

## Policy Memorandum

### Ending Complicity with Israel's Annexation

July 8, 2020

#### Israel's annexation plans

Israeli Prime Minister Benjamin Netanyahu announced his intention to annex the Jordan Valley, a large swathe of the occupied West Bank, if he wins the September elections. He also reaffirmed a pledge to annex all of the settlements Israel has established in the West Bank.

-  AREAS 'A' AND 'B'  
Controlled by Palestinian Authority
-  AREA 'C'  
Controlled by Israel
-  PROPOSED ANNEXATION
-  NO MAN'S LAND

1949 Armistice Lines, known as the **Green Line**, separated the Israeli from the Jordanian- and Egyptian-held territories.

During the 1967 Six Day War Israel captured most of the Golan Heights from Syria, later annexing it.



Israeli settlements and unofficial outposts



Note: Part of the western boundary of the proposed annexation is defined by the Allon Road. The remaining exact boundaries are unknown.

Sources: B'Tselem; Peace Now; Economic Cooperation Foundation; Palestinian Authority's Ministry of Planning; Maps4News, OpenStreetMap; Reuters

P.K. Dutta, 13/09/2019

REUTERS

To better understand Israel's potential annexation of additional Palestinian land in the occupied West Bank, American Muslims for Palestine (AMP) -- a national, grassroots organization dedicated to educating the public about Palestine and advocating for freedom, justice, and equality for the Palestinian people--present Members of Congress and their staff with the following memo.

The memo provides an overview of the legal framework that pertains to Israel's military occupation of the West Bank, the history of Israel's *de facto* and *de jure* annexation of Palestinian land, comparative historical examples of Congress imposing penalties on countries for engaging in illegal acts of annexation, and policy

recommendations to hold Israel accountable for further acts of illegal annexation.

The memo describes our asks for your office: Introduce, cosponsor, and vote for legislation to hold Israel accountable and condemn its annexation as illegal.

## Legal Framework

As a result of the creation of Israel in 1948, and the violence of its pre-state militias and armed forces, a majority of Palestinians were dispossessed from their homes and made refugees. From 1948 to 1966, Palestinians living in Israel proper lived under military rule. As a result of Israel's military conquests in June 1967, it became a belligerent occupier of the West Bank, including East Jerusalem, the Gaza Strip, the Golan Heights, and the Sinai Peninsula.<sup>1</sup> Israel continues to occupy the West Bank (Israel also continues to occupy Gaza by way of "effective control."<sup>2</sup>). As a belligerent occupier, Israel must abide by the relevant rules of the law of armed conflict, namely the 1907 Hague Regulations<sup>3</sup>, and the Fourth Geneva Convention (hereinafter GC IV).<sup>4</sup> These two instruments reflect customary international law<sup>5</sup> and are therefore legally binding on Israel.

Israel has long claimed incorrectly that the West Bank is "disputed" territory,<sup>6</sup> as opposed to occupied, thereby rejecting the applicability of the GC IV. Israel's position is that the West Bank has "a status *sui generis*," that is, it is not formally occupied territory and therefore missing a sovereign.<sup>7</sup> Israel's position has been widely rejected by the international community.<sup>8</sup> Interestingly, immediately after Israel's conquest in 1967, it accepted the applicability of the GC IV.<sup>9</sup> However, that same year, Israel removed all references to the GC IV in its military orders and rejected its *de jure* application to the West Bank.<sup>10</sup> Instead, Israel invoked its unwarranted discretion to derogate from many GC IV provisions and applied *de facto* only those provisions that Israel characterized as "humanitarian."<sup>11</sup> This grossly misinterprets the purpose of humanitarian law, in that all the provisions are humanitarian in nature.

---

<sup>1</sup> The accepted reference to the West Bank, including East Jerusalem, and the Gaza Strip is Occupied Palestinian Territories (OPT). For purposes of this paper, the focus will be on the West Bank, but it is important to note that humanitarian/occupation law applies to Gaza as well.

<sup>2</sup> Tristan Ferraro, *Determining the Beginning and End of an Occupation Under International Humanitarian Law*, volume 94 (885) of the International Review of the Red Cross (2012) p. 139.

<sup>3</sup> Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907. Available at: <https://ihl-databases.icrc.org/ihl/INTRO/195>

<sup>4</sup> Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949. Available at: <https://ihl-databases.icrc.org/ihl/INTRO/195https://ihl-databases.icrc.org/ihl/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>.

<sup>5</sup> International Commission of Jurists, *The Road to Annexation, Israel's maneuvers to change the status of the Occupied Palestinian Territory* (2019) p. 8.

<sup>6</sup> Leila Stockmarr, *Is It All About Territory: Israel's Settlement Policy in the Occupied Palestinian Territory Since 1968*, DIIS Report p. 20

<sup>7</sup> *Ibid.* p. 21

<sup>8</sup> International Commission of Jurists, *The Road to Annexation, Israel's maneuvers to change the status of the Occupied Palestinian Territory* (2019) p. 10.

<sup>9</sup> Shawan Jabarin, *The Occupied Palestinian Territory and International Law: A Response to Peter Maurer*, volume 95 (890) of the International Review of the Red Cross (2014) p. 417.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

## Background of UN Security Council Resolution 242

In the aftermath of the 1967 war, there was general agreement that a resolution had to be passed calling for Israel's withdrawal from all the occupied territories. Israel desired to reap political benefits from its brutal act of conquest, just as it did in the aftermath of the 1956 Suez War. When Israel invoked that same annexationist desire in 1957, President Dwight Eisenhower refused on the basis of the UN Charter and US policy. He quite aptly stated that

“should a nation which attacks and occupies foreign territory in the face of UN disapproval be allowed to impose conditions on its own withdrawal? If we agreed that armed attack can properly achieve the purposes of the assailant, then I fear we will have turned back the clock of international order. We will, in effect, have countenanced the use of force as a means of settling international differences and through this gaining national advantages.”<sup>12</sup>

Immediately following the war, the US supported Israeli withdrawal from “all territories.” But in October that same year, due to pressure from Israel,<sup>13</sup> President Lyndon Johnson backtracked and reversed course by shifting toward supporting withdrawal from territories, without emphasizing the definite article or the word “all,”<sup>14</sup> which gave Israel a “perceptible loophole” that authorized “territorial revision” for its benefit.<sup>15</sup> However, the overarching preambulatory clause “emphasizing the inadmissibility of the acquisition of territory by war”<sup>16</sup> was never removed from the resolution. Moreover, the International Court of Justice (ICJ) reinforced the inadmissibility requirement in its seminal 2004 advisory opinion.<sup>17</sup>

---

<sup>12</sup> Dwight D. Eisenhower: 1957: containing the public messages, speeches, and statements of the President, January 1 to December 31, 1957. Available at <https://quod.lib.umich.edu/p/ppotpus/4728417.1957.001?rgn=main;view=fulltext>

<sup>13</sup> Michael Lynk, *Conceived in Law: The Legal Foundations of Resolution 242*, Journal of Palestine Studies Vol. XXXVII. No. 1 (Autumn 2007) p. 11-12. Abba Eban, Israel's foreign minister at the time, vetted the US draft and insisted upon indefinite language in the withdrawal provision.

<sup>14</sup> Karol R. Sorby, *UN Security Council Resolution 242- Source of Lasting Arab Bitterness*, Institute of Oriental Studies, Slovak Academy of Sciences Klemensova 19, 813 64 Bratislava, Slovakia p. 221-222

<sup>15</sup> Michael Lynk, *Conceived in Law: The Legal Foundations of Resolution 242*, Journal of Palestine Studies Vol. XXXVII. No. 1 (Autumn 2007) p. 12.

<sup>16</sup> United Nations Security Council Resolution 242, 22 November 1967. Available at <https://unispal.un.org/unispal.nsf/0/7D35E1F729DF491C85256EE700686136>

<sup>17</sup> ICJ Advisory opinion on the Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory,” (2004). Available at <https://www.un.org/unispal/document/auto-insert-178825/>

## Policy recommendations

- **Oppose further Israeli annexation**

Annexation is the forcible acquisition of territory with a clear intention of permanently appropriating it. It is a way of applying sovereignty to occupied territory at the expense of the real sovereign, in this case, the Palestinian people. Israel's incremental or creeping annexation of the West Bank has taken on a more explicit form in recent years. Israel's cumulative efforts in the Occupied Palestinian Territories (hereinafter OPT), since 1967, evince an intent to annex significant portions of the West Bank and stake a sovereign claim over the territory.

From 1967 to 2017, no US administration recognized Israel's unilateral *de facto* & *de jure* annexations of Palestinian lands. The two main examples of formal *de jure* Israeli annexations are Israel's annexation of East Jerusalem and the Golan Heights. Immediately after the 1967 war, Israel unilaterally annexed East Jerusalem.<sup>18</sup> The United Nations Security Council (hereinafter UNSC) reaffirmed the "inadmissib[ility]" of the "acquisition of territory by military conquest," condemned Israel's actions, and considered as "invalid. . . all legislative and administrative measures" taken by Israel that changed Jerusalem's "legal status," and called for Israel to "rescind" such measures.<sup>19</sup> The UNSC "deplor[ed] the persistence of Israel in changing the physical character, demographic composition, institutional structure and the status of the Holy City of Jerusalem."<sup>20</sup>

In 1980, Israel formalized the *de facto* annexation of East Jerusalem by *de jure* annexing it via a Basic Law declaring Jerusalem as the "complete and united . . . capital of Israel."<sup>21</sup> The UNSC declared the law "null and void," and "affirm[ed] . . . the continued application of the [GC IV]."<sup>22</sup> While US policy has always treated East Jerusalem as occupied territory, President Donald Trump broke away from that official policy and announced in 2017 that Jerusalem is the capital of Israel. Even after the Trump administration recognized Jerusalem as Israel's capital, the international community did not extend recognition, and, in fact, condemned it.

In 1981, Israel enacted a law extending Israeli "law, jurisdiction, and administration" over the Golan Heights. This effectively rose to the level of *de jure* annexation. This measure was roundly condemned by the international community, and the UNSC declared the move "null and void and without international legal effect." President Donald Trump recognized Israeli

---

<sup>18</sup> B'Tselem, The Israeli Information Center for Human Rights in the Occupied Territories, East Jerusalem, (2019). Available at <https://www.btselem.org/jerusalem>

<sup>19</sup> United Nations Security Council Resolution 252, 21 May 1968, available at <https://unispal.un.org/UNISPAL.NSF/0/46F2803D78A0488E852560C3006023A8>.

<sup>20</sup> United Nations Security Council Resolution 476, 30 June 1980, available at <https://unispal.un.org/UNISPAL.NSF/0/6DE6DA8A650B4C3B852560DF00663826>.

<sup>21</sup> Basic Law: Jerusalem, Capital of Israel, 30, July, 1980. Available at [https://www.knesset.gov.il/laws/special/eng/basic10\\_eng.htm](https://www.knesset.gov.il/laws/special/eng/basic10_eng.htm)

<sup>22</sup> United Nations Security Council Resolution 478, 20 August 1980, available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/DDE590C6FF232007852560DF0065FDD8>

sovereignty over the Golan Heights in 1967, giving weight to Israel's unfounded and illegal annexation. The Trump administration gave credence to Israel's two acts of *de jure* annexation, but the international community rejected Israel's annexations and recognized their illegality. The principle regarding the inadmissibility of the acquisition of territory by force is a staple of international law, and the US must join the international community in that regard, and oppose Israel's proposed annexation of illegal settlement areas in the West Bank.

**ASK:** Introduce, cosponsor, and vote for legislation that defunds and condemns as illegal Israel's annexation of Palestinian land. While the Executive Branch exercises the constitutional prerogative to recognize territorial sovereignty, Congress can constrain the power of the president by passing legislation that prohibits subsidizing Israel's annexation. In addition, Congress can also pass a resolution expressing its policy view on the issue. Although such a resolution is non-binding, it would send a strong political message inside and outside the US.

- **Hold Israel accountable as Congress did with other annexations**

The US opposed the Iraqi annexation of Kuwait and voted in favor UNSC resolutions "demand[ing] that Iraq withdraw immediately and unconditionally all its forces,"<sup>23</sup> and "deciding that annexation of Kuwait by Iraq under any form and whatever pretext has no legal validity, and is considered null and void."<sup>24</sup> Congress authorized President George H.W. Bush to use military force against Iraq pursuant to UNSC resolutions condemning Iraq's actions.<sup>25</sup> US-led coalition forces of nearly 500,000 expelled Iraqi forces from Kuwait in "Operation Desert Storm," and Kuwait's leaders were restored to power.<sup>26</sup> This sent a message to world leaders that they must not give any credence to proposed annexation plans, and follow a universal standard, the same standard that demanded "Iraq rescind its actions purporting to annex Kuwait."<sup>27</sup> This is an example of the US upholding international law.

Congress also expressed vehement opposition to Russia's annexation of Crimea. Congress passed the "Crimea Annexation Non-recognition Act," expressing its policy "not to recognize the Russian Federation's claim of sovereignty over Crimea."<sup>28</sup>

---

<sup>23</sup> United Nations Security Council Resolution 660, 2 August 1990, available at <https://www.refworld.org/docid/3b00f12240.html>. See also UNSC resolution 678 29, November 1990, available at <http://unscr.com/en/resolutions/doc/678>

<sup>24</sup> United Nations Security Council Resolution 661, 9 August 1990, available at [https://undocs.org/S/RES/662\(1990\)](https://undocs.org/S/RES/662(1990))

<sup>25</sup> S.J.Res.2, 102nd Congress, available at <https://www.congress.gov/bill/102nd-congress/senate-joint-resolution/2/text>

<sup>26</sup> Kuwait: Governance, Security, and U.S. Policy, Congressional Research Service. Available at <https://fas.org/sqp/crs/mideast/RS21513.pdf>

<sup>27</sup> Paul Lewis, Confrontation in the Gulf; U.N. Council Declares Void Iraqi Annexation of Kuwait, 10 August, 1990. Available at <https://www.nytimes.com/1990/08/10/world/confrontation-in-the-gulf-un-council-declares-void-iraqi-annexation-of-kuwait.html>

<sup>28</sup> H.R. 596, 13 March, 2019, available at <https://www.congress.gov/bill/116th-congress/house-bill/596/text>

When Russia moved to annex Crimea, President Barack Obama asserted that “any violation of Ukraine’s sovereignty and territorial integrity would be deeply destabilizing.”<sup>29</sup> The United Nations General Assembly condemned Russia for violating Ukraine’s territorial integrity, “reaffirm[ed] the paramount importance of the Charter of the United Nations,” and emphasized the obligations of states to “refrain . . . from the threat or use of force against the territorial integrity or political independence of any State, and to settle their international disputes by peaceful means.”<sup>30</sup> Eric Rubin, the Deputy Assistant Secretary of European and Eurasian Affairs, said to the House Foreign Affairs Committee that “Russia’s actions in Crimea. . . [are] a breach of international law, including Russia’s obligations under the UN Charter.”<sup>31</sup>

Moreover, Congress passed, and President Obama signed into law, legislation calling for sanctions against Russia due to its annexation of Crimea,<sup>32</sup> especially the prohibition of any defense articles or defense services.<sup>33</sup> In 2017, Congress passed, and President Trump signed into law, legislation strengthening, and finding new targets for, sanctions against Russia.<sup>34</sup>

**ASK:** Introduce, cosponsor, and vote for legislation holding Israel accountable for its acts of illegal annexation just as Congress has done on previous occasions. Accountability can take the form of cutting, conditioning, or, ideally, ending US military aid and other funding to protest and put pressure on Israel to reverse its illegal annexation.

---

<sup>29</sup> Transcript of Obama’s Remarks on Ukraine, The New York Times 28 February, 2014. Available at <https://www.nytimes.com/2014/03/01/us/politics/transcript-of-obamas-remarks-on-ukraine.html?auth=linkd-google>

<sup>30</sup> United Nations General Assembly, 68/262, 27 March 2014, available at [https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a\\_re\\_s\\_68\\_262.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_re_s_68_262.pdf)

<sup>31</sup> Eric Rubin, U.S. Foreign Policy Toward Ukraine, 6 March, 2014, available at <https://2009-2017.state.gov/p/eur/rls/rm/2014/mar/223023.htm>

<sup>32</sup> Support For The Sovereignty, Integrity, Democracy, And Economic Stability Of Ukraine Act Of 2014, Public Law 113-95, 3 April, 2014. Available at <https://www.congress.gov/113/plaws/publ95/PLAW-113publ95.pdf>

<sup>33</sup> Ukraine Freedom Support Act of 2014, Public Law 113-272, 18 December, 2014, available at <https://www.congress.gov/113/plaws/publ272/PLAW-113publ272.pdf>

<sup>34</sup> Countering America’s Adversaries Through Sanctions Act, Public Law 115-44, 2 August, 2017, available at <https://www.congress.gov/115/plaws/publ44/PLAW-115publ44.htm>

## Conclusion

Members of Congress have already taken important steps in this direction. A dozen lawmakers signed onto a letter, spearheaded by Rep. Alexandria Ocasio-Cortez (D-NY), emphasizing that “annexation is . . . prohibited,” and in “direct opposition to the principles of democracy and human rights.”<sup>35</sup> The letter called for conditioning US military funding to ensure US taxpayers do not contribute toward annexation. Concretely, it proposes to end the current \$800 million US subsidy to Israeli military industries, known as off-shore procurement, should Israel annex additional Palestinian land.<sup>36</sup> Similarly on July 2, Sen. Chris Van Hollen (D-MD) filed an amendment to the NDAA, cosponsored by 12 Senators, to prohibit US funding from being used by Israel to annex Palestinian land.<sup>37</sup>

AMP supports these measures and urges Congress to undertake further courageous steps to hold Israel accountable for illegally annexing Palestinian land just as it has done in other cases of annexation. Israel should not be singled out for special treatment; it should be held accountable, like every other country should, for its violations of international law. The most effective way to hold Israel accountable and pressure it to reverse its illegal acts is by cutting, conditioning, or, ideally, ending US funding, which makes the United States complicit in Israeli actions.

---

<sup>35</sup> Congress of the United States, 30 June, 2020, available at <https://www.palestinechronicle.com/wp-content/uploads/2020/06/1-jerusalem-1.pdf>

<sup>36</sup> *Ibid.*

<sup>37</sup> VAN HOLLEN, SENATE DEMOCRATS FILE NDAA AMENDMENT PROHIBITING U.S. FUNDS FROM SUPPORTING ISRAELI ANNEXATION OF THE WEST BANK, available at: <https://www.vanhollen.senate.gov/news/press-releases/van-hollen-senate-democrats-file-ndaa-amendme-nt-prohibiting-us-funds-from-supporting-israeli-annexation-of-the-west-bank>