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# Israeli Settlement in Judea and Samaria Through the Prism of International Law

**Chapter B.3. From the book**
**" Issues in Judea and Samaria Land Law"**

# Issues in Judea and Samaria Land Law

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## Introduction

Conventional international discourse regarding the legal standing of Israeli settlement in Judea and Samaria, which regards this settlement as illegal, is based on a number of underlying assumptions:

1. In 1967, Israel captured Judea and Samaria from the Hashemite Kingdom of Jordan.
2. Because Judea and Samaria are "occupied territories" according to international law, they fall under the Fourth Geneva Convention of 1949 Regarding Protection of Citizens in a Time of War (hereafter: the Geneva Conventions).
3. Beginning in the early 1970s, all Israeli governments have promoted, to one degree or another, a policy of settling Israelis in the territory that was conquered by Israel in the Six Day War, including Judea and Samaria.
4. Article 49 of the Geneva Conventions forbids the transfer of population into the occupied territory by the occupying power.

It is argued that these four postulates necessarily lead to the conclusion that the entire Israeli settlement enterprise in Judea and Samaria was carried out in contravention of Article 49, and therefore violates customary international law. There are those who go even farther, arguing that because of the inclusion of Article 49 (with certain amendments) in the Rome Statute of 1998 which established the International Criminal Court, Israeli settlement activity in Judea and Samaria may constitute war crimes.

Despite the fact that this position, with certain nuances, has been adopted by most countries, by the United Nations and its various institutions, and by many scholars of international law,[1] and despite the fact that this position has been adopted by the International Court of Justice at the Hague and was at the core of a controversial judgement regarding the security fence constructed by Israel in Judea and Samaria,[2] it is worth noting that this position has never been adopted by an international court with jurisdiction over Israel, by the Israeli government itself, or by Israel's Supreme Court - although the Supreme Court, which enjoys a very respectable international reputation, has adjudicated hundreds, if not thousands of cases that involve Judea and Samaria. In fact, the legal

1 See, for example, Eyal Benvenisti, The International Law of Occupation, 2012 (second Edition), pp. 206–209.

2 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion ICJ Rep. 136 (July 9, 2004), at para. 78.

footing of Israeli settlement in Judea and Samaria is far more complex than the simplistic arguments outlined above, but before examining the legal issues, a brief review of the relevant historical background is in order.

# Historical Background

Until the First World War, Judea and Samaria were under the control of the Ottoman (Turkish) Empire, which included, among other areas, the territories now known as Israel, Jordan, Syria, and Lebanon, as well as Judea, Samaria, and the Gaza Strip.

As a result of the Turkish defeat in WWI, these territories were divided among two of the world powers who had fought the Turks, Great Britain and France;[3] in 1922, these countries were given mandatory powers by the League of Nations to temporarily administer these areas.[4] The British Mandate included all of the territory that is today known as the State of Israel, Judea and Samaria, the Gaza Strip, as well as the territory on the east bank of the Jordan River.

Several months after the Mandate took effect, the League of Nations ratified Great Britain's motion to grant independence to the Trans-Jordanian Emirate headed by the Emir Abdallah, on territory east of the Jordan River – what is known today as Jordan – thus establishing the Jordan River as the eastern border of mandatory Eretz Yisrael.[5]

This situation continued until the conclusion of the British Mandate in Palestine in 1948, whereupon the Egyptian army invaded Israel from the south, seizing control of the Gaza Strip, and the Jordanian Legion invaded Israel from the east and seized eastern Jerusalem and territory on the western bank of the Jordan River.

With the conclusion of the War of Independence, the territory that had once been under the jurisdiction of the British Mandate was divided into three separate areas: The sovereign State of Israel, Judea and Samaria – which were devoid of any official status, and were controlled de facto by the Jordanian army - and the Gaza Strip, territory devoid of official status that was controlled de facto by the Egyptian army.

It is important to point out that while the Egyptians were careful to clarify that they laid no claim to rights of any kind over the Gaza Strip and that their jurisdiction there consisted of military government, the Jordanians behaved as the sovereign in Judea and Samaria, and in 1950 went so far as to announce that this territory was an integral, inseparable part of the Hashemite Kingdom of Jordanian.

The Jordanian decision was not at all well-received by the international community, and even less enthusiastically by the United States. Moreover, Jordan's fellow members in the Arab League went so far as to threaten banning Jordan from the organization on account of this act of annexation (which was recognized, to the best of our knowledge, by only three

3 The Council of the League of Nations Resolution: The Palestine Mandate (July 24, 1922).
4 In practice, Great Britain's control over most of the territory of Palestine began in 1917.
5 Memorandum relating to Article 25 of the Palestine Mandate presented by the British Government to the Council of the League of Nations on September 16, 1922 and approved by the Council on September 23, 1922.

countries – Britain, Iraq and Pakistan). Eventually, a compromise was reached between the members of the Arab League, in which Jordan would be permitted to retain the territory in question as a trustee only. In other words, even the Arab nations refused to officially recognize Judea and Samaria as Jordanian territory.[6]

Jordan's de facto control of Judea and Samaria continued for 19 years, until Israel took control of the area in the Six Day War. Today, Israel's military government controls slightly more than half of the overall area of Judea and Samaria, while authority over the remaining area is in the hands of the Palestinian Authority, as per the political arrangements between Israel and the PLO agreed upon in the "Oslo Process."

The importance of this brief historical summary for the matter at hand is that it enables us to establish that since 1917, Judea and Samaria have not been a recognized part of any state.7 Moreover, since the First World War, sovereignty over Judea and Samaria has been unclear, and this continues to be the situation until today.

# On the applicability of the Laws of Occupation to Judea and Samaria

As we have seen, the majority of scholars of international law contend that Judea and Samaria are occupied territories, and as a result, the corpus of customary international law regarding occupied territory, and particularly the Geneva Conventions, applies. This was the position expressed by the International Court at the Hague in its decision regarding the Israeli security barrier.

Underlying this argument are the assumptions detailed above. The foundation of this position rests upon the legal contention that the status of occupation is contingent upon the existence of "effective control" on the part of a state over territory that is not part of its recognized sovereign territory. The majority of international legal discussion in this context surrounds the question of "effective control;" in other words, the salient points in legal terms are the nature and extent of control extended over the territory in question.

Yet while the majority of attention in legal literature addresses the nature and characteristics of "effective control," far less attention has been paid to a different question: Is it possible to occupy territory that had not been subject to any recognized sovereignty? In other words, is "occupation" applicable to a situation in which the territory in question did not fall under the sovereignty of another state?

In this context, the State of Israel has often argued, in a variety of forums and on any number of occasions, that it **does not accept** the argument that international laws of

6 On 15 May 1950, The Political Committee of the Arab League issued a condemnation of the Jordanian annexation. Moreover, the initiative to expel Jordan from the Arab League in response to the annexation was defeated by only two votes: Yemen and Iraq objected. See Naseer H. Aruri. Springer, Jordan: A Study in Political Development (1921-1965), 1972, pp. 90, footnote 3.

7 For a comprehensive description of the history of Jewish settlement, see The Origins of Jewish Settlement in the Land of Israel, Beginning with the First Aliyah (Hebrew), The Israel National Academy of Sciences and the Bialik Institute, 1944, pp. 97-138.

occupation, including the Geneva Conventions, are to be applied to all situations in which sovereignty over territory is unclear or in dispute (including Judea and Samaria). At the same time, Israel has chosen to self-impose, de facto, the humanitarian chapters of the Geneva Conventions in Judea and Samaria.[8] To support its position in the specific case of Judea and Samaria, the Israeli government has based its arguments on the historical facts outlined above, among other things.

In a nutshell, the State of Israel contends that because Judea and Samaria were never a legitimate part of any Arab state, including the Kingdom of Jordan, and in light of the historical, legal, and physical connection of Jewish People to Judea and Samaria,[9] it is not possible to consider Israel an "occupying power" in the commonly accepted legal sense.

Despite the fact that this approach is supported by a number of internationally renowned experts in international law, the position of the State of Israel has not garnered widespread international acceptance. Nonetheless, it is important to stress that even those who reject Israel's position, who argue that occupation is not contingent on the legal status of the territory prior to the change of effective control over it, will be hard-pressed to argue that there currently exists an unequivocal, binding "accepted practice" in customary international law that would necessarily require the application of the laws of occupation over "complex" territories such as Judea and Samaria.[10]

A defense of the State of Israel's position as we have described it may be based upon principles, conventions, and binding decisions of international law. On the level of principles, modern public international law has developed, starting in the 17th century, parallel to the development of the state as the legitimate actor in international law. Thus, it should come as no surprise that to this very day most of the rules of international law apply only to states and the relationships between states. One expression of this legal reality may be seen in the language of Article 2 of the Geneva Conventions (emphasis added):

> "...the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise **between two or more of the High Contracting Parties** ...The Convention shall also apply to all cases of partial or total occupation **of the territory of a High /contracting Party**...

In other words, since the time the Geneva Conventions were drafted, the Convention that

8 Meir Shamgar, "The Observance of International Law in the Administered Territories", 1 Israel Yearbook of Human Rights, pp. 262; Meir Shamgar, "Legal Problems of the Israeli Military Government", Military Government in the Territories Administered by Israel (1967-1980) 13 (Vol. 1, 1982).

9 Regarding this, see the extensive comments of Chief Justice Levy, High Court of Justice docket 1661/05, In the Matter of the Gaza Coast Regional Council vs The Knesset and Others, 2005, Decision 59(2), pp. 304-305.

10 Professor Benvenisti summarizes his interpretation of the legal status, but does not claim at any point that his conclusions reflect common practice in international law: "In sum, a teleleological interpretation of the law of occupation as well as developments in general international law now provide a firm basis for applying the law of occupation beyond situations of clear enmity, to all circumstances in which non-allegiance characterizes the relationship between an administration of territory and the population subject to it." (Benvenisti, 2012, pp. 206)

has organized (and continues to do so to this very day) the behavior of states in occupied territories, assumes relevance only regarding the relations between a conquering state and a conquered state. Similar language may be found in the Hague International Court of Justice's decision of 2005 in the matter of Armed Activities on the Territory of the Congo:

> "In order to reach a conclusion as to whether a State, **the military forces of which are present on the territory of another State** as a result of an intervention, is an "occupying Power" in the meaning of the term as understood in the *jus in bello*, the Court must examine whether there is sufficient evidence to demonstrate that the said authority was in fact established and exercised by the intervening State in the areas in question. In the present case the Court will need to satisfy itself that the Ugandan armed forces in the DRC were not only stationed in particular locations but also that they had **substituted their own authority for that of the Congolese Government**..."[11]

It is clear that the underlying assumption for the judges' consideration is that the territorial dispute is **between two states**. Although the State of Israel's argument that Judea and Samaria are not occupied territory has not gained significant international support, the arguments it presents are not baseless. In practice it may be possible to support Israel's position with statements made by several well-respected experts in the field of international law, among them Professor Michael Curtis,[12] Professor Julius Stone,[13] and Professor Stefan Shwebel (President Emeritus of the International Court at the Hague), who went so far as to express his opinion that the acts of aggression that led to the outbreak of the Six Day War gave Israel the right to retain the territories over which it gained control in that war.[14]

Schwebel's position, then, is not that international law stipulates that territory that had not previously come under the sovereignty of another state can never be considered occupied; rather, he argues that the opposite cannot be unequivocally proven – that there is in international law a binding rule that states that the question of occupation is not exclusively contingent upon the historical-legal status of the territory before the change in effective control. From a purely legal standpoint, this is a legal question that has not been authoritatively answered, and there are arguments to be made for both sides.

In order to illustrate the difficulty in resolving this issue , and to explain why the position of those who argue that there is no connection whatsoever between the question of occupation and the prior status of the territory is far from being an open and shut case, let us consider a theoretical scenario:

For the sake of argument, let us posit the existence of two states (Country A and Country

11 ICJ JUDGMENT, Case Concerning Armed Activities on the Territory of the Congo, pp. 230 (December 2005).

12 Michael Curtis, "International Law and the Territories", Harvard International Law Journal 32(2), Spring 1991, pp. 487.

13 .Julius Stone, "Israel and Palestine – Assault on the Law of Nations", International Law and the Arab-Israel Conflict (1981, Second Edition).

14 Stephen Schwebel, "What Weight to Conquest?", in: The Arab-Israeli Conflict, Volume II: Readings (J.N. Moore [ed.]) (Princeton, NJ: Princeton University Press 1974), pp. 315.

B) that have an age-old dispute between them regarding a tract of land located between them, and over which both countries claim sovereignty; this dispute has never reached a political or legal resolution. Let us further posit that in the disputed territory , the majority of the population identifies historically and ethnically with Country B. Finally, let us posit that according to all indicators accepted by international law, the claims of Country A to sovereignty over the disputed territory are much stronger than the claims of Country B.

In this situation, which for our purposes is theoretical but in fact may reflect many existing territorial disputes across the globe, purposeful application of the legal indices for "a state of occupation" that ignore the question of the status of the territory, may bring us to the conclusion that if Country A takes the disputed territory by force, it will be considered an occupying power because the territory in question is not under its sovereignty and because the majority of the population of said territory does not identify with this occupation, while if Country B does the same, it is apt not to be considered an occupier – even though this would ignore the legal aspects that make Country A far more likely than Country B to be awarded legal rights of sovereignty over the disputed territory should the matter come before a court of international law.

This theoretical case brings into clearer focus the understanding that dogmatic adherence to the principle that laws of occupation apply automatically and in every case – regardless of the status of the territory prior to "occupation" – may cause unwanted, and even absurd outcomes in some cases.

This being so, why is there such widespread agreement among scholars of international law that the Israeli position should be rejected? In our estimation, the answer to this question does not necessarily lie in the realm of pure legal argument but rather in the fact that the majority of scholars, like the majority of countries in the world, have adopted the Palestinian political narrative which states that the land of Judea and Samaria "belongs" to the Palestinian nation. In other words, the position taken by the State of Israel is generally not accepted, not because it is supported by weak legal arguments but because the world generally tends to adopt the Palestinian position regarding the Arab-Israel conflict.

Once they have adopted this position, brushing aside all evidence of an Israeli or Jewish connection to Judea and Samaria, the nations and scholars need not contend with the logical problem and the historical injustice that may result from dogmatic application of their legal position. If these nations were to accept Israeli claims of historic and legal rights in Judea and Samaria, scholars of international law would not be so quick to argue that there is no connection between application of the laws of occupation and the prior status of the territory in terms of the right to extend "effective control " to that territory.

To sum up this section, the Israeli contention that Judea and Samaria are not occupied territories is not without legal foundation. It therefore follows that the Israeli contention, that the laws of occupation (including Article 49 of the Geneva Convention) do not necessarily or automatically apply to Judea and Samaria, is also far from groundless.

# Between Ramat Rachel and Rachel's Tomb: The Significance of the Green Line

Another point that deserves attention is that in all international references to the question of the status of Judea and Samaria, there is nearly universal acceptance of the assumption that all of Judea and Samaria should be treated as one monolithic unit, politically and geographically. It appears that the international community long ago accepted the "green line" as the border of the sovereign State of Israel, and therefore, in the eyes of the nations of the world, they consider all territory located beyond this line "occupied." An analytical examination reveals, however, that this assumption is also far from unequivocal.

As we explained earlier, until 1948, Judea, Samaria, and the territory that is today the State of Israel, were all integral parts of the British Mandate. Therefore, it should be no surprise that Jewish settlement efforts in the Land of Israel, which reached their apex in the Mandatory period, did not neglect the territory later referred to as Judea and Samaria. For this reason, at the time of the establishment of the State, both Jewish settlement and Jewish holy sites were not a rarity in Judea, a fact that is well-illustrated by the case of two sites bearing similar names: Ramat Rachel and Rachel 's Tomb.

Today, Kibbutz Ramat Rachel is one of Israel's well-known kibbutzim (pioneering collective settlements) and is not the subject of international dispute. The Rachel's Tomb compound, on the other hand, located on the outskirts of Bethlehem, is administered by the IDF in a unique arrangement created in the context of the agreements between Israel and the PLO. In the eyes of the international community, Israel's presence in this compound is part of the illegal Israeli occupation of Judea and Samaria. Is this distinction clear-cut or justified?

At the outbreak of Israel's War of Independence, both Ramat Rachel and Rachel's Tomb were populated and controlled by Jewish residents under the British Mandate. Both sites were included in the international zone stipulated in the UN's 1947 Partition Plan. Both sites served as strongholds which blocked the access of the Arab armies that sought to capture Jerusalem in the War of Independence.

In the course of the 1948 war, the Jordanian army attempted to capture both sites. But while it succeeded in overtaking Rachel's Tomb in battle, Kibbutz Ramat Rachel managed, by a hair's breadth, to withstand the combined onslaught of Jordanian and Egyptian forces. As a result of these battles, at the end of the War of Independence, Rachel's Tomb and Kibbutz Ramat Rachel found themselves on opposite sides of the divide.

This situation was given practical expression when the armistice lines between Israel and Jordan were drawn up in the 1949 "Rhodes Agreements." According to the Rhodes map, the armistice line (later known as the 'green line') encircled Kibbutz Ramat Rachel on all sides but left it on the western (Israeli) side of the green line, while Rachel's Tomb remained on the eastern (Jordanian) side.

What is the difference between the two sites? Why is one on the Israeli side and the other on the Jordanian? Only because in 1949 the Jordanian army managed to capture one site from the Jewish forces that were defending it, but failed in its attempt to wrest the other from Jewish hands.

Reflecting this fact in the armistice map was justified at the time, as the Rhodes Agreement was intended to reflect the actual state of affairs on the ground at the end of the battle between the opposing armies. On the other hand, the armistice accords stressed that the line drawn in the agreement does not claim to be a political border.[15] The framers of the Rhodes Agreement expected the fate of the territory in dispute between the sides to be decided in future negotiations, and did not intend that the line they drew for the purposes of the armistice would necessarily be the future political boundary.

18 years later, Israel returned to Rachel's Tomb, but because of that military armistice line drawn in 1949, and because of the unilateral steps taken by Jordan in the interim in the compound it had seized in 1948, Israeli control over the compound came to be regarded by the international community as occupation rather than liberation.

This raises any number of questions when considered in light of the central tenet of international law – which is often dangled above Israel's head - which asserts that states cannot obtain sovereignty over territory taken through the use of force. If Israeli control over Rachel's Tomb and Bethlehem in 1967 was illegal because of the prohibition in international law against territorial acquisition through the use of force, it is difficult to justify the Jordanian occupation in 1948 of this same territory, which was obtained in precisely the same manner.

And if the argument is made that in 1948 the Jordanian occupation was justified because at that time there was no other sovereignty over this territory – because some of the battles were fought before the establishment of the State of Israel – then we would argue that this same reasoning supports Israel's rejection of the classification of Judea and Samaria as occupied territory.

The case of Ramat Rachel vs Rachel's Tomb illustrates the unavoidable conclusion that monolithic treatment of all of Judea and Samaria as one political entity is mistaken, or at the very least, problematic. The status of Ramallah, in which there was no Jewish presence, is not the same as that of Hebron, where Jewish settlement that had been uninterrupted over hundreds of years was brought to an abrupt end by horrific pogroms in 1929; the status of Al Khader, which was and remains an Arab village,[16] is very different than that of the nearby communities of Gush Etzion, which, like Rachel's Tomb, were under full and exclusive Jewish control prior to the War of Independence but unfortunately fell into the hands of the Jordanian Legion in the last days of the 1948 War of Independence. And of course – the Old City of Jerusalem, the cradle of Jewish history and home to the two Holy Temples, differs from the nearby neighborhood of Abu Dis.

The international community's complete disregard of the these truths does not stem from purely legal considerations; it is an expression of the outcome of wall-to-wall international

15 HASHEMITE JORDAN KINGDOM – ISRAEL: GENERAL ARMISTICE AGREEMENT, Article II (2):
It is also recognized that no provision of this Agreement shall in any way prejudice the rights, claims and positions of either Party hereto in the ultimate peaceful settlement of the Palestine question, the provisions of this Agreement being dictated exclusively by military considerations.

16 It should be noted that over the years, Al Khader, which was once a Christian Arab village, has become a Muslim village.

acceptance of the Palestinian narrative which contends that there is a territory that is "Palestinian" beyond the line drawn in green ink on a map in 1949, and any Israeli presence in this territory is tantamount to "occupation."

Echoes of the position that it is appropriate and justified to differentiate between territories, localities, and specific sites within Judea and Samaria may be found as well in Resolution 242 of the UN Security Council, whose English version is binding, and which called for "withdrawal of Israeli armed forces from territories occupied in the recent conflict." Referring to "territories" rather than "the territories" indicates that the intention is not necessarily all of the territory taken in the Six Day War.[17]

# Regarding individual property rights and sovereignty

An individual's rights to property are recognized throughout the free world as one of the most fundamental rights. The rights of ownership have been recognized in the Universal Declaration of Human Rights of 1948,[18] anchored in the European Charter on Human Rights,[19] and recognized in the constitutions of many western countries.[20]

Property rights do not clash with sovereignty, since these two concepts exist on different planes: While ownership rights operate on the interpersonal level (the intra-state plane), sovereignty operates between states (the international plane).

It is altogether likely that a citizen of one state will own property located in another state, without causing even the slightest damage to the sovereignty of the latter. In practice, this is quite a routine state of affairs among civilized countries.

This is an important distinction for the present discussion precisely because, in the case of Judea and Samaria, it appears that most of the countries of the world and most legal scholars chose to ignore it. Once again, this selective blindness stems, as far as we are able to discern, not from legal considerations but from sweeping acceptance of the Palestinian narrative which claims that any private ownership by Jews or Israelis in Judea and Samaria is an obstacle to future Palestinian sovereignty in this area.

17 However, see the French version of this resolution: "Retrait des forces armées Israéliennes des territoires occupés lors du récent conflit." For an analysis of the differences of opinion regarding the formulation and the significance ofUN Security Council Resolution 242, see: Ruth Lapidot, " The Misleading Interpretation of Security Council Resolution 242 (1967) (2011). Jewish Political Studies Review, Vol. 23, No. 3/4, pp. 7-17. Available at SSRN: https://ssrn.com/abstract=2679233

18 The Universal Declaration of Human Rights, Article 17:
(1)" Everyone has the right to own property alone as well as in association with others.
(2) No one shall be arbitrarily deprived of his property."

19 The European Convention on Human Rights, Protocol 1 (Enforcement of certain Rights and Freedoms not included in Section I of the Convention):ARTICLE 1:
Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

20 See, for example, section 3 of Israel's Basic Law: Human Dignity and Liberty. This notwithstanding, it should be pointed out that the scope of this basic right is not uniform among different nations. For further discussion on individual property rights see the decision by Justice Levy in High Court of Justice case 1661/05, In the Matter of the Gaza Coast Regional Council vs The Knesset and Others, 2005, decision 59(2), pp. 304-305.

To be specific: There are a great number of places in Judea and Samaria that were or presently are privately owned by Jews or Israelis. Both the Jordanian authorities (from 1950 – 1967) and the Palestinian Authority (since it assumed responsibility for territory in Judea and Samaria in 1995) have invested and continue to invest massive efforts to prevent recognition of Jewish and Israeli ownership, and have even gone so far as to legislate a prohibition against Jewish ownership of land (legislation that stands in complete contradiction to customary prohibitions in international law against discrimination on the basis of nationality or ethnicity). In the past, as in the present, this activity has not been criticized by the international community, despite the fact that no country would allow its own citizens to be treated in this way.

With these principles in mind, we would argue that, despite the disregard of the international community for the individual rights of Jews and Israelis, these rights may be relevant to the question of the legality of Israeli settlement in Judea and Samaria. Precisely because individual ownership has no bearing on the status of territory in future political negotiations, recognition of the individual property rights of Jews and Israelis according to customary international law should not necessarily influence the future sovereignty over a particular territory. These rights, therefore, should be upheld rather than ignored.

# Summary and conclusions

The legality of Israeli settlement in Judea and Samaria according to the principles of customary international law hinges mainly on the question of the legal status of Judea and Samaria. Israel's position is that it is not an occupying power in Judea and Samaria, and therefore Israeli settlement there is not illegal.

Although this position has been rejected by the international community and many scholars of international law, it is a well-supported and defensible position. It is rejected in large part because the Palestinian political narrative has gained international currency, and not on the basis of purely legal arguments or reasoning.

Additionally, international law and practice recognize the individual's basic right of personal ownership. There is no automatic contradiction between private ownership and national sovereignty, and it is perfectly legitimate to have a situation in which a citizen of one country owns property within the sovereign boundaries of another country.

If we accept the State of Israel's contention that Judea and Samaria are not occupied territory but rather disputed territory, two secondary arguments may be made; first, that the presence of Israelis and Jewish settlements in Judea and Samaria do not violate international law; and second, that there is not necessarily any legal justification for making a distinction between Israeli citizens who live in Judea and Samaria and other residents of this territory who are not Israeli citizens.[21]

21 In practice, even the Supreme Court was prepared to recognize the standing of Israeii citizens in Judea and Samaria as "local populations." See, for example, High Court of Justice case 256/72, Israel Electric Company – Jerusalem Region vs Minister of Defense, decision 27(1), 124, p. 138; High Court of Justice case 9717/03, Naaleh Settlement Cooperative of Samaria of Israel Aeronautics Corp. Employees vs The Civil Administration for Judea and Samaria, The Planning Commission's Sub-Committee for Mining and Quarrying, and Others, decision 58(6), 97, p. 104.