



Briefing No. 49

SADAKA صدقة

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## Annexation of the West Bank: It Has Already Happened

Annexation has featured prominently in recent months in the news in relation to Palestine and Israel. This followed the conclusion of a coalition agreement between Israel's two largest parties (Likud and the Blue and White party) which included a commitment to annex the West Bank. More recently, as part of agreements signed by Israel and both the United Arab Emirates and Bahrain normalising relations with those two countries, Israel has agreed to "defer" annexation. Israeli Prime Minister Benjamin Netanyahu has made clear, however, that annexation "remains on the table."<sup>[1]</sup> This briefing note outlines how annexation not only remains on the table but has already taken place in practice.

### What is annexation?

The term "annexation" refers to the forcible acquisition of territory by a State. It is a breach of the longstanding rule of international law that a State cannot acquire the territory of another State by force as reflected in Article 2(4) of the UN Charter, which states:

*All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.*

This rule has the status of a "peremptory norm" of international law meaning it is accepted by the international community to be a fundamental rule to which no exception can be made.

Annexation can take place in two ways. On the one hand, a State can formally extend its sovereignty over territory it has forcibly acquired, such as by passing a law or issuing a governmental decree to this effect. This is referred to as *de jure* annexation. Alternatively, a State can exercise effective sovereignty over territory it has forcibly acquired and over which it exercises effective control, without any accompanying formal declaration. This might involve, for example, the application of certain domestic laws to that territory or measures, such as population transfer, to alter the territory's demographics.<sup>[2]</sup> This is referred to as *de facto* annexation and is often a precursor to *de jure* annexation. Importantly, both forms of annexation are equally unlawful under international law.

### The annexation of Palestine by Israel

Israel has occupied the Gaza Strip, East Jerusalem, the West Bank and the Syrian Golan <sup>[3]</sup> since June, 1967. Weeks after the commencement of this occupation, Israel extended the application of its laws to East Jerusalem. Subsequently, in 1980 it enacted a law declaring Jerusalem the "complete and unified" capital of Israel, prompting condemnation from the UN Security Council.<sup>[4]</sup> The following year, Israel formally extended the application of its laws to the Golan Heights. Both East Jerusalem and the Golan Heights have therefore been annexed by Israel *de jure*.

Regarding the West Bank, in its 2004 advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the International Court of Justice held that:

*“the construction of the wall and its associated regime create a “fait accompli” on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation.”* [5]

The “associated regime” which the Court referred to includes, of course, the illegal Israeli settlements which the Israeli Apartheid Wall encircles. As of 2017, more than 620,000 Israeli citizens were residing in approximately 200 illegal settlements. According to the Israeli human rights organization, B’Tselem (again referring to the position in 2017):

*Settlements cover 538,130 dunams – almost 10% of the West Bank. Their regional councils control another 1,650,370 dunams, including vast open areas that have not been attached to any particular settlement. This brings the total area under the direct control of settlements to 40% of the West Bank.*[6]

Over the last three years (i.e. since President Trump has been in office), the construction rate of Israeli settlement units and infrastructure has increased by 25%.[7] It is beyond doubt that these settlements are intended to be permanent. As Israeli Prime Minister Benjamin Netanyahu has stated in relation to them: “We’re here to stay, forever.”[8]

In this context, the UN Special Rapporteur on the situation of human rights in the occupied Palestinian territory, Professor Michael Lynk has stated:

*“No country creates civilian settlements in occupied territory unless it has annexationist designs in mind, which is why the international community has designated the practice of settler-implantation as a war crime. The political purpose of the Israeli settlement enterprise has always been to establish sovereign facts-on-the-ground and to obstruct Palestinian self-determination.”*[9]

According to Professor Lynk, the existence of the settlements, the fact that the Israeli military commander in the West Bank has made them subject to Israeli legislation (among other factors) and the explicit Israeli position that they are permanent make clear that Israel’s practices in the West Bank constitute *de facto* annexation of that territory.[10] Israel has not therefore decided to defer annexation of the West Bank.

**Annexation has already happened: Israel has simply decided to defer formally declaring its sovereignty over the West Bank i.e. *de jure* annexation.**

### **Sanctions: The appropriate response of the international community**

The website of the European Council states: “Since March 2014, the EU has progressively imposed restrictive measures against Russia. The measures were adopted in response to the illegal annexation of Crimea and the deliberate destabilisation of Ukraine. [...]”

These measures include:

- an import ban on goods from Crimea and Sevastopol
- restrictions on trade and investment related to certain economic sectors and infrastructure projects
- a prohibition to supply tourism services in Crimea or Sevastopol
- an export ban for certain goods and technologies.”<sup>[11]</sup>

While Russia’s violation of the prohibition of acquisition of territory by force has been met with appropriate sanctions, Israel’s has not been sanctioned for its much longer-standing violations of international law. Sanctions against Israel are not only the appropriate response, they are the response that is demanded by international law. As Professor Lynk has observed, writing in the Irish Times,<sup>[12]</sup> States are under a “legal duty to take all measures necessary to demand respect by Israel of its solemn obligations under international law.” Referring to the Occupied Territories Bill specifically, he further stated that “Among the measures which states must adopt to this end is a ban on trade with Israel’s illegal settlements.”

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## References

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2. O. Dajani, “Israel’s Creeping Annexation” (2017), 111 *American Journal of International Law* 51, at p. 53.
3. More on the annexation of the Syrian Golan: <http://golan-marsad.org/wp-content/uploads/Al-Marsad-Forgotten-Occupation.pdf>
4. UNSC Resolution 478 (20 August 1980)
5. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*[2004] ICJ Rep 136, para. 121.
6. <https://www.btselem.org/settlements>
7. Construction rate in Israel settlements up 25% since Trump took office in 2017 <https://www.middleeastmonitor.com/20200318-construction-rate-in-israel-settlements-up-25-since-trump-took-office-in-2017/>
8. <https://www.haaretz.com/israel-news/netanyahu-vows-to-never-remove-west-bank-settlements-we-re-here-to-stay-1.5446461>
9. Michael Lynk, *Situation of human rights in the Palestinian territories occupied since 1967* (22 October 2018) A/73/45717, para. 45.
10. Ibid, paras. 44-55.
11. <https://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/>
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