

The Annexation That Was and Still Is

Can we breathe a sigh of relief? After months of announcements, rumors and projections, Israel appears – at least for the time being – to have [shelved the plan](#) to officially annex the West Bank to its territory.

When official annexation was still on the table, and especially once the [Trump Plan](#) made it more feasible in late January, the world was in an uproar. After all, annexing all or part of the West Bank would [violate](#) international law. A fundamental tenet of this body of law is that territory cannot be acquired by force, and therefore the annexation of occupied territory is forbidden. Accordingly, many [diplomats](#), including from the EU, clarified that if Israel followed through on its plan, they would be compelled to respond sternly, suggesting sanctions and non-renewal of agreements were being considered. Twelve European ambassadors [submitted an official protest](#) to the Israeli Ministry of Foreign Affairs, stating that annexation would have repercussions for Israel's international status. Concern was voiced in Israel, too, that annexation would turn it into an apartheid state and end democracy.

When Israel decided, for its own reasons, to shelve the idea of official annexation in August 2020, the world was waiting to renew its longstanding embrace. The concerned domestic voices also fell silent, for the most part. Within weeks, the Europeans invited Foreign Affairs Minister Gabi Ashkenazi for a high-profile meeting, in a step largely seen as a [reward for forsaking the idea of annexation](#). Reports have also circulated that the EU is considering reinstating the Association Council – senior-level meetings between Israel and the EU. Such an act could only be interpreted as a public reward for good behavior.

Yet both the uproar when annexation seemed imminent and the sigh of relief and renewed indifference afterwards overlook a crucial fact: for years, Israeli governments have treated the West Bank as their sovereign territory, to do with as they please in pursuit of long term goals – without official declaration or legislation. This position paper focuses on that reality and provides updates on the current situation, demonstrating how Israel continues to unilaterally make irreversible changes in the West Bank. Over the years, Israel has chosen to accelerate or rein in this process according to its interests, but has never stopped. This paper reflects the state of affairs in October 2020.

Even without official annexation, Israeli actions in the West Bank are not constrained by the laws of occupation

A key argument against de jure annexation is that changing the normative framework that applies in the West Bank – i.e., replacing international law with Israeli law – would allow Israel to implement policies and measures it has avoided due to the restrictive laws of occupation. This is projected to facilitate much greater violation of Palestinians' rights.

The laws of occupation do [limit](#) what an occupying power may do in occupied territory, based in part on the constitutive paradigm that occupation is temporary and the occupier is never sovereign. This principle informs a fundamental rule in the laws of occupation – that an occupier cannot make permanent changes to occupied territory unless they are meant to serve the interests of the local population or answer immediate military needs. Likewise, the occupier may not exploit local resources for its own needs.

The laws of occupation also stipulate that the residents of the occupied territory from before the occupation are a protected population, which the occupier must protect and enable to continue living as before. The occupier is not permitted to subject the protected population to collective punishment or violence, expropriate their private property or expel them from their homes. The laws of occupation also prohibit the occupying power from transferring its own population into the occupied territory.

The argument can be – and has been – made that relinquishing these rules would expose Palestinian in the West Bank to severe violation of their rights. Perhaps. Yet this argument is flawed: it relies not only on debatable projections, but on the uncertain future rather than the present. The reality is that Israel has never, in over 50 years, considered itself beholden to international law, including the basic tenets of the laws of occupation. It finds endless ways around these provisions to advance its goals and create facts on the ground while evading accountability.

A. Contrary to the laws of occupation, Israel’s occupation of the West Bank is not temporary

The reality Israel has created in the Occupied Territories cannot be described as temporary. By engineering the space, Israel has [radically transformed the map of the West Bank](#) to suit its interests, creating contiguity for settlements and pushing Palestinians into scores of isolated, crowded enclaves.

In the mid-1990s, as part of the interim agreements signed between Israel and the Palestinians, the West Bank was divided into [Areas A, B and C](#). This division, originally intended to last only five years, helped Israel engineer the space to suit its purposes. Areas where the majority of Palestinians lived were designated Area A or B. The land around these enclaves, constituting 60% of the West Bank, was designated Area C – a geographically contiguous area made up of open spaces, farmland, all of the settlements and vast land reserves. Areas A and B were ostensibly handed over to the Palestinian Authority, while Area C was to remain, temporarily, under full Israeli control. This division created the illusion that the West Bank had been divided between Israel and the Palestinian Authority and that each entity operates freely and independently in the area it controls. In practice, the division allowed Israel to abdicate all responsibility for the Palestinians, despite its control of the entire territory and all its residents. This broad control includes key aspects of governance, such as allocation of land and water resources, communications infrastructure and the population registry, allowing Israel to pursue its agenda in the area.

The [settlements](#), which violate the aforesaid prohibition in international law on transferring the population of the occupier to the occupied territory, also violate the prohibition on making permanent changes in this territory. Building permanent communities and bringing civilians to live in them creates substantial facts on the ground. Few human actions are as permanent as building a home, raising children in it, sending them to the local school and

burying the dead nearby. Nevertheless, more than 400,000 Israelis now live in nearly 250 settlements built in the West Bank (excluding East Jerusalem – the only formally annexed part of the West Bank). Many Israeli laws have been extended to apply to settlements and settlers, by means of parliamentary legislation or military orders turning them into Israeli “islands” isolated from their Palestinian surroundings. Settlers benefit from nearly all the protections, rights and funding available to Israelis inside their country’s borders. With a third generation growing up in these settlements, most Israelis no longer remember a time when they did not exist.

Israel has used a variety of tools to build the settlements, all based on military orders or a disingenuous interpretation of Jordanian law, which still applies in the West Bank, and of international law. These have allowed Israel to dispossess Palestinians of hundreds of thousands of dunams throughout the West Bank, using the land to build settlements and industrial parks, clear farmland and lay service infrastructure. One measure Israel has used in this pursuit is attaching various labels to land in the West Bank, such as ‘state land’, ‘firing zone’, ‘nature reserve’ or ‘archeological site’. Israel has also presented land as required for military needs and later used it for civilian purposes and settlements.

Israel has undertaken a wide range of infrastructure projects to service these settlements. Roads take center stage in this context, as they are the lifeblood of Israel’s settlement enterprise. They facilitate the construction of new settlements and the expansion of existing ones; they allow settlers to travel between the West Bank and Israel without passing through Palestinian communities; and they help render the fact that settlers live on occupied land not formally annexed to Israel practically meaningless.

The current round of road-building includes several large projects at the planning or implementation stages, costing billions of shekels. Many of these projects are creating direct access routes to Jerusalem for settlement blocs to the north, east and south of the city. These roads, which require overcoming topographic challenges typical of the region and are therefore rather costly, indicate that Israel is planning to significantly increase the settler population in this area and to connect the settlements to Jerusalem and to central Israel.

South of Jerusalem: Two projects are currently underway on Route 60 south of the city – doubling the section of the highway known as the Tunnels Road and paving a bypass road around the Palestinian village of al-’Arrub. The former is expected to end by 2022 and the latter the following year. Both are designed to serve settlers’ commute between the southern West Bank and Jerusalem. The Tunnels Road expansion is primarily a response to significant population growth expected in the settlements of Efrat and Beitar Illit.

East of Jerusalem: Work is under way to alleviate congestion on routes leading into the city from Ma’ale Adumim and from other settlements in the vicinity. One example is the construction of tunnels under the French Hill intersection to ease access to Tel Aviv and relieve congestion. This road is slated to open in 2023. The eastern Jerusalem beltline is expected to ease access between Ma’ale Adumim and southern Jerusalem (and the southern West Bank). The southern section of the road, stretching from the settlement of Har Homa to the Palestinian village of Sheikh Sa’ed, is currently under construction.

North of Jerusalem: Several roads are at the planning stage, including one designed to provide direct access from the Dolev-Talmonim settlement bloc west of Ramallah to Jerusalem, significantly shortening settlers’ commute. Another planned project will ease

settler access to Jerusalem from the north with a below-grade road running south of the Qalandia checkpoint, providing settlers with an easy connection to Route 443 and Begin Road.

Farther north in the West Bank, construction of the Huwarah bypass road (along Route 60) is underway, as is the expansion of Route 55, which will significantly cut travel time from settlements in the area known as the Samarian Mountain Ridge into Israel.

In addition to significant investment in settlements, Israel works to minimize Palestinians' presence by confining them to enclaves in order to create a contiguous space for settlements – ignoring both their present and future needs.

From the outset, the enclaves defined as Areas A and B consisted mostly of built-up areas in Palestinian communities. Yet while the population in these enclaves has nearly doubled, all the open spaces for urban, agricultural and financial development in the West Bank remain in Area C. Any development outside the enclaves requires Israeli approval – whether it is building homes or increasing functional ties between the communities through water, communications, power or traffic networks. However, Israel's [planning system](#) precludes almost any applications of this kind and rejects almost all of the few that are submitted.

Left with no other choice, Palestinians build without permits – to which the Civil Administration responds by quickly issuing demolition orders for their homes and sources of livelihood. Tens of thousands of such orders have been issued over the years, averaging at 1,000 since the division into Areas A, B and C in 1995. From 2006 to 31 August 2020, Israel demolished at least 1,602 Palestinian housing units in the West Bank (excluding East Jerusalem). At least 6,970 people lost their homes, including at least 3,501 minors. In 2020 alone, by the end of August, Israel had demolished 78 housing units, leaving 320 people homeless, about half of them minors. Tens of thousands of people currently live in fear of demolition and in utter uncertainty about their future. Also, from the beginning of 2012 to 31 August 2020, the Civil Administration demolished 1,778 non-residential structures in the West Bank (including fences, water cisterns, storage rooms, agricultural structures, businesses and public buildings).

In an August 2020 meeting of the Foreign Affairs and Defense Sub-Committee regarding Palestinian construction in Area C, the head of the Civil Administration, Brig. Gen. Ghassan 'Alian, and the director of the Civil Administration enforcement unit, Marco Ben Shabat, boasted of [recent measures to prevent Palestinian construction](#). The two officials said new military legislation enabled them to step up enforcement significantly. Accordingly, in 2020 alone, the Civil Administration confiscated 242 prefabs, compared to six in 2015. In 2019, the Civil Administration confiscated about 700 tractors and diggers and uprooted some 7,500 trees planted in Area C (in the last 20 years, the Civil Administration has uprooted nearly 42,000 trees). The officials clarified that by fighting Palestinian construction and development, they had managed to reduce the number of international aid projects for Palestinians in Area C to a mere 12 in 2019, compared to 75 in 2015. These projects included setting up prefabs and laying infrastructure.

Israel is also making efforts to drive Palestinians out of Area C, a policy that is particularly harmful to several thousand residents who live in [dozens of hamlets](#) and subsist mostly on shepherding and farming. These efforts focus on three areas in the West Bank: the [South Hebron Hills](#), [the Jordan Valley](#) and the area around [Ma'ale Adumim](#). Israel creates

unbearable living conditions for these communities, in a bid to push them to leave ostensibly of their free will. In addition to a sweeping ban on construction for residential or public use, Israel refuses to connect these communities to basic utilities such as water and electricity or build access roads, limits their pastureland and conducts military training in their territory. When the residents build without permits for lack of choice, the Civil Administration issues demolition or confiscation orders. Whether these orders are executed or not, the threat hovers constantly over the residents. In some communities, the Civil Administration has repeatedly demolished homes and infrastructure belonging to the same families.

Two stark current examples are the Khan al-Ahmar community, near which Ma'ale Adumim and other settlements were built, and the communities living in what the military declared Firing Zone 918 in the Masafer Yatta area in the South Hebron Hills.

[Khan al-Ahmar](#) lies about two kilometers south of the settlement of Kfar Adumim. It is home to 32 families totalling 173 members, including 92 children and adolescents. The community has a mosque and a school that was built in 2009 and serves about 150 children aged six to 15, half of them from neighboring communities. Israel is seeking to drive the community out in order to expand nearby settlements and reduce Palestinian presence in the Ma'ale Adumim area. To that end, the authorities refuse to connect the community to power, sewage and traffic networks, forbid construction for residential or public use, and limit access to pastureland. Over the years, they have confiscated equipment and facilities in the community and demolished structures. From 2006 through May 2018, 26 residential structures were demolished, leaving 132 people homeless, including 77 children and adolescents. Seven non-residential structures were also demolished.

Community residents filed several petitions with Israel's High Court of Justice in an attempt to prevent their expulsion. The [final ruling](#) in the matter was delivered in September 2018, establishing that Israel could demolish the community's homes, expel the residents and relocate them to another area. The ruling removed the last obstacle to the state's plan, and the state has since held the position that there is no legal impediment to removing the community from its home. Nevertheless, the plan has not yet been carried out. In April 2019, the Regavim organization filed a High Court petition demanding the state be forced to execute the demolition orders and remove the community. The Court granted several requests for postponement. When the state asked to defer the hearing to "the end of the first quarter of 2021," Justice Sohlberg called the motion "embarrassing", noting that state counsel had previously insisted that the removal of the community was a "pressing, perhaps even urgent" matter, yet "two years on, nothing has changed." Justice Sohlberg called on the state to "uphold the statements it makes and allow reliance on them", and refused to defer the hearing beyond November 2020.

Another example is communities in the South Hebron Hills that live within the area [declared Firing Zone 918](#). Like Khan al-Ahmar, these communities have been living under threat of expulsion for years. An interim injunction issued by the High Court some 20 years ago has kept Israel from demolishing them, but has also put the residents' lives on hold. Left with no choice, they have built new homes and laid the required infrastructure, including power and water networks. The Civil Administration responded with demolition orders, some of which are still pending. In some cases, the Civil Administration demolished the structures and confiscated the infrastructure equipment. Since 2006, B'Tselem has documented 64 demolitions of homes in these communities, leaving 346 people, 155 of them minors,

homeless. Since the beginning of 2012, B'Tselem has documented the demolition of 19 non-residential structures in these communities.

The last High Court hearing in these petitions took place on 10 August 2020, with counsel for the state saying it was “willing to compromise” with the residents and allow them, for instance, to remain in their homes two months each year, with prior coordination, or on weekends and holidays when the military does not train in the area. The petitioners squarely rejected these proposals, which would effectively destroy their lives and drive them away. The justices, however, favored the state’s proposals and clarified that the petitioners had to consider solutions that would allow the military to train in their area, saying “the answer lies in some sort of balance.” Though the petitioners rejected this option, the justices gave the parties 60 days, which have since expired, to explore whether a compromise could be reached. The court is now expected to deliver a judgment.

B. Israel violates Palestinians’ rights in the West Bank every day

Daily life in the West Bank is dictated primarily by the presence and location of the settlements. Their devastating impact on the human rights of Palestinians goes far beyond the hundreds of thousands of dunams stolen to build them. Checkpoints, gates, ditches and dirt mounds have been installed to restrict Palestinian movement according to the location of settlements; access to vast Palestinian farmland inside or near settlement jurisdictions has been effectively blocked to the landowners; the circuitous route of the [Separation Barrier](#), which severs communities from each other and farmers from their land, runs deep within the West Bank, primarily so as to keep as many settlements and land reserves as possible on its western side.

Israel has also held all Palestinians in the West Bank under a strict military regime for more than 50 years, excluding them from decision-making about their own lives. As they have no political representation in the Israeli systems that govern their affairs, the potential for arbitrary use of power against them – whether physical or administrative – is nearly boundless. Indeed, Israel abuses a great many of their rights throughout the West Bank every day, while ignoring the provisions of international law designed to protect them.

Key examples include: circumscribe

- [A lethal open fire policy](#): Over the years, Israel has killed thousands of Palestinians in the Occupied Territories, ostensibly relying on open-fire regulations and on the provisions of international humanitarian law that circumscribe the use of firearms. Yet this is only a semblance of legality. In practice, security forces often open fire even though their lives are not at risk, with no justification. From 2010 to the end of August 2020, 427 Palestinians were killed in this fashion. Twenty-six of these deaths occurred in 2019 and 18 in 2020. The military law enforcement system does not seriously investigate these cases, and the fruitless investigations opened in a fraction of the cases merely reinforce the policy of inaction against those involved in causing such harm – the shooters themselves, their immediate superiors and those who approve the open-fire policy. Essentially, this is a whitewashing mechanism that creates a [facade of law enforcement](#).
- [Restrictions on movement](#): The military restricts Palestinians’ freedom of movement at will and disrupts their lives, often with no prior warning. Soldiers close roads temporarily or permanently, detain Palestinians at checkpoints, humiliate them, and sometimes use

physical violence against them. The Civil Administration enforces a rigid, arbitrary permit regime that applies to every aspect of resident's lives. Its officials decide who may travel abroad, work in Israel, pray in Jerusalem, visit the Gaza Strip, receive ordered goods or get to work on time. The system has no clear rules. No reasons are given for decisions, and Israel treats every permit it issues a Palestinian as an act of grace.

- [Night raids of homes](#): Soldiers invade Palestinian homes in the West Bank every day – and every night – waking the entire household, with no need to present search warrants or offer explanations. Some invasions end with violent arrests, including of minors. Others end with damage to property or the house being turned upside down. Still others achieve nothing other than disrupting families' lives, terrorizing them and violating their privacy – which is what these invasions are meant to do in the first place.
- Restrictions on freedom of expression: [Israel places a blanket ban](#) on Palestinian demonstrations in the West Bank. When protests do take place, Israel disperses them violently, including with lethal force. Israel also restricts freedom of expression in the press and on social media and prohibits associations, even when they are strictly social.
- Incarceration of Palestinians: Every year, Israel tries thousands of Palestinians in its [military court system](#) on various charges, including entering Israel without a permit, stone-throwing, membership in unauthorized associations, possession of weapons and violent offenses. Defendants are almost always convicted, usually not on proof of guilt but in plea bargains based largely on confessions rather than evidence. Those who insist on a trial can expect to find themselves [incarcerated](#) for much longer than they would have, had they signed a plea bargain. The military judges' role is reduced to rubber-stamping these deals, based on which defendants are sent to prison. In addition, over the years, Israel has put thousands of Palestinians in [administrative detention](#) for anywhere between several months and several years. At certain times during the second intifada, Israel was holding more than 1,000 people in administrative detention at a given time. As of the end of June 2020, Israel has 357 administrative detainees. People held in administrative detention, one of the most draconian measures used by the occupation regime, do not know when they will be released, as the commander of the area may extend the detention order indefinitely – based on evidence that the detainee is given no opportunity to counter.

International pressure is as vital as ever

The real question before 1 July 2020 was not whether Israel would formally annex the West Bank, but whether it would decrease the gap between the de facto and the de jure situation. For the first time ever, Israel openly considered, with full backing from the US administration, formalizing what it already does on the ground. No more pretend negotiations, no more ambiguous, half-hearted, fake support of the two-state vision – but a formal step backed by government resolution or legislation, reflecting Israel's long-term ambitions in the West Bank.

Supporters of annexation – and some detractors – maintain that formal annexation would free Israel from the shackles of international law. Yet Israel has flouted these legal provisions for years – while insisting its actions are lawful and creating an impression, backed by legal opinions and Supreme Court rulings, of obeying the laws of occupation.

At least some of these legal opinions rely on baseless interpretations that empty the principles of international law of meaning, giving Israel wiggle room while creating a show of upholding the law. For instance, Israel argues that the settlements are legal because international law does not prohibit voluntary relocation of the occupiers' citizens to the occupied territory – overlooking the state's huge investment in building the settlements and their service infrastructure, and in settling hundreds of thousands of people in them. Israel also claims that punitive house demolitions are a proportionate deterrence measure, although they constitute prohibited collective punishment. It claims that planning and building laws must be enforced by demolishing structures built without a permit as part of its obligation to maintain public order and safety, completely ignoring the state's duty to allow construction and development that meet protected persons' needs. Finally, Israel broadly interprets the phrase "security needs", contrary to the accepted view, in order to legitimize sweeping restrictions on the movement of Palestinians in the West Bank, invasion of their homes on a nightly basis, and holding military training on their lands in severe violation of their rights.

If Israel lacks laws to advance its policies it easily enacts them, in the Knesset or by military order. Israel has done this with respect to the law preventing Palestinians harmed by Israeli security forces from filing [civil claims in Israeli courts](#). It has done this with the law that [forbids family unification](#) between Palestinian residents of the Occupied Territories and Israeli citizens or residents. It has done the same with respect to a slew of military orders signed in recent years that [expedite house demolitions](#). All this civilian and military legislation has been carried out for years without formal annexation.

These interpretations are brought before the High Court, the State Attorney's Office and the Military Advocate General's Corps, where they are utilized or maneuvered to lend a guise of legality to breaches of international law. All these institutions have approved [home demolitions](#), [administrative detentions](#), [expulsion of communities](#), [torture during interrogation](#), [violations of the right to due process](#) and more, based on formalistic, hollow interpretations of the rules meant to prevent these actions.

Of course, despite Israel's full control of the territory and the extent of its unilateral steps over the years, it cannot always do as it pleases. This has nothing to do with the formal status of the land or the legal system that applies in it. What determines the extent of Palestinian dispossession is the price Jerusalem assesses that Israel would have to pay (if any) on the international scene. International inaction and zero demand for accountability are what has allowed Israel to get this far – once the leadership and the public realized they would have to pay little lip service, if any, no matter how much they violated Palestinians' rights.

The possibility of formal annexation shook the international community, which took the rare step of threatening consideration of concrete measures against Israel. Now it seems we are back to "business as usual" – the intolerable reality euphemistically known as "the status quo." Israel has chosen to take formal annexation off the table for the time being, in return for a let off of international pressure. The global community has welcomed Israel back with open arms – legitimizing its continued policy of dispossession with no price.

The international community should have reached the opposite conclusion. A key factor in Israel's about-face on the issue of annexation was the realization that implementation might have a significant cost in terms of Israel's international standing. Once again, polite requests and statements of concern have proven ineffective compared to real leverage. That is why temporarily shelving the idea of formal annexation must not become a license to carry on as

usual. The international community must recognize its responsibility, power and capacity to take steps right now against the occupation and de facto annexation – to create a future of liberty and equality for everyone living between the Mediterranean and the Jordan River.