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# Information concerning the Israeli government's plans to "annex" the Jordan Valley and settlement blocs

Israeli Prime Minister Netanyahu has announced intentions to apply Israeli law and jurisdiction to the Jordan Valley and settlement blocs. This was agreed in the coalition agreement between Likud and Blue and White.

There is a lot of controversy in Israel (and worldwide) about whether this is a wise step.

The EU and many others refer to Israel's plans as "annexation", and several EU member states support imposition of sanctions on Israel should Israel proceed with its plans. The World Council of Churches, in its condemnation of the Israeli plans, repeat this allegation.

The word "annexation" is also used in the media. It seems to be assumed that this action would be illegal under international law. But would Israel’s actions actually breach international law?

## What is Israel planning to do?

The Israeli government does not use the word "annexation", but carefully speaks about extending Israeli law and jurisdiction to the relevant territories (Jordan Valley and settlement blocs).

The intention is to apply Article 11b of the Israeli *Law and Administration Ordinance of 1948*, which makes possible the application of Israeli law, jurisdiction, and administration to territories of the land of Israel that the State of Israel controls. That is what happened when Israel declared the united city of Jerusalem to be part of Israel, after the Six Day War in June 1967.

So instead of "proposed annexation", it is more correct to refer to the "proposed application of Israeli law, jurisdiction and administration to the Jordan Valley and settlement blocs".

## What is the relevance of the Trump Peace plan?

The Israeli government refers to the “Peace to Prosperity” Peace Plan proposed by the US Administration, as the basis for the planned application of Israeli law and jurisdiction to these territories.

This plan acknowledges that Israel has legitimate claims to sovereignty over (parts of) the West Bank, and envisages that Israel will, under a final peace agreement, retain control and sovereignty over about 30% of the territory covered by the Oslo Agreements (the West Bank, including “East Jerusalem”). However it should be noted that this plan envisages several steps and conditions, and it seems that it does not (as such) envisage unilateral steps by Israel. Further, the plan does not, of course, in itself create any rights; it thus does not give any entitlements to Israel under international law. This is because the plan has been rejected by the Palestinian side, and thus is no more than a proposal. Thus, while the plan may provide political support to Israel, it does not provide a legal basis for the proposed action.

## The claims of the parties

Israel takes the position, as a matter of law, that it is entitled to treat the settlement blocs and Jordan Valley as part of the State of Israel. It argues:

1. Israel has a valid claim to sovereignty over these territories based on the Mandate for Palestine. As Israel also recognizes the Palestinians have a rightful claim, they are willing to negotiate, but they do so on the basis that Israel has fundamental rights to sovereignty over these territories;
2. the Oslo Accords do not affect this underlying status of the territory;
3. while the Palestinian people have a right to self-determination, this does not amount to a right to statehood, and in any event at this time the "State of Palestine" does not exist; and
4. the territory is not "occupied" within the meaning of the Fourth Geneva Convention (FGC), therefore the proposed action does not breach the law of belligerent occupation.

The Palestinians (PLO) claims:

1. this territory belongs to “the State of Palestine”, or (alternatively) “the Palestinian people”;
2. Israel's proposed action amounts to a forcible acquisition of that territory;
3. the territory is "occupied", therefore: settlements are illegal (under art. 49(6) of the FGC – the prohibition on transfer or deportation of the occupier's population into the occupied territory), and any annexation of occupied territory is also illegal;
4. Israel’s actions would breach the Oslo Accords and amount to a termination of those agreements.

## What is "annexation"?

"Annexation" refers to the forcible taking of territory belonging to another State by an act of aggression or illegitimate use of force.

Annexation is, except in limited circumstances, illegal under international law. There are three bases upon which annexation could be illegal:

1. International law prohibits “the acquisition of territory by the use of force" (UN Charter articles 1 and 2), which is a "peremptory norm of international law".
2. It is arguable that annexation is also prohibited under the law of belligerent occupation, and
3. In certain circumstances it is an illegal "crime of aggression" under article 8*bis* of the Statute of Rome of the International Court of Justice.

## Is Israel's planned action illegal annexation?

On any view, annexation is only illegal if it can be established that (1) the affected territory belongs to another State, and (2) there is a use of force, either at the time the occupation began, or at the time the territories are incorporated into the territory of the State.

In this case, both those issues are hotly contested. In fact, it is strongly arguable that - as a matter of international law - Israel's proposed action does not breach the prohibition on the acquisition of territory by the use of force, for two reasons:

* *there is and has never been an illegitimate use of force:*Israel did not take Jerusalem and the West Bank (Judea and Samaria) by an act of aggression in 1967 (rather, it was acting defensively); and the Israeli government's current proposals (to apply Israeli law and jurisdiction) do not involve the use of force;
* *the territories do not belong to another state:* these territories never belonged another State, nor do they belong today to a “State of Palestine”. Most international lawyers would agree that at present the “State of Palestine” does not exist under the normal criteria of statehood under international law.

## Would Israel’s actions breach the Oslo Accords?

The territory to which this would apply are all in Area C of the Oslo Accords, which are under exclusive Israeli control.

According to Article V of the Declaration of Principles (Oslo I Accord, 1993) permanent status negotiations shall cover *inter alia* issues like settlements and borders. Moreover, Article XXXI (7) of the Interim Agreement (Oslo II Accord, 1995) provides that: ”Neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations.”

Would Israel’s actions “change the status” of these territories? There is more than one possible answer to this question.

* First, it is arguable that the status of the West Bank was determined by the Mandate for Palestine. Under the principle of *uti possidetis juris*, the administrative boundaries of the Mandate became the boundaries of the State of Israel in May 1948. That remained true even if it at that time Israel could not exert its sovereignty in respect of the territory later called (by Jordan) the “West Bank”, due to the occupation by Jordan. When Israel brought the territory under its control in 1967, nothing changed as to its status as sovereign territory of the State of Israel. Also the Oslo Accords did not change that status. They only provided a framework for negotiations on the future status of the territories (‘borders’) and its inhabitants (‘settlements’). The parties can agree to change the status of (parts of) the West Bank. As a sovereign State, Israel may freely decide in the course of negotiations to terminate its sovereignty over a part of its territory and transfer it to another State.
* Even if Israel’s actions constitute a ‘change of the status of the West Bank’, that does not necessarily mean that the proposal of the Israeli government contravenes international law. The other party to the Oslo Accords, the PLO as representative of the Palestinian people, has violated the Accords in various ways. An obvious example is Article IX (5) of the Interim Agreement, which provides that the Palestinian Council – established under the Agreement as the representative of the Palestinian population of the West Bank and Gaza – has no powers in the sphere of foreign relations, including the establishment abroad of embassies, consulates or other types of foreign missions and posts, or permitting their establishment in the West Bank or the Gaza Strip. What we see however is that ‘Palestine’ has established representations in many states that exert the functions of an embassy, while many States have established their representations and missions in Ramallah. Moreover, the Oslo Accords provide that the PLO may only enter into international agreements to a limited extent. Notwithstanding this prohibition, ‘Palestine’ has acceded to many international treaties in various fields far beyond that limited extent. Think only of its accession to the Rome Statute establishing the International Criminal Court, and its applications before this Court concerning presumed crimes committed in the West Bank. Further, ‘Palestine’ has purported to become a Member State of a number of international organizations, thereby pretending it is a State. All these examples show that Palestine is acting on the international level as a State with the West Bank and Gaza as its territory, which has the effect of changing the status of these territories contrary to Article XXXI (7). Such a violation of the Interim Agreement permits the other party – Israel – in terms of Article 60 (1) of the Vienna Convention on the Law of Treaties (1969) not to comply with (a part of) its obligations: “A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.” Even if we may assume that the Vienna Convention is not applicable to the Oslo Accords in a technical sense – as they are not treaties between states, but agreements between a Sate and a non-state entity – it may be safely held that the underlying general principle of law, the *exceptio non adimpleti contractus,*is applicable.

It is unclear whether the Oslo Accords are still binding on Israel and the PLO. The PLO recently announced that because of Israel’s intentions, it considers the agreements no longer binding.

## What are the implications of the current proceedings before the International Criminal Court?

The Prosecutor of the ICC argues that (1) the West Bank does not belong to the territory of the State of Israel, but to the territory of the “State of Palestine”; (2) the State of Palestine is a State Party to the Rome Statute; and (3) Israel’s proposed action would constitute an illegal act of annexation in contravention of the Rome Statute.

The Court’s Pre-Trial Chamber (PTC) has been asked to make a ruling on whether the Court has jurisdiction to prosecute crimes committed in the “State of Palestine”, and whether the West Bank (including East Jerusalem) indeed belongs to the territory of the “State of Palestine”. It is not yet known what decision the PTC will make.

In the event the PTC determines that the Court does have jurisdiction, then it is likely the Prosecutor will proceed with an investigation, leading to prosecution of Israeli leaders for crimes under the Statute of Rome. This will likely include the crimes of “transporting or deporting population” under article 8, and (should Israel proceed with its current plans) “annexation” under article 8 *bis* of the Statute.

Israel is not a party to the Statute of Rome, and strongly disputes its application to these territories. It refuses to cooperate with the Court. This means it will be difficult for the Prosecutor to carry out an investigation or prosecution of Israeli leaders.

Several other States also dispute the application of the Statute of Rome to these territories.

## Conclusions

Those criticizing Israel’s proposed actions have not clearly established that it is illegal. There are strong arguments that it would not be illegal. We/*thinc.* – and not *thinc.* alone – assert that it is not illegal.

Of course, the law is only one part of the matter. As a political matter, the settlements and the proposal to apply Israeli law and jurisdiction to the settlement blocs and Jordan Valley on the basis of the Trump Peace Plan are hotly contested. Whether or not the proposed action is in Israel’s interests, and whether it will promote or undermine a peaceful resolution of the dispute, are open to debate, and involve many other considerations.

For a more detailed legal analysis, read this article by Dr. Matthijs de Blois:

<https://www.thinc.info/to-annex-or-not-to-annex-thats-the-question/>

## Background information

For background information about Israel's plans and the status of the territories, see this video by former Israeli Ambassador to the UN Dore Gold and article by Yossi Kuperwasser, both published by JCPA:

* <https://jcpa.org/video/does-the-term-annexation-even-apply/>
* <https://jcpa.org/article/applying-israeli-sovereignty-to-parts-of-judea-and-samaria-according-to-the-u-s-peace-plan-implications/>

See also this interview with Caroline Glick, discussing the issue from the perspective of Israel’s interests:

<http://carolineglick.com/discussion-of-the-sovereignty-plan-and-netanyahus-trial/>

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