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Settlement Annexation on the West Bank: Legal and Political Context

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The issue of Jewish settlements in the West Bank remains one of the key elements of the Israeli-Palestinian conflict. The political situation in Israel and favourable attitude of the U.S. administration increase the likelihood that Israel might annex settlements. Illegal under international law, this action would have a destructive effect on the peace process and would force a revision of EU-Israel relations.

Settlements—A Legal Assessment. The Jewish settlement movement in the West Bank has been developing since Israel took control of the area from Jordan after the Six-Day War in 1967. Under Israeli-Palestinian agreements concluded in 1993 (Oslo I) and 1995 (Oslo II), the West Bank was divided into three types of areas: Area A, managed by the Palestinian Authority (PA); Area B, under the combined jurisdiction of the PA and Israel; and, Area C, under Israeli control. Currently, there are more than 250 settlements inhabited by about 413,000 people in type C territory (2017 data by the Israel Central Bureau of Statistics, excluding East Jerusalem). Around half of them are settlements set up without the permission of the Israeli authorities (“outposts”), although supported by them in various ways. The majority of the population is concentrated in settlement blocks, usually located close to the ceasefire line established before the Six-Day War (“the Green Line”) and behind the “security barrier”, and infrastructurally integrated with the territory of Israel.

Under Israeli law, construction in an Area C is legal as long as government approval is obtained. In practice, it is granted almost exclusively to Jewish settlers. In addition, a 2017 legal act provides for the retroactive legalisation of some outposts built on private Palestinian land. Palestinians only occasionally receive permission to build in an Area C, thus, more often than not, they build buildings without permission, risking demolition by the Israeli authorities. In addition, the presence of military forces protecting Jewish settlements, attacks from radical settlers, and restrictions on the freedom of movement, as well as the use of resources, negatively affect the situation of the Palestinian population.

Israel justifies its right to build settlements by the centuries-long presence of Jews in Palestine and recognition of the Jewish immigration there by the League of Nations in the 1920s. It claims at least part of the West Bank, indicating that when Israel took it over, the area was not, in this interpretation, subject to Palestinian (no state of Palestine at the time) or Jordanian sovereignty (because the international community did not consider it part of Jordan).

An overwhelming majority of states and international organisations, particularly the UN, dispute these arguments. According to international jurisprudence, the West Bank is not part of Israel, but an area occupied by Israel within the meaning of the Fourth Geneva Convention and administered by the Palestinian authorities. This is based on, among others, rulings by the International Court of Justice in a 2004 advisory opinion on the legal consequences of the construction of a wall in Occupied Palestinian Territory and by the

Court of Justice of the EU in its 2010 *Brita* judgment. This legal view is confirmed by resolutions of the UN General Assembly (e.g., of 2017 and 2018) and the UN Security Council (e.g., No. 2334 of 2016). These resolutions also state that the West Bank's status as occupied territory is not affected by whether it belonged to Jordan before 1967 or not but by the fact that it was seized by force by Israel. As an occupier, Israel must comply with humanitarian law, including Art. 49 of the Fourth Geneva Convention, which prohibits the transfer of an occupier's population to the occupied territory (forcibly or voluntarily). This makes settlement construction contrary to international law. Hence, the UN and other organisations, such as the EU, demand this practice be ceased and call upon states not to support it. They condemn Israel's other settlement activities that violate human rights or humanitarian law, such as land confiscation and the forced transfers of Palestinians, and refuse to recognise territorial changes not agreed to by both parties.

The annexation of settlement areas then would be illegal under international law because it would consolidate the existing situation, making permanent the violations specified above. It also would be contrary to Art. 47 of the Fourth Geneva Convention, which prohibits restricting the rights of civilians (in this case, Palestinians) as a result of the annexation of part of the occupied territory. It will also violate Art. 31 (7) of the Oslo II agreement, which prohibits any unilateral steps that change the West Bank's status before the outcome of the Israeli-Palestinian negotiations.

Political Context. The settlements are one of the key elements of the political discourse in Israel and in the Israeli-Palestinian conflict. Settlers, motivated by both ideology/religion and economic considerations, are an important pressure group and the overwhelming majority are part of the right-wing electorate. The parties representing them (e.g., Jewish Home) have been part of every coalition formed by Prime Minister Benjamin Netanyahu since taking power in 2009. Currently, the prolonged electoral cycle in Israel and the need to consolidate support (the ruling Likud received the most settler votes in the April elections) prompts politicians to strengthen guarantees concerning the settlements' future, and hence, Netanyahu's declarations in April about extending Israel's sovereignty to all settlements, and in July about preventing the eviction of any communities in the West Bank.

Although the main Israeli political forces recognise that the removal of all settlers to behind the "green line" is impossible (in part because of the scale of social resistance), scenarios for the resettlement of part of the settler population are realistic. Many Israeli proposals in the peace process have included the incorporation of some settlements in exchange for land swaps of Israeli territory to Palestine and the eviction of the rest (e.g., with support from an international fund). Hence, the annexation of settlement blocks is in Israel's perception (as in the case of Jerusalem) a solution that it will not give up in negotiations anyway. At the same time, some political forces demand the annexation of all Areas C or even the entire West Bank (variants of this view are supported by about 40% of Israelis). This would entail granting Israeli citizenship to the Palestinian people, otherwise, ethnic-political segregation would be sanctioned.

The change in the settlement *status quo* is favoured in the current political approach by the U.S., Israel's key ally and the country with the greatest influence on its West Bank policy. Unlike the Obama administration (during which settlement construction was partially frozen), the Trump administration is willing to accept Israeli control over the disputed territories as a form of recognition of what it calls "facts on the ground", as in the case of Jerusalem and the Golan Heights. For example, Israel's ambassador to the U.S., David Friedman, has said Israel has the right to take over parts of the West Bank. At the same time, some Democratic Party politicians oppose annexation, including presidential candidates Bernie Sanders and Elizabeth Warren.

Perspectives. The scenario of the annexation of Jewish West Bank settlements into Israel has never been so close to being carried out. Apart from the electoral context, internal Israeli dynamics—the political dominance of the right-wing and public support for annexation, as well as the most amenable U.S. administration in decades—have also aligned. At the same time, annexation would mean the complete collapse of the Israeli-Palestinian peace process based on a two-state solution (by preventing the creation of a functional Palestinian state) and would spark the destabilisation of the West Bank through mass Palestinian protests. The incorporation of only some settlements would be resisted by the settlers, without whose support Netanyahu would be unable to build a post-election coalition. The potential negative consequences of either option may lead the Israeli authorities to maintain the *status quo*, that is, continued support for the settlements without formally changing their status. Ultimately, if external dynamics turn in Israel's favour (such as PA rejection of the yet-to-be-announced U.S. peace plan), the future Israeli government could take unilateral action towards Areas C.

It is in the interest of the EU to send a clear signal that any territorial changes in the West Bank carried out outside the format of a peace agreement between Israel and Palestine will be rejected due to their illegality and will meet with a strong diplomatic and economic response. The gravity of such a message would be strengthened if adopted with Arab countries in the region (e.g., Gulf states) with which Israel wants to strengthen relations. Annexation with U.S. support would also hinder effective transatlantic cooperation (not only in the Middle East), especially if Donald Trump is re-elected in 2020.