# Israel's "settlements": The Facts


ZF FOR ISRAEL

# The settlement issue in a nutshell

Over the past 52 years, Israel's presence in the ancient lands of Judea and Samaria, now more commonly referred to as the West Bank, has been used by its detractors to demonise and delegitimise Israel. This continues today, with claims of illegality and "colonialism" being peddled, not just by the Palestinian leadership in both Gaza and Ramallah, but international politicians, diplomats and of course, those who claim to be pro-Palestinian but whose manifestation of their so-called support for the Palestinians all too often crosses the line into Antisemitism.

These attempts to label any presence in Judea and Samaria / the West Bank as illegal and "colonial" in nature ignores the complexity of the issue, the history of the land, and the unique legal circumstances of this case. Jewish communities in this territory have existed from time immemorial, a manifestation of the deep connection of the Jewish people to the land, which is the cradle of their civilization, as affirmed by the League of Nations Mandate for Palestine in 1922, and from which they, or their ancestors, were ousted.

International bodies such as the United Nations, heads of state, politicians and diplomats who label the settlements as illegal tend to refer to the Fourth Geneva Convention to back up their claims. However, under the Fourth Geneva Convention, the prohibition against the forcible transfer of civilians to territory of an occupied state was not intended to relate to the circumstances of voluntary Jewish settlement in their ancestral homelands in Judea and Samaria / West Bank on legitimately acquired land which did not belong to a previous lawful sovereign and which was designated to be part of the Jewish State under the League of Nations Mandate.


State under the League of Nations Mandate.

Existing bilateral Israeli-Palestinian agreements as embodied in the Oslo Accords, specifically affirm that settlements are subject to agreed and exclusive Israeli jurisdiction pending the outcome of peace negotiations, and do not prohibit settlement activity.

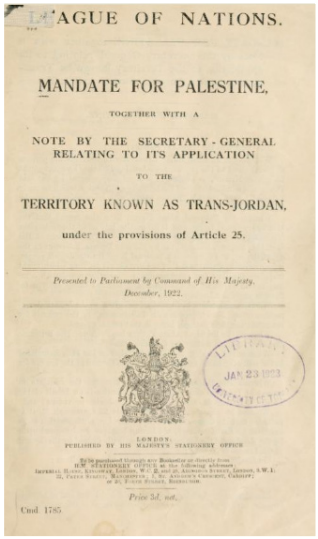
Despite ongoing claims to the contrary, settlements are not an obstacle to peace. At this time, in 2019, settlements comprise less than 5% Judea and Samaria / West Bank. Israel's unilateral withdrawal from Gaza in 2005 also proves the claim that settlements are the obstacle to peace as entirely false. The Arab world had opposed a Jewish state within any borders long before the reestablishment of Israel in 1948 and during the 19 years of illegal Jordanian occupation of what has since been renamed as the West Bank, when Jews were forbidden to live in the West Bank, the Arabs still refused to make peace with Israel.

The Palestinian claim that Judea & Samaria / West Bank should be cleansed from any Jewish presence is contrary to the vision of peace and coexistence between Israelis and Palestinians. In 2010, Prime Minister Benjamin Netanyahu froze settlement construction for ten months, and the Palestinians refused to engage in negotiations until the period was nearly over. After agreeing to talk, they walked out when Netanyahu ended the freeze.

Israel remains committed to peace negotiations without preconditions in order to resolve all outstanding issues and competing claims. It continues to ask the Palestinian side to respond in kind. Israel hopes that such negotiations will produce an agreed secure and peaceful settlement which will give legitimate expression to the connection of both Jews and Palestinians to this ancient land.

# The history of the settlements

It's often wrongly asserted that Jewish settlement in the ancient territories of Judea and Samaria / West Bank is a modern phenomenon. However, a Jewish presence in these territories existed for thousands of years. This reality, and its legitimacy, was recognised by the League of Nations (the predecessor of the United Nations) in 1922, when it adopted the Mandate for Palestine. This Mandate provided for, and gave legal ratification to, the establishment of a Jewish state in the Jewish people's ancient homeland – Eretz Yisrael.


LEAGUE OF NATIONS.

MANDATE FOR PALESTINE,

TOGETHER WITH A

NOTE BY THE SECRETARY-GENERAL RELATING TO ITS APPLICATION

TO THE

TERRITORY KNOWN AS TRANS-JORDAN,

under the provisions of Article 25.

Presented to Parliament by Command of His Majesty. December, 1922.

LONDON:
PUBLISHED BY HIS MAJESTY'S STATIONERY OFFICE

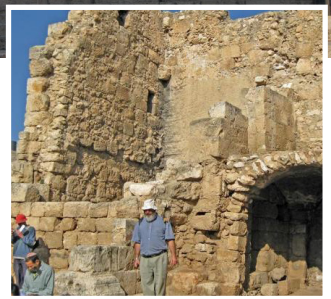
Cmd. 1785.

The Mandate recognised "the historical connection of the Jewish people with Palestine" and "the grounds for reconstituting their national home". It also specifically stipulated in Article 6 as follows: 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 cooperation with the Jewish Agency referred to in Article 4, close settlement by Jews on the land, including State lands not required for public use.

It is important to note that, at the time, the term "Palestine" referred to the geographical denomination of the area without any political or ethnical connotation. Everyone living there was called "Palestinian", Jew and Arab alike. In fact, many of the pre-state Jewish institutions in the land had the name "Palestine" in their titles, such as the Palestine Orchestra which became the Israel Philharmonic Orchestra and the Palestine Post which became the Jerusalem Post.

In some places throughout the land, Jewish settlement had existed throughout the centuries of Ottoman rule, and in others, such as the ancient city of Hebron, Jewish settlement had existed for millennia. Other settlements, such as Neve Ya'acov, north of Jerusalem, the Gush Etzion bloc in southern Judea, and the communities north of the Dead Sea, were established prior to the establishment of the State of Israel, in accordance with the League of Nations Mandate.

Many post-1967 Israeli settlements have actually been re-established on sites which were home to Jewish communities in previous generations - an expression of the Jewish people's deep historical and abiding connection with this land. A significant number are situated in places where previous Jewish communities were forcibly ousted by Arab armies or militia, or slaughtered, as was the case with the ancient Jewish community of Hebron in 1929, or the four agricultural villages of Gush Etzion in 1948.



The only administration which prohibited Jewish settlement in Judea and Samaria / West Bank, after almost two thousand years of Jewish presence, was the Jordanian occupation administration which, during the nineteen years of its rule (1948 – 1967), declared the sale of land to Jews a capital offence. However, the right of Jews to establish homes in these areas, and the legal titles to private land which had been acquired, could not be legally invalidated by Jordanian occupation (which resulted from their illegal armed invasion of Israel in 1948 and was never recognised by the international community as legal), and such rights and titles remain valid to this day. The ongoing attempts to portray Jewish settlements the West Bank as "colonialist" settlement on the lands of a foreign sovereign are as disingenuous as they are politically motivated. At no point in history were Jerusalem and the territories of Judea and Samaria / West Bank subject to Palestinian Arab sovereignty.

In essence, what is at issue is the right of Jews (an historical, internationally recognised right) to reside in their ancient homeland, alongside Palestinian Arab communities, in an expression of the connection of both peoples to this land.

# International humanitarian law and the settlements

International Humanitarian Law (IHL) or the Laws of Armed Conflict (LOAC) prohibits the transfer of sections of the population of a state to the territory of another state which it has occupied as a result of the resort to armed force. This prohibition is reflected in Article 49(6) of the Fourth Geneva Convention (1949) which was drafted immediately following the Second World War as a response to specific events that occurred during that war.

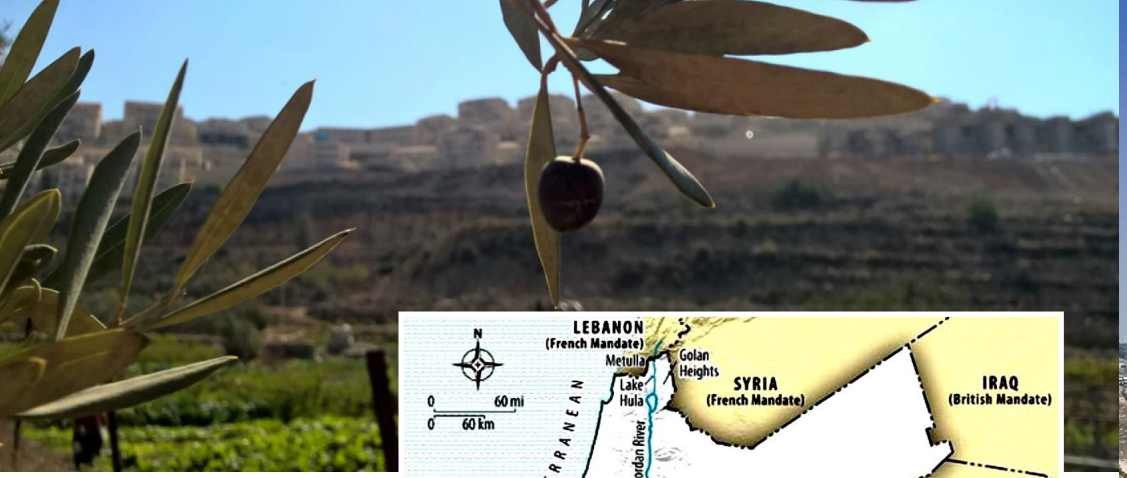
The International Red Cross provided an authoritative commentary to the Convention. It confirmed the prohibition was intended to protect the local population from displacement, including endangering its separate existence as a distinct group, as occurred with respect to the forced population transfers in Czechoslovakia, Poland and Hungary before and during the war. Notwithstanding the question of whether the Fourth Geneva Convention applies 'de jure' to territory such as the West Bank, over which there was no previous legal sovereign, the case of Jews voluntarily establishing (or re-establishing their pre-1948) homes and communities in their ancient homeland, and alongside Palestinian communities, can in no way be compared to the kind of forced population transfers contemplated by Article 49(6).

Former US Under-Secretary of State for Political Affairs, Professor Eugene Rostow, has written that *"the Jewish right of settlement in the area is equivalent in every way to the right of the local population to live there."* (AJIL, 1990, vol. 84, p.72). With regard UN Resolution 242, Rostow confirmed that it gives Israel a legal right to be in the West Bank. *"Israel is entitled to administer the territories"* it captured in 1967, Rostow observed, until *"a just and lasting peace in the Middle East"* is achieved.

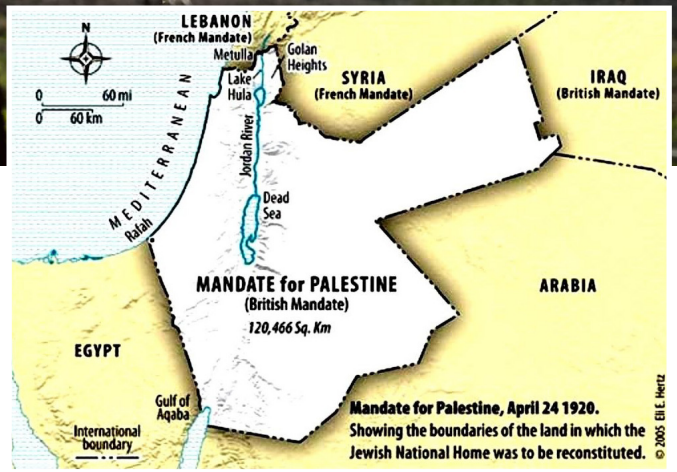
Stephen Schwebel, formerly president of the International Court of Justice, notes that a country acting in self-defence may seize and occupy territory when necessary in order to protect itself. Schwebel also observed that a state may require security measures designed to ensure its citizens are not menaced again from that territory, as a condition for its withdrawal from it.

The provisions of the Fourth Geneva Convention Article 49(6) regarding forced population transfer to occupied sovereign territory should not be seen as prohibiting the voluntary return of individuals to the towns and villages from which they, or their ancestors, had been forcibly ousted. Nor does it prohibit the movement of individuals to land which was not under the legal sovereignty of any state and which is not subject to private ownership.

In this regard, it should be noted that, under the supervision of the Supreme Court of Israel, Israeli settlements in Judea and Samaria / West Bank have been established only after an exhaustive investigation process, and subject to appeal, which is designed to ensure that no communities are established illegally on private land. Furthermore, in cases in which the Supreme Court found that construction was illegally built on private lands, their



demolition has been ordered.
Just as the settlements do not violate the terms of Article 49(6) of the Fourth Geneva Convention, neither do they constitute a “grave breach” of the Fourth Geneva Convention or “war crimes”, as some claim. In fact, even if one wants to support the view that these settlements are inconsistent with Article 49(6), the notion that such violations constitute a “grave breach” or a “war crime” was introduced only in the 1977 Additional Protocols to the Geneva Conventions and only as a result of political pressure by Arab States. However, leading States, including Israel, are not party to the Additional Protocols which, on this issue, do not reflect




customary international law.

Furthermore, in addition to the acknowledged right to secure boundaries, Article 80 of the United Nations preserves intact all the rights granted to Jews under the League of Nations’ Mandate for Palestine, even after the Mandate’s expiry on May 14-15, 1948. Under this provision of international law (the Charter is an international treaty), Jewish rights to Palestine and the Land of Israel were not to be altered in any way

unless there had been an intervening trusteeship agreement between the states or parties concerned, which would have converted the Mandate into a trusteeship or trust territory. This did not happen. Conflicting claims or not, the legality of Israel’s right to the land is beyond question under international law.

# Israeli-Palestinian Agreements

The bilateral agreements signed between Israel and the Palestinians which govern their relations, including the Oslo Accords, contain no prohibition on the building or expansion of settlements. On the contrary, these agreements specifically provide that the issue of settlements is reserved for permanent status negotiations, reflecting the understanding of both sides that this issue can only be resolved alongside other permanent status issues, such as borders and security. The parties expressly agreed – in the Israeli- Palestinian Interim Agreement of 1995 – that the Palestinian Authority has no jurisdiction or control over settlements or Israelis and that the settlements are subject to exclusive Israeli jurisdiction pending the conclusion of a permanent status agreement.

It has been claimed that the prohibition against unilateral steps which alter the “status” of Judea and Samaria / West Bank and Gaza Strip, as contained in the Interim Agreement (Article 31(7), implies a ban on settlement activity. However, such claims are unfounded. This prohibition was agreed upon in order to prevent either side from taking steps which purport to change the legal status of this territory (such as by annexation or unilateral declaration of statehood), pending the outcome of permanent status negotiations. Given that the provision was drafted to apply equally to both sides, if this prohibition applied to building, it would lead to the dubious interpretation that neither side is permitted to build homes to accommodate the needs of their respective communities until permanent status negotiations are successfully concluded.

In this regard, Israel’s decision to dismantle all settlements from the Gaza Strip and some in northern Samaria / northern West Bank (in the 2005 Disengagement Plan) were unilateral Israeli measures taken with the aim of promoting peace, rather than the fulfilment of a legal obligation.

# Are they or aren’t they?

Whilst in political terms, Judea and Samaria / West Bank is considered as ‘occupied territory’, in legal terms, this territory is best regarded as territory over which there are competing claims which should be resolved in peace negotiations; indeed, both the Israeli and Palestinian sides have committed to this principle.

Israel has valid claims to title in this territory based not only on the historical Jewish connection to, and long-time residence in this land, its designation as part of the Jewish state under the League of Nations Mandate, Article 80 of the United Nations and Israel’s legally acknowledged right to secure boundaries, but also on the fact that the territory was not previously under the legal sovereignty of any state and came under Israeli control in a war of self-defence. At the same time, Israel has repeatedly demonstrated that it recognises that the Palestinians also exercise claims to this area and accordingly, it is for this reason that the two sides have expressly agreed in binding, bilateral agreements, to resolve all outstanding issues, including the future of the settlements, in direct bilateral negotiations, to which Israel remains committed.

As of 18th November 2019, the US Administration has confirmed that it no longer views the settlements “as per se inconsistent with international law” and that such an assertion has done nothing to bring peace closer to a reality. The UN and EU, reacting to the US Administration’s statement, have both doubled down on their long-held opinions and have reaffirmed their opinion that they view the settlements illegal under international law.

Whilst this statement by the US Administration has attracted much attention and opposition, this recognition must be understood in the wider context of US Secretary of State Pompeo’s which confirms that they *“are not addressing or prejudging the ultimate status of Judea and Samaria / West Bank. This is for the Israelis and the Palestinians to negotiate. International law does not compel a particular outcome, nor create any legal obstacle to a negotiated resolution”* and that *“The hard truth is there will never be a judicial resolution to the conflict, and arguments about who is right and wrong as a matter of international law will not bring peace. This is a complex political problem that can only be solved by negotiations between the Israelis and the Palestinians. The United States remains deeply committed to helping facilitate peace, and I will do everything I can to help this cause. The United States encourages the Israelis and the Palestinians to resolve the status of Israeli settlements in the West Bank in any final status negotiations.”*

# Quoting the settlements

*"When it is asked what is meant by the development of the Jewish National Home in Palestine, it may be answered that it is not the imposition of a Jewish nationality upon the inhabitants of Palestine as a whole, but the further development of the existing Jewish community, with the assistance of Jews in other parts of the world, in order that it may become a centre in which the Jewish people as a whole may take, on grounds of religion and race, an interest and a pride. But in order that this community should have the best prospect of free development and provide a full opportunity for the Jewish people to display its capacities, it is essential that it should know that it is in Palestine as of right and not on sufferance."*

**Winston Churchill**
British Secretary of State for the Colonies
June 1922

*"After carefully studying all sides of the legal debate, this administration agrees with President Reagan. The establishment of Israeli civilian settlements in the West Bank is not per se inconsistent with international law."*

**Mike Pompeo**
US Secretary of State
18th November 2019

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