

Secret – Urgent [handwritten]

Jerusalem, 1 Kislev 5718
November 5, 1956

To: Minister of Foreign Affairs

Copy: Office of the Minister of Defense, Office of the Minister of Justice, Attorney General – Executive Director's Office,
Dr. Y. Robinson

From: Legal Advisor

Re: Administration in Gaza Strip and Sinai Peninsula

This morning, I saw, in the possession of the minister of justice, the proclamation regarding IDF rule over the Sinai Peninsula and the emergency regulations regarding administered territories that were prepared yesterday by the attorney general and referred for the defense minister's signature.

I explained to the minister of justice and the attorney general that, in my opinion, these documents (copies of which are attached hereto) contradict international law and that further political consideration is required prior to their promulgation. The following are my main arguments:

1. According to international law, a transfer of sovereignty does occur simply through military occupation: A transfer of sovereignty occurs only under subsequent diplomatic agreements.
2. Pending transfer of sovereignty, or any other diplomatic arrangement, the rights of the occupying army are limited. It must leave existing law intact and can add to it or amend it only if this is required for the security of the military. Since the emergency regulations apply Israeli law in its entirety to the administered territory, they contradict this principle.
3. The Hebrew phrase "held territory" carries special meaning under the Areas of Jurisdiction and Powers Ordinance 5708 [1948], and it is limited to areas formerly included in mandatory Palestine. Since this term is used in the proclamation, it may lead to a misunderstanding given that the Sinai Peninsula is not included in the areas covered by the ordinance.
4. The military commander's rights in the Gaza Strip and the Sinai Peninsula are rooted in international law only, and they are the rights reserved for the commander of an occupying army. I believe that the proclamations and documents that will be necessary in order to establish military administration in Gaza and the Sinai Peninsula must follow ordinary international law more closely than do the two documents attached.

If we do not follow the course of international law, I fear we will create serious political problems for ourselves, as the proclamations I have seen mean effective annexation of the territories to the State of Israel, with everything this entails legally and politically.

Of course, should the political decision be to follow the course of effective annexation and disregard the accepted norms of ordinary international law, then I have nothing to say about the documents. It is my duty, however, to elucidate to you the meaning of the documents.

Following consultation with the minister of justice this morning, the promulgation of the proclamations has been presently postponed. The matter requires expedient consideration.

Sincerely,

Shabtai Rosen, Legal Advisor