

The Settlements Under International Law

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Since 1967, Israel has occupied the West Bank. The fundamental principle of international law establishes that occupation is temporary. This principle, which is accepted – declaratively, at least – by Israel,¹ prohibits the occupying power from establishing permanent facts in the occupied territory.

International law views the occupying power's rule as temporary, with the occupier holding the territory as a trustee, until its final status is decided upon.² Establishing permanent civilian communities (settlements) in the occupied territory for the population of the occupying power contravenes the substantive prohibition on establishing permanent facts in occupied territory.

The Fourth Geneva Convention forbids the occupying power to transfer its civilian population to the occupied territory. This prohibition relates not only to expelling civilians or forcibly transferring them to the occupied territory; it applies also where the occupying power encourages its civilians to relocate to land that is under occupation or assists them in that endeavor.³

Regarding this sweeping prohibition, the question of ownership of the land is irrelevant: the prohibition on establishing settlements applies to both private Palestinian land and public land (state land). Establishing settlements on private Palestinian land also violates provisions of international law that require the occupying power to protect private property.⁴ The occupying power also has the duty to protect public property, but Israel breaches this duty by establishing settlements on state land.⁵

To date, 121 official settlements and some 100 unrecognized settlements, referred to as "unauthorized outposts," have been established in the West Bank. In addition, 12 Israeli neighborhoods have been built on West Bank territory that Israel unilaterally annexed to Jerusalem's jurisdiction area, as defined after 1967. Under international law, these neighborhoods have the same status as Israeli settlements built in other parts of the West Bank. The

very existence of the settlements leads to numerous violations of Palestinians' human rights, among them the rights to equality, property, an adequate standard of living, freedom of movement, and self-determination.⁶ Under international law, all these communities are illegal.

1 - The state made such declarations in its responses to various High Court of Justice petitions. See, for example, its Supplemental Statement on Behalf of Respondents 175 in HCJ 1526/07, Ahmad 'Issa 'Abdallah Yassin and 16 Others v. Head of the Civil Administration in Judea and Samaria et al., July 5, 2007.

2 - HCJ 393/82, Jam'iyyat Iskan al-Mu'alimoun al-Mahdduda al-Mas'uliyah v. Commander of IDF Forces in Judea and Samaria, ruling given on December 28, 1983.

3 - Article 49 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War; International Court of Justice advisory opinion on construction of the Separation Barrier (2005).

4 - For example, article 46 of the Regulations Attached to the Hague Convention on the Laws and Customs of War on Land of 1907.

5 - Article 55 of the Regulations Attached to the Hague Convention on the Laws and Customs of War on Land of 1907.

6 - B'Tselem, Land Grab: Israel's Settlement Policy in the West Bank (May 2002), pp. 41-44.