River, which had been unlawfully occupied by Jordan since 1948.

Thereafter, the Knesset of Israel adopted Laws¹⁰⁵ enabling the application of Israeli law and administration to Jerusalem and other areas recaptured and the extension of municipal boundaries, consistent with the foregoing. The Knesset later adopted a Basic Law: Jerusalem,¹⁰⁶ which declared that the complete and united Jerusalem was the capital of Israel. This was also recognized under US law in the Jerusalem Embassy Act of 1995.¹⁰⁷

The US State Department, under Secretary of State Mike Pompeo, in the Trump administration,¹⁰⁸ correctly dropped the reference to occupied territories regarding Judea and Samaria. Secretary Pompeo declared¹⁰⁹ that Israeli communities in Judea and Samaria were not per se illegal under International Law. In line with the foregoing, efforts were initiated by Secretary Pompeo and US Ambassador David Friedman to eliminate territorial restrictions for bilateral agreements.¹¹⁰ Thus, for example, Ambassador Friedman signed a new protocol that eliminated the broad restrictions on funding of scientific projects in certain areas beyond the so-called Green Line.¹¹¹ Secretary Pompeo also initiated new guidelines¹¹² that all items produced within areas where Israel exercises the relevant authorities—most notably Area C under the Oslo Accords—would be

¹⁰⁵ Volumes 1-2 of Laws, 1947-1974, Part IV. Jerusalem and the Holy Places, Section 13. Law-1967 and Administration Ordinance (Amendment 11) Law-1967, which were adopted on June 27, 1967. Also adopted, was Municipalities Ordinance (Amendment 6) Law-1967, which added after Section 8, new subsections 8a-b, which, among other things, enabled enlargement of the area of the municipality.

¹⁰⁶ On July 30, 1980, published in *Sefer Ha-Chukkim* No. 980 (1980).

¹⁰⁷ Public Law 104-45, dated November 8, 1995 and known as the Jerusalem Embassy Act of 1995.

¹⁰⁸ See, for example, “State Dept. drops ‘occupied’ reference to Palestinian territories,” in report, by Michael Wilner, in the *Jerusalem Post*, dated 4/22/2018 and “Judea/Samaria not ‘occupied,’” in *Heritage Florida Jewish News*, by World Israel News, dated 5/4/2018.

¹⁰⁹ On November 18, 2019. See, for example, “Full text of Pompeo statement on settlements,” by TOI Staff, in the *Times of Israel*, dated 11/19/2019 and “Pompeo is right, the settlements are not illegal,” by Yigal Dilmoni, in the *Jerusalem Post*, dated 11/25/2019.

¹¹⁰ See, “US to extend bilateral agreements with Israel into Judea and Samaria, Golan,” at *JNS*, dated 10/27/2020.

¹¹¹ See, “PM fetes ‘important victory’ as US okays funding science projects in settlements,” by Raphael Ahren, at the *Times of Israel*, dated 10/28/2020.

¹¹² Statement of Secretary Pompeo, dated November 19, 2020-Markings of Country of Origin.

marked as “Israel,” “Product of Israel” or “Made in Israel,” when exporting to the US.

There have been a number of cases before the Supreme Court of Israel that have dealt with the legal status of Jerusalem and other areas recaptured from Jordan, in 1967. One example is the case of Temple Mount Faithful, et al. vs. Attorney General, et al.¹¹³ In that case, the Supreme Court of Israel, in a well-reasoned opinion, issued in 1993, held that Jerusalem, including the area of the Temple Mount, was a part of the State of Israel. It also held that the laws, jurisdiction, and administration of the State of Israel applied to Jerusalem.¹¹⁴

The legal status of Jerusalem was also considered by the French Court of Appeals of Versailles, in the case of PLO et ano vs. Société Alstom Transport SA, et al.¹¹⁵ Mahmoud Abbas appeared for the PLO, as President of the Executive Committee. The decision the Court issued, in 2013, once again confirmed that the State of Israel was vested with sovereignty and title to Jerusalem, under International Law. The defendant was involved with the tramway in Jerusalem. The PLO alleged the State of Israel was occupying so-called Palestinian territory illegally and was continuing with illegal settlement through the building of the Jerusalem tramway. It claimed a breach of Article 49 of the Fourth Geneva Convention, which provides that an Occupying Power shall not forcibly transfer parts of its own civilian population into the territory it occupies. However, there was no such forcible transfer and thus Article 49 was inapplicable. It also

¹¹³ Temple Mount Faithful-Amutah, et al. vs. Attorney General, Inspector General of the Police, Mayor of Jerusalem, Minister of Education and Culture Director of the Antiquities Division, Muslim WAQF (H.C. 4195/90). The Supreme Court, sitting as the High Court of Justice (highest court of the State of Israel) on this case, was comprised of Justices Menachem Elon, Aharon Barak, and Gavriel Bach. Their decision was dated September 23, 1993. An English translation of the decision was published in 45 Cath. U. L. Rev. 866 (1996).

¹¹⁴ Lest anyone incorrectly presume that the Supreme Court of Israel is biased in favor of Jews and against Arabs, here is another example, which demonstrates, in no uncertain terms, the impartial and unbiased character of the Israeli Supreme Court. In the case of Hamad vs. Minister of Defense, et al., the Supreme Court of Israel, sitting as the High Court of Justice, found that homes illegally constructed in Amona, on private land owned by Arab residents in the adjacent town of Silwad, had to be demolished and vacated (decided on December 12, 2014-HCJ 9949/08). The Israeli Supreme Court also counts among its number Justice Khaled Kabub, of the Muslim faith, as well as previous Arab jurists, who happened to be of the Christian faith.

¹¹⁵ France-Palestine Solidarité, et ano vs. Société Alstom Transport SA, Cour d’Appel de Versailles, Code nac: 59a (R.G. No. 11/05331), decided March 22, 2013.

claimed a violation of Article 53, which prohibits an Occupying Power destroying real or personal property belonging to individuals, the state or other public authorities, except when rendered necessary by military operations. It was claimed that work done on the public road for the construction of the light rail violated this provision.

The French Court of Appeals rejected these as well as the other claims of the Palestinian plaintiffs. The Court held the Palestinians had no legal right to Jerusalem protected by International Law and Israel was legally entitled to build the light rail in the area.¹¹⁶

The Court also challenged the baseless assumptions asserted by the PLO. It held that the PLO's individual assessment as to a political or social situation is not determinative for purposes of legally establishing the purpose or lawfulness of a party's actions. While these kinds of vocal assertions may make for good propaganda on the lecture circuit, they do not constitute legal arguments.

The Court was interested in law and real facts, established by probative evidence, not speculations or mere assertions. Thus, it would not ascribe a nefarious political motive to the actions of the State of Israel, just because the plaintiffs said so. Lest there be any misunderstanding about what the Court meant, it also caustically noted that Article 53 is about bombing and Jerusalem was not being bombed, by building a tramway.

The Court concluded that the State of Israel had a legal right to build the light rail. Indeed, it was constructed for the good purpose of bettering Jerusalem, which it lawfully governed.

It should also be noted the unfounded assertion that Section 49 somehow applies to Israel and Jerusalem is a particularly cruel and ironic canard. This provision was intended¹¹⁷ to prevent a recurrence of such abhorrent actions as Nazi Germany's forcible: a) expulsion from Germany of its Jewish citizens and resettlement in concentration and death camps in occupied Poland; and b) impress of citizens of the countries it conquered as slave laborers in Nazi Germany.

¹¹⁶ The French Court of Appeals also held that the PLO and Palestinian Authority were not states nor were they contracting parties to the Geneva Convention. Therefore, the provisions of the Geneva Convention cited by them did not apply.

¹¹⁷ See Eugene V. Rostow Letter to the Editor, in the *American Journal of International Law*, Volume 84, pp. 717-719 (1990), as well as his letter to the *New York Times*, published April 1, 1992. See also International Committee of the Red Cross (ICRC) Commentary to the Fourth Geneva Convention of August 12, 1949 (edited by Jean S. Pictet), at pp. 278-279 (1958), as well as International humanitarian law, ICRC and Israel's status in the Territories, by Alan Baker, *International Review of the Red Cross*, Volume 94, Number 888 (2012).

It is specious to suggest that the citizens of Israel, who moved to the united city of Jerusalem and other parts of Judea and Samaria, did so because the State of Israel forcibly expelled them and transferred them there. Moreover, Judea and Samaria (including Jerusalem) are not an occupied territory nor is Israel an Occupying Power. It was Jordan which had unlawfully taken and occupied the eastern portion of Jerusalem, including the Old City, and other areas of Judea and Samaria. Israel fought a lawful defensive war against Jordan and recaptured territory, which had originally been vested in the Jewish People of Israel, as detailed above.¹¹⁸

Despite all the pious-sounding pronouncements accusing Israel of violating International Law or being in illegal occupation of Judea (including Jerusalem) and Samaria, this is just not the case. Indeed, as summarized above, courts of competent jurisdiction have ruled in favor of Israel denying the validity of these baseless accusations and validating Israel's right to sovereignty over Jerusalem and other parts of Judea and Samaria.

Having no law or probative factual evidence to support a legitimate claim, the propaganda mills of Hamas, the PA, and their sponsors, allies, and useful dupes loudly proclaim all sorts of baseless and dubious assertions. The noise is often deafening; but it must not be allowed to distract from the central immutable conclusion that the Jewish People are vested with paramount legal title to the Land of Israel.

As the Bible¹¹⁹ declares, those who bless Israel will be blessed. Psalms¹²⁰ also provides that those who pray for the wellbeing of and love Jerusalem, as the Jewish People do, will enjoy repose and security. ❧

¹¹⁸ See "Historical Approach to the Issue of Legality of Jewish Settlement Activity," by Eugene W. Rostow, in *New Republic*, on April 23, 1990.

¹¹⁹ Numbers 24:9.

¹²⁰ Psalms 122:6.