



From Temporary Occupation to Permanent Annexation: Israel's Acquisition of Palestinian Territory by Force

1967: Alon Plan



1978: Drobles Plan



Facts on the Ground



Background

Following President Trump's recognition of Israel's annexation of both Jerusalem and the occupied Syrian Golan, talk of annexation of occupied Palestinian territory has increased. In reality, annexation of occupied territory has been on Israel's agenda since the beginning of the occupation in 1967, most clearly reflected in Israel's formal annexation of occupied East Jerusalem in 1967 and the occupied Syrian Golan in 1981.¹ Today, Israel's intent to annex can be seen through the proliferation and entrenchment of its colonial settlement enterprise: instead of overt annexation, Israel's annexation of the occupied West Bank has been insidious - a slow and steady process, defined by an array of policies and practices which are designed to obstruct the Palestinian right to self-determination.

¹ Golan Heights Law, 14 December 1981, available at <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/golan%20heights%20law.aspx>.

Since the beginning of the occupation, Israel has sought to settle and exploit Palestinian territory, and created plans which ultimately formed the blueprint for its illegal colonial settlement enterprise as it exists today. The Allon Plan of 1967 represents the first of these plans aimed at effectively redrawing the borders of the State of Israel to include the Jordan Valley and connect the Jordan Valley to Israel through an east-west corridor including Jerusalem.² While never formally adopted, the plan served as Israel's loose masterplan for the occupied West Bank and the settlement enterprise. The Drobles Plan of 1978 followed as a comprehensive plan for the settlement enterprise, including increased settlement expansion in the interior areas of the occupied West Bank.³ Motivations for the plan are clearly presented in the following plan statement:

*"State land and uncultivated land must be seized immediately in order to settle the areas between the concentration of minority population [i.e., the Palestinians in the West Bank] and around them, with the object of reducing to the minimum the possibility for the development of another Arab state in these regions."*⁴



The Israeli settlement enterprise, defined by the theft of Palestinian land and resources; the forcible displacement and transfer of the Palestinian population; and the unlawful transfer of Israeli citizens into occupied territory, was designed to ensure that Palestinians are unable to exercise their right to self-determination and forms the clearest representation of Israel's intent to turn a temporary occupation into a permanent annexation.

² Tom Segev, 1967: Israel, the War, and the Year that Transformed the Middle East (Metropolitan Books, 2007), 504.

³ B'Tselem, "Land Grab – Israel's Settlement Policy in the West Bank, May 2002 p. 14, available at https://www.btselem.org/download/200205_land_grab_eng.pdf.

⁴ Referenced in Report of the United Nations Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (22 October 2018) UN Doc A/73/45717 ("Report of the Special Rapporteur"), as quoted in D. Kretzmer, "Settlements in the Supreme Court of Israel" (2017), 111 American Journal of International Law 41, at 42.

Annexation Under International Law

Annexation is defined as the forcible acquisition of territory by one State at the expense of another; it presupposes the effective occupation of the territory, and shows the clear intent to permanently appropriate it.⁵ It is strictly prohibited under international law, and derives its illegality from the Charter of the United Nations, specifically Article 2(4) which prohibits the “threat or use of force against the territorial integrity or political independence of any state.”⁶ Annexation also impedes the right to self-determination, a peremptory norm of international law, imposing an obligation on all States to ensure the enjoyment of this right.



International legal scholarship has generally recognized two forms of annexation: *de jure* and *de facto* annexation. *De jure* annexation is defined as formal declaration by a state that it is asserting permanent sovereignty over territory which it had forcibly acquired from another state.⁷ *De facto* annexation has been generally accepted as a term to describe the actions that a State takes to consolidate its control over a territory (whether political, legislative, institutional or demographic), which form the basis for, or indicate an intent to, claim sovereignty over territory acquired through force or war sometime in the future.⁸

5 R. Hofmann, “Annexation,” in Max Planck Encyclopedia of Public International Law (Oxford University Press, 2013).

6 UN Charter (signed on 26 June 1945, entered into force 24 October 1945) 1 Unts xvi.

7 R. Hofmann, “Annexation,” in Max Planck Encyclopedia of Public International Law (Oxford University Press, 2013), para. 1.

8 Report of Special Rapporteur, p. 9.



***De Jure* Annexation of East Jerusalem: Continued Entrenchment**

Israel officially annexed occupied East Jerusalem through two formal declarations. First in 1967, Israel issued a government decree announcing annexation through the extension of Israeli law, administration and jurisdiction to occupied East Jerusalem, as well as neighboring villages included in the expanded municipal boundaries of the city.⁹ The second declaration came in 1980 when the Israeli Knesset enacted the quasi-constitutional law titled, *Basic Law: Jerusalem, Capital of Israel*, which declared Jerusalem, “complete and united,” as the capital of Israel.¹⁰

Following each declaration of annexation of East Jerusalem, the international community condemned and did not recognize the annexation. This includes United Nations Security Council (UNSC) Resolution 242 (1967) which emphasized the “*inadmissibility of the acquisition of territory by war*,” and called on Israel to withdraw its armed forces and respect the sovereignty, territorial integrity, and political independence of all of the affected States. Again, in 1980 the UNSC condemned Israel’s annexation “*in the strongest terms*,” and declared that the Israeli *Basic Law* was “*a violation of international law*.” In Resolution 478, the Security Council stated that “[A]ll legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem... are null and void and must be rescinded forthwith.”¹¹ Since then, numerous United Nations resolutions have reaffirmed the illegality and non-recognition of the formal Israeli annexation of East Jerusalem.¹²

Over the years, Israel’s annexation of occupied East Jerusalem, including Latroun Valley, has been conducted through various means aimed at altering the historical, cultural and demographic nature of the city, most notably the continued expansion of the settlement enterprise in the city with the aim of achieving a Jewish majority. This is clearly evident through an address made by Prime Minister Ehud Barak in 2000:

*“Maintaining our sovereignty over Jerusalem and boosting its Jewish majority have been our chief aims, and toward this end Israel constructed large Jewish neighborhoods in the eastern part of the city, which house 180,000 residents, and on the periphery of Jerusalem, like Ma’aleh Adumim and Givat Ze’ev.”*¹³

9 Government of Israel Decree on Annexation of East Jerusalem (1967), available at, <https://ecf.org.il/issues/issue/90>.

10 Basic Law: Jerusalem, Capital of Israel (1980), available at, https://www.knesset.gov.il/laws/special/eng/basic10_eng.htm.

11 United Nations Security Council Resolution 478 (2 August 1980) UN Doc S/RES/487.

12 See UNSC 2334; UNGA 73/22 (30 November 2018); UNGA ES-10/19 (22 December 2017); among others.

13 Ehud Barak Address, 8 November 2000, available at <https://mfa.gov.il/MFA/ForeignPolicy/MFADocuments/Yearbook13/Pages/195%20%20Address%20by%20Prime%20Minister%20Barak%20on%20the%20fifth.aspx>.

Israel's aims to further entrench the annexation of East Jerusalem are also achieved through: the extension of numerous Israeli national laws to the city;¹⁴ isolating East Jerusalem from the rest of the West Bank through the Annexation Wall and an ID system designed to fragment the Palestinian population; and the ongoing attempt to reduce Palestinian presence in the city through, for example, the revocation of permanent residency status of Palestinian East Jerusalemites. Due to this policy, 14,500 Palestinians have been forcibly transferred from East Jerusalem since 1967.¹⁵

***De Facto* Annexation of the Occupied West Bank: An Ongoing Process**

Israel's policies and practices in the occupied West Bank have been increasingly defined as a process of ongoing *de facto* annexation. The term was highlighted in the International Court of Justice Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, which stated that the Annexation Wall and its accompanying regime created "*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.*"¹⁶



Israel has entrenched the *de facto* annexation of occupied Palestinian territory through the continued establishment of settlements and their associated regime of checkpoints, roads, as well as the Annexation Wall; the transfer of Israeli settlers into occupied Palestinian territory; the forcible displacement of Palestinian communities from their land; the extension of Israeli laws into the occupied West Bank; the creation of a discriminatory legal system; and the exploitation of Palestinian natural resources, among others. Through the implementation of these facts on the ground, Israel has exceeded the limits imposed by occupation law, and instead of merely administering the occupied territory, is unlawfully acting as the sovereign.¹⁷

14 See Al-Haq, The Occupation and Annexation of Jerusalem through Israeli Bills and Laws, 5 March 2018, available at <http://www.alhaq.org/advocacy/6263.html>.

15 Al-Haq, Residency Revocation: Israel's Forcible Transfer of Palestinians from Jerusalem, available at: <http://www.alhaq.org/advocacy/6331.html>.

16 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion), International Court of Justice, (2004), para 121.

17 Article 43 of the Hague Regulations of 1907 defines the responsibilities of the occupying power, stating: "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, 1907, (hereinafter the Hague Regulations), Article 43.

I. Extension of Israeli Laws to Settlers

While Palestinians in the occupied West Bank are subject to military law and the military court system, illegal settlers are subject to Israeli civil law. The extension of Israeli law is achieved through Knesset amendments to legislation, allowing for application to illegal settlers on a personal and extraterritorial basis. For example, where the Knesset Elections law of 1970 does not permit voting outside of the borders of Israel, Amendment Number 2 to this legislation came as an exception to this principle, granting settlers the right to participate in Israeli elections in their place of residence.¹⁸ Furthermore, Military Orders citing Israeli laws with exclusive application to settlers, as well as Israeli court rulings facilitate the extension and application of Israeli laws to the settlement enterprise.¹⁹ Israel's extension of their national laws in this manner is a clear form of exercise of unlawful sovereignty in occupied territory.

II. The Israeli Settlement Enterprise in the Jordan Valley and Northern Dead Sea

The Jordan Valley comprises nearly 28.5% of the occupied West Bank and contains important land reserves for the natural expansion of Palestinian towns and cities. It is home to the majority of occupied Palestine's natural resources, including fertile land and one-third of the underground water reserves in the West Bank. It also has enormous potential for the Palestinian economy, specifically in the agricultural, industrial and tourism industries. Since the beginning of its military occupation in 1967, Israel has systematically appropriated Palestinian land for the establishment and expansion of Israeli settlements in the Jordan Valley;²⁰ unlawfully exploited Palestinian natural resources in the area, including vital water resources; and enforced oppressive policies and practices against Palestinian inhabitants aimed at creating a coercive environment leading to forcible transfer,²¹ thereby facilitating Israel's *de facto* annexation of the region.

Israel's *de facto* annexation of the area is most clearly reflected in the fact that nearly 90% of the Jordan Valley is off limits to Palestinians, including the 38 kilometers of the Dead Sea shores that belong to the State of Palestine. This area, comprised of settlements, closed military zones and firing zones, is under the control of nearly 12,000 Israeli settlers, who have developed profitable agricultural, extractive and tourism industries in the area. Meanwhile, 65,000 Palestinians are confined to only 10% of their own lands, and face an array of restrictions that not only hamper the growth of these very industries, but deny the Palestinian right to self-determination.²²

18 Association for Civil Rights in Israel (ACRI), One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank, p. 17-18, available at <https://law.acri.org.il/en/wp-content/uploads/2015/02/Two-Systems-of-Law-English-FINAL.pdf>

19 ACRI, One Rule, Two Legal Systems, at 16-18.

20 Most recently, in October of 2019, the Civil Administration Supreme Planning Council approved the construction of 182 housing units in the Jordan Valley. Ben Kimon, Elishe, "Supreme Planning Council approves construction of 182 housing units in Jordan Valley," Ynetnews.com, 10 October 2019, available at <https://www.ynetnews.com/articles/0,7340,L-5605353,00.html>.

21 This includes an array of movement restrictions and a discriminatory building permit regime that leads to the demolition of Palestinian structures.

22 Area C and the Future of the Palestinian Economy, World Bank, 2014, available at <http://documents.worldbank.org/curated/en/257131468140639464/pdf/893700PUB0978100Box385270B00PUBLIC0.pdf>.

The ongoing annexation of the Jordan Valley is supported through international trade with the Israel's illegal settlement enterprise. Sixty percent of Israeli settlements in the Jordan Valley rely on agricultural production,²³ the majority of which is exported to the international market (mainly to the EU, US, Russia, India and Singapore).²⁴ In addition, AHAVA Dead Sea cosmetics, which runs a production and visitor center in the illegal Israeli settlement of Mitzpe Shalem, sells forty percent of its production abroad.²⁵

Israel's control and annexation of the area is also supported by international tourism to the Jordan Valley and Dead Sea area, as the Israeli Park Authority controls the majority of tourism sites in the area, including the Baptism Site and Qumran. Qumran receives an average of 3,000 tourists on a daily basis, charging an entrance fee of 8 USD.²⁶ Israel's exclusive control over the northern Dead Sea shores has propped settlement tourism businesses, such as the Kalia Beach settlement, which charges an entrance fee of almost 16 USD per person.²⁷



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23 Al-Haq, *Business and Human Rights in Palestine*, p. 18, available at http://www.alhaq.org/cached_uploads/download/alhaq_files/publications/Business%20and%20Human%20Rights%20Booklet.pdf.

24 Lidman, Melanie, "Jordan Valley farmers unperturbed by EU labels," *Times of Israel*, 11 November 2015, available at <https://www.timesofisrael.com/jordan-valley-farmers-unperturbed-by-eu-labels/>.

25 Who Profits "The Israeli Exploitation of Palestinian Natural Resources: Part IV Ahava" available at <https://whoprofits.org/updates/the-israeli-exploitation-of-palestinian-natural-resources-part-iv-ahava/>.

26 Israeli Nature and Parks Authority "Qumran Park" available at <https://www.parks.org.il/en/reserve-park/qumran-park/>.

27 Kalia Beach (Hebrew), <http://kaliabeach.com/en/>.

The Position of the State of Palestine

Israel has continuously entrenched its *de facto* annexation of occupied Palestinian territory, rendering any formal declaration of annexation a mere label of what already exists on ground. Israel's policies and practices in the occupied State of Palestine continue to defy international, as the international community's failure to act has allowed an Israeli culture of impunity to prevail. This has obstructed any meaningful exercise of the Palestinian right to self-determination and the possibility of achieving a two-state solution.

The State of Palestine refuses such unlawful actions and reiterates the necessity to respect international law. Therefore, the international community must not wait for a formal declaration by Israel to take action, in line with their legal obligations to: 1) hold Israel accountable; 2) protect the Palestinian right to self-determination; and 3) resuscitate the two-state solution. Without such action, the reality on the ground cannot escape the characterization of Apartheid.

Recommendations

International law sets out rules outlining third-party State obligations vis-à-vis Israel's violations of peremptory norms of international law, including the right to self-determination. For example, Article 41 of the International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts provides that individual States have an obligation not to recognize Israel's illegal conduct as lawful, not to render aid or assistance in maintaining the illegal situation, and to cooperate to bring it to an end.²⁸

UNSC 2334 (2016) provides a means to operationalize the obligation of non-recognition by requiring states to "distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967." In order to comply with this obligation, States must:

- Recognize the difference between Israeli territory and territory occupied since 1967 in official dealings, through for example, not holding official meetings with Israeli officials in occupied territory, including East Jerusalem, and the inclusion of territorial clauses in agreements with Israel that exclude the Israeli settlement enterprise;
- Adopt legislation to end any actions or dealings within their jurisdiction which directly or indirectly contribute to the Israeli annexation of occupied Palestinian territory and specifically the settlement-industrial complex, including but not limited to, the banning of settlement products from its markets or bar them from the enjoyment of free trade agreements; and
- Guide your businesses regarding legal and reputational risks associated with operating in or with the illegal settlement enterprise.
- Support the release of the database of businesses involved in illegal Israeli settlements pursuant to Human Rights Council Resolution 31/36 (2016).

²⁸ Draft Article on Responsibility of States for Internationally Wrongful Acts with commentaries, International Law Commission, United Nations, 2001, Article 41(2).