At the Jerusalem District Court Sitting as the Court for Administrative Affairs
Before Honorable Vice President Moshe Sobel

AP 10413-04-22

Petitioner: **Omar Shakir**
Represented by counsel, Adv. Michael Sfard et al.

v.

Respondent: **Coordinator of Government Activities in the Territories**
Represented by the Jerusalem District Attorney's Office (Civilian)

Judgment

1. Administrative petition (amended) against the decision of the Coordinator of Government Activities in the Territories, dated July 20, 2022, to deny Petitioner's request for an Israeli entry visa for the purpose of entering the territories of the Judea and Samaria Area (hereinafter: the Area). The decision, made with government-level approval, cited, as grounds, substantive concern over Petitioner's possible exploitation of his stay in the Area to promote a boycott of Israel and entities operating in Israel and in the Area.

2. The petitioner is a US citizen, currently residing in Amman, Jordan and serving as Israel-Palestine director with human rights organization Human Rights Watch (hereinafter: HRW). Petitioner began his stay in Israel in 2017 as HRW's Israel-Palestine researcher pursuant to a B/1 temporary foreign worker visa granted to HRW until March 31, 2018. Following an administrative petition filed with this court in April 2017 (AP 47430-04-17), the Minister of Interior decided in May 2018 to refrain from allowing Petitioner to remain in Israel. At that time, HRW and Petitioner filed an administrative petition with this court against the Minister's decision (AP 36759-05-18). The petition was dismissed in a judgment delivered on April 16, 2019, which held that Petitioner had, since 2006, been engaged in systematic and continuous activity to promote a boycott of the State of Israel solely due to ties to areas under its control and that he continued this activity even after entering Israel in 2017 as an HRW representative. Given that this activity amounts to having "knowingly issued a public call to boycott the State of Israel," the Minister was entitled to refuse to extend Petitioner's Israeli visa in accordance with the powers vested in him under Section 2(d) of the Entry into Israel Law - 1952, enacted in 2017 and instructing that:

> No visa and temporary residency permit of any kind shall be granted to a person who is not a citizen of Israel or a person holding a permanent

> residency visa in the State of Israel if they or the body or organization on behalf of which they acted had knowingly issued a public call to boycott the State of Israel as defined in the Law for the Prevention of Harm to the State of Israel through Boycott - 2011, or has undertaken to participate in such a boycott.

3. An appeal brought to the Supreme Court by HRW and Petitioner against the judgment was dismissed on May 11, 2019 (AAA 2966/19). In its ruling, the Supreme Court held that Petitioner's systematic, prolonged activism in the promotion of boycotts against the State of Israel and entities with connections to it or an area under its control, which began many years prior to his joining HRW and continued thereafter, was rooted in his wholesale opposition to Israeli control of the Area and the wholesale denial of the legitimacy of Israeli settlement therein. Therefore, it is a call to boycott Israel solely because of its ties to the Area rather than a specific boycott against a concrete party that violates the rights of the residents of the Area. This activity falls within the scope of Section 2(d) of the Entry into Israel Law and substantiates concerns over the possible exploitation of Petitioner's stay in Israel for the promotion of the boycott movement against it. In the circumstances, the court found no cause to intervene in the decision of the Minister of Interior, which was rendered within the confines of his powers and in a proportionate manner, particularly given the state's clarification that the decision applied to Petitioner only, while HRW was not considered a boycott organization and would be able to request to employ another person who is not mired in BDS activity in Israel (paragraphs 18, 22-23 of the judgment of Justice N. Hendel). Petitioner was ordered to leave Israel within 20 days of the judgment. A motion for a further hearing of the judgment was dismissed by President A. Hayut on January 20, 2020 (FHM 7697/19).

4. On July 13, 2021, counsel for Petitioner contacted the Respondent with a request to approve Petitioner's entry into the Area for a week for the purpose of meeting with the HRW staff he manages in Israel and the Area and advancing research on arbitrary arrests and torture by the Palestinian Authority. The request noted Petitioner was willing to travel from Jordan to Ramallah via Allenby crossing in order to avoid entering Israel. As no pertinent response was received despite several reminders and warning letters sent by Petitioner's counsel to Respondents, on April 6, 2022, the original petition against Respondent's failure to answer was filed. After the petition was submitted, Respondent requested and received several extensions to render his decision on the request. Finally, on July 20, 2022, Respondent rendered his decision to deny the request. On August 14, 2022, the amended petition against the decision of July 20, 2022 was submitted on behalf of Petitioner.

5. The July 20, 2022 decision stated it had "been made in keeping with COGAT's broad discretion with respect to granting entry to the Area to foreign nationals, as well as the provisions of the Entry of Foreign Nationals into the Area Procedure, which stipulates, *inter alia*, that all provisions thereof are subject to government policy. As known, government policy in this matter (which has been entrenched in primary legislation in Israel) is to prohibit the grant of any type of visa or stay permit to persons who knowingly issue a public call to boycott the State of Israel or any of its institutions or any area under its control." The decision went on to clarify the information on which it was based: First, the position of expert officials according to which there was solid, credible information indicating Petitioner's systemic, ongoing activity in the field of de-legitimizing the State of Israel, including with respect to boycotting Israeli entities operating in Israel and in the Area simply due to their ties to Israel or an area under its control. Second, the findings made by the Supreme Court in AAA 2966/19 (paragraph 22) that Petitioner had "maintained systematic, consistent, high-profile and

highly visible involvement in promoting the movement for boycott and divestment against Israel." In light of the aforementioned, Respondent had reached a decision, which, as stated therein, received government-level approval, to deny Petitioner's request for a visitor visa to the Area, for reasons of "substantive concern over possible exploitation by your client of his stay in the Area to promote a boycott of Israel and entities operating in Israel and in the Judea and Samaria Area."

6. Petitioner offered several lines of argument against the decision: The first line of argument concerns the powers vested in the Respondent, who operates pursuant to the powers of the Military Commander of the Area, to prohibit a person's entry and exit to and from the Area. Petitioner claims that according to the rules of belligerent occupation, under which the Area has been held since 1967 pursuant to the laws of war in public international law, the Military Commander or the nation on whose behalf he acts are not the sovereign of the Area, but rather parties managing it (via the Military Commander) temporarily, in trust, pending resolution of the Area's permanent status. As a result, the Military Commander's powers are limited to the imposition of prohibitions designed to promote only two interests: The one - maintaining the security of the Area; The other - ensuring public order for the local population, in the sense of law and order, and restoring civilian life in the territory (Art. 43 of Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (hereinafter: The Hague Regulations). Petitioner argues that prohibiting entry and exit to and from the area held under belligerent occupation designed entirely to assist in the occupying power's battle against a movement that advocates for its boycott constitutes a political consideration of the occupying power and as such, the Military Commander may not factor it into his decisions, not least since the grounds for denying entry due to the promotion of boycott activity mentioned in Section 2(d) of the Law on Entry into Israel, are not found in the law applicable in the Area.

   Petitioner maintains that, with respect to this matter, the fact that the Area was declared a closed zone by the Military Commander in 1967 is immaterial. Petitioner maintains it is not just international law, but also military legislation in the Area, which gives the Military Commander the authority to declare closed zones, that constrains the Military Commander's discretion to provisions that are necessary "to enable good governance and maintain public order and safety" (Proclamation No. 3 regarding The Entry into Effect of the Order regarding Security Provisions (West Bank Area) - 1967, dated June 7, 1967, pursuant to which, the Order regarding Closed Zones (West Bank Area) (No. 34) - 1967, was promulgated on July, 8 1967). Petitioner further argues that the fact that he is a foreign national (US) rather than a protected person residing in the Area does not absolve the Military Commander of the duty to base the decision in his request to visit the Area solely on public order and safety considerations. While, being a foreign resident, Petitioner does not have a vested right to enter the closed zone, he does, like any other person, possess a right that his request to enter the Area would not be denied based on extraneous considerations that do not serve the purpose for which the territory was closed, meaning - public order and safety considerations.

7. Respondent argues, on the other hand, that promoting a boycott of activity in the Area or entities operating within it constitutes activity that undermines public order, public life and the economy of the Area, in keeping with the expansive interpretation Israeli jurisprudence has given to the phrase "public order and safety" in Art. 43 of the Hague Regulations. As such, Respondent has the power to deny admission into the area to a person who promotes such a boycott, especially when the person in question is a key boycott activist such as the Petitioner, who is a foreign national, and who, even according to the international law of belligerent occupation, has no vested right or protected interest whatsoever to enter the Area. Add to that the fact that the Area in its entirety had been declared a closed zone, in a manner providing the Military Commander with broad discretion as to whether to

admit foreign nationals into it, and, as part thereof, factor government policy and government level directives into the protocols on entry into the Area. Respondent further claims that prior to issuing the decision, the individual circumstances of the case were considered and consultations were held with policy makers and experts. These revealed that Petitioner is one of the key delegitimization activists working today, that he persists in his work to promote a boycott and calls to refrain from engaging in business that could support Israeli settlement in the Area, and that his modus operandi, which was what led to the revocation of his Israeli visa, has not changed. These activities pose a genuine threat to the economy and fabric of life in the Area, such that the decision to deny the request for a visitor visa to the Area did not exceed the range of considerations the Respondent may consider.

8. Having reviewed the findings contained in the judgments issued in 2019 by this court and the Supreme Court with respect to the revocation of Petitioner's Israeli work visa, I have found them to sufficiently support Respondent's position that Petitioner's activism in the promotion of the boycott movement amounts to interference with public order and safety in the Area and that, regardless, denying Petitioner entry into the Area for the purpose of averting exploitation of said entry to promote a boycott, falls within the ambit of Respondent's powers under the laws of belligerent occupation and security legislation in the Area.

9. The judgment of this court, dated April 16, 2019, contains, *inter alia*, the following findings:

    - The organization founded by the Petitioner led a campaign for divestment from companies profiting from Israel's presence in the held territories (para. 24);

    - In May 2017, Petitioner was refused admittance to Bahrain since he "wanted to pressure FIFA to stop sponsoring matches in illegal Israeli settlements" (ibid., the quote is from Petitioner's Twitter page);

    - In March 2018, Petitioner made statements on his Twitter account effectively supporting the publication of a "black list" of international and Israeli companies operating in the Area (ibid.);

    - In November 2018 and February 2019, Petitioner published several statements lauding Airbnb's decision to remove properties located in the Judea and Samaria Area from its website and called on other companies to follow suit. He later spoke of pressure exerted on Booking.com to do the same (paras. 24, 26 and 54);

    - In January 2019, Petitioner made similar statements in press interviews (paragraph 24);

    - Petitioner's statements about FIFA and Airbnb were not limited to soccer matches that are not open to the local population or an impingement on rights caused by a specific property or due to the fact that it is not accessible to the local population. Thus, Petitioner called for a blanket boycott of soccer games "in illegal settlements" and for the blanket removal of Israeli properties located in the Area, even if located on private land, the ownership of which is not challenged, simply because they are located in the Area, and not only due to their alleged inaccessibility to the local population (para.55);

    - In Petitioner's call for a boycott, reasoning pertaining to the exclusion of the local population appears as the fourth of four reasons, all of which refer to all Israeli

settlements in the Area, rather than to specific cases with characteristics unique to human rights violations (ibid.);

- Petitioner's statements encouraging and supporting the boycott of businesses and factories in the Area, as made in recent years, amount to boycott promoting activity causing financial harm to said parties (paras. 56-57).

10. The judgment of the Supreme Court, dated November 5, 2019, contains, inter alia, the following findings:

    - In 2006, Petitioner founded a student organization that called for divestment in companies connected to the Area (para. 18 of the opinion of Justice N. Hendel);

    - In the years that followed, Petitioner called for selective divestment from commercial companies to which he attributed human rights and international law violations, given their operations in Israel and in the Area (ibid.);

    - The objections Petitioner and HRW raised with respect to these statements do not alter the general impression, and it takes a great deal of feigned innocence to present the remarks quoted in the judgment of the Court for Administrative Affairs as a theoretic-academic analysis of boycott as a tool (ibid.);

    - Petitioner was involved "together with HRW" in efforts to stop FIFA's sponsorship of soccer matches in settlements (ibid.);

    - In March 2018, Petitioner posted about action HRW had taken vis-à-vis the UN Human Rights Council, in an attempt to promote the drafting of a "List of businesses operating in settlements, who contributes to serious abuses [sic]" (ibid.);

    - In November 2018, Petitioner welcomed the decision made by Airbnb to delist properties located in the Area, called on other companies to follow suit, and noted HRW would be publishing a report on the matter shortly thereafter (ibid.);

    - Petitioner repeated these messages in interviews he gave in early 2019, and in "dozens more" posts on his Twitter account (ibid.);

    - Petitioner's activities are rooted in his wholesale opposition to Israel's control over the Area. Thus, aside from his persistent support for the BDS movement prior to his employment with HRW, his conduct vis-à-vis FIFA, and his repeated calls to boycott Israeli properties in the Area are based on a sweeping rejection of the legitimacy of Israeli settlements (para. 22).

11. These activities, as specifically found with respect to Petitioner by this court and by the Supreme Court, fall within the ambit of the "supreme" norm set forth in the opening clause of Art. 43 of The Hague Regulations, which "has been recognized in our jurisprudence as a quasi-constitutional framework norm within the laws of belligerent occupation, which puts in place a general framework for the manner by which the Military Commander discharges his duties and exercises his powers in the occupied territory" (HCJ 2164/09 *Yesh Din - Volunteers for Human Rights v. IDF Commander in the West Bank*, para. 8 (December 26, 2011). According to this provision (as translated from French into Hebrew, the version adopted in HCJ 202/81 *Tabib v. Minister of Defense*, IsrSC 36(2), 622, 629

(1981); see also HCJ 69/81 *Abu Aita v. Commander of the Judea and Samaria Area*, IsrSC 36(2) 197, 283 (1983)):

> The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

Justice A. Barak made the following remarks with respect to the power vested in the Military Commander in the opening clause of Art. 43, to "restore, and ensure, as far as possible, public order and safety":

> The Regulation does not limit itself to a certain aspect of public order and safety. It spans all aspects of public order and safety. Therefore, this authority – alongside security and military matters – also applies to a variety of "civilian" issues such as economic, social, educational, social assistance, sanitation, hygiene, transportation and other matters to which human life in modern society is connected. As Judge Shilo says in HC 202/81, p. 629: 'What is the guarantee of order and public life? The obvious answer is: implementing good governance, encompassing all its agencies practiced in a civilized country in our day and age, including security, health, education, welfare, but also including quality of life and transportation.
> (HCJ 393/82 *Jam'iat Iscan al-Ma'almoun al-Thanawiya al-Mahduda al-Masulia v. IDF Commander in the Judea and Samaria Area*, IsrSC 37(4) 785, 798 (1983)).

Justice A. Procaccia addressed this as well:

> The Commander's duty to ensure normal life in the Area extends to all spheres of life and goes beyond security issues and immediate subsistence needs. It applies to the inhabitants' various living needs, including welfare, sanitation, economic, educational, and societal needs, and other needs of a person in modern society.
> (HCJ 10356/02 *Haas v. IDF Commander in the West Bank*, IsrSC 58(3) 443, 461 (2004)).

On the extension of the Military Commander's powers regarding ensuring "public order and safety" to a variety of civilian aspects of residents' lives, see Marco Sassoli, Legislation and Maintenance of Public Order and Civil Life by Occupying Powers, 16 EJIL. 661, 663-664 (2005); David Hughes, Moving From Management to Termination: a Case Study of Prolonged Occupation, 44. Brooklyn J. Int'l L. 109, 142 (2018).

Vigorous, systematic, prolonged activity to boycott Israeli assets in the area, divert investments by Israeli and international companies operating in the Area and withdraw FIFA sponsorship from football matches in Israeli communities in the Area, such as the Petitioner engaged in, stands to harm economic and cultural life in the Area, which form part of the overall fabric of life therein. For this reason, the powers vested in the Military Commander under international law, as emerges from Art. 43 of the Hague Regulations, include taking measures to prevent such activity within the Area. Even assuming, for the sake of the argument, that the harm caused by the aforesaid activity is limited to Israeli residents in the Area, this would not nullify the Military Commander's power, in fact, duty,

under international law, to protect these residents from harm. Indeed, the duty to "ensure the safety, security and welfare of residents of the Area" applies to the Military Commander "with respect to all residents, regardless of their identity – Jews, Arabs or foreigners" (*Haas*, p. 460). Accordingly, it has been ruled that "the Military Commander is also obligated to take action to ensure the welfare of Israeli residents of the area," and, so long as his actions do not stem from political considerations and contribute to public order and safety in the Area, they should be regarded as falling within the ambit of the power vested in him. (HCJ 794/17 *Ziyada v. IDF Commander in the West Bank*, paras. 27 and 29 (October 31, 2017); See also, HCJ 7957/04 *Mara'abe v. Prime Minister of Israel*, IsrSC 60(2) 477, 497-500 (2005); HCJ 3969/06 *al-Harub v. IDF Commander in the West Bank*, para. 15 (October 22, 2009); HCJ 2150/07 *Abu Safiya v. Minister of Defense*, IsrSC 63(3) 331, 358 (2009); HCJFH 5124/19 *Hebron Municipality v. State of Israel*, para. 13 (21.8.2019)).

12. Petitioner makes no claim that his mode of operation has changed since both this court and the Supreme Court issued judgments in his matter in 2019. On the contrary, he claims (in sections 9 and 76 of the Amended Petition) that despite the contrary findings of these judgments - which he disputes - he has never promoted a boycott of the State of Israel or Israeli entities in its meaning under the Law for the Prevention of Harm to the State of Israel through Boycott 2011 (hereinafter: the Boycott Law), as part of his work in HRW. The aforesaid notwithstanding, Petitioner does accept that he and HRW have called and continue to call on businesses to refrain from activities that may encourage human rights violations against the Palestinian communities in the Area (ibid.). Nor did the Petitioner state a change to the approach he took in previous proceedings, wherein: "[D]espite being given a chance to do so, Shakir chose to refrain from making a declaration that he was abandoning his calls for a boycott and undertaking not to promote the boycott movement during his stay in Israel." (Para. 2 of the opinion of Justice N. Hendel in AAA 2966/19, as well as para. 22 therein; see also the opinion of Justice Y. Willner therein). This is added to the statements made in Respondent's response to the petition, whereby prior to the decision of July 20, 2022, he was presented with the position of the Ministry of Foreign Affairs stating that Petitioner was one of the key delegitimization activists working today and that there had been no change in his modus operandi, which was what led to the revocation of his Israeli visa. Given the aforesaid, the factual findings in the judgments issued in previous proceedings do substantiate the groundwork for Respondent's power to deny Petitioner admittance to the Area pursuant to the laws of belligerent occupation.

13. Petitioner argues that in the matter at hand, the rule empowering the Military Commander under international law to see to the welfare of Israeli residents of the Area as well does not apply. The reason given is that the ban on his entry into the Area harms Palestinian residents of the Area, who, unlike Israeli residents, are "protected persons," in the meaning of the term in Art. 4 of the Fourth Geneva Convention and said harm does not serve these protected persons.

    In principle (independently of the present matter), this claim is correct. Thus, for example, in *Abu Safiya,* the court ruled by majority opinion that a blanket ban on travel by local Palestinians on Route 443 exceeded the authority of the Military Commander and was incongruent with the rules of international law concerning belligerent occupation, since:

> The Military Commander is indeed empowered to impose travel restrictions pursuant to his obligation to ensure public order and safety on the roads in the Area, including ensuring the safety of Israeli settlers and Israelis present in the Area and using the Road. However, the Military Commander's power does not extend to the point of imposing a permanent and complete ban on Palestinian vehicular traffic on the Road... The state

> of affairs which stems from the flat ban on movement by residents of the villages is that it is no longer a road serving the benefit of the local population. (ibid., p. 364).

In *al-Harub*, a petition against travel restrictions imposed on Palestinian residents of the Area on Route 3265 was accepted, with the court stating:

> The closure of the road was designed to provide protection for some 150 Israeli residents who live in the area and use the road, yet it injures the fabric of life of thousands of protected residents... their routine has been disrupted, simple everyday tasks have become complicated missions." (Ibid., para. 32).

In the aforementioned Hebron municipality case, the court clarified that "actions taken by the Military Commander that infringe on the rights of the protected persons cannot stand if they are intended to benefit the Israeli residents of the area only" (ibid., para. 13).

However, unlike these and similar cases, in the matter at hand, the Military Commander did not impose any prohibition or restriction on a local, protected resident of the Area. The entry ban was imposed on the Petitioner, who is a citizen and resident of a foreign nation. Petitioner's claim regarding harm to protected persons residing in the Area as a result of the ban on his entry relates to another challenge made in the petition, wherein Petitioner claims that according to international law, Palestinian residents of the Area have a right to have recognized human rights defenders, such as himself and his organization, enter the territory and work inside it to reduce violations of the basic rights of the local population, which has been living under military occupation for some five and a half decades.

14. I do not believe this argument serves to negate the power of the Military Commander of the Area under the rules of belligerent occupation to prohibit Petitioner's entry in order to avert harm to the economic and cultural life of the Area as detailed above.

First, in response to the petition, the Respondent clarified that the authorities in the Area work to promote the activities of international organizations in the Area and liberally allow human rights activists and human rights organization workers, including the Petitioner's organization, HRW, to enter the Area. The entry ban relates specifically to the Petitioner, who has been a persistent, impactful key activist in the promotion of a boycott of Israel and the Area.

Second, it is rather difficult to accept a claim made by the Petitioner that is not intended to protect his own right or protected interest, but rather an alleged right of residents of the Area, who did not choose to take action on their own behalf or join Petitioner's action. The remarks made by Justice N. Sohlberg in the aforesaid judgment in AAA 2966/19 (concerning the appeal filed by Petitioner and HRW with respect to the revocation of Petitioner's Israeli work visa) are relevant:

> Citizens and residents of Israel are able and permitted to defend their rights and petition the court over a violation of free speech. Israelis are not helpless, and Omar Shakir need not speak for the citizens of Israel. Given that Shakir has no constitutional right to enter Israel, there is no justification for allowing him a bypass route into the country in order to avert an alleged curtailment of the free speech of Israeli citizens and residents, as "beneficiaries" (to quote the Appellants in para. 13 of their

> argument brief), of his entry into the country; or the impingement he alleges on their rights to have unmitigated contact with him, be exposed to what he says and hear it directly (ibid.). I am, therefore, in doubt as to whether Shakir has standing to petition against a violation of the freedom of expression of Israeli citizens and residents.

Justice Willner added therein that she -

> "Concur[s] with the comment made by my colleague Justice N. Sohlberg regarding the difficulty that arises in recognizing a foreign national as having standing to make arguments about the violation of the rights of citizens of the State of Israel."

This approach is also valid when the petition cites alleged harm to the protected residents of the Area, wherein the Petitioner is not one of them. In a similar situation, in *Yesh Din,* the court dismissed in limine a public interest petition challenging the activity of Israeli quarries operating in the Area citing harm to the protected Palestinian population. One reason for the in limine dismissal provided by President D. Beinisch was that: "The petition does not include any concrete petitioners claiming to be injured by the aforementioned activity, while the general and all-embracing remedy requested therein is the termination of any and all quarry operations." (ibid., para. 6).

The third reason for which I did not see fit to accept Petitioner's position on the implications denying him entry into the Area have for the local Palestinian residents lies in the absence of a sharp divide between the welfare of Israeli residents of the Area and that of the protected persons residing in the Area. In this context, I shall mention the Order regarding the Employment of Laborers in Specific Locations (Judea and Samaria) (No. 967) - 1982, which was "promulgated by the IDF Commander in the Area in order to protect the rights of the workers in the area... The practical outcome of these provisions is that a resident of the Area who is employed in a community fitting the terms of the Order is entitled to pay that is at least equal to minimum wage." The same holds true "outside the boundaries of a community, provided that the employer is Israeli" (HCJ 1234/10 *A. Dynamics Holdings 2002 LTD. v. Civil Administration for the Judea and Samaria Area*, para. 16 (July 21, 2010)). Likewise, the rule established in HCJ 5666/03 *Worker's Hotline v. National Labor Tribunal in Jerusalem*, IsrSC 62(3) 264 (2007), regarding the applicability of Israeli labor laws to the employment of Palestinians in the Area by Israeli employers according to the test of "most ties."

15. The aforesaid taken together indicates that the Respondent was empowered under international law to deny Petitioner admittance for a visit in the Area over fear that he would exploit such visit to promote a boycott against parties operating in the area. This power stands despite the fact that Respondent's decision of July 20, 2022 (as well as his response to the petition) also mentions concerns over the exploitation of Petitioner's stay in the Area to promote a boycott of the State of Israel and parties operating in Israel. In the aforementioned *Jam'iat Iscan*, the court clarified: "The Military Commander may not weigh the national, economic and social interests of his own country, insofar as they do not affect his security interest in the Area or the interest of the local population." (ibid., p. 794-795). Accordingly, in that case, a petition against the construction of an interchange between two highways in the Area was dismissed after the court found the planned road system was intended to serve the needs of the local population in the Area, as, despite being "connected to planning inside Israel, it takes it into consideration and forms a joint project for Israel and the Area. It will serve not only the residents of the Area, but also residents of Israel and the traffic between Judea and Samaria and Israel." (ibid., p. 790). In a similar vein, in *Abu Safiya*, it was noted that so long as Route 443 served the needs of the local protected population, it was possible to assume, as

part of the laws of belligerent occupation, that as part of the road's planning, it would "also serve residents of Israel, and the needs for travel between the Area and Israel." (ibid., p. 363).

This approach is also relevant to the activities of the boycott movement, which does not distinguish between the State of Israel and the areas it holds and sees them as one. As remarked by President M. Naor, one of the majority judges in HCJ 5239/11 *Avneri v. Knesset* (April 15, 2015), wherein the legality of the Boycott Law was under review (note that even though this law does not apply in the Area, it is possible to draw on the remarks made therein and adapt them to the current discussion with respect to the laws in the Area):

> [A] call for a boycott solely due to a factory having a connection with an area under state control falls within the scope of "a boycott against the State of Israel," as defined in the Law... After all, the calls for a boycott of the state are linked to and intertwined with the state's connection to the area under its control... [W]e must stay out of the political debate in all that relates to the Area, while recognizing that in the margin of discretion granted to the legislature, there are no grounds for the court to prevent it from defending against a boycott not only of the state itself, but also of enterprises and institutions installed in the Area with the consent of the state, and at times, with its encouragement, as part of the overall policies of this and previous governments. The law-abiding residents of the Area are entitled to have the state protect their property and livelihoods from harm (ibid., para. 4).

Vice President E. Rubinstein made similar comments in the same matter:

> [I]f Israel's enemies who seek to do it harm do not distinguish in this regard between "little" Israel and the territories it controls... why should we be making that distinction?.... The parties that the Law seeks to protect are not "punished" for their actions or views. They are punished solely as a means for influencing the policy of the State of Israel, primarily on the issue of the territories, by means of calling for a boycott against them... If any should nevertheless choose to call for a boycott of companies conducting business in the State of Israel or in an area under its control solely by reason of their connection with the state or the Area, they will be exposed to a tort action for damage caused. The limited restriction of their freedom of expression is meant to protect third parties harmed through no fault of their own, but rather due to a political boycott against a policy of the state (ibid., paras. 5-12).

Moreover, Justice Y. Danziger, one of the minority justices in *Avneri*, also believed that: A boycott of the Area... expresses opposition to one of the 'expressions of [Israel's] policy'" (ibid., para. 37).

The connection between the State of Israel and the Area in the context of boycotts was expressed by the Military Commander shortly after the Six Day War in the Order regarding the Revocation of Israel Boycott Laws (West Bank Area) (No. 71) - 1967.

16. To complete the picture, it is noted that the fact that Respondent based his decision (among other things) on government policy and the position of the government officials does not detract from the legality of the decision under international law where the decision falls within the scope of the objectives set forth in Art. 43 of The Hague Regulations. As stated in *Jam'iat Iscan* (p. 806):

"Contact with elements outside the Area – and indeed such contact with the state of the military government – is not an act of sovereignty which is beyond the power of a military government." Similarly, in HCJ 548/04 *Amana v. IDF Commander in the Judea and Samaria Area*, IsrSC 58(3) 373, 379 (2004), the court ruled: "The Military Commander is the Israeli Military Commander. As such, he is subordinate to the senior military command and the government above them, whose decisions guide military policy in its entirety." And further:

> Therefore, the Military Commander has the power and, in fact, the obligation to operate in the Area under his command in a manner that is consistent with the policies put in place by the government, so long as, when exercising his discretion, he operates in accordance to the powers legally vested in him and subject to his responsibility for public order and safety in the Area held under belligerent occupation according to international law" (HCJ 9594/09 *Legal Forum for the Land of Israel v. Ministerial Committee on National Security Affairs*, para. 15 (April 21, 2010)).

17. Wherein the Respondent has the power under international law to deny Petitioner admittance into the Area on the grounds of him being a key boycott activist, and wherein Petitioner's argument regarding special status he enjoys in the Area as a human rights defender fails to reveal a flaw in the decision that could justify intervention by this court, Petitioner's other argument, whereby local law does not contain a provision empowering Respondent to deny his admittance into the Area over concerns such admittance would be exploited to promote boycott activities therein, falls as well. Power under local law is granted in Order regarding Closed Zones (West Bank Area) (No. 34) - 1967. As I noted in the decision dated August 16, 2022, the declaration in this Order gives the Military Commander the authority to grant, at his discretion, a permit to enter the Area (Section 318 of the Order regarding Security Provisions [Incorporated Version] (Judea and Samaria) (No. 1651) - 2009; HCJ 8566/16 *Sarsur v. Military Commander of the Judea and Samaria Area*, para. 9 (May 16, 2017). The power exists despite the fact that the declaration and the procedure related to it ("Procedure for Entry and Remainder in the Judea and Samaria Area by Foreign Nationals," dated September 4, 2022) do not mention denying admittance due to boycott activity specifically. The Procedure also states that, as a rule, foreign nationals do not have a vested right to enter the Area and that entry applications by foreign nationals would be considered according to the discretion of the competent official. The Procedure lists some specific considerations but extends to "any other relevant consideration" (Part I, Section 10). It, therefore, must be that Petitioner's arguments are, in fact, directed not at the Respondent's power but rather at his discretion in exercising it, including claims alleging extreme lack of reasonableness or a lack of proportionality in the Respondent's decision.

    Nevertheless, arguments regarding discretion also fail to show cause for intervention. Given that Petitioner is a foreign national and foreign resident, he has no vested right to enter an area declared a closed zone. (HCJ 802/79 *Samara v. Commander of the Judea and Samaria Area*, IsrSC 34(4) 1, 3 (1980); HCJ 147/81 *Yasin v. Minister of Interior and Police* (October 25, 1981); HCJ 629/82 *Mustafa v. Military Commander of the Judea and Samaria Area*, IsrSC 37(1) 158, 162 (1983); HCJ 263/85 *'Awad v. Civil Administration Commander*, IsrSC 40(2) 281, 285 (1986)). As President A. Barak pointed out: "The area in question has been declared a closed military zone. As such, neither the Petitioners nor any other individual have a right to enter said area as part of exercising their freedom of movement" (HCJ 9293/01 *MK Barakeh v. Minister of Defense*, IsrSC 56(2) 509, 516 (2009)). Admittedly, the absence of a vested right does not mean the absence of a right granted to

foreign residents "that a refusal to grant them a permit shall be based on proper considerations," and consequently, that the court shall exercise judicial review over decisions by the Military Commander to deny admittance to the Area to a foreign national made arbitrarily or based on extraneous considerations (*Samara*). However, in light of all the aforesaid, no extraneous considerations can be attributed to the decisive weight the Respondent had given to Petitioner's deep involvement in promoting a boycott of activities in the area, harming the fabric of life of an entire population group in the Area.

18. It appears there is no need to recall that the role of the court is to exercise judicial review with respect to the Military Commander's use of discretion as a party fulfilling a public function under the law, rather than to replace it with the discretion of the court. (HCJ 7015/02 *Ajuri v. IDF Commander in the West Bank*, IsrSC 56(6) 352, 375-376 (2002)). This is so in general; it is so with respect to the Military Commander's discretion under local law in the Area regarding issuance of entry permits into areas declared as closed zones, and it is so with respect to the Military Commander exercising his powers under Art. Article 43 of The Hague Convention to ensure public order and safety for residents of the Area:

> [T]here is clearly a minimum standard of ensuring the public order and safety of the local population of which a military government, acting as a proper government, cannot fall short, and that there is also clearly a maximum standard for ensuring the public order and safety of the local population which the military government, acting as a temporary government, may not exceed and that between the two there is a spectrum of power in which there is no duty but rather a privilege to choose between various options wherein each military government chooses the balancing points it favors, according to its nature and characteristics on one hand and according to its understanding of the Area on the other. (*Jam'iat Iscan*, p. 807).

19. Therefore, the petition is dismissed.

The secretariat will send the judgment to parties' counsel.

Given today, November 28, 2022, in the absence of the parties.

Moshe Sobel, Vice President