

ARGUMENT

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Israel Is Officially Annexing the West Bank

A quiet bureaucratic maneuver by Netanyahu's government has begun transferring control over the occupied territory from military to civilian leadership—violating international law.

By [Michael Sfard](#), an Israeli lawyer specializing in international human rights law and international humanitarian law.

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On Nov. 22, 1967, the United Nations Security Council debated a resolution that would become the international community's most important directive about the Israeli-Palestinian conflict since the 1947 partition plan for Palestine. The discussion concerned the outcome of the 1967 war, during which Israel had triumphed over its Arab neighbors to capture the West Bank and East Jerusalem from Jordan, Gaza Strip and Sinai Peninsula from Egypt, and Golan Heights from Syria.

At the Security Council, Israel's then-Foreign Minister Abba Eban said, "We shall respect and fully maintain the situation embodied in the cease-fire agreements until it is succeeded by peace treaties between Israel and the Arab States ending the state of war." Eban wasn't being entirely accurate: When he made his statement, Israel had already unilaterally applied its law over East Jerusalem; it would do the same 15 years later by formally annexing the Golan Heights. And, over the past half-century, settlement expansion into the West Bank would deepen Israeli control and make a military withdrawal look increasingly unlikely. (Israel returned the Sinai Peninsula to Egypt as part of a 1979 peace treaty.)

Still, nebulous diplomatic verbiage aside, Eban's speech would define Israel's official position on the West Bank for the 50 years to come: The final status of the occupied territory was to be determined in mediated talks. That is, until a few years ago—when Prime Minister Benjamin Netanyahu started openly pushing a policy of unilateral annexation. A recent bureaucratic maneuver within his new far-right government all but made annexation official by

beginning the process of transferring many powers overseeing the West Bank from military to civilian leaders—in contravention of international law.

From the very beginning, Israel has sought to perpetuate its unilateral sovereignty in the West Bank. For decades, as successive Israeli governments sweet-talked the world about the occupied territory's future status being resolved through negotiations, the country's actions on the ground told a very different story.

Under international law, an occupying state is considered a temporary administrator—rather than a sovereign—of the territory it occupies. This means it is obligated to preserve the territory's pre-seizure state as much as possible. But in the West Bank, Israel has done the opposite—acting as sovereign by harnessing the territory's land and resources in the service of a colossal colonization project, mostly in the form of Israeli settlements.

Since 1967, Israel has built more than 130 settlements (and helped build about 140 settler outposts) in the West Bank; today, 700,000 Israeli settlers live in the territory, about 230,000 of them in East Jerusalem, according to Peace Now, an Israeli nongovernmental organization where I serve as legal advisor. Israeli settlers, who have full civil and political rights and are seamlessly connected to Israel's infrastructure and resources, reside alongside millions of Palestinians subject to Israeli military rule who have zero say over how they are governed. Numerous leading Israeli and international nongovernmental organizations have likened this bifurcated system to apartheid. (I authored the first report from such an Israeli group—Yesh Din—in 2020.)

The international laws of war, as well as the statute of the International Criminal Court (ICC), consider the transfer of an occupying state's civilian population into the occupied territory to be a war crime. Together with the prohibition on forced transfers within a territory and deportations outside a territory of occupied people—Russian President Vladimir Putin has been indicted for the latter by the ICC—this prohibition is designed to ensure that the occupying power does not demographically engineer the occupied territory. But Israel has clearly done so, and is now planning to escalate through further settlement expansion.

Still, words and statements carry special importance in both international relations and international law. So despite abundant, unequivocal evidence

that Israel is applying its sovereignty in the West Bank, absent an official declaration of annexation—and with the territory officially under military, rather than civilian, command—the world has not treated Israel’s actions as a violation of one of the core tenets of international law: the prohibition on unilateral annexation of territory occupied by force.

The gap between Israel’s words and actions on the West Bank

began changing in 2017, when officials in Netanyahu’s then-government began discussing plans for unilateral annexation of the territory. That December, Netanyahu’s ruling Likud party passed a resolution instructing its legislators to “pursue” full annexation of the West Bank. But it was clear to those who voted in favor of the resolution that it had only declaratory status and could not be implemented immediately due to international objections.

Then, in the leadup to Israel’s 2019 elections and the emergence of then-U.S. President Donald Trump’s so-called “deal of the century”—which prescribed a partial Israeli annexation of the West Bank—Netanyahu declared in media interviews that he would promote the “gradual” application of Israeli sovereignty to the territory. Netanyahu said he discussed “annexation by consent”—U.S. consent—with the Trump administration.

Netanyahu has repeated this messaging several times since. The new government he formed last year with extremist settler parties mentions “the Jewish people’s exclusive right over the entire Land of Israel” in its manifesto. The coalition agreement between Likud and Finance Minister Bezalel Smotrich’s hard-line Religious Zionist Party is more specific, stating, “The prime minister will work towards the formulation and promotion of a policy whereby sovereignty is applied to the Judea and Samaria.” (Judea and Samaria are the biblical names for the areas comprising the West Bank and are typically used by the Israeli right.)

This is the background for the Netanyahu government’s recent decision to change the official governance structure of the West Bank by transferring many administrative powers from military to civilian command. Its moves should assuage any remaining doubts that Israel is in the process of fully annexing the West Bank—de jure.

In late February, Smotrich—an avowed homophobe and proponent of Jewish superiority—signed an agreement with Defense Minister Yoav Gallant to

transfer a number of governmental powers in the West Bank from the territory's military commander to Smotrich. (In addition to serving as finance minister, Smotrich is also a minister in the Defense Ministry.) The move was agreed upon in the coalition agreement between Likud and the Religious Zionist Party.

While Smotrich did not receive the commander's full portfolio, the transfer still dramatically changed the structure of Israel's regime in the West Bank: For the first time, it placed many administrative powers in the occupied territory in the hands of a civilian. The move effectively anointed Smotrich de facto governor of the West Bank.

According to the agreement, Smotrich (referred to as "the minister within the Ministry of Defense") will appoint civilians for official positions in the military government, such as the newly created position of deputy head of the Civil Administration, the military agency in charge of civilian matters for Israeli settlers and settlements in the West Bank; he will also appoint these officials' legal advisors.

Moreover, Smotrich will be solely responsible for designing much of Israel's colonization policy in the West Bank. Issues such as land allocation, planning, and construction in most areas outside of Palestinian cities and villages; law enforcement on illegal construction by both Palestinians and Israelis; infrastructure; water allocation; and much more all now fall under Smotrich's purview.

Some of the agreement's clauses obfuscate the transfer of powers by presenting the de facto governor as subordinate to the defense minister. But the defense minister will have veto power only in extreme cases—such as on large-scale demolitions in Palestinian areas—and, either way, these decisions will bypass the military commander. Smotrich is not hiding the fact that he intends to extend the powers of the Israeli government into settlements by dismantling the Civil Administration altogether, which would grant Israeli authorities direct jurisdiction over the West Bank.

The agreement also states that the de facto governor will work to expand the dual legal system in the West Bank by allowing Knesset legislation to apply more fully to Israeli settlers, while Palestinians will remain under military law. Legal advisors will be tasked to draft military orders that will officially apply

Israeli legislation to settlers, a process dubbed “channeling” because military law channels Knesset law to the occupied territory.

International law stipulates that an occupying power—in this case, Israel—must advance the occupied territory’s interests during its temporary occupation. By transferring administrative powers in the West Bank from the military to an Israeli minister and the civil service, Israel is abdicating this duty not just in its actions—as it did long ago—but also on paper. This is because Israeli public servants are obligated and trained to advance Israeli interests alone.

The world’s silence in the face of these developments is a particularly dangerous manifestation of Israel’s exceptionalism in the international arena. The United States and other Western countries’ apathy toward Israel’s changing legal regime in the West Bank poses grave real-life consequences for Palestinians under occupation. But the international community’s blunder is not new. It has been a feature—not a bug—of the system since day one of Israel’s occupation.

The West’s silence also undermines its integrity in its fight against Russian expansion into Ukraine. The prohibition on unilateral annexation of an occupied territory is a key principle of the post-World War II rule-based order. Failing to hold Israel to account not only undercuts the West’s credibility but also has a destabilizing effect on the entirety of the international system. By giving Netanyahu a free pass, the international community is handing other leaders with expansionist tendencies—such as Putin—a recipe for how to forcefully acquire territory without consequence.

The high road to legal annexation is an official, public declaration, as Putin made when he annexed the Crimean Peninsula in 2014. But annexation does not necessarily involve pomp and ceremony. It can happen in dull, windowless offices and through seemingly dreary administrative and bureaucratic actions.

Exposing Israel’s annexation requires zooming out. This is what the international community fails to do, and it is why Israel’s brazen violation of international law has not drawn the ire it deserves. International discourse is hung up on the ceremonial, formal version of annexation—Putin’s annexation, which was rightly met with rebuke and sanctions. The world does not know how to deal with Netanyahu’s tactics.

Though it was not accompanied by a grand statement, the Israeli defense ministry's portfolio transfer to Smotrich amounts to an act of de jure annexation of the West Bank—and is a dangerous step toward entrenching apartheid within the territory.

Michael Sfard is an Israeli lawyer specializing in international human rights law and international humanitarian law. In addition to serving as a non-resident fellow at Democracy for the Arab World Now (DAWN), he is the legal advisor to several human rights and peace organizations and represents Palestinian communities as well as Israeli and Palestinian activists. He is the author of book *The Wall and the Gate: Israel, Palestine, and the Legal Battle for Human Rights*. Twitter: [@sfardm](https://twitter.com/sfardm)

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