

Why Are Israeli Settlements Not Illegal Under International Law?

“The one who states his case first seems right, until the other comes and examines him” (Prov. 18:17).

Probably around 1 percent of Israeli Messianic Jews live in settlements, though no formal counting of them exists.

For most, the reason may be more financial than theological. Believers working or ministering in Jerusalem or Tel Aviv often find the high cost of decent home ownership in those cities unaffordable. Housing prices in the settlements are much lower. In any case, most if not all believers living in Judea or Samaria, aka the West Bank, would say God led them there.

Most Christians who support Israel understand her right to exist, with settlements in Judea and Samaria, based on the Bible. (The word “right” in this post does not imply any right to demand anything from God.) For that we are deeply thankful. Yet relatively few understand Israel’s legal rights in the critical realm of international law.

They are not able to respond to pro-Palestinian movements distorting the law and denying key facts or legal realities. (This phenomenon has given rise to “lawfare,” defined as the disingenuous use of traditional Western law by extremists in order to undermine the democracy on which such law is based. Lawfare is a form of warfare used to conquer a culture where military warfare alone cannot achieve extremist goals.) Besides pointing to prophecy, they can not speak into the international community’s condemnation of settlements. As a result, more and more evangelical churches and denominations have aligned with anti-Israel, anti-Semitic movements. And

that affects us all.

Admittedly, legal issues regarding the West Bank are complex. One short article cannot adequately discuss them. But the simplest basics needn't be intimidating. As a Messianic Jewish attorney, I've tried here to demystify Israel's case for settlements under international law. I think you'll find it worth the 5-10 minute read! (Alternatively, you can scroll down to the Conclusion at the end.)

Customary international law presumes the last nation to historically and legally own and occupy land retains legal title deed or ownership of that land. Concerning Judea and Samaria, that nation is indisputably Israel. But centuries' old, democracy-style, customary international law is being challenged and changed—regarding Israel first, but certainly not last.

Historically, Israeli settlements are located in Judea and Samaria, territories belonging to the Jewish people for thousands of years. The Jews were illegally forced off the land by the Romans during the first century. Through the millennia, however, a small, Jewish territorial presence was maintained. Acknowledging these key historical facts, the 1922 League of Nations Mandate for a Jewish National Home explicitly included Judea, Samaria—and Jordan. The mandate was to be administered by Great Britain.

Palestinian Arabs reacted to the prospect of a Jewish state with murderous terror. Hoping to appease them, Britain illegally created a Palestinian state, now called Jordan, from 70 percent of Jewish mandated land. Meanwhile, Arab terror persisted.

When the United Nations was established in 1945, by law it inherited the British Mandate. Still trying to appease terror, the U.N. (wrongly and probably illegally) offered Judea and Samaria to the Arabs to create a second Palestinian state. The

Arabs, wanting all of Israel, refused the offer. When a Jewish state was declared in 1948, Jordan and other Arab nations attacked it. Jordan then illegally conquered and occupied Judea and Samaria, which had been "no-man's land." But Jordan did not create from it a second Palestinian state. Nor did it absorb the Palestinian population, refusing instead to grant most of them citizenship.

In 1967, defending herself in another Arab initiated war against Israel, the Jewish state acquired (some say, liberated) Judea and Samaria. Under customary international law, at that time Israel had the legal right to incorporate these historical regions of the Jewish National Home into the Jewish state. In a decision some now regret, Israel generously applied the international laws of war instead.

Those who argue settlements are illegal usually claim they violate the laws of war under the Fourth Geneva Convention, Article 49 or 2. But for such an argument to be sustained, the provisions of the Convention must be taken extremely out of context, then contorted almost beyond recognition to apply to circumstances for which they were never intended.

Regarding the law's intent, its goal was to prevent an offensive, unprovoked military assault by one nation on another involving forced deportation of local populations. Thus Article 49 states that an "occupying power" may not "deport or transfer parts of its own civilian population into the territory it occupies." The term "occupied territory" was conceived to prevent another Nazi-like, genocidal military conquest and occupation of any sovereign, recognized state.

But Israel has not embarked on a genocide campaign. It has not forced Jewish civilians to relocate into the West Bank. Nor has it forced a population of Palestinian civilians to relocate out of the West Bank. Admittedly, in relatively few and isolated instances, Palestinians have been forced to relocate, but within the territories—and strictly for

security-related defensive, not offensive, reasons. Usually Israel compensates those civilians, which then fulfills her obligations under the Geneva Convention.

Second, the West Bank has never been a sovereign state. Before 1967, it was illegally occupied and neglected by Jordan. Only Israel has ever historically, lawfully owned it.

Third, Article 2 of the Geneva Convention, which some say extends the law of armed conflict to Israeli settlements, applies only to conflicts which “arise between two or more high Contracting Parties.” Israel and Jordan had no contractual relations regarding the West Bank in 1967. The law of armed conflict should not be made to apply here.

Conclusion

Judea and Samaria are not illegal but “disputed” territories, over which there are competing claims. I do not deny that, in this dispute, Israel has acted unjustly in some instances. But under customary international law, Israel has the stronger case to ownership of the land, including settlements, for these reasons:

1. Its historic Jewish sovereignty and presence in Judea and Samaria;
2. The territory’s designation as part of the Jewish state under the League of Nations Mandate;
3. The fact the territory was not previously under the legitimate sovereignty of any other state;
4. The fact the territory was wrongly taken from the designated Jewish state by Great Britain and the U.N.;
5. The territory came under Israeli control in a legitimate war of self-defense;
6. Israel has a legal right to secure boundaries; and
7. The Israeli-Palestinian Bilateral Agreement of 1995 (Oslo II) specifically reserves the issue of settlements for permanent status negotiations, which have not yet occurred. Meanwhile, it does not specifically prohibit building or

expanding settlements.

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