



# **International Responses to Annexation: Lessons for Israel from Other Conflicts**

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## International Responses to Annexation: Lessons for Israel from Other Conflicts

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Over the last decade, Israel has accelerated a long-term process of annexation in the West Bank through legal, political, physical and rhetorical steps that are both explicit, and increasingly irreversible. What kind of reaction can Israel expect from the international community if these policies continue? This paper summarizes the annexationist trends in Israel, then examines cases of post-World War II annexation, to map the range of international reactions. The analysis shows that the international community (states and meta-state bodies) has responded with diverse tools, all designed to oppose and deter annexation. Yet such measures have only rarely stopped or reversed annexation. When annexation was stopped or reversed, the international pressure focused on violations of other major international norms or reflected state interests. Israeli annexation outright, but the international community can be expected to step up concrete policies of opposition. Not only would such responses not be unique to Israel – it would be an anomaly if the international community did not undertake opposition measures. The paper concludes by proposing that the international community develop a more expansive understanding of the concept of annexation to improve deterrence, and re-commit itself to the fundamental proscription against conquering territory by force.

### **A. The Problem with Annexation**

Under international law, annexation refers to the “forcible acquisition of territory by one state at the expense of another.”<sup>1</sup> The principle has been established in international law in the post-World War II era, deriving from the UN Founding Charter, Article 2.4: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.” Later texts such as UN General Assembly (UNGA) Resolution 26/25 (1970) are considered the consensus interpretation of the founding charter.<sup>2</sup> Prior to the 20<sup>th</sup> century, the seizure, conquest and annexation of territory in wartime was normal. Although challenges to the practice of acquiring territory through war

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<sup>1</sup> Rainer Hoffman, “[Annexation](#),” *Oxford Public International Law*, Max Planck Encyclopedia of Public International Law, 2013.

<sup>2</sup> [UNGA \(1970\) 2625](#) “All States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State” (this repeats the language of the UN Founding Charter) and “The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force.”

began before the 20<sup>th</sup> century, the change in international norms became more significant in the interwar years, and accelerated significantly following World War II.<sup>3</sup>

Annexation is now completely proscribed by international law, as it “violates the prohibition of the threat or use of force,”<sup>4</sup> which in turn protects the inviolability of sovereignty or territorial integrity of existing states. Annexation is unilateral by definition; territory acquired by mutual agreement or treaty is not annexation.<sup>5</sup> Some have posited that annexation is legitimate if the territory did not previously belong to a sovereign state (such as the Palestinian areas and Western Sahara). Yet, international law has ruled that such cases still fall under the laws of occupation, which in turn prohibit actions in occupied territory that lead to annexation.<sup>6</sup>

Annexation is closely linked to issues of occupation, self-determination and secession. Annexation may begin with a military occupation, then shift to de jure, creeping or de facto annexation (Israel in the Golan Heights, East Jerusalem and the West Bank; Russia’s role in Georgia’s breakaway regions and Turkey’s occupation of Northern Cyprus, should Turkey move decisively towards formal annexation). Annexation by one state can prevent the self-determination of people in the territory (Western Sahara, East Timor, and the West Bank<sup>7</sup>). By contrast, there are cases in which a territory might have seceded from an existing state out of desire to join an annexing power (this is Russia’s argument regarding Crimea and may be true of the Georgia breakaway regions). Due to these overlapping concepts, some situations are ambiguously defined; therefore, this paper does not cover all cases that might be included, but a relevant selection.

Within the general post-war order, the international prohibition on acquiring territory by force has become one of the most powerful norms in the post-war international system. The inability to conquer territory through war has contributed substantially to the overall decline of conventional wars in the late 20<sup>th</sup> century.<sup>8</sup>

## B. Israel’s Annexationist Path

Five decades after Israel conquered extensive new territories in the Six Day War – the Golan Heights, West Bank, Gaza, East Jerusalem and Sinai – each region has taken a different political path.<sup>9</sup> A full review of each is beyond the scope of this paper; their trajectories will

<sup>3</sup> Sharon Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice*, Oxford: Oxford University Press, 1996.

<sup>4</sup> Hoffman, *ibid.*

<sup>5</sup> “[Annexation \(prohibition of\)](#),” International Committee of the Red Cross.

<sup>6</sup> On the illegality of occupation that advances annexation by the occupying power, see “[Occupation/Annexation of a Territory](#),” *European Parliament*, 2015. p. 22. On the applicability of international law of occupied territory to Palestine, see *ibid*, p. 28. Morocco might make the same claim regarding Western Sahara, though the international discourse has focused more on the right of self-determination for the Sahwari people.

<sup>7</sup> Israel’s policy in Gaza has a similar effect, and discussions about Palestinian self-determination should always apply to both regions. The paper addresses primarily the West Bank due to the unlikelihood of Israeli annexation in Gaza – indeed, this distinction between Israeli policy in the two regions is part of an overall strategy of ongoing separation between the two.

<sup>8</sup> John Mueller, “War Has Almost Ceased to Exist: An Assessment,” *Political Science Quarterly* 124(2), Summer 2009, pp. 297-321.

<sup>9</sup> The fact that each would have a different political trajectory was clear in the very first days after the war. The government’s electronic archive provides access to the full transcripts of government decisions during, and immediately following the war. On June 15, the sub-committees of the Security Cabinet provided the outlines for the future of each conquered territory: Sinai and the Golan could be returned in exchange for full peace,

be summarized briefly, with a focus on the West Bank as the arena of annexationist policies in the present and near future.

Israel never annexed the Sinai Peninsula. Although Israelis built settlements there, these were dismantled when Israel returned Sinai to Egypt following the peace treaty of 1979. Two of the territories, the Golan Heights and East Jerusalem, were placed under full Israeli civil control – de facto, annexed – through a series of administrative and legal procedures. In Jerusalem this process began immediately after the Six Day war, when Israel expanded Jerusalem’s municipal boundaries to include East Jerusalem but also beyond the original city, reaching into the West Bank. Israel then enacted administrative authority over the new areas, placing them under full Israeli civil control well before 1980, the year the Knesset passed a Basic Law declaring Jerusalem to be the unified capital of Israel.<sup>10</sup> The 1980 legislation was interpreted as proof of Israeli annexation, though the text avoids the word itself.<sup>11</sup>

In the Golan Heights, a military government was established until 1981, when a new law declared that “The Law, jurisdiction and administration of the State [of Israel] will take effect in the Golan Heights,” the same language of the Jerusalem legislation. Once again, the law has been widely interpreted and implemented as annexation.<sup>12</sup> Non-Israeli residents of both the Golan and East Jerusalem broadly rejected formal Israeli sovereignty. The vast majority of them hold permanent resident status rather than citizenship, a relic of incomplete sovereignty that also creates grave hardship;<sup>13</sup> in most other ways they live under Israeli civil authority. The Golan Heights is physically indistinguishable from the rest of Israel. Notwithstanding the concrete barrier that Israel erected within and around some of the Jerusalem neighborhood beginning in 2003, there is no political border demarcating east from west Jerusalem.<sup>14</sup>

Thus, while avoiding the formal terms, the political result is the same: one state has a monopoly on the use of force, and these two territories are governed by Israeli civil authorities under civil law. They fall under near-complete Israeli sovereignty in practice, with

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Gaza might remain part of Israel, there was no decision about the West Bank, and Jerusalem would remain united. For a summary: Israel State Archives ([electronic](#)), for the full transcript: Israel State Archives, [full transcript](#).

<sup>10</sup> [Basic Law: Jerusalem, Capital of Israel](#). For the 1967 legislation enacting Israeli civil law over East Jerusalem and expanding municipal boundaries in practice, see Terry Rempel, “The significance of Israel’s partial annexation of East Jerusalem,” *The Middle East Journal* 51, Autumn 1997; also see Shaul Arieli, “[Toward a Final Settlement in Jerusalem: Redefinition rather than Partition](#),” *Strategic Assessment*, Institute for National Security Studies 8(1), June 2005.

<sup>11</sup> In response to the 1980 law unifying Jerusalem, the UN Security Council passed Resolution 478 condemning the move, refusing to recognize the change of status, and calling on embassies to relocate. Those located in Jerusalem at the time did so, and a few have shifted between Tel Aviv and Jerusalem at different times following 1980. “[US not the first nor last embassy to open in Jerusalem](#),” *Agence France Press*, 10 May 2018, and [UNSC Resolution 478](#), 1980. However, most embassies were not located originally in Jerusalem due to the failure to implement the Partition Plan, which called for Jerusalem to become a “Corpus Separatum.”

<sup>12</sup> Joel Singer, “[Trump’s Recognition of Israeli Sovereignty in the Golan Heights and Netanyahu’s Promise to Annex the Jewish Settlements in the West Bank – Poison Pills to Middle East Peace](#),” *Joel Singer Blog*, Current Affairs, 16 May 2019.

<sup>13</sup> In the Golan Heights, Israel originally sought to have the Druze residents become citizens as a mark of sovereignty, but they refused *en masse*. In Jerusalem, residents can apply for citizenship, but very few do; Israel does not encourage this and only a portion of the applicants are accepted.

<sup>14</sup> Israel officially refers to the wall as a security barrier, while giving no indication that it would relinquish control over areas of Jerusalem left on the other side. Even bills from 2018 redefining Jerusalem’s boundaries (which were debated but did not advance) made no reference to the final political status or sovereignty of the areas under question and dealt only with municipal boundaries.

brief or highly circumscribed aspects of autonomy.<sup>15</sup> Even Israeli observers have stated that the laws avoided the words sovereignty or annexation primarily in order not to run afoul of international norms, while advancing just this goal.<sup>16</sup>

By contrast, Israel has no formally stated policy for the final political status of the West Bank and Gaza, the areas that could have formed the territory of the Palestinian state. Their trajectories have diverged from one another over the last two decades. By contrast to the Golan and Jerusalem, neither Gaza nor the West Bank falls under regular Israeli civil law. Following 1967, Israel quickly established a military government in both areas. Israel then dismantled the military government in Gaza following the Oslo accords, and withdrew all settlements and army presence from inside the Strip in 2005 (while keeping tight control over Gaza's perimeters, which the UN has referred to as "effective control").<sup>17</sup> At present there is no serious conversation about Israel annexing Gaza – even hardline Israelis prefer to avoid this direction due to demographic concerns.

The Oslo accords divided the West Bank into sections with different levels of Israeli and Palestinian control on the ground (A, B and C), and formal sovereignty for none. Israel governs military and civil affairs in Area C, which covers over 60 percent of the West Bank, but does not include East Jerusalem. All Israeli West Bank settlements are located in Area C, which has over 400,000 Israeli and up to 300,000 Palestinian residents.<sup>18</sup> In Area B, Palestinians and Israelis split civil and military affairs, respectively. The Palestinian Authority (PA) is responsible for both security and civil affairs in Area A. However, the Israeli military holds ultimate authority over the whole region, and can enter even Area A at will. The Oslo arrangements were intended to be a five-year interim plan, but did not determine the final political outcome of the territories. Twenty-six years later, the broad framework is still in place.

### *Assessing political intentions*

The feasibility of the two-state solution has been eroding for years.<sup>19</sup> Israeli settlement activity in the West Bank began in the first years after the Six Day War. By the start of the Oslo process in 1993 there were just under 185,000 settlers; at present the number is over

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<sup>15</sup> For example, Israel consented to coordination with Palestinian security forces in East Jerusalem during the early Oslo years, which effectively ended in the early 2000s. A minority of Palestinian students in East Jerusalem attend schools under the autonomous agency of the Islamic Waqf, and Israel abides by the status quo of Jordanian and Waqf control over the al-Haram al Sharif/Temple Mount. However, these are all subject to Israel's exclusive discretion. After the government decisions in 1967, "Sheikh Jarrah became indistinguishable from Tel Aviv, from an Israeli legal perspective" (Author conversation with Daniel Seidemann, *Terrestrial Jerusalem*, 15 October 2019. Nevertheless, some contend that East Jerusalem is not formally annexed, for example Ian Lustick, "Has Israel Annexed East Jerusalem," *Middle East Policy* 5(1), October 2008, pp. 34-45. But since the international community views Israel's actions and laws as an attempt to annex, the case is included in order to assess international reactions.

<sup>16</sup> See for example Arieli, *ibid*, and Rempel, *ibid*.

<sup>17</sup> ["Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1"](#) Human Rights Council, UN (Twenty-nine session), 24 June 2015.

<sup>18</sup> Office for the Coordination of Humanitarian Affairs, ["Occupied Palestinian Territory: Humanitarian Facts and Figures,"](#) 2017, p.12; Peace Now, ["Israeli Settlements 2019"](#).

<sup>19</sup> Political elites began to point out the fading possibility of a two state solution by the end of the first decade of the 2000s. See for example ["Abbas: Two State Solution Eroding,"](#) *Jerusalem Post*, 10 June 2010; and Harriet Sherwood, "Window of opportunity for two-state solution closing, Hague warns Israel" *The Guardian*, 4 November 2010. This phase has been followed by numerous articles and analyses tracking the erosion of this approach.

600,000 including East Jerusalem.<sup>20</sup> Much of the settler population is concentrated in large blocs close to the Green Line, but smaller settlements are spread throughout Area C, fragmenting Palestinian territorial contiguity and encircling the areas under PA control.<sup>21</sup> Some have concluded that long-term settlement alongside Israeli infrastructure growth, while blocking Palestinian development (particularly in Area C), amounts to incremental or creeping steps towards de facto annexation.<sup>22</sup>

In recent years, Israeli political and social leaders have been openly advocating annexation, through rhetoric, legislation and policy. This open support represents a break from the political ambiguity of the past, but essentially accelerated an existing trend on the ground. Far right-wing parties such as the Jewish Home have published plans for annexation of Area C since 2012, and by 2019 senior figures from the ruling Likud party openly advocated various forms of annexation, including several now-famous statements by Prime Minister Netanyahu.<sup>23</sup>

Over the last decade, Israel has advanced numerous pieces of legislation supporting annexation. These take two main forms: Bills directly designed to annex territory (or euphemistically, “extend Israeli law”); and those intended to bring administrative affairs under regular Israeli civil law and institutions – in effect, extending Israeli law over the geographic regions of the West Bank without a declaration. A comprehensive list of these bills has been compiled by the Israeli NGO Yesh Din.<sup>24</sup>

One example of direct annexation legislation is the Settlement Regularization Law (which passed in 2017, and currently faces legal challenges). A second “Regularization II” bill could be revived during the next Knesset term.<sup>25</sup> There have been bills to annex the individual settlement Ma’aleh Adumim outside Jerusalem, which roughly 80 percent of Israeli Jews support,<sup>26</sup> and to annex the Jordan Valley (neither have yet advanced).<sup>27</sup> Both have been initiated or co-sponsored by Likud, the ruling party. The main opposition party, Blue and White, has expressed support for permanent Israeli control over the Jordan Valley as well.

Examples of the indirect legislation include a law transferring jurisdiction over issues that often cover occupation related problems (freedom of information, planning and building, entering and exiting the West Bank and [movement] inside it) from the Supreme Court (also

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<sup>20</sup> Report of the Secretary General, “[Economic and social consequences of the establishment of settlements by Israel in the Palestinian territory, including Jerusalem, occupied since 1967, and the Syrian Golan](#),” *General Assembly Economic and Social Council*, Forty-eighth session, Substantive session of 1993, UN, 8 July 1993.

<sup>21</sup> In some ways, the Israeli and Palestinian populations have been increasingly segregated by developments such as the separation barrier, and the stark reduction in work permits for Palestinians over the years. This trend has happened alongside Israel’s deepening overall control; causing speculation that the goal is either Palestinian consolidation in Areas A and B.

<sup>22</sup> Omar M. Dajani, “[Israel’s Creeping Annexation](#),” *American Journal of International Law* 111, pp. 51-56, 2017.

<sup>23</sup> On right-wing support for annexation in 2015: Dahlia Scheindlin, “[The Right Wing Solution for the Violence](#),” *+972 Magazine*, 10 October 2015. For documentation of senior Likud figures openly supporting annexation, [video](#) posted by the “Sovereignty” movement, February 5 2019; Francesca Paris, “[Ahead of Israeli Elections, Netanyahu Vows He will Annex West Bank Settlements](#),” *NPR*, 7 April 2019; Yuval Shany, “[Israel’s new plan to annex the West Bank: What Happens Next](#),” *Lawfare Blog*, 6 May 2019.

<sup>24</sup> [Database of Annexation Legislation](#). *Yesh Din*; and in [English](#).

<sup>25</sup> Jacob Magid, “[Ministers advance bill that would legalize 66 outposts deep in the West Bank](#),” *Times of Israel*, 16 December 2018; [Announcement](#) after early discussion in Knesset.

<sup>26</sup> Two surveys conducted by the author in 2017, one for the Israeli human rights organization B’Tselem and one for The Carter Center, found the same result regarding support for annexing Maaleh Adumim. (both surveys: n=650, representative samples of Jews & Arabs, error: +/-3.7%).

<sup>27</sup> Collected on the Yesh Din database.

Israel's High Court of Justice) to regular district courts; in addition to laws that harmonize business investment, tax policy and agriculture between the West Bank and Israel, and other bureaucratic changes that make life indistinguishable for Jewish residents governed by Israeli law on either side of the line.<sup>28</sup> Once again, however, these represent an acceleration of older processes: the fact that the Supreme Court had regulated much of Israel's policy from the early years of the occupation can itself be seen as preliminary form of Israeli sovereignty.<sup>29</sup>

### *The problem with annexation by Israel*

As noted, annexation violates international law and principles. It weakens the rules governing the international system at a time when the Russian annexation of Crimea also contributes to a weakening of this norm. Annexation raises numerous additional problems: Israeli annexation of West Bank (while severing of access from Gaza) precludes Palestinian self-determination. The UN recognized this right as early as 1947, with UN Resolution 181, or the Partition Plan, which acknowledged the presence of two peoples. Israel itself has recognized Palestinian rights to self-determination conceptually, as far back as the 1930s, by David Ben Gurion himself.<sup>30</sup> The UN and other international bodies have repeatedly affirmed the Palestinian right to self-determination,<sup>31</sup> and Israeli leaders implicitly accept Palestinian national aspirations by supporting the two state solution, even nominally.<sup>32</sup> The argument that Israeli annexation applies to a territory that was not previously a sovereign state is also weak since numerous international declarations have recognized the existence of such a state in the future – once again from 1947, through to the UN vote on recognizing Palestine as a non-member observer state in November 2012.<sup>33</sup>

West Bank annexation also creates fundamental problems for Israel. A group of former military leaders warn that partial annexation could cause the Palestinian Authority to collapse, prompting a rise in violence that could lead to further Israeli annexation. In turn, Israel would face pressure (both internally and externally) to end military rule and provide full citizenship for all Palestinians, something most Israeli Jews reject, or else it would face accusations of apartheid.<sup>34</sup> Researchers at the Tel Aviv-based Institute for National Security Studies concur, adding that annexation could spark international isolation as well as possible criminal prosecution in international courts.<sup>35</sup> Jordan has warned that annexation could

<sup>28</sup> *Ibid.*

<sup>29</sup> The author thanks Dr. Ehud Eiran for this observation.

<sup>30</sup> "The Arab in Palestine has the right to self-determination. This right is not limited, and cannot be qualified by our own interests [...] It is possible that the realization of the aspirations (of the Palestinian Arabs) will create serious difficulties for us but this is not a reason to deny their rights." Quoted in Eric Rouleau, "The Palestinian Quest," *Foreign Affairs* 53(2), January 1975, p. 266.

<sup>31</sup> The right has been affirmed by UNGA resolutions from the 1970s, summarized in Musa Dweik, "[Settlements the Right to Palestinian Self-Determination](#)," *Palestine-Israel Journal* 4(2), 1997. The right has been re-affirmed in recent decades; see for example UNGA Resolution 72/160, 2017, which summarizes earlier affirmations including the International Court of Justice's decision from 2004 regarding the political impact of the security barrier, and UN resolutions of 2004, 2012, [2016](#).

<sup>32</sup> For international affirmation, see most recently, UN General Resolution 72/160, "[The right of the Palestinian people to self-determination](#)," 19 December 2017. Israel has committed itself to the two state solution formally under four Prime Ministers: Ehud Barak, Ariel Sharon, Ehud Olmert, and Benjamin Netanyahu (in a 2009 speech), though as argued in this paper, these commitments have been contradicted by policies on the ground.

<sup>33</sup> UNGA [Resolution 181](#), 29 November 1947; "[General Assembly Votes Overwhelmingly to Accord Palestine 'Non-Member Observer State' Status in United Nations](#)" *UN*, 2012.

<sup>34</sup> Commanders for Israel's Security, "[Annexation Initiatives in Judea and Samaria – Implications](#)," September 2018 [Hebrew].

<sup>35</sup> Pnina Sharvit Baruch, "[The meaning of enacting Israeli sovereign over Judea and Samaria](#)," *Mabat AI*, 1007, Institute for National Security Studies, 7 January 2018 [Hebrew].

threaten its peace agreement with Israel and it could shake the peace treaty with Egypt as well.<sup>36</sup> These possibilities provide the central inquiry of the next section: what has been the range of international reactions in other cases? Which of these is Israel most likely to face?

### C. Comparative Cases of Annexation

Given the evolution of international norms over the 20<sup>th</sup> century, post-war cases are the relevant ones for comparison. The examples are politically and geographically diverse, which creates some challenges for comparing the international responses. However, the same diversity also helps to compare different forms of annexation, which aptly reflects Israel's incremental and ambiguous approach over the years.

#### *Declared or de facto annexation*

- **Crimea:** Russia openly annexed Crimea in March 2014, after invading some months earlier and organizing a hasty (and probably sham) referendum. The vote was not recognized by any member of the international community.<sup>37</sup> Due to the largely ethnic-Russian composition of the population, Russia has portrayed the annexation as historic redress, justified by the putative choice of the local residents in favor of reunification.
- **Kuwait:** In August 1990, Iraq invaded Kuwait and declared a "comprehensive and eternal merger," which was immediately understood as annexation by the international community. Within months, the confrontation led to the first Gulf War in late 1990, beginning 16 January 1991.<sup>38</sup> US President George H. W. Bush declared Kuwait liberated on 27 February 1991.
- **East Timor:** The region was openly annexed by Indonesia by 1975. In 1999, East Timor held a referendum on independence with the consent of Indonesia. East Timor voted for independence and has been a full UN member since 2002; its status is no longer disputed and the annexation has ended.
- **Western Sahara:** Morocco has controlled the Western Sahara following decolonization in 1975 and 1976. In 1975, the International Court of Justice issued an advisory opinion that local Sahrawi inhabitants had the right to self-determination, challenging Morocco's claim to sovereignty; yet Morocco held its "Green March" shortly afterwards, then forged a partly-secret agreement with Spain to divide the area between Morocco and Mauritania. In 1979, Mauritania renounced its claim and Morocco took over this portion too, building a wall to demarcate territory under its control. This is often characterized as a de facto annexation that violates the right to

<sup>36</sup> "[Amman warns Jordan Valley annexation pledge puts peace treaty 'at stake'](#)," *Times of Israel*, 11 September 2019.

<sup>37</sup> Most states actively condemned the referendum; however, some abstained and 11 countries supported a UNGA resolution for reasons related to their own political preferences. Russia naturally supported the referendum and rejected the UN votes. "[Backing Ukraine's territorial integrity, UN Assembly declares Crimea referendum invalid](#)," *UN News*, 27 March 2014. Bill Chappell, "[Russia Vetoes U.N. Security Council Resolution On Crimea](#)," *NPR*, 15 March 2014.

<sup>38</sup> Ahmed Shehabaldin & William M. Laughlin Jr., "Economic sanctions against Iraq: Human and economic costs," *The International Journal of Human Rights* 3(4), 1999, pp. 1-18.



self-determination of the Sahrawi people.<sup>39</sup> The armed conflict continued until an UN-brokered ceasefire took effect in 1992, when a “Settlement Plan” was agreed, stipulating a referendum on self-determination in the territory. The referendum has not been held.

- Tibet: China invaded Tibet in 1951, amidst competing (and ambiguous) historic, legal and political claims of both Tibet’s Buddhist leadership and China’s pre-communist rulers of the early 20<sup>th</sup> century. Following the invasion, the People’s Republic of China signed an agreement with the Tibetan leadership (the Dalai Lama) incorporating Tibet into Chinese sovereign territory.<sup>40</sup> The Dalai Lama quickly and repeatedly repudiated the 1951 agreement, arguing that it was forced on him. China does not view Tibet as having been a sovereign country prior to 1951. Since that time, China has committed massive human rights violations in Tibet, including destruction of both people and culture. However, China’s sovereignty is no longer seriously disputed – the Tibet question focuses on human rights and autonomy.<sup>41</sup> In 1979, the Dalai Lama ceased the demand for full sovereign independence, advocating instead for a negotiated autonomy, democratic governance and religious freedom.<sup>42</sup>
- West Bank: Annexed by Jordan in 1950, Jordanian sovereignty was in fact recognized by Britain, Iraq and Pakistan, though the move was divisive and rejected by significant segments of the Palestinian local leadership and people, while partially accepted by others.<sup>43</sup> Israel captured the territory in 1967 and Jordan renounced its claim in 1988.<sup>44</sup>

#### *Undeclared, partial, and creeping annexation*

- South Ossetia, Abkhazia: As Georgia separated from the Soviet Union, these two ethnically distinct regions declared themselves independent states; no other country recognized them. With Russian military backing, they fought wars and achieved a measure of de facto control in the early 1990s.<sup>45</sup> Their status is disputed to this day, while Georgia considers them part of its sovereignty territory. Russia has wielded heavy influence since then; following another war between Georgia and Russia in

<sup>39</sup> Hoffman, *ibid.* See also Sidi M. Omar, “The right to self-determination and the indigenous people of Western Sahara,” *Cambridge Review of International Affairs* 21(1), 2008.

<sup>40</sup> For a thorough review, see Qiang Zhai, “Tibet and Chinese-British-American Relations in the Early 1950s,” *Journal of Cold War Studies* 8(3), Summer 2006. Note that in academic and historic literature, this is referred to variously as “annexation,” “invasion,” “incorporation” of Tibet into the PRC, or “conquest.” The CFR documents cited here for example, do not use the term “annexation.” However, Kobayashi does (Ryosuke Kobayashi, “Tibet in the Era of 1911 Revolution,” *Journal of Contemporary East Asia Studies* 3(1), 2014, pp. 91-113, and Korman uses “annexation” for Tibet in her book devoted to the changing norms of territorial conquest.

<sup>41</sup> Interview by Robert J. Barnett (Interviewee), Bernard Gwertzman (Interviewer)

“[Can China’s Tibetan Crisis Be Resolved?](#)” *Council on Foreign Relations*, 6 March 2009.

<sup>42</sup> James Flynn, “[Will China’s Next Crisis Be in Tibet](#),” *The American Interest*, 13 August 2019; Randeep Ramesh, “[Generations Fail to Agree on Tibet’s Future](#),” *The Guardian*, 23 November 2008.

<sup>43</sup> Moshe Maoz, *Palestinian Leadership on the West Bank*, London and New York: Routledge Library Editions: Israel and Palestine 2, 1984.

<sup>44</sup> “[Jordanian Annexation of the West Bank](#),” Economic Cooperation Foundation.

<sup>45</sup> “[Georgia/Abkhazia](#),” *Human Rights Watch*, March 1995; “Georgia: Avoiding War in South Ossetia,” *International Crisis Group*, Spring 2004.

2008 over South Ossetia, Russia recognized the independence of both regions.<sup>46</sup> Russia has made various advances towards annexation. In 2002 it allowed residents to receive Russian passports.<sup>47</sup> From roughly 2015, it began to employ “borderization” and “Integration” tactics, including incrementally erecting physical barriers ever-deeper inside Georgia, signing agreements for economic and legal harmonization, and continuing to provide passports to residents of the breakaway regions.<sup>48</sup> Analysts note that the main questions are “plausible deniability” and “reversibility” – can Russian actions be denied sufficiently to avoid international reactions, and is the incremental process reversible?<sup>49</sup>

- Eastern Ukraine: In 2014, the two regions of Lugansk and Donetsk held referendums on secession from Ukraine (like in Crimea, also poorly organized or a sham). Russia has not taken decisive steps towards annexation, therefore this remains more of a specter than a reality, but one to be watched: in April 2019, Russia simplified procedures for granting citizenship (via Russian passports) to residents of the Donbass region; outgoing Ukrainian President Poroshenko declared this a step towards annexation and demanded that the international community threaten further sanctions.<sup>50</sup>

This list excludes other possibly relevant examples. Turkey’s role in Cyprus can clearly be considered an occupation, possibly creeping control, but formal annexation appears to be a remote, though still worrying possibility. This is precisely a reason why international norms should be strengthened, rather than weakened.

Nagorno-Karabakh is an unusual case of a non-recognized territory claiming another state’s sovereign territory. When Armenian forces captured additional territory of Azerbaijan during a separatist war over the Karabakh region, numerous UN resolutions called for their withdrawal from those areas. Instead, Karabakh has dug in; some have called this creeping annexation. But the unusual political situation makes it an outlier, with international attention directed primarily at conflict resolution.<sup>51</sup>

India’s crackdown on Jammu and Kashmir in the summer of 2019 represents a longstanding sovereignty conflict. However, under the Indian constitution, Jammu and Kashmir fall under Indian sovereign territory, with special provisions for autonomy provided in Article 370. The abrogation of this special status is more akin to Serbia’s revocation of Kosovo’s constitutional autonomy in 1989. These conflicts are all comparable to Israel and Palestine

<sup>46</sup> Since that time, four other countries under heavy Russian influence have also recognized the breakaways. Alexis Mrachek, [“Beware of Russia’s ‘Creeping Annexation’ of Georgia,”](#) *The Heritage Foundation*, 4 September 2018.

<sup>47</sup> Krishnadev Calamur, [“How Countries Use Passports as a Geopolitical Tool,”](#) *The Atlantic*, 26 April 2019.

<sup>48</sup> Andrew North, [“Russian expansion – ‘I went to bed in Georgia and woke up in South Ossetia,’”](#) *The Guardian*, 20 May 2015; and Gerard Toal (Gearóid Ó Tuathail) & Gela Merabishvili, “Borderization theatre: geopolitical entrepreneurship on the South Ossetia boundary line, 2008-2018,” *Caucasus Survey*, 2019.

<sup>49</sup> Author Interview with Laurence Broers, 28 June 2019.

<sup>50</sup> Darya Korsunskaya, Pavel Polityuk, [“Russia offers passports to east Ukraine, president-elect decries ‘aggressor state,’”](#) *Reuters*, 24 April 2019.

<sup>51</sup> Eugene Kontorovich, “Unsettled: A Global Study of Settlers in Occupied Territories,” *Journal of Legal Analysis* 9(2), Winter 2017; Joshua Kucera, [“For Armenians, they’re not occupied territories – they’re the homeland.”](#) *Eurasianet*, 6 August 2018.

on other issues, such as self-determination.<sup>52</sup> However, they will not be included under this analysis of annexation.

## D. International Responses to Annexation

The fact that there are only limited postwar cases of annexation, and even fewer annexations that have not (yet) been reversed, highlights the overall success of the prohibition on the use of force for territorial expansion.<sup>53</sup> But what has been the international reaction when unilateral annexationist policies do occur?

The following section reviews the responses of international governments and meta-state bodies to the cases above. What is the range and nature of responses to other cases, that Israel can expect? What could their impact be? It could be equally valuable to survey possible responses from civil society actors, but, this is beyond the scope of this paper. As in the previous section, the international responses are gathered thematically, according to degrees of annexation.

### *Responses to creeping, incremental, undeclared annexation*

Overall, the international community has neglected, downplayed, or reacted with mostly declarative measures to informal incremental annexationist steps. Although Nagorno-Karabakh is an outlier, it is worth reiterating that the UN Security Council protested the conquest of the additional territories. The Security Council issued four separate resolutions condemning the acquisition of Azerbaijani territories by force and violation of sovereign borders.<sup>54</sup> These measures were declaratory and their impact partial. Armenian forces have not withdrawn to the present.<sup>55</sup>

Responses to Russia's activities in Georgia have been less concrete. Russia maintains "plausible deniability" and it is not clear that the international community has acknowledged the annexation dynamics sufficiently to develop a policy.<sup>56</sup> Policy analysts have called for the US to step up its support for the sovereign parent state (Georgia), and entreated the four countries that have recognized the breakaway regions to rescind their recognition.<sup>57</sup> As of this writing, neither has happened.

Due to the tense situation in Ukraine, Russia's actions in Donbass are under much closer scrutiny. In April 2019, Russia facilitated providing Russian passports for residents of Eastern Ukraine,<sup>58</sup> in effect expediting Russian citizenship. A US State Department spokesperson issued a condemnation, calling the actions provocative and an "assault on

<sup>52</sup> For a valuable comparison of conflict-related nationalist politics between India and Israel, see Sumantra Bose, "[Why India's Hindu nationalists worship Israel's nation-state model](#)," *The Conversation*, 14 February 2019. For a comparison of the impact of conflict on democracy, see Dahlia Scheindlin, "[Lessons for Israel-Palestine from Nagorno-Karabakh – Does Unresolved Conflict Destroy Democracy?](#)," *Mitvim - Israel Institute for Regional Foreign Policies*, 2016.

<sup>53</sup> The author thanks Dr. Limor Yehuda for this observation.

<sup>54</sup> UNSC Resolutions [822](#), [853](#), [874](#) and [884](#).

<sup>55</sup> Eduard Abrahamyan, "Armenia's New Ballistic Missiles Will Shake Up the Neighborhood," *National Interest*, 12 October 2016.

<sup>56</sup> Broers interview, *ibid*.

<sup>57</sup> Alexis Mrachek, "[Beware of Russia's Creeping Annexation of Georgia](#)," *The National Interest*, 1 September 2018.

<sup>58</sup> "[U.S. Condemns Putin's Move To Ease Russian Citizenship For Those In Ukraine's Separatist-Held Areas](#)," *Radio Free Europe/Radio Liberty*, 24 April 2019.

Ukraine's sovereignty and territorial integrity."<sup>59</sup> However, the statement did not call for any specific reaction. It stated that the passport policy creates obstacles to implementing the Minsk agreement (to reintegrate the Donbass region), and concludes that it is "up to Russia" whether to escalate or recommit to negotiations.

In sum, in response to undeclared, slow-burn processes of annexation, the international response has tended to take mainly mild and declarative measures. The declarations do not necessarily name the actions as annexation or warn of future annexation. In these cases, the responses mostly refrain from clear action against the annexing power other than the declarations themselves.

### *De facto and declared annexation*

The international responses to these situations is surprisingly broad, ranging from tacit acceptance or even encouragement of territorial violations, to swift, severe economic sanctions or even, at the most extreme, immediate military intervention to end the violation – at least as a *casus belli*, alongside realpolitik considerations.

In the year prior to the Chinese invasion of Tibet in late 1950, Britain, the US and India considered how to head off the brewing threat of this imminent intervention. Their concerns focused mainly on preventing Communist expansion. However, differing interests among the three parties precluded significant deterrence efforts.<sup>60</sup>

Immediately following the military invasion, Tibet appealed to the UN against the "conquest," which it described as a major threat to the "independence and stability of other Asian countries."<sup>61</sup> Although Tibet was not a UN member, and its political status was ambiguous, a legal examination from the British Foreign Office concluded that Tibet could claim its own "international personality," diminishing Chinese claims of suzerainty as recognized in the early 20<sup>th</sup> century. Still, the first appeal was not discussed. The US had shown signs of beginning to support Tibet's claims when, in April 1951, Tibetan officials negotiated then signed an agreement with China placing Tibet under Chinese sovereignty. Despite later disavowals by the Tibetan leader (the Dalai Lama) – and although signed under military invasion and duress – the agreement appeared to have mitigated the international perception that China had unilaterally annexed Tibet. Most attention is therefore focused on the severe human rights situation of Tibet under Chinese authorities in their suppression of regular separatist flare-ups.

Jordan's parliament approved the annexation of the West Bank at roughly the same time. The main reaction was non-recognition, with only three countries who did recognize the action (Britain, Iraq and Pakistan). The Arab League angrily rejected Jordan's move. The annexation is considered a violation of international law, though there is no evidence of specific UN resolutions or other international punitive measures.<sup>62</sup> The Arab League considered expelling Jordan from the association, though this divided the members and did

<sup>59</sup> "[Statement by Morgan Ortagus](#)," Spokesperson, US Department of State, 24 April 2019.

<sup>60</sup> Zhai, *ibid*.

<sup>61</sup> Letter from Tibet government to the UN Secretary General, published in Melvyn C. Goldstein, "A History of Modern Tibet," Volume 2: *The Calm Before the Storm: 1951-1955*, University of California Press, 2007, pp. 59-81.

<sup>62</sup> On the illegality of the act and rejection by the international community, see Alan Levine, "the Status of Sovereignty in East Jerusalem and the West Bank," *NYU International Journal of Law and Politics* 5(485), 1972, p. 494.

not happen. However, the primary cause of their rejection was focused on the perceived weakening of the Palestinian national cause rather than a stance in principle against territorial violation.<sup>63</sup>

Morocco has faced numerous repercussions for its occupation of Western Sahara since 1975, from international bodies and specific countries, at various levels. At the diplomatic/organizational level, the Organization for African Unity in 1984 voted to recognize the right of the Sahrawi people to self-determination, prompting Morocco to leave the meta-state body. However, in 2017, Morocco re-joined what was by then known as the African Union. While this indicates a legitimization of Morocco, the Union also includes the self-declared entity of Western Sahara (the Sahrawi Arab Democratic Republic, a partly-recognized entity).<sup>64</sup>

The UN has issued numerous Security Council resolutions regarding the situation, generally decrying the occupation and upholding the settlement calling for a referendum.<sup>65</sup> Neither the EU nor member states have recognized Morocco's control or sovereignty over Western Sahara.<sup>66</sup> At the same time, an EU policy report notes that "active non-recognition" is lower than for either the Palestinian territories or Crimea.<sup>67</sup>

In December 2016, the European Court of Justice ruled that bilateral agreements between the EU and Morocco must not include Western Sahara; calling to dismiss earlier EU trade agreements; a second similar ruling was issued in 2018.<sup>68</sup> The US also has a free trade deal with Morocco which excludes Western Sahara.<sup>69</sup> However, EU policy towards Morocco in general has been forthcoming – Morocco enjoys heavy financial assistance and privileged relations for various EU trade and development programs.<sup>70</sup> These have underplayed the situation in the Western Sahara. It is fair to say Morocco has not suffered significantly from international responses beyond the occasional and little-noticed declarative level.

Reactions to Indonesia's invasion and annexation of East Timor were notably muted. The situation unfolded in the powerful context of Cold War dynamics. Evidence has emerged that the US was aware of the imminent Indonesian invasion, and tolerated it, fearing that East Timor's leadership was Communist.<sup>71</sup>

<sup>63</sup> William H. Haddad & Mary M. Hardy, "Jordan's Alliance with Israel and its Effects on Jordanian-Arab Relations," *Israel Affairs* 9(3), 2003, p. 45.

<sup>64</sup> Arpan Banerjee, "[Moroccan Entry to the African Union and the Revival of the Western Sahara Dispute](#)," *Harvard International Law Journal* 59, Fall 2017.

<sup>65</sup> See a [list](#) of UNSC Resolutions. One activist organization has cited "[over 100 UN Resolutions](#)" favoring Saharawi self-determination, but this could not be confirmed.

<sup>66</sup> "[According to Advocate General Wathelet, neither the EU-Morocco Association Agreement nor the EU-Morocco Agreement on the liberalisation of trade in agricultural and fishery products apply to Western Sahara](#)," Press Release 94/16, *Court of Justice of the European Union*, 13 September 2016.

<sup>67</sup> "Occupation/Annexation of a Territory," *European Parliament*, 2015, p. 40.

<sup>68</sup> Dominic Dudley, "[European Court Dismisses Morocco's Claim to Western Sahara, Throwing EU Trade Deal Into Doubt](#)," *Forbes Magazine*, 21 December 2016."

<sup>69</sup> Dominic Dudley, "[Morocco Steps Up Diplomatic Pressure On US And Europe Over Western Sahara Occupation](#)," *Forbes Magazine*, 19 May 2016.

<sup>70</sup> See a detailed review here "Occupation/Annexation," *ibid*, 2015, p. 42.

<sup>71</sup> William Burr and Michael L. Evans (eds.), "[East Timor Revisited: Ford, Kissinger and the Indonesian Invasion, 1975-76](#)." *National Security Archive Electronic Briefing Book* 62, 6 December 2001.

Australia did recognize Indonesian sovereignty over East Timor, although it was criticized for being the only one to do so.<sup>72</sup> In later years, violence and major human rights violations ultimately led both Australia and the US to change their positions, following the end of the Cold War and the emergence of a human rights approach to international affairs.

In 1998, Australia's Prime Minister John Howard proposed a plan for East Timor's independence. The US by this time also supported the right of East Timor to self-determination. In late 1998 Congress suspended military training programs with Indonesia. After significant political pressure, the Indonesian leadership allowed a referendum on independence in 1999, but the voting was overrun by Indonesian forces, who committed severe violence. The UN issued an ultimatum to restore order, threatening to send peacekeeping forces. US President Bill Clinton then suspended military sales, leading to the eventual capitulation of the Indonesian leadership, which was also facing an economic crisis.<sup>73</sup> East Timor became fully independent in 2002. This forceful diplomatic pressure was primarily a response to the urgent need to end mass violence; rather than a protest against the annexation of 1975.<sup>74</sup>

On the other end of the spectrum, the response to Russia's action in Crimea in 2014 was rapid and severe. Crimea was in the spotlight of global attention from the earliest stages, unlike some of the other cases. The annexation followed destabilizing political unrest in Ukraine that emerged from the competition between pro-Western and pro-Russian forces inside Ukraine (layered over a broader anti-corruption, pro-democracy uprising). The swift international reaction therefore represented the next move in what might be seen as a reconstituted cold war.

On 17 March 2014, one day after the Russian-contrived referendum, the EU implemented its first sanctions, including travel bans and freezing assets of persons related to Russia's activities in Crimea. Russian President Vladimir Putin signed the law annexing Crimea on 21 March 2014. Three days later, the G8 group suspended Russia's membership indefinitely and relocated the now-G7 summit to Brussels instead of Sochi. (In 2017 Russia announced that it would leave the G8 permanently; in 2018 US President Donald Trump stated that he would like Russia to rejoin). In July 2014, "the EU imposed economic sanctions [...] and reinforced them in September 2014. In March 2015, the European Council linked the duration of those economic restrictions to the complete implementation of the Minsk agreements." The latter relate to the Donbass region. It is not completely clear if the sanctions would be extended in the event of a Russian retreat from Donbass, but not from Crimea.<sup>75</sup>

By 2015, 151 persons, 37 entities had been sanctioned (including 13 enterprises in Crimea, taken over by Russia). These policies have not truly differentiated between Crimea and Russia – the EU has placed economic/financing bans both on Russian interests in Crimea and directly targeting Russia as a state. The EU has placed bans on loans to banks,

<sup>72</sup> Australia's foreign minister [claimed](#) this was not the case, compiling a list of other countries that had recognized Indonesian sovereignty in the region (Citation of Australian Senate, Debates, 10 November 1994, p. 2958, in *Australian International Law Journal*, 1995 – full reference not available; link accessed 23 November 2019).

<sup>73</sup> For a detailed review, see Kai He, "Indonesia's Foreign Policy after the Cold War," chapter in B. J. C. McKercher (ed.), *Routledge Handbook of Diplomacy and Statecraft*, London and New York: Routledge, 2012. pp. 218-220.

<sup>74</sup> James Cotton, "The Emergence of an Independent East Timor: National and Regional Challenges," *Contemporary Southeast Asia* 22(1), April 2000.

<sup>75</sup> ["EU Sanctions against Russia over Ukraine Crisis,"](#) EU Newsroom (regularly updated).

“embargo on import/export of arms” and trade on “dual use goods,” bans on financial instruments related to Russian banks, energy, defense companies.<sup>76</sup>

At the time of this writing, according to public EU sources, “Asset freezes and visa bans apply to 170 persons while 44 entities are subject to a freeze of their assets in the EU.” These measures have also been extended through 2020.<sup>77</sup>

The American response has been similarly decisive. Since 2013 (the start of Russian intervention into Ukraine), over 60 rounds of sanctions have been imposed, though these include sanctions for Russia’s role in Syria and US election interference in 2016, and other issues.<sup>78</sup> America has repeatedly stated its total rejection and non-recognition of the annexation, and its support for the restoration of Ukrainian sovereignty and EU policy; and numerous rounds of sanctions have specifically targeted the annexation of Crimea.<sup>79</sup> The impact of the sanctions has been heavily debated.<sup>80</sup> The main critique is that Russia has not ended its interference in Ukraine; however, defenders argue that the major goal has been to influence that policy indirectly, through economic pressure, and by “changing the decision-making context.”<sup>81</sup> One perspective regarding Crimea is that the sanctions may have deterred further outright annexation in eastern Ukraine. Perhaps the Minsk agreement (attempting to stabilize the Donbass region) would not have been achieved. At the same time, Russia remains firmly ensconced in Crimea and shows no signs of leaving.

At the most extreme end of the spectrum lies the response to Iraq’s invasion and annexation of Kuwait in August 1990. The first response was immediate UN condemnation: Security Council Resolution 660 condemned the invasion and demanded immediate withdrawal. UNSC Resolution 662 placed the annexation at the center of the condemnation: “Gravely alarmed by the declaration by Iraq of a ‘comprehensive and eternal merger’ with Kuwait [...]’ 1. Decides that annexation of Kuwait by Iraq under any form and whatever pretext has no legal validity, and is considered null and void; 2. Calls upon all States, international organizations and specialized agencies not to recognize that annexation, and to refrain from any action or dealing that might be interpreted as an indirect recognition of the annexation.”<sup>82</sup>

Within days of the invasion, UN resolutions imposed daunting economic and commercial sanctions on Iraq. These would remain in place for years to come, long after the war. By late 1990, the UN had authorized the use of force, and when Iraq failed to withdraw on 15 January 1991, the next day a coalition of 39 countries led by the US launched an enormous air and then land campaign now known as the first Gulf War, forcing Saddam Hussein’s forces out by February. Sanctions imposed by the US alone included a trade embargo and freezing of government assets; these were adjusted but retained, then updated following the second Gulf War beginning in 2003. By 2010 the broad-based sanctions were removed, but

<sup>76</sup> “Annexation/Occupation,” *ibid.*

<sup>77</sup> “EU Sanctions,” *ibid.*; Press Release, “[Russia: EU prolongs economic sanctions by six months](#),” *Council of the European Union*, 27 June 2019.

<sup>78</sup> Cyrus Newline and Jeffrey Mankoff, “[US Sanctions Against Russia: What you need to know](#),” *Center for Strategic and International Studies*, 31 October 2018.

<sup>79</sup> Alina Polyakova and Filippos Letsas, “[On the Record: The US Administration’s Sanctions on Russia](#),” *Brookings Institution*, 3 June 2019.

<sup>80</sup> Nigel Gould-Davies, “[Sanctions on Russia are Working](#),” *Foreign Affairs*, 22 August 2018.

<sup>81</sup> Nataliia Slobodian and Iryna Ptasnyk, “[Sanctions on Russia: Effectiveness and Impacts](#),” *Europe Now*, 5 February 2018.

<sup>82</sup> UNSC Resolutions [660](#), [662](#) and [678](#) from 1990.

individuals and specific parties continue to be targeted and sanctioned by US, the EU and the UK.<sup>83</sup>

However, it is abundantly clear that America's decision to lead the international coalition to war was based on a complex set of circumstances of which the protection of international law was only one, and very likely a rhetorical device rather than substantive reason. The urgency of upholding "collective security" by enforcing global norms was reinforced by the suspicion that Iraq intended to follow Kuwait by invading Saudi Arabia. America was also no less concerned about protecting oil interests in the Persian Gulf, asserting its role in the emerging post-Soviet environment, and possibly feared Iraq's military buildup. There is a strong argument that the latter formed the true motivations behind America's response. Even putative concrete security concerns such as Iraqi armament and expansionist designs on Saudi Arabia may have been exaggerated and exploited (as the weapons of mass destruction argument was during the second Gulf War).<sup>84</sup>

One further case should be mentioned: Israel itself. Although Israel has avoided the explicit terminology of annexation in its laws, nevertheless, the international community treated both major pieces of legislation regarding East Jerusalem and the Golan Heights as annexation. The international responses have so far fallen on the moderate end of the spectrum. On the declarative level, the international community rejected Israeli sovereignty in both areas; the consensus rejection was broken only in 2019 with formal US recognition of Israeli sovereignty over the Golan Heights.<sup>85</sup> In response to the Golan Heights law, the UN Security Council passed Resolution 497, demanding that Israel rescind the law, declaring it null and void. The text also reaffirmed the prohibition on annexation: "Reaffirming that the acquisition of territory by force is inadmissible in accordance with the Charter of the United Nation, [and] the principles of international law."<sup>86</sup> The UN Security Council similar passed a resolution denouncing the Basic Law on Jerusalem. While the US abstained from the vote, it passed with all other members.<sup>87</sup>

Notwithstanding the American abstention over the resolution concerning Jerusalem, the US reacted harshly to the Golan law. Under President Ronald Reagan, the US also suspended an arms transaction, and nullified a recently-negotiated strategic cooperation agreement signed just weeks earlier, according to the Israeli legal advisor who negotiated the deal, Joel Singer.<sup>88</sup>

<sup>83</sup> US Department of Treasury, "[Iraq: An Overview of the Iraq Stabilization and Insurgency Sanctions Regime](#)," *Office of Foreign Assets Control*, 15 September 2010; See EU and UK current sanctions [summary](#).

<sup>84</sup> For a very comprehensive examination see Christopher Layne, "[Why the Gulf War Was Not in the National Interest](#)," *The Atlantic Online*, July 1991. On the accusation of threat exaggeration with regards to Iraq's intent to invade Saudi Arabia, see Joshua Holland, "[The First Iraq War was also sold to the public based on a pack of lies](#)," *Bill Moyers*, 27 June 2014.

<sup>85</sup> In response to Israel's 1980s Basic Law on Jerusalem, UNSC Resolution 478 rejecting the act and calling on remaining embassies to relocate to Tel Aviv. Though the international community was united in its rhetorical rejection, neither law was followed by significant policy action. Those located in Jerusalem at the time did so, and a few have shifted their location between Tel Aviv and Jerusalem at different times following 1980. "[US not the first nor last embassy to open in Jerusalem](#)," *Agence France Press*, 10 May 2018; and UNSC Resolution [478](#) (1980); However, most embassies were not located originally in Jerusalem due to the unresolved status during the 1948 war, and the failures to implement the Partition Plan, which called for Jerusalem to become a *Corpus Separatum*.

<sup>85</sup> [Israel Basic Law: The Golan](#).

<sup>86</sup> UNSC Resolution [497](#), 1981.

<sup>87</sup> UNSC Resolution [478](#), 1980.

<sup>88</sup> Singer, *ibid*.



This response by Israel's closest ally in the 1980s is vastly different from America's response in 2018-19.<sup>89</sup> The US decision to relocate its embassy to Jerusalem in 2018 can be interpreted as a broad legitimization of Israel's unification/annexation of East Jerusalem (American officials have tried to deny this interpretation).<sup>90</sup> Naturally the US President's outright recognition of Israeli sovereignty on the Golan Heights in 2019 was considered a shock to the international system in general.

In between these two poles of harsh opprobrium and lavish affirmation, lies an intermediate approach, taken by individual governments and meta-state bodies such as the EU. Certain trade deals include some manner of differentiation regarding goods produced in the settlements, including a trade deal Israel signed with South Korea in August 2019.<sup>91</sup> The EU has provided guidelines regarding labeling the origin of products from the settlements as distinct from those originating in Israel.<sup>92</sup> Numerous trade agreements with EU countries exclude settlements, and some individual governments have warned of the problems of conducting business ties in the settlements, some including the West Bank, East Jerusalem and the Golan Heights in this designation.<sup>93</sup> In 2013, the EU issued guidelines stipulating that its member states should always exclude settlements in future agreements.<sup>94</sup> China has also announced a ban on foreign construction workers participating in settlement construction in the West Bank.<sup>95</sup>

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Summarizing the international reactions to cases of clear or even stated annexation, policies have ranged from tacit acceptance and even assistance (Indonesia/East Timor), to diplomatic isolation (Russia), removal from essential international clubs, to full-throttled sanctions targeting the economic/banking, energy and military sectors of the central government (not only related to the annexed territory), including individual travel bans and access to global financial institutions, and full-out war. Some cases have experienced one or several of these.

Specific reactions are clearly related to the geopolitical situation of the territory and state in question. Thus, global impact or obscurity of the perpetrator matters (Russia matters more for global affairs than Morocco). However, the nature of international competition, state interests, and Cold War (or neo-Cold war) dynamics plays a large role. Whether or not the annexed region is governed by a sovereign state plays some role as well; annexation of a disputed territory appears to dilute the response (Morocco, Palestinian territories). At the same time, at least one case of outright annexation of sovereign territory has been met with primarily declarative rather than punitive measures (Golan Heights). A situation of relative

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<sup>89</sup> Singer, *ibid.*

<sup>90</sup> The denial was based primarily on the following line in [Trump's speech](#): "We are not taking a position on any final status issues, including the specific boundaries of the Israeli sovereignty in Jerusalem, or the resolution of contested borders. Those questions are up to the parties involved."

<sup>91</sup> Ora Coren and Hagai Amit, "[Israel Agrees on Trade Deal With South Korea That Excludes West Bank, East Jerusalem, Golan](#)," *Haaretz*, 22 August 2019; "[Israel inks free-trade deal with South Korea despite settlement row](#)," *Times of Israel*, 21 August 2019.

<sup>92</sup> "[Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967](#)," *European Commission*, 11 November 2015.

<sup>93</sup> Hugh Lovatt, "[Occupation and Sovereignty: Renewing EU policy in Israel and Palestine](#)," *European Council on Foreign Relations*, 21 December 2017.

<sup>94</sup> Harriet Sherwood, "[EU takes tougher stance on Israeli settlements](#)," *The Guardian*, 16 July 2013.

<sup>95</sup> Staff and Agencies, "[China bans its construction crews from the West Bank over opposition to Israeli settlements](#)," *The Independent*, 25 April 2017.

obscurity but representative of Cold War dynamics was actively abetted by the international community (East Timor). This was not the case in Tibet, but most likely because of the nominal agreement signed in 1951. Still, in both cases the international community became heavily engaged in protecting human rights, including self-determination, in both areas.

## E. Implications for Israel

The review here reveals a broad toolbox ranging from international condemnation to full-out economic, energy and military sanctions and even military force. Sanctions can include cutting off access to international banking, ending bilateral trade, trainings or military agreements, and severe diplomatic isolation including sanctions and travel bans on individuals. If no common policy arises, individual governments may choose from this set of options.

However, this review shows that global reactions to annexation are markedly inconsistent, reflecting the wide variations in relevant factors from case to case. For numerous reasons, Israel will avoid the harsh end of the spectrum: primarily due to American affirmation of annexation under the Trump Administration and ongoing traditional American support in international forums, divisions among EU countries, the lack of tensions akin to the Cold War dynamic around the Israeli-Palestine conflict (though such tensions are mounting in Syria and the Middle East more broadly). Still another reason is that the EU is unlikely to reach a consensus about harsh measures, as it did in the case of Russia regarding Crimea – individual countries would probably split over how to respond. Finally, Israel has worked to inoculate itself against the countries that are most likely to care about annexationist policies (Western Europe), while cultivating global allies who probably do not.<sup>96</sup> It is therefore unlikely that punitive measures will directly affect most Israelis.

Given these factors, should Israel continue with a creeping, unacknowledged form of annexation, it seems unlikely that it will be stopped due to international governmental pressure. To be sure, formal annexation, even partial, would garner highly negative responses. Just the fear of those critical reactions may continue to deter Israel from further formalized annexations depending on the future of Israeli political leadership. Harsh measures are even less likely if Israel maintains deniability and continues with its decades-long policy of incremental, unnamed annexation. Some even maintain that open annexation, for example of Area C – would generate a storm that blows over.<sup>97</sup>

However, this does not imply that annexation would have no consequences for Israel: The various reactions to other cases show that the range of reactions can be very harsh; the very fact that the current government portrays even mild, technocratic measures such as labeling with hysteria might ironically portray any further recriminations as increasingly disastrous in Israeli perceptions. On the domestic level, Israeli pro-annexation forces will invariably accuse any negative reactions to annexation as “singling out” Israel; but the findings here pre-empt this charge since numerous countries have faced numerous punitive measures – some similar to, others harsher than those Israel will face. Effectively neutralizing the “singling out” concept can lead to policy debates that are less subject to political manipulation.

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<sup>96</sup> Dahlia Scheindlin, “[Netanyahu’s Foreign Policy is Bad for Israel](#),” *Foreign Affairs*, February 2019.

<sup>97</sup> Danny Danon, “[Make the Land of Israel Whole](#),” *New York Times*, 18 May 2011.

However, if ultimately neither domestic nor international actors are able to prevent annexation in the West Bank, advocates for a democratic Israel will be compelled to shift their goals towards protecting human rights, and advocating self-determination in the annexed areas in the future. Annexation is unlikely to end these Palestinian demands, and ironically will probably boost their international legitimacy. In that case, Israel would do well to recall that in several of the cases reviewed here, the annexing power was eventually subjected to the most intensive pressure to relinquish its power due to human rights abuses, and allow captive communities to fulfil their desire for self-determination.

## **G. Conclusion**

This review yields observations about the international norm itself: While the prohibition on acquiring territory by force has been roundly successful in the post-war era, the exceptions are instructive. They tend to be contested primarily when they contradict hard state interests, geostrategic interests such as Cold War dynamics, or the interests of a meta-state body such as the EU. If state interests favor the annexation they may even be condoned or at least tolerated. In no cases has annexation been successfully reversed as a protest against *annexation* but instead primarily due to the suppression of self-determination or violation of human rights, as in East Timor. In order to close what appears to be a de facto loophole, the international community would benefit from a more expansive definition of annexation that defines responses to “creeping,” incremental and de facto forms, even in situations of “plausible deniability.” Annexing powers appear to have learned that open action risks international reaction, but basic obfuscating tactics are sufficient to keep international reactions at bay. There is no better example than Israel.