



LEGAL ANALYSIS
THE STATUS OF POST-1967 ISRAELI HELD TERRITORIES
UNDER INTERNATIONAL LAW

It is important to understand that the analysis addresses the legal questions regarding the status of the Territories; it does not touch upon related political issues or positions concerning the Arab-Israeli conflict or any other legal issues associated with that conflict or the Territories. Those issues, unrelated to the analysis, include policies concerning possible solutions to the conflicts, possible concessions potentially required from the parties, as well as other possible legal questions which might arise from them, including, but not limited to, laws of armed conflict (“LOAC”), human rights violations, terror, incitement to terror and equality.

The review will touch upon precedents, treaties, and customary international law citing several formative events and principles of international law:

- Post-1967 Territories - Introduction
- The Oslo Accords
- Binding resolutions under international law concerning the territories
 - U.N. Security Council Resolution 242
 - The British Mandate for Palestine
 - The San Remo Resolution
- Implementation of Key Principles of international law
 - The Right to Self-Determination
 - Ut Possidetis Juris
 - Preferential Weight to Conquest
- Israeli/ Jewish Communities in the Disputed Territories
- Article 49(6) of The Fourth Geneva Convention



Post-1967 Territories – Introduction

Background:

The post-1967 territories (the territories) are the territories over which the State of Israel gained control in the course of the war launched against it in 1967 by a coalition of Arab countries. These territories included the Sinai Peninsula and the Gaza Strip (conquered from Egypt), the Golan Heights (conquered from Syria), Judea and Samaria (renamed “the West Bank”) and East Jerusalem (conquered from Jordan).

All of these territories, as well as the entire region and the countries which currently exist within it, were controlled by the Ottoman Empire for a duration of 400 years. The Ottomans had conquered it from the Mamluks who conquered it from the Crusaders and so on, dating back to the days of the Bible and the two kingdoms of Israel. This entire region was called Southern Syria by the Ottomans and its subjects.

The Ottoman rule ended with the victory of the Allied powers in WWI and was replaced with the British Mandate which lasted until 1948. With the ending of the Mandate, the Jewish leadership declared independence and the establishment of the State of Israel. A coalition of Arab armies attacked the new State of Israel following this declaration.

The Green Line

The war ended in 1949 when the parties reached armistice agreements. The armistice line was marked in green on the maps, and thus the armistice line became known as “The Green Line.” The Green Line was a demarcation line rather than a permanent border, mainly due to the Arab countries’ insistence that the agreements were **not to determine permanent borders**. The agreements between Israel and Jordan, Egypt, and Syria contained specific provisions in that regard, insisted upon by the Arab parties. Outside of the Israeli-held territory, beyond the Green line, were territories gained in the war by Egypt and Jordan; the Gaza Strip, Judea and Samaria (renamed the “West Bank”); and East Jerusalem respectively. These territories remained under Egyptian and Jordanian rule for 19 years until the 1967 War.

It is crucial to distinguish between the disputes over the different territories, as the historical facts differ significantly and therefore, the legal arguments over rightful claims vary accordingly.

The Golan Heights

Although discussions have been conducted between Israel and Syria in the past (including informal negotiations), further discussion over the rightful legal claim to these territories is pointless at this time. Syria is in the midst of an ongoing civil war with no end in sight and no way of predicting its results at this juncture. There is a very real possibility of the war terminating with the collapse of the Syrian state or its replacement with a radical Islamist entity such as ISIS.

The Sinai Peninsula

The Sinai Peninsula was returned to Egypt following the peace agreement signed by the two countries in 1979. The Sinai Peninsula is approximately three times the size of Israel today and constituted the vast majority (over 90%) of the territory conquered in the 1967 war.

The Gaza Strip

Egypt did not annex the Gaza Strip during its 19-year rule, nor was Egypt ever considered to be its legal sovereign. The Strip was not included in the Egyptian claims during the peace negotiations with Israel; consequently, it was left under Israeli control. Under the Oslo accords, the Israeli government agreed to include the majority of the Gaza strip in the areas designated as Area A, effectively granting control over it to the newly established Palestinian Authority (PA).

In 2005, the Israeli government decided to unilaterally disengage from the remaining parts of the Gaza Strip, leaving the entire territory under control of the PA. In 2006, subsequent to a violent coup, in a material breach of the Oslo Accords, Hamas seized power and to this day maintains its control over the Gaza Strip. At this point, in light of these facts, there is no need for further discussion regarding the rightful claim over the Gaza Strip.

Judea, Samaria, and East Jerusalem

Unlike Egypt, Jordan did claim sovereignty over Judea, Samaria, and East Jerusalem, and illegally annexed these territories in 1950 (with the exception of two countries, the Jordanian annexation was rejected by all other countries, including the Arab League).

The Jewish citizens of these areas fled their homes in the wake of the attacks that occurred during the war. Those who stayed behind, such as the residents of Kfar Etzion, were massacred or taken hostage; not one Jewish citizen remained beyond the armistice line.

In 1988, the Jordanian King Hussein announced his official waiver of claims regarding Judea and Samaria. In his speech, King Hussein also stated that his waiver was made for the sake of the Palestinian Arabs. However, King Hussein was not in a position to transfer legal rights over the territories to another, as he was never legally entitled to them. Moreover, until 1988, including during the 19 years of Jordanian occupation, Jordan did not recognize any Palestinian Arab claim, nor was there any Palestinian claim made with regard to the territories while under Jordanian rule¹.

It is our conclusion that there is no sovereign Arab state which has a favorable legal claim to these territories. Moreover, there is no distinction in terms of international law between territories in Israel's possession since 1948 and those possessed in 1967 (see analysis below). The only difference lies in the circumstances that led to the Arab armies' progression in their war of aggression in 1948, primarily the Jordanian army's progress into the Jordan Valley, Judea, Samaria and East Jerusalem resulting in its 19-year occupation.

* Clarification – this excludes legal rights willingly conceded in peace agreements, or interim agreements (like the Oslo Accords).

Palestine

As there was never a state called Palestine², nor a Palestinian state under any other name, the Palestinians are not included in this section.

* Clarification – this does not negate any claim originating from the right to self-determination under international law which will be discussed in detail later on.

¹ Article 24 of the original PLO charter created in 1964 officially denounced any claim or aspirations for sovereignty over these areas when it stated "This Organization does not exercise any regional sovereignty over the West Bank in the Hashemite Kingdom of Jordan, on the Gaza Strip or the Himmah Area. Its activities will be on the national popular level in the liberation, organizational, political and financial fields."

² ("Palestine" was the name given by the Romans to the ancient land of Israel in the year 136 C.E. to disconnect the Jewish people from her land

The Oslo Accords³

The Oslo Accords are a set of interim agreements that were signed between the State of Israel and the Palestine Liberation Organization (PLO) between the years 1993-1999.

The Accords established the Palestinian Authority (PA) as an interim autonomous self-government, establishing its control over its affairs in the designated areas in accordance with the agreements. The agreements included Israeli withdrawal from extensive parts of Judea and Samaria (the West Bank) and Gaza (Areas A and B), ceding control of these areas to the newly established Palestinian Authority.

The interim agreements determined the division of territory so that the PA would have control over Areas A and B and Israel would have full control over the remaining parts of the territories (Area C).

The division of the territory into said areas was determined by security considerations, but was based mainly on the existing distribution of both populations; the demarcation of Areas A and B was based on the location of the vast majority of Palestinian Arabs.

Major issues were left undetermined in the interim agreements as the parties agreed to **negotiate** the status of these issues at a later time **in a permanent status negotiation**. This was declared clearly in article 31(5) and included **Jerusalem, the Jewish communities** in the area (also referred to as Israeli settlements), the **Palestinian refugees** and determination of **final borders**. The accords did **not** establish or change the legal status of these issues which were clearly and explicitly **excluded** from them, pending resolution in the permanent status negotiation.

³ *Declaration of Principles on Interim Self-Government Arrangements ("Oslo Agreement")*, 13 September 1993, available at: <http://www.refworld.org/docid/3de5e96e4.html>; *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II)*, 28 September 1995, available at: <http://www.refworld.org/docid/3de5ebbc0.html>; *Protocol Concerning the Redeployment in Hebron* 17 January, 1997, available at: <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/protocol%20concerning%20the%20red%20ployment%20in%20hebron.aspx>

The Interim Agreements were signed by Israel and the PLO and were witnessed by the European Union, the Russian Federation, the United States, Egypt, and Norway and endorsed by the United Nations.

The Current Legal Status of the Accords:

The Oslo Accords were signed as interim agreements with the hope of reaching a permanent agreement following bilateral negotiations within 5 years. However, for various reasons⁴, a permanent agreement has yet to be reached.

The agreements are still considered valid, and therefore binding on the parties. To this day, the terms of the agreement continue to apply, including the powers granted to the PA, division of territory and control, security arrangements and legal restrictions.

Binding Resolutions under International Law Concerning the Territories

In addition to the Oslo Accords, many other resolutions have been passed by governments and U.N. bodies; however, their status is not binding and therefore does not create an obligation under international law.

1. U.N. Security Council Resolution 242, 1967⁵

* Clarification – this resolution was taken under chapter 6 of the U.N. charter and therefore it is not legally binding. However, the fact that the resolution was referred to numerous times, including in the various peace negotiations and agreements, has turned it into a meaningful resolution which should be addressed in this context.

Background - Security Council Resolution 242 was adopted following the war of 1967. This item on the Security Council's agenda originated in an appeal by Egypt following its extensive loss of territory in the war. Egypt now attempted to deploy

⁴ Circumstances leading to the parties not having reached a permanent agreement is external to the legal issues discussed in this report, and therefore are not included in it.

⁵ UN Security Council, *Security Council resolution 242 (1967)*, 22 November 1967, [S/RES/242 \(1967\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/242(1967)), available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/242\(1967\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/242(1967)).

international pressure to force Israel to retreat from the territories it gained in the war, despite the fact that Egypt was the driving force behind the war.

It is our conclusion that the determinations agreed upon in Resolution 242 cannot be used to successfully deny the Israeli claim to the territories, nor does it include a requirement for withdrawal to the Green Line as we will demonstrate in the following clauses.

Withdrawal from Territories

The resolution does not determine the need for an Israeli withdrawal from **all** the territories; the reference is to “territories conquered in recent conflict” (e.g. the 1967 War). This generalization is intentional, given that a proposal to include more specific language was explicitly denied (the final version of the resolution was suggested by the British ambassador at the time, who affirmed repeatedly that there was no intent to demand full Israeli withdrawal to the 1967 lines⁶. So did the American Ambassador and he adds “Secretary [of State] Rusk was a particularly strong advocate of this position because of Egypt's violation of the 1957 agreement.⁷) The requirement, therefore, can be understood as a general call to waive territorial possession for peace.

Moreover, in addition to the question of withdrawal, the resolution contains further obligations which are currently not being sufficiently addressed by the international community, mainly termination of all claims.

Termination of all Claims

The resolution contains a clause determining the need for the termination of all claims or states of belligerency, mutual recognition, and the right to live in peace within secure boundaries.

The requirement to comply applies to all the associated parties. All requirements must be adopted and implemented jointly and without prejudice. Therefore, the

⁶GEORGE BROWN, *In My Way: The Political Memoirs of Lord George-Brown* (London: Victor Gollancz, 1971).

⁷ Eugene V. Rostow. “The Drafting of Security Council Resolution 242: The Role of the Non-Regional Actors”, 25 New York University Journal of International Law and Politics 489 (1993), p 499.

resolution cannot be argued to apply unilaterally to Israel while the remaining terms remain unenforced.

Palestinian Arab Claims

The Palestinian Arabs were not mentioned in the Resolution. The 1967 War was conducted between Israel, Jordan, and Egypt and did not involve Palestinian Arabs whatsoever. The same applied to the Arab countries' demand of the Security Council. The only exception to this can be associated with Article 2(b) which addresses the problem of refugees.

It should be noted that despite the Arab states' demand to include solely Arab refugees under clause 2(b) which reads, "For achieving a just settlement of the refugee problem," the Security Council refused to accept their demand. The general term "refugees" was meant to include **all** refugees, including the Jewish refugees who fled and were expelled from Arab countries (as was explained by the U.S. Ambassador Arthur Goldberg, one of the key drafters of the final language, on several occasions).⁸

The San Remo Conference - The Mandate for Palestine, 1922

The San Remo conference, convened in August of 1920, was an international meeting of the WWI Principal Allied Powers. Its purpose was to determine the allocation of Class "A" League of Nations mandates for administration of the former Ottoman-ruled lands. France was given mandates over Syria and Lebanon, while Britain was given a mandate over Mesopotamia (which became Iraq) and the newly designated "Palestine.".

On July 24, 1922, the League of Nations unanimously approved the Mandate for Palestine. Its preamble states: "Whereas the Principal Allied Powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on **November 2nd, 1917** (the Balfour Declaration⁹), by the Government of His Britannic Majesty, and adopted by the said Powers, **in favor of the establishment in Palestine of a national home for the Jewish people**, it being

⁸ Arthur J. Goldberg, *Resolution 242 after Twenty Years*, AMERICAN FOREIGN POLICY NEWSLETTER, volume 11 Issue 1(1988), available at http://www.mefacts.com/cached.asp?x_id=10789

⁹ The Balfour Declaration itself is not a legally binding document under international law. However, the reference to it and the use of its wording in the San Remo Resolution provides the legal and factual background needed to assert the intent of the League of Nations in safeguarding the British promise to reconstitute the Jewish homeland in Palestine.

clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country; and Whereas **recognition has thereby been given to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country...**¹⁰"

In contrast to the U.N.'s resolutions (excluding Security Council Chapter 7 resolutions), the League of Nation's resolutions are considered binding under international law. Moreover, upon the establishment of the U.N. in 1945, the principle of "continuity" was determined in Article 80 of its newly formulated charter¹¹. In other words, the treaties signed by the former League of Nations, including the legal rights bestowed upon third parties, were to remain valid and binding under international law and recognized by the new entity, the U.N.

The decision by the League of Nations clearly states that it favors the national home for the Jewish people to be established "in Palestine." In our opinion, the unreserved use of this term indicates that the term "in Palestine" refers to the entire territory of the British Mandate of Palestine; there is no indication that parts of the territory were intended to be divided again. On the contrary, article 25 of the Resolution states that "In the territories lying between the Jordan and the eastern boundary of Palestine as ultimately determined, the Mandatory shall be entitled, with the consent of the Council of the League of Nations, to postpone or withhold application of such provisions of this mandate as he may consider inapplicable to the existing local conditions..."¹². The League of Nations later passed a resolution in order to modify the original Resolution, excluding the areas west of the Jordan River, as was explained in the League of Nations official journal from November 1922¹³. This meant that the provision of Article 25 was used to divide the territory which was

¹⁰League of Nations, *Preamble to the Mandate for Palestine and Transjordan Memorandum*, 24 July 1922, available at <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20mandate%20for%20palestine.aspx>

¹¹Charter of the United Nations, 24 October 1945, 1 UNTS XVI, art. 80, para. 1, available at <http://www.un.org/en/sections/un-charter/chapter-xii/index.html>

¹² League of Nations, *Mandate for Palestine*, C. 529. M. 314. 1922. VI. 12 August 1922.

¹³ League of Nations Official Journal, Nov. 1922, pp. 1390–1391.

designated for the establishment of the Jewish home to reward the Hashemites and establish TransJordan.

Even if the phrasing had intended to leave an opening for the establishment of another religious or nation state, there is no indication of a recognition of a specific group, nor the size of it, or a specifically allocated area within the territory of such a possible state.

The Mandate for Palestine recognized the Jewish people's historical connection to the land of Palestine, or at the very least, to the territories west of the Jordan River. Following the Mandate's approval by the League of Nations, it effectively became legally binding and has remained so ever since. The Resolution further stated that "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 co-operation with the Jewish agency referred to in Article 4, **close settlement by Jews on the land, including State lands and waste lands not required for public purposes**".

In addition, it is clearly stated that all civil and religious rights of non-Jewish communities in Palestine should be protected.

* Clarification – this does not negate the rights later on agreed upon by the parties, or any other right under international law.

The wording of the Mandate also negate any claim that the Jewish presence and establishment of the State of Israel was done in keeping with colonial agendas or any other extraneous considerations.

2. The British Mandate for Palestine, 1922-1948

The British Mandate for Palestine began in 1922, a mandate given to Britain by the League of Nations following World War I. The British government was given the authority, as a trustee of the Mandate for Palestine, to administer and execute its provisions.

The British Mandate for Palestine included, as stated above, all of what is currently Jordan and Israel. Following the later resolution, the land east of the Jordan River,

constituting approximately 77% of the Mandate's turf, was awarded to the Hashemites, thus creating Transjordan (now known as Jordan).

The rest of the territory, including Judea, Samaria, and all of Jerusalem, remained under the British Mandate until its termination in 1948. All permanent residents under the jurisdiction of the British administration in Palestine were given citizenship including Muslims, Christians, and Jews. All were considered Palestinians including those who resided in the Eastern part of the Mandate which later became Jordan.

The international community, in attempting to prepare for the departure of Britain and the termination of the Mandate, voted on a non-legally binding Partition Plan brought forth by the U.N. General Assembly. However, the Arab leaders rejected this suggestion, ending the British Mandate with the absence of an international decision re-determining the status of the territory. While the British Mandate was terminated, the Mandate for Palestine remained valid under international law, including the recognition of rights bestowed upon it.

Implementation of Key Principles of International Law

1. Uti Possidetis Juris¹⁴

Uti Possidetis Juris ("as you possess under law") is a valuable principle in international law. Originating (in its modern form) in the 19th Century's decolonization of South America, it was used numerous times throughout the 20th Century to determine the borders of new and emerging states in Africa and Eastern Europe.

The rule intended to add stability and certainty to a naturally chaotic situation ensuing after the decolonization of a region. The rule established a default determination of borders, granting emerging states the right to inherit the previously existing colonial borders upon declaring independence.

As the International Court of Justice explained in the Burkina Faso case

¹⁴ Bell, Abraham, and Eugene Kontorovich. "Palestine, Uti Possidetis Juris and the Borders of Israel" *Arizona Law Review* 58(2016): 633-692; Northwestern Public Law Research Paper No. 16-04; San Diego Legal Studies Paper No. 16-214. Available at <https://ssrn.com/abstract=2745094>

“[b]y becoming independent, [the] new State acquires sovereignty with the territorial base and boundaries left to it by the [administrative boundaries of the] colonial power.... [T]he principle of *uti possidetis [juris]* applies to the State as it is [at that moment of independence]....”

Despite the seemingly arbitrary nature of this principle and the fact that it can potentially infringe on other key principles in modern international law, such as the right to self-determination, it is still considered preferable to other options. As has been affirmed in many international disputes, this principle decreases the probability of future wars and bloodshed which can potentially go on for centuries without resolution resolve. (It can be argued that the application of this rule to the Arab-Israeli conflict following termination of the British Mandate and declaration of Israeli independence might have prevented needless bloodshed decades ago.)

In the case of Yugoslavia for instance, the arbitration committee stated:

“whatever the circumstances, except where the states concerned agree otherwise, the right to self-determination must not involve changes to existing frontiers existing at the time of independence...”

Examining the circumstances of the Israeli declaration of independence, we conclude that *Uti Possidetis Juris* applies and, therefore, grants the State of Israel the legal right to all territories previously colonized by Britain in its Mandate for Palestine.

2. The right to Self-Determination

The right to self-determination is well established in modern international law, as well as its defined purpose to provide people with the legal right to decide their own destiny. However, the scope, as well as legal consequences derived from it, still remain unclear.

There are many reasons for this ambiguity, as there are often many competing rights and interests and the reality on the ground is often complex.

Realistically, the right to self-determination is a point of consideration; however, it is not a determining factor, nor does it automatically mean the right to an independent state and certainly not to a specific and defined territory. The right to determine one's

destiny can be fulfilled in many ways and through different rights, such as internal self-determination which may refer to various political and social rights within the framework of a non-nationalistic area, or of a minority group within a national state, as well as other forms of self-government.

A hypothetical attempt to implement the right to an independent state everywhere that a minority group constitutes the majority of the population in a specific territory within a sovereign state, would undoubtedly lead to chaos and bloodshed all over the world.

There are many minority groups around the world aspiring for independence and the fulfillment of their recognized right to self-determination. Groups such as the Kurds, South Saharans, Tibetans, Berbers, Catalonians, and Native Americans, however, have remained minorities within sovereign states.

Palestinian Arabs are recognized by the majority of the international community as a group which is entitled to the right to self-determination. However, as listed above, the scope and legal consequences derived from this aspiration are undetermined under international law. Are they entitled to a sovereign independent state or autonomous rule? To which territories are they entitled? Is it the whole territory they wish to possess or just the territory of which they constitute the majority (areas A and B, not including area C)? Should their right be negotiated in accordance with the consideration of other rights such as the Jewish right to self-determination and other rights binding under international law such as those listed in this document?

Moreover, there are national and international interests dealing with a variety of issues such as security, stability, and sustainable peace which must be taken into consideration.

In light of the above, we have come to the conclusion that the right to Palestinian Arab self-determination does not supersede all other rights portrayed in this document; alternatively, we find that the autonomous self-government of the Palestinian Authority might be considered satisfactory (in the legal sense) as well as other solutions, as listed above.

3. Preferential Weight to Conquest

It is a general principle of international law not to accept conquest as a legitimate act to acquire territory. This principle was created to deter potential aggressors from engaging in war and from the just notion that wrongdoings should not be

acknowledged or rewarded. However, understanding this principle and the motives for its creation makes obvious the distinction between aggressive conquest and defensive conquest, as well as the distinction between the taking of territory legally held and the taking of territory illegally held. According to former President of the International Court of Justice (ICJ) Judge Schwebel¹⁵:

"Those distinctions may be summarized as follows:

(a) A state acting in lawful exercise of its right of self-defense may seize and occupy foreign territory as long as such seizure and occupation are necessary to its self-defense... (c) Where the prior holder of territory had seized that territory unlawfully, the state which subsequently takes that territory in the lawful exercise of self-defense has, against the prior holder, better title."

"...If the foregoing conclusions that (a) Israeli action in 1967 was defensive and (b) Arab action in 1948, being aggressive, was inadequate to legalize Egyptian and Jordanian taking of Palestinian territory, are correct, what follows?"

"...It follows that the application of the doctrine of according no weight to conquest requires modification in double measures... Israel had better title in the territory of what was Palestine, including the whole of Jerusalem, than do Jordan and Egypt.".

It therefore follows that the exception to the rule "no weight to conquest" applies to the Israeli conquest of Judea, Samaria, and East Jerusalem in the 1967 War. The exception applies for two main reasons: (a) it was a war of aggression forced on Israel resulting in Israel's taking possession of the territory in a lawful exercise of self-defense; and

¹⁵STEPHEN M. SCHWEBEL, *Justice in international law: Selected Writings* 521-526 (Cambridge University Press, 1994).

(b) the prior holders of the territory (Jordan and Egypt) had seized that territory unlawfully. Therefore, the seizing of the territory by the State of Israel is not illegal under international law.

Israeli/ Jewish Communities in the Disputed Territories

As a precondition to argue the illegality of Jewish communities in the territories, one must first negate the Israeli claim to the territories and establish that a Jewish presence in the territories is illegal. Moreover, Arguing that any territory, including a Palestinian controlled territory and/or a future Palestinian state should be free of Jews is in itself against international law.

Based on the analysis above, such a determination can certainly be argued against; on the contrary, the legal merit establishing the Israeli claim is founded on extensive evidence.

In previous sections, it was established that none of the Arab countries have valid legal claims to these territories and that the Palestinian Arab claim can either be founded on grounds of self-determination or rights bestowed upon them by the Oslo Accords.

The right to self-determination is, in fact, a central and powerful principle in modern international law. As was previously noted, this legal analysis does not intend to negate other legal rights, but solely to establish the legality of the Israeli claim to the territories. It should be noted, however, that the right to self-determination is not absolute (as mentioned above) and must be properly balanced with competing rights and claims.

The Oslo Accords

The Palestine Liberation Organization (P.L.O.) entered into the Accords with full knowledge of the Jewish presence in the territories and the claims by Israel in regards to the territories. Moreover, the Oslo Accords contain no prohibitions in that regard, including provisions for the building or the expansion of settlements. In fact, the Oslo Accords stipulated specifically that the issue of the settlements will be reserved for permanent status negotiations and that the interim accords shall have no implications with respect to this issue.

It is argued at times that Article 31(7) can be interpreted to contain such a prohibition: "Neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations."

However, this article is meant to settle the parties' concerns over possible unilateral actions which might change the **legal** status of the territories, meaning primarily either annexation by the Israeli government or declaration of statehood by the P.A.

* Clarifications

- (a) The question of whether Israel **should** maintain its settlements in Area C or continue to build additional structures or communities is a political question and not a legal one. In terms of law, the Oslo Accords do not restrict Israel from doing so, as was clearly demonstrated above.
- (b) There is no legal restriction preventing the parties from determining, in the permanent agreement, to either keep the Jewish communities under Israeli control, evacuate each and every Jewish resident from these territories, or establish a Palestinian state with a Jewish minority residing in these areas as Palestinian citizens with equal rights under the law.
- (c) Just as the Israeli unilateral withdrawal from the Gaza strip in 2005 cannot be successfully argued to be a breach of this agreement, the continuation of the Israeli presence in Judea, Samaria, and Jerusalem cannot be considered a breach of this agreement.

The Fourth Geneva Convention, 1949¹⁶

International Humanitarian Law (IHL) and the Laws of Armed Conflict (LOAC) prohibit the transfer of segments of a state's population to the territory of another state which it has occupied from another sovereign state. This principle, which is reflected in Article 49(6) of the Fourth Geneva Convention, was drafted immediately following

¹⁶ International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August , 1949, 75 UNTS 287, available at <https://www.icrc.org/ihl/INTRO/380>.

the Second World War and as a response to specific horrific events that occurred during that war.

The Convention addressed cases of illegal occupation of another state's territory. According to the well-established arguments cited above, applying the restrictions of the Fourth Geneva Convention or any other part of international law regarding the **occupation of a part of a sovereign state** to the Israeli possession of the territories would constitute a false interpretation or application of the law. Nevertheless, we still wish to bring forth an analysis concerning the Israeli compliance with these terms.

The authoritative commentary of the International Committee of the Red Cross (ICRC) confirms that The Fourth Geneva Convention was enacted to prevent the atrocities of WWII when Nazi Germany forced massive transfers of populations in Czechoslovakia, Poland, and Hungary and endangered their existence as a race.¹⁷

According to Eugene Rostow, former Dean of Yale Law School:

The Convention prohibits many of the inhumane practices of the Nazis and the Soviet Union during and before the Second World War – the mass transfer of people into and out of occupied territories for purposes of extermination, slave labor or colonization, for example.... The Jewish settlers in the West Bank are most emphatically volunteers. They have not been “deported” or “transferred” to the area by the Government of Israel, and their movement involves none of the atrocious purposes or harmful effects on the existing population it is the goal of the Geneva Convention to prevent.¹⁸

Upon examining Jewish history, it is evident that the areas of Judea, Samaria, and Jerusalem are considered to have monumental value in the Jewish tradition. Many of the ancient and sacred places associated with the Jewish faith are believed to be located there, which explains why Jews have maintained a strong connection to these

¹⁷ 4 INTERNATIONAL COMMITTEE OF THE RED CROSS, THE GENEVA CONVENTIONS OF 12 AUGUST 1949: COMMENTARY 3-9 (Jean S. Pictet ed., 1958).

¹⁸ Eugene V. Rostow, *'Palestinian Self-Determination': Possible Futures for the Unallocated Territories of the Palestine Mandate*, AMERICAN JOURNAL OF INTERNATIONAL LAW, Vol. 84, 1990, p. 719.

areas throughout thousands of years. These traditions and beliefs have led many Jews to voluntarily "return" to these places whenever circumstances have allowed it.

The Convention does not prohibit the voluntary movement of individuals and the voluntary establishment of Jewish homes in a land to which these individuals feel a deep historical and spiritual connection; these do not constitute a violation of the prohibition of forced population transfer, protected by Article 49(6).

Moreover, examination of examples of occupation occurring after WWII which involved transfers of parts of occupiers' own populations, clearly demonstrates that the Israeli case does not constitute a violation of Article 49(6)¹⁹. For example:

- 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 all of the above-mentioned cases, as well as in other such examples, the international community did not view such transfers as violations of Article 49(6).

Conclusions

After conducting a thorough examination of international law detailed above, we conclude that the State of Israel has substantial legal merits to its claims over the territories. These conclusions do not negate other claims; however, they **rebut the seemingly broad international misconception that these territories constitute "occupied Palestinian territories" under international law.**

¹⁹ Kontorovich, Eugene. "Unsettled: a Global Study of Settlements in Occupied Territories." (September 7, 2016). *Northwestern Public Law Research Paper No. 16-20*. Available at: <https://ssrn.com/abstract=2835908>