



## Israeli Backers of the Two-State Solution Should Support the Levy Report

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**EXECUTIVE SUMMARY:** Israeli advocates of the two-state solution should support the findings of the Levy Commission, which affirms Israel's right to settle in the West Bank. Israel will thus be viewed as giving up its own territory in any future agreement. Israeli citizens should not deny their country's rights in order to strengthen the argument for removing settlements.

Opponents of Israeli settlements in the West Bank and supporters of a two-state solution should support the Levy Commission's affirmation of Israel's rights in the territories. The Commission concluded that "Israelis have the legal right to settle in Judea and Samaria and the establishment of a settlement cannot, in and of itself, be considered illegal." It did not say, however, that the settlements should stay where they are.

The objection made to many or all of the settlements is that they are thought to interfere with peace negotiations and/or block a two-state solution. These arguments are just as strong if the settlements are considered legal as they are if they are thought to be illegal; the question of legality is separate from that of prudence about Israel's settlement policy. The Levy Commission didn't claim that its findings about the legal status of settlements and Israel's claims to Judea and Samaria meant that Israel should keep the settlements, nor did it reject the idea of transferring the bulk of Judea and Samaria to a Palestinian state. It also did not speak of the disputes about private ownership of particular pieces of land used for settlements.

There are two problems with the common assumption that one who feels strongly about restricting settlements and negotiating a two-state solution

should strengthen his case by supporting the international position that the settlements are not just imprudent but also illegal. First, it is based on a falsehood; the settlements are not illegal. The director of the Israel Policy Forum (IPF) essentially conceded as much to *Haaretz*, while attacking the Levy Commission: “Ambassador Baker seems to have misunderstood the nature of our concerns, which stem from the added impediments the Levy report poses for achieving a diplomatic solution to the Israeli-Palestinian conflict – not the technical and legal reasoning used to arrive at its conclusions, which is irrelevant to our concern.” In other words, he said, the legal arguments of the Commission may be correct, but they make it harder to achieve what we think is the best diplomatic solution. The correct response to the Levy Commission for those who share the IPF’s concerns is to say – as many supporters of the Commission do – that even though the report is correct, it is not a reason to keep the settlements or to object to a Palestinian state.

The second problem is that rejection of the Levy report has the effect of helping the attack on Israel’s legitimacy. The report’s conclusion permits Israel to say, “Our settlements are legal, and we have a legal claim to the land, but because of our desire for peace we will agree to restrict settlements and try to negotiate a division of the land.” This is very different than Israel admitting that it had no right to make the settlements in the first place. Giving up land you own – or may own – to make peace is very different from giving up land that you took with no right. If Israel is seen as a thief who drops the stolen goods, the situation is different than if Israel is viewed as pursuing a compromise towards peace by relinquishing its claim to disputed property.

Israel has very little basis to resist any terms of an imposed international plan concerning the territories if it must admit that Judea and Samaria are “Palestinian land” to which it never had any legal claim, which it has been occupying only because it had the military strength to take it, and because it served security interests. There will be little international sympathy for Israel as an admitted thief.

Fortunately, Israel has not stolen anyone’s land. Even if it is ultimately decided that the way to achieve peace is for almost all of Judea and Samaria to become Palestine, it was not yet Palestinian land when Israel took it. Israel does not have to go into negotiations as a guilty party. The purpose and point of creating the Levy Commission to address the question of law was to enable Israel to stand up against those who want to treat Israel as a thief.

Mainstream Israelis who believe that Israel can only prevent its destruction by restricting or retreating from settlements should endorse the Levy

Commission so that they can urge Israel's government to demonstrate its commitment to peace by not standing on its legal rights, and so that Israel can go into negotiations as a self-respecting and lawful member of the international community. Loyal citizens of Israel should not deny Israel's rights – and its fundamental moral position – in order to improve the argument for their diplomatic strategy.

Some advocates of Israeli withdrawal from the West Bank are so convinced that only such a withdrawal can save Israel that they are willing to brand Israel as a thief of Palestinian land if such a false brand is necessary to compel Israel to end the occupation. Unfortunately a byproduct of that strategy is that it undermines the legitimacy of Israel's claim to its territory within the 1967 lines.

The Levy Commission – like many previous legal opinions – says that the League of Nations Mandate for Palestine, which was reaffirmed in the UN Charter, is still valid. The Mandate was an international decision to designate part of the former Ottoman Empire called Palestine as the Jewish homeland, and it specifically authorized Jewish settlement in all the land west of the Jordan River.

This Mandate is the legal authority for the Jewish state, and it applies equally to both sides of the 1967 lines. Anyone who denies its application to the West Bank denies its application to Tel Aviv and Haifa. While the Mandate doesn't determine what the borders should be in the future, it does say that Israeli settlements were legal, however unwise they may have been, and however much they may now stand in the way of peace.

The previous Netanyahu administration created the Levy Commission because it thought it important to increase recognition of the legal basis of Israeli actions in Judea and Samaria. But in the face of attacks by settlement opponents the government hasn't stood up for the Commission and its report. The government was right to appoint the Levy Commission. The new Netanyahu government should go one step further and adopt the Levy report, and challenge the myth that Israel stole Palestinian land.

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