



THE INTERNATIONAL LEGAL FORUM

Controversial Lands: 8 Burning Questions about Israel and the Territories

The Israeli government has officially declared its intention to apply its law to areas of Judea and Samaria starting on 01.07.20. Since the plan's unveiling several months ago, the public discourse in the international community has been almost entirely negative, with world leaders and jurists condemning the "illegality" of the planned "annexation". Absent from this discussion is an honest appraisal on Israel's legitimate rights and claims.

The following document is meant to provide a brief guide to clarify the main legal issues at stake. It addresses the common questions and criticism raised, as well as a brief summary of the key take-away points.

The distinction between the political and legal issues

Israeli society is divided on the political issues surrounding Israeli control over Judea and Samaria. Questions such as the continuation of Israel's control, under what circumstances, whether to withdraw and to what degree, etc. are important political issues that must be addressed.

However, alongside and distinct from these political issues, there is a legal discussion regarding the essence of Israel's international legitimacy. Israel's legal legitimacy is not a political issue and should not be a polarizing issue between the Left and Right.

Objective observers must assert that Israel has legitimate legal rights to the territory and that Israel is committed to complying with international law, including issues of human rights. The delegitimization campaign has gone into overdrive to condemn, reject and slander the State of Israel. To combat the disinformation being regularly pumped out, we have produced a brief questions and answers document that sets out Israel's legal rights.

1. Isn't Israel's Occupation of Judea and Samaria illegal?

No.

"Illegal occupation" is not a legal term, and in fact does not exist under international law.



International law does not deal with the legality of occupation (good or bad). Occupation is a situation when a state seizes territory from another sovereign.

2. If it's not an illegal occupation what is it?

The situation in the territories is unique. Why?

In 1967, when Israel conquered the territory from Jordan, it decided to reserve all political options and not fully apply its sovereignty. Simultaneously, Israel has consistently maintained that it has the full legal right to do so.

This decision has several distinct implications

- Legal right – The State of Israel has always held that it has the legal rights to the territory, however decided to not to actualize its full rights until the political conditions were right.
- Sovereignty – Until the final resolution of the conflict, sovereignty remains undetermined.
- Governing laws -Israel has **voluntarily** applied international humanitarian laws in order to defend the territories, existing population, while keeping the existing status quo (Jordanian law).

3. Is annexation legal?

No, annexation means the forcible acquisition of territory by one State at the expense of another State. This legal definition has three components:

- Occupied from a legitimate legal sovereign
- Defensive or aggressive war
- Occupier has valid legal claims to the territory

Let's analyze the Israeli situation according to these components:

- Were the territories occupied from a legitimate legal sovereign?

No.

In 1948 upon the termination of the Mandate for Palestine and the Israeli declaration of independence, several Arab armies invaded the newly established Jewish state. The territories, meaning Judea and Samaria or the West Bank were conquered from Israel by the Jordanians.

The Jordanians illegally annexed the territories (deemed illegal by the international community).

Where are the Palestinians in the picture?

The Palestinians have never had their own state, therefore, these specific laws of occupation don't apply to them.

The local Arab Palestinian population was a part of Jordan for 19 years.

- Were the territories acquired in a defensive or aggressive war?

They were conquered by the Jordanians in 1948, in an aggressive war.

In 1967 Jordan launched another aggressive war which resulted in Israel's retaking of the territories.

Israel engaged in an act of defense in both military campaigns.

- Does the occupier have valid legal claims for the territory?

Jordan never had legal rights to the territories. Israel has valid claims to the territory, explained below.

4. What are the sources of Israeli claims to the territory?

There are several important sources for Israel's rights to Judea and Samaria. Two of them:

- **The San Remo Conference and the Palestine Mandate:** The Jewish people's rights to the Land of Israel, including Judea and Samaria, are a binding part of international law.

At the end of the First World War, the Principal Allied Powers gathered at the San Remo convention of April 1920 and conferred the Mandate for Palestine upon Britain. The Resolution specifically tasked the British government with the goal of "the establishment in Palestine of a national home for the Jewish people[1]", thus

converting Britain's political promise to the Zionist Organization contained in the Balfour Declaration into a binding legal requirement. The subsequent Mandate for Palestine, adopted by the League of Nations on July 24, 1922[2]:

- Recognized the Jewish historical connection to the Land of Israel;
 - Called for the reconstitution of the Jewish national home in that country.
 - Tasked Britain with, among other things, facilitating Jewish immigration and settlement.
- **The Principle of *Uti Possidetis Uris* - The inheritance of mandatory lines with the termination of the Mandate:**

Uti Possidetis Uris- Is a key principle in international law that is intended to promote peace and stability over national aspirations of different groups. This rule has been used in numerous modern occasions like the decolonization of South America and the determination of borders of new and emerging states in Africa and Eastern Europe. It has been applied most recently to the states emerging from the break-up of Yugoslavia and the Soviet Union.

The rule establishes a default determination of borders, granting new states the right to inherit the previously existing borders upon declaring independence.

The State of Israel is the only state that emerged out of the territory of the British Mandate and therefore is entitled to inherit its borders.

[1] <https://www.cfr.org/israel/san-remo-resolution/p15248>

[2] https://ecf.org.il/media_items/291, Preamble, Article 6 and 7

5. Doesn't the international community reject Israel's claims to the territory?

International law is not established by a political opinion or a majority vote. The political positions of states do not affect the legality or the rights of other states. Simply put, states have their own reasons and interests for opposing Israeli control over Judea and Samaria. This has little to do with international law.

No international tribunal has ever had to deal adequately, thoroughly and directly with Israeli claims to Judea and Samaria. Furthermore, no judicial body has the authority to solve territorial disputes without the consent of the parties.

6. Hasn't the UN recognized a Palestinian state/ recognized that Judea and Samaria belong to a Palestinian state?

UN General Assembly resolutions do not create law; they are expressions of policy aspirations. Therefore, the UN resolutions are irrelevant to the question of legal rights. Furthermore, the UN cannot create new states, it can only express its support for a creation of a new state. It can recognize certain entities as states for technical purposes, such as voting at the UN and signing treaties. The UN is not authorized to settle territorial disputes without the consent of the relevant parties.

7. Don't Palestinians have a right to statehood resulting from their right to self-determination?

- There is no *right* to statehood under international law.
- Self-determination does *not* equal statehood.

Under international law, *people* enjoy the right to self-determination. However, it is generally actualized in forms that do not require an independent state, such as in an existing state or autonomous self-rule. There are currently hundreds of national and ethnic minorities worldwide, many actively seeking statehood, who are not considered to be entitled to a state.

The Palestinians enjoy an intermediate form of self-determination by an autonomous self-rule (the Palestinian Authority). Whether and how the Palestinian will attain statehood are political matters and therefore irrelevant to this specific discussion.

The acceptable international framework calls for this matter to be resolved via negotiations.

8. Do Israeli settlements constitute a war crime or crime against humanity?

- Jews have lived in Judea and Samaria for millennia. Many of the "settlements", or Jewish communities, predate the 1967 War.
- It is morally reprehensible to demand that a future Palestinian state must be free of Jews. Moreover, it is difficult to understand how one can successfully argue that a house built anywhere is inherently a crime against humanity.
- The Mandate for Palestine (binding under international law) acknowledges the Jewish historical connection to the land and calls to encourage their immigration and settlement in all parts of the land.

- No law prohibits the voluntary establishment of homes. Article 49(6) of the Fourth Geneva Convention is often misquoted and misrepresented, as its clear intent was to prevent forced population transfers, similar to those committed by Nazi Germany. By contrast, Israeli citizens voluntarily chose to settle in Judea and Samaria, often for deep emotional and religious reasons.
- Moreover, comparisons with other territorial conflicts show that every case of long-term "belligerent occupation" involves the settlement of the citizens of the Occupying power to the Occupied territory. In not one of these cases did the international community consider this a violation of Article 49(6)[1].

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- [1] The Soviet Union occupation of Baltic States - by the end of 1989, there were 905,000 Russian citizens in Latvia, amounting to 34% of Latvia's population.
 - The Vietnam-Cambodia conflict (1978-1989) – throughout the conflict Vietnam transferred an estimated 500,000 citizens into Cambodian territory, amounting to approximately 5% of Cambodia's population.
 - Morocco- Western Sahara conflict – to date, Morocco transferred more than 170,000 citizens into Western Sahara, in some cases using force or bribery.
 - Northern Cyprus – to date, Turkey transferred an estimated 50,000 citizens into the Cyprus territory, amounting to approximately 20% of the Northern Cyprus population.

In conclusion:

- The State of Israel and the Jewish people have legitimate legal rights to Judea and Samaria (San Remo Conference, *Uti Possidetis Uris*, defensive conquest).
- Israeli control and the application of Israeli law to the territory is in accordance with international law.
- The State of Israel is committed to protecting human rights, as currently implemented in the territory.
- Judea and Samaria are an integral and essential component of the Jewish nation's history.
- The international community recognized this historical connection, as part of binding international agreements.
- Jewish communities lived in Judea and Samaria throughout history, until they were completely destroyed during the Jordanian conquest.

- Judea and Samaria were included in the Mandatory territory upon which the State of Israel declared independence in 1948, but it lost control to the Jordanian army which held the territory illegally for 19 years.
- The State of Israel strives for peace as a supreme value, and as such chose not to fully actualize its legal rights throughout the years. The State of Israel remains committed to peace and the actualization of its rights do not change or detract from this.
- The political debate is important and essential to Israeli democracy, and in general it must be supported and encouraged. The legitimacy question is not a political question. Therefore, questions arising from the issue of legitimacy, such as the policies that Israel should adopt, or accompanying legal questions such as Palestinians' rights, etc., must be examined separately from the question of Israel's rights.

