



U.S. Recognition of Israeli Sovereignty over the Golan Heights

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Recognition of Israeli sovereignty over the Golan Heights is part of a series of pro-Israeli decisions made by President Donald Trump, that break with the previous U.S. foreign policy line towards the region. It raises legitimate opposition from other members of the international community. The decision may widen the gap in transatlantic relations and negatively affect the image of the U.S. as a mediator in the Israeli-Palestinian peace process.

The Background of the Decision. The Golan Heights is a territory of Syria occupied by Israel as a result of the Six-Day War in 1967. Israel justified retaining control over this area for security reasons, saying it guaranteed a strategic advantage over Syria, hindered attacks on Israeli territory and provided access to the sources of the Jordan River. In 1981, the Knesset adopted a law that extended Israel's jurisdiction over the Golan Heights, de facto annexing the territory. From the mid-1990s to the outbreak of the civil war in Syria in 2011, Israel and Syria negotiated the possible return of the Golan Heights. The intensity of the talks varied, but they were never successful.

With the escalation of the conflict in Syria, Israeli prime minister Benjamin Netanyahu's government embarked on diplomatic efforts to gain recognition of Israel's full sovereignty over the Golan Heights. The political justification was the loss of credibility of President Bashar al-Assad in Syria, arising from the scale of war crimes alleged against his regime, and the threat from Iran and Hezbollah operating in Syria. Israeli actions were intensified with the assumption that Trump would win the U.S. presidential election and make decisions favourable from Israel's perspective, including the [recognition of Jerusalem as the capital of Israel](#), [withdrawal from the nuclear agreement with Iran](#), and [tightening policy towards the Palestinian Authority](#). The U.S. recognised the Golan Heights as Israeli territory in a declaration of 25 March that supported the Israeli arguments for it.

Legal Aspects. Israel has always maintained that the annexation of the Golan Heights was legal because it took control of the area while defending against an attack by a coalition of Arab states. Since self-defence is consistent with international law, argues Israel, the annexation of a territory seized in the process must also be legal. However, one of the pillars of the post-war international legal order is the principle that the conquest of part of a state's territory does not give the conqueror legal title, regardless of the circumstances in which it occurs. Therefore, although occupied by Israel, the Golan Heights remain part of Syrian territory. As a consequence of the use of force and violation of Syria's territorial integrity, this territory's annexation is null and void and should be rescinded by Israel.

This has been the view of the United Nations and every state but Israel since 1981. It is expressed in UN Security Council resolution 497 and UN General Assembly resolution 36/226B (both adopted in 1981), among other documents. Resolution 36/226B also included a call to all states and international institutions not to recognise the annexation of the Golan Heights. Although these resolutions were not formally

binding, according to the International Court of Justice (ICJ) 1971 advisory opinion on Namibia, UN members cannot simply disregard the Security Council's legal assessments and recognise situations determined by the Council as being in violation of international law. In doing so they would also break the law by failing in their duty not to recognise situations brought about in violation of international law. The latter deals particularly with grave breaches of fundamental norms of international law (*ius cogens*), such as the prohibition of the use of force and the obligation to respect the territorial integrity of states. The existence of this duty in universal customary law is confirmed by the ICJ's 2004 advisory opinion on legal consequences of the construction of a wall in the occupied Palestinian territory, and by article 41, paragraph 2, of the International Law Commission's 2001 draft articles on the responsibility of states, a document commonly regarded as a binding standard in the field of international responsibility.

The U.S. is also bound by treaty obligations in this regard, pursuant to article 11 of the 1933 Montevideo Convention and article 21 of the 1948 Charter of the Organization of American States. Although these are regional treaties, the scope of application of both articles is not limited only to other American countries. As a consequence, recognition of the annexation of the Golan Heights violates international law, and the U.S. is obliged to reverse its position. This may be done by a future U.S. president, so Trump supporters in Congress have submitted a bill that would prevent such a move. However, the U.S. Supreme Court ruled in *Zivotofsky v. Kerry* (2015) that recognition of states, including their territorial borders, is the sole prerogative of the incumbent president, so Congress cannot interfere in presidential decisions in this field and the success of the proposed bill would be contrary to the U.S. Constitution. Furthermore, the current composition of the court means this ruling is unlikely to be overturned.

Political Aspects of the Decision. Recognition of the Golan Heights, a profoundly pro-Israeli move, strengthens Trump's reception among his key evangelical electorate and in the Republican Party. The Democratic Party has taken a moderately critical stance towards the decision, as it witnesses declining intra-party support for Israeli politics. The internal divisions among Democrats in this area are used by Trump in his political narrative.

Trump's decision is part of a series of unilateral actions breaking with the previous U.S. foreign policy line towards the region. At the bilateral level, it lent significant support for Netanyahu before the April election, especially as the vast majority of Israeli citizens and politicians (including the opposition) support Israel's claim to the Golan Heights. Moreover, Trump's decision has a two-fold effect on the prospects of success for an Israeli-Palestinian peace plan prepared by the U.S. and due to be announced during the post-election period in Israel. On the one hand, it increases the probability of Israel accepting the plan. Open opposition by the future Israeli government would be politically difficult and damaging to its image. On the other hand, it is a signal for the Palestinian authorities that any unwillingness to negotiate on their part could lead to U.S. recognition of Israeli sovereignty over parts of the West Bank (mainly blocks of Jewish settlements). It is also likely that the Israeli government will further intensify diplomatic efforts in other areas important to Israel to maximise the pro-Israeli attitude of the U.S. government in the immediate future.

At the regional level, U.S. acceptance of Israeli control of the Golan Heights met strong opposition, including from close allies such as Saudi Arabia. However, the far-reaching convergence of interests between some states and the U.S. (including in policy towards Iran), and the reluctance to antagonise the sympathetic Trump Administration, prevent regional criticism from escalating. The decision may affect the level of tension between Israel and Syria (in the interests of Iran), which strengthens Russia's role as the main political mediator between the parties. It is possible that Syria will try to affirm its own rights to the Golan Heights, but fear of a U.S. reaction will mean that such actions are likely to be limited and purely demonstrative.

The U.S. decision was not supported by the international community and was criticised by the EU, the UN Secretary-General, Russia, and China, among others. Its wider effect may be the deepening of disagreements in transatlantic relations. The U.S. will push allied countries to take similar actions or support the position of the U.S. and Israel in international forums such as the General Assembly or the UN Security Council (as happened when the U.S. recognised Jerusalem as the capital of Israel).

Conclusions. Recognition of the Golan Heights as part of Israel reinforces the image of the U.S. as a partner disrespecting international law and introduces an additional level to the political dispute with EU countries and others. It is yet another precedent that may lead to the erosion of the duty not to recognise territorial acquisitions resulting from the use of force. This would be an extremely negative development from Poland's perspective, as the duty is one of the main factors discouraging states from territorial expansion at the expense of others. What is more, Russia will probably use Trump's decision to relativise its own annexation of Crimea. It is in the interests of Poland and other EU states to maintain the current approach to Syrian territorial integrity, while not giving signals that could be interpreted as support for the Syrian authorities in other areas.