

Israeli Settlements in the 'West Bank'/Judea-Samaria – Are they 'illegal'?

Factsheet No 4

The
**Israel Clarity
Initiative**
Verifiable Facts for Policymakers

The view that Israeli settlements in the West Bank are illegal under international law **misrepresents** both the facts on the ground and core principles of international law. Such claims are **politicised, ideological, unsubstantiated** and **legally flawed**. This position reflects a **clear anti-Israel prejudice and double standards**. The EEAS has repeatedly condemned Israel in harsh terms while downplaying Palestinian rejectionism, Hamas terrorism and governance failures.

Why the Settlements in Area C are lawful

1. The Fourth Geneva Convention Does Not Apply *De Jure* Because There Was No Prior Legitimate Sovereign

- The 'West Bank' was not sovereign territory of any state when Israel captured it in 1967 during a defensive war. **Jordan's control resulted from its illegal invasion and annexation**, recognised by only two countries and never accepted as legitimate.
- The territory was part of the former British Mandate for Palestine and had no prior legitimate sovereign after the Ottoman Empire's collapse. **The Geneva Conventions apply only to occupation of territory of a "High Contracting Party"**, ie not in this case.
- The area is therefore best viewed as **disputed territory whose final status must be resolved through negotiation, not as classic occupied territory**.

2. Article 49(6) Prohibits Only Forcible Transfers, Not Voluntary Settlement

- Article 49(6) was drafted to prevent Nazi forced deportations and resettlements, as confirmed in the ICRC's 1958 Commentary. **Israeli settlements involve voluntary movement by Jewish civilians to their ancestral homeland.**
- **Settlements are often on public land or legally purchased property.** There is no government deportation or forced transfer of Israelis, and no mass expulsion of Palestinians occurred.
- The provision **does not ban voluntary settlement in disputed areas** or criminalise private initiatives on non-private land.

3. Jews Have Historical and Legal Rights to Settle Under the Palestine Mandate etc

- The League of Nations Mandate for Palestine (1922) explicitly called for "close settlement by Jews on the land," including state and waste lands, to establish a **national home in the historic Land of Israel**.
- These rights were preserved by Article 80 of the UN Charter. Israel, as the Jewish national state that emerged from the Mandate, has **legitimate claims to the territory**.
- Declaring Jewish settlement illegal would **contradict earlier international recognition of Jewish rights in the area**.

4. Oslo Accords and Bilateral Agreements Explicitly Reserve Settlements for Negotiations and Do Not Prohibit Them

- The Oslo Accords place the issue of settlements on the **agenda for permanent status negotiations** alongside borders, Jerusalem, refugees and security, with no prohibition on activity.
- The agreements **recognise exclusive Israeli jurisdiction over settlements and Israelis in Area C pending a final agreement**.
- Unilateral condemnations undermine the agreed bilateral good-faith process negotiations.

The EU's Position and Risks

The ICJ and some Member States have rejected these arguments, interpreting Article 49(6) broadly and affirming Geneva Convention applicability. **This approach ignores the absence of a prior legitimate sovereign and the Oslo framework agreed by both sides.** It emboldens rejectionism, removes incentives for compromise, applies law selectively against Israel, and risks damaging the credibility of EU institutions as an impartial, bona fide actor in the region.

Recommendations for EU Leaders

EU policymakers need to:

- Insist that any legal determinations on settlements be conditional on Mandate rights, the absence of prior sovereign **and in particular the Oslo framework**.
- **Prioritise bilateral negotiations** under the Oslo Accords rather than unilateral legal condemnations
- **Apply international law consistently** without double standards that single out Israel