

# Politics of Occupation and Normalization: The Case of Golan Heights

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## Introduction

Above the Sea of Galilee lies a long cliff with a height ranging from 800 to 1000 metres popularly known as the Golan Heights. Its highest point known as Mount Hermon rises to 2814 metres at its peak, which acts as a strategic point to get a view right up to Syria's capital Damascus- a considerable asset from the military's perspective. It is located in the southwest of Syria and northeast of Israel in the Middle East (ESHEL, 2007). The Golan Heights has a total landmass of 1,860 square kilometres & it represents one percent of Syria's landmass. After the 1967 Arab-Israeli conflict, Israel occupied approximately 1000 square kms of land & has been under its control since then.

In 1981, Israel annexed the Golan Heights & implemented Israel's domestic law in the region. This action by Israel received widespread condemnation by the international community & from the perspective of 'Law of Occupation', Golan Heights was still an occupied territory & the occupant does not have any discretionary power to violate Syria's territorial sovereignty. The annexation was recognized by the US to approve of Israel's sovereignty over the occupied Golan Heights. The Israeli occupation has conducted human rights violations in many forms since its control over Golan Heights. Its actions have forced deportation & evacuation of Syrian citizens from the Golan Heights, destruction of private property & establishment of Israeli settlements violating all forms of regulations & conventions under the International Law.

Golan Heights is significant for Israel because of its geo-strategic location & its access to rich water resources. Golan Heights and the Jordan River provide up to 50% of Israel's

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freshwater. Because of its height, it acts as a vantage point to monitor the movements of Syrian Army. Since time immemorial, Golan has been involved in various military conflicts.

This paper first gives a background that led to the occupation of Golan Heights. This is followed by the reasons for its annexation & US recognition of Israeli sovereignty over Golan Heights. It talks about the destruction caused to the human population & natural resources mainly caused due to Israel's presence over the heights. It then examines the legality or illegality based on International Law based on Israel's occupation & annexation along with recognition by the US. And finally, it examines the violations of International Law on Israel's actions over the Syrian population.

## **Background**

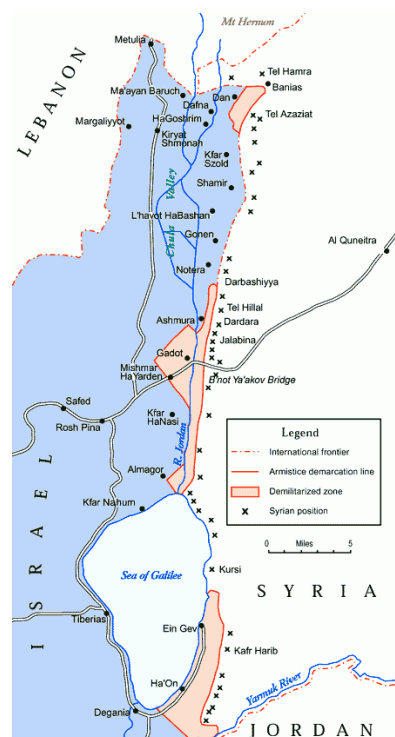
In the early 20<sup>th</sup> century, Jews across the world under the Zionist movement started migrating & settling in Palestine. Under the British mandate of Palestine after World War 1, Britain pledged to build a Jewish national home in the country as per the Balfour declaration. The Jews started creating vehicles for agrarian settlements, & a viable socialist economy with national health systems, universities, reforestation & infrastructure in Palestine. This was resented by the Arabs as they regarded Yishuv as a form of western imperialism, a culture alien to their traditional way of life. The continuous waves of immigration of the Jews to the land of Palestine ignited more violent Arab reactions resulting in the revolt of 1936 against the Jews. Seeing a backlash, the British issued a white paper nullifying the Balfour declaration. The revolt that lasted for three years till 1939, aroused a nationalistic spirit of Pan-Arabism against the Zionist movement. The people of the Arab world called for erasing the borders of Syria, Lebanon, Transjordan, Palestine, and Iraq & asked for an independent Arab state. On November 30, 1947, United Nations proposed the partition of Palestine between Jewish & Arab people. This led to severe civilian protests across the Arab world. Civil strife broke out between the Palestinians & the Jews. Once the state of Israel got created in 1948, the civil strife burning since November exploded into a regional war between Israel & the five nearest Arab countries. The invasion was led by Syria & Iraq followed by Lebanon, Transjordan & Egypt. The Arab armies penetrated through Negev & Galilee bringing Tel Aviv, Israel's largest city under siege. By the fall of 1948, Israel's Defence forces (IDF) broke through the Arab blockade & fought the Arab armies for a stalemate. It ended up occupying Umm al-Rashrash on the Red Sea which acted as Israel's lifeline through the Gulf of Aqaba and the Straits of Tiran, to the markets of

Africa and Asia, & captured another 30 percent Palestinian territory than UN had allotted it as per the partition plan (OREN, 2002).

The war ended in 1949 with the signature of an Armistice agreement between Israel & Arab forces under the leadership of the UN to establish peace in Palestine. The terms of the agreement were pretty ambiguous because the Arab side claimed their rights to renew hostilities at will & deny Israel any form of legitimacy or recognition. UN official Ralph Bunche who acted as a mediator stated that the agreement will sustain the conflict & prepare the ground for war (OREN, 2002).

## Syria Israeli Armistice July 20, 1949

The agreement stipulated that an Armistice Demarcation Line shall follow a line midway between the truce lines and where the truce lines run along the international boundary between Syria and Palestine. A demilitarized zone was also established between the demarcated line & boundary because of a pending final territorial settlement between both the parties (Syrian-Israeli Armistice- July 20, 1949, 2002).



Source- Mideast Web

The peace after armistice agreements didn't last long. By 1953, Egypt began sponsoring groups to carry out guerrilla raids into Israel & renewed propaganda calls for the second round. Israel

viewed these calls as a threat to their existence & an attempt to anesthetize Israel before slaughtering it (OREN, 2002).

In response to the Guerrilla attacks, IDF units launched raids across the border blowing up dozens of houses & killing civilians. On the Syrian side, Israelis drained the Hula swamp in northern Galilee. Egypt captured one of Israel's ships in the Suez Canal & rejected Operation Alpha (Peace initiative between Israel & Arab neighbours). Israeli responded with Gaza Raids in 1955 claiming 51 Egyptian soldiers & 8 Israeli soldiers inaugurating the countdown to war. Egypt in response nationalized the Suez Canal which led to the second Arab- Israeli war. Israel with the help of British & French forces shattered the Egyptian Army & occupied three-quarters of the canal. By this time, the Israelis were controlling all of Sinai, Gaza, and the Straits of Tiran. Both parties Egypt & Israel signed an agreement under the leadership of UNSC. Israel was given the right to respond in self-defence under Article 51 of the UN charter if Egypt attempts to revive the Tiran blockade of Israeli ships. Throughout 1955 & 1956, Israel & the neighbourhood witnessed large-scale border fighting, retaliations, and guerrilla attacks that took the lives of hundreds of people (OREN, 2002).

In 1958, Egypt registered an achievement by unifying Egypt with Syria also called the United Arab Republic. With this rose the expectation of people to liberate Palestine. It started with an Israeli attempt to cultivate the DZ's along the northern border. Syrian troops use to fire on the tractors working at DZ and IDF guns blasted at Syrian positions on the overlooking Golan Heights. As things heated up, the Soviets stepped in and informed Egypt that Israel was planning to invade Syria. Egypt forces entering Sinai caught the Israeli forces completely caught off-guard. The Israeli army was mobilized for retaliation. Both sides flexed their muscles but with minimal damages. In totality, the period between 1956-1966 saw several serious military confrontations including artillery, fighter planes & patrol boats clash between both parties at the borders leading to 189 civilian deaths. These factors were enough for the Israeli state to be prepared for any threats emanating from its neighbours (OREN, 2002).

In 1964, Israel was planning to channel the water at Galilee to the Negev desert. This invoked fear in Arabs because that desert could support additional 3 Mn Jewish immigrants & strengthen their grip on Palestine. This called for people's war to destroy the Zionist plot. This led to the creation of the United Arab Command (UAC) with a ten-year budget of \$345 Mn to prepare for an offensive campaign for liberating Palestine. Expecting an all-Arab assault, Israel came up with a comprehensive defense plan designed to rebuff attacks on all fronts and then

enable the army to take the offensive. The continued events of provocation & retaliation finally led to the Six-Day Arab-Israeli war. It ended in a decisive victory for Israel by bringing under control territory four times the size of existing Israel. This includes the capture of Golan Heights from Syria. The heights were brought under the Israeli military administration & were integrated into Israel's financial & communication network. The war ended with a UNSC resolution calling for the withdrawal of the Israeli armed forces from territories occupied in the conflict (OREN, 2002).

Both Egypt & Syria wanted to reoccupy Sinai & Golan Heights respectively from Israel's occupation. Therefore, they build an alliance & launched the Yom-Kippur war against Israel. It ended up submitting more land of Golan Heights to Israel. The war ended with negotiations from both sides. A disengagement agreement was signed & both sides agreed to establish a demilitarized zone, disengage forces & release the POWs under the supervision of UNDOF. At the same time, UN maintained that Golan Heights is an occupied territory & Israel has to vacate its presence from the occupied Golan Heights as per UNSC's resolution 242.

## Occupation of Golan Heights in 1973 (Blanchard, n.d.)



Source- EveryCRSReport.Com

In 1981, Israel went for its annexation by adopting the Golan Heights Law under which jurisdiction and administration of the State of Israel shall apply to the area of the Golan Heights. The move was justified by arguing that the application of Israeli law on Golan Heights is not annexation because it fills a vacuum caused by the absence of Syrian institutions such as the judiciary. The vacuum was caused because of people running away from the area after Israel occupied the territories post the 1967 war. In the absence of Israeli or Syrian law, day-to-day

disputes & legal questions were solved based on the customs of the indigenous communities. It further added that the Israeli legal and administrative system does not relate to the Golan as a part of Israel, and when it does relate to the Golan Heights as a part of Israel, it will be exceeding its authority (Sheleff, 1994).

The United States under Donald Trump in 2019 recognized the sovereignty of Israel over Golan Heights. The majority of world leaders including the United Nations condemned the decision arguing that Article 51 under the UN charter confirms Israel's annexation of Golan Heights to be in grave violation of International Law which implies that US recognition of Israel's sovereignty is an illegal move. On the contrary, United States argued that International Law backs the US decision to recognize Israel's sovereignty citing 1967 UNSC resolution 242. They blame Syria for being bad, breaking the rules & claim Syria rejecting the negotiating framework of Resolution 242. Besides, Syria has been at war with Israel since 1948, it's an ally of a very brutal Iranian regime & therefore, by giving Golan Heights back to Israel, the US has afforded the only secure & recognized boundary that can exist under the circumstances- the objective of Resolution 242 (Mulian, 2020).

Since Israel's occupation at the Golan Heights in 1967, it has undertaken several measures & actions that have negatively impacted the Syrian population. Their actions forced more than 130,000 Syrian citizens to evacuate the area & were forbidden from returning. The authorities consciously de-populated the region to build their settlements. They also destroyed numerous villages & farms to force the evacuation of citizens. These actions have severely violated the Hague Resolutions & the Fourth Geneva Conventions under International Law (Murphy & Gannon, *Changing the Landscape: Israel's gross violation of International Law in the occupied Syrian Golan*, 2008).

Impact of International Law on Occupation, Annexation of Golan Heights & Israel's sovereignty over occupied territory.

Occupation under customary international law is defined as the control of territory by a foreign power. If we look at Article 42 of the 1907 Hague Regulations it states that "territory is considered occupied when it is placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised." The term "hostile army" has been used consciously to give it a military character & emphasize the temporary character of the situation. The 1907 Hague regulations made a law for the occupant power to establish its administration based not on the legal right to govern but as per

Article 43 “the authority of the legitimate power having passed into the hands of the occupant”. It emphasizes that the authority belongs to the “occupant” as opposed to the “occupying State.” The insistence on the occupant was required to distinguish between the authority of the occupant in running an administration & its sovereign to avoid future actions & claims with regards to the status of a territory. The failure of this would lead to establishing surrogate institutions, annexation, or puppet states/government by the occupying state (Benvenisti, *The International Law of Occupation*, 2012).

To determine if a territory is occupied, an assessment based on facts called the “effective control” test is undertaken. Its guiding elements are:

- One State’s armed forces are physically present in the territory of another State, without the consent of the local government in place at the time of the invasion.
- The local government is incapable of exerting its authority by virtue of the foreign forces’ presence.
- The foreign forces are able to exercise authority over the territory concerned (or parts thereof) in lieu of the local government.

Israel acquired its occupation over Golan Heights in 1967 post the Arab- Israeli war. The authorities of the Syrian government were replaced with the legislative authorities of Israel managed by its military commanders to administer the occupied territory. The assessment clearly holds ground for Israel as an occupant of Golan Heights (Jurist, 2019). The ICRC commentary to the Fourth Geneva Convention also confirms the line of reasoning & states that “the occupation of territory in wartime is essentially a temporary, de facto situation, which deprives the occupied Power of neither its statehood nor its sovereignty; it merely interferes with its powers to exercise its rights” (Murphy & Gannon, *Changing the Landscape: Israel's gross violations on International law*, 2008). Occupation of territory through military means is always temporary in nature. It comes to an end only when the occupant signs a peace agreement with the sovereign authority for the return of the occupied territory or by transferring authority to an indigenous government supported by its population through an act of referendum (Benvenisti, *The International Law of Occupation*, 2012). One of the instances is the transfer of occupied Sinai Land from Israel back to Egypt through peace negotiations. In 1979, Egypt & Israel concluded a peace treaty in which Israel agreed to withdraw from Sinai in three years. On the contrary, Israel & Syria entered into multiple peace negotiations since the 1990s but it

always came to a dead end because of Israel's annexation of Golan Heights & its refusal to withdraw from the territory in response to Syria's consistent threat to the destruction of the Jewish state.

In 1981, Israel extended its domestic laws over the occupied territory calling for its annexation by passing the Golan Heights Law. The law granted people residing in Golan Heights as residents to gain permanent resident status. The then Prime Minister of Israel Menachem Begin stated that historically Golan Heights for many generations were an integral part of Israel. He added that between 1948 & 1967, Syrian forces used the topographical advantage of the heights to target Israeli farmers in the Galilee Valley & turned their lives into a reign of blood & terror. Further Begin said, Israel was finally making the move to incorporate the 500 square miles of the Golan Heights into Israeli territory from a "moral-political aspect" based on Syria's constant refusal to recognize the existence of the Jewish state (Claiborne, 1981).

Israel's UN Ambassador Yehuda Blum argued that the deep Syrian hostility towards Israel & the calls for the destruction of the Jewish state are a few reasons for the annexation. After the 1967 war, Syria refused to accept Security Council Resolution 242 (1967) which affirms the right of every state in the area to live in peace within secure and recognized boundaries. In its quest for peace, Israel withdrew forces from the territory captured in the war of 1973 & 1967 but still Syria refused to go beyond agreements on a cease-fire and a disengagement of military forces. The Syrian attitude of repeated acts of aggression with the aim of conquering and even destroying a neighbouring country violates Article 2(2) of the Charter, which states that "All members in order to insure to all of them the rights and benefits resulting from membership shall fulfill in good faith the obligations assumed by them in accordance with the present Charter." The government of Israel could not wait endlessly for Syria to begin to show the political will to make peace and agree on secure boundaries. Israel cannot be expected to maintain indefinitely a military administration merely to accommodate Syria's interest in persistent conflict. The government of Israel is willing to negotiate unconditionally with Syria for a lasting peace in accordance with Security Council resolutions 242 & 338 (Blum, 1982).

Syria argues that after the Israeli occupation of Golan Heights, more than 500,000 Syrians were driven out of their homeland. Some 20,000 Syrians continue to live in the occupied Syrian Golan. The Israeli forces have destroyed Syrian cities, towns & villages & have built over 40 illegal settlements. Syrians continue to wait for the murderous and illegal occupation of their land to come to an end. Syrian diplomacy has launched many calls in order to resume peace



talks. Syrian President, Bashar Al-Assad, has sent several messages in this regard. However, the provocative visit of former Israeli Prime Minister Ariel Sharon to the Al-Aqsa Mosque in Jerusalem, which sparked the 2000 Palestinian Uprising, the U.S. invasion of Iraq in 2003, along with Israeli aggression against the Palestinians and Lebanon in 2006 has widened the gap and complicated the picture (Permanent mission of the Syrian Arab Republic to the United Nations, n.d.).

The UNSC resolution 497 adopted in 1981, rejected the Israeli occupation of the Golan Heights. It stated, "The Israeli decision to impose its laws, jurisdiction and administration in the occupied Syrian Golan Heights is null and void and without international legal effect." Therefore, Israel's annexation is a clear and grave violation of international law, particularly Security Council Resolution 497. Again, the Golan Heights is referred to as the "Syrian territory occupied by Israel" in Security Council Resolutions 242 (Council, 1981). This annexation also violates article 2(4) of the UN charter since it's a move against the territorial integrity & political independence of the Syrian state inconsistent with the purpose of the United Nations (Mulian, 2020). Moreover, it violates the Law of Occupation since it allows occupation by Israeli forces but doesn't give Israel any authority for the transfer of Golan Heights sovereignty. The foundation on which the Law of Occupation is based is the principle of inalienable sovereignty which allows occupation by a foreign power but does not authorize the transfer of sovereignty to the foreign power. Therefore, the definition of occupation included the control of territory & establishment of an administration for its inhabitants by the occupying power without the violation of the sovereign of that territory (Benvenisti, *The International Law of Occupation*, 2012).

The US recognition of Israel's sovereignty also stands null & void since the annexation of occupied territories violates International Law. The annexation of territories as per International Law is viable through "cession" which is the transfer of sovereignty over State territory by the owner State to another state or if an independent government managed by the local inhabitants of the area with the help of a referendum agrees to become part of the occupant state. Say, for instance, Sikkim now a part of India back in 1947 enjoyed de-facto independence after the British left India. By 1975, the prime minister of Sikkim appealed to the Indian Union for a change in Sikkim's status & to join the Indian Union. A referendum was held where more than 97 percent of its population agreed to become a state of the Indian Union. This action was recognized by the International community which made the move attainable. Similarly, in the case of Israel's occupation & annexation of Golan Heights, the move was contrary to the desire

of the parent state from which the territory was captured & therefore the legal status of the territory will remain vague until the agreement of the parent state. Another important point to highlight is the success of such actions always depends on the reaction of the international community. For an annexed territory to be recognized, the international community has to come out in cohesion to its support. In the case of the US recognition, it was a unilateral decision since the whole world condemned the move of granting recognition on Israel's sovereignty over Golan Heights (Mulian, 2020).

Israel was the first country since 1949 to be called upon by the international community to implement the provisions of Geneva Conventions (4) in the occupied territories. Israel ratified all the four Geneva Conventions by 1951 & was fully obliged for its implementation in the occupied territories. Any country controlling an occupied territory is obliged by the International Law of Occupation to implement the provisions given in the Hague Regulations, Fourth Geneva Conventions & certain provisions of Protocol I of 1977 Additional to the Geneva Conventions of 1949. But Israel never fully acquiesced to the application of any of the regulations or conventions in its occupied territories. With regards to Hague Regulations, Israel stated that it does not apply *de jure* to the occupied Golan but it is applicable when the regulations comply with the Israeli law. It also rejected the rightful application of the Geneva Conventions but implied its obligations towards the humanitarian provisions of the conventions. Israel was responsible for the forceful transfer of the Syrian population from the occupied Golan Heights, destruction of private property & establishment of Israeli settlements in occupied territory.

After the occupation of Golan Heights, more than 130,000 of the native Syrian inhabitants were displaced or deported from their homes. The Israeli military began a widespread campaign to demolish their homes, farms, a city & 340 villages. They were replaced with more than 30 Israeli settlements. They were also responsible for the exploitation of natural resources (Al-Marsad, 2018).

Under the Fourth Geneva Conventions, Article 49 states that "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." It also prohibits the "individual or mass forcible transfers, as well as deportations of protected persons from occupied territory" (ICRC, Practice Relating to Rule 129. The Act of Displacement, n.d.). In its written statement submitted to the ICJ in Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory in 2004, Saudi Arabia stated: Both the 1907

Hague Regulations and the Fourth Geneva Convention of 1949 make clear that the occupying Power has a general duty to respect and protect private property. Article 46 of the 1907 Hague Regulations states the simple proposition: “Private property cannot be confiscated.” Article 53 of the Fourth Geneva Convention of 1949 likewise states: “Any destruction by the occupying Power of real or personal property belonging individually or collectively to private persons ... is prohibited, except where such destruction is rendered absolutely necessary by military operations” (ICRC, Practice Relating to Rule 51. Public and Private Property in Occupied Territory, n.d.) As an occupier state, Israel is forbidden from using land & natural resources on Golan Heights for purposes other than military needs or for the benefit of the local population. This appropriation amounts to pillage which is prohibited by both the Hague Regulations and Fourth Geneva Convention and is a war crime under the Rome Statute of the International Criminal Court (Amnesty, n.d.).

## **Conclusion**

Israel’s occupation & annexation of Golan Heights is a grave violation of International Law. It triggers the international responsibility of the offending state & obliges full reparations for the losses caused because of its actions. The Customary International Law practices do not suggest an occupant force on a de-facto annexation of the occupied territory without the permission of its sovereign authority. Despite the extension of its domestic laws on Golan Heights, it remains occupied territory under the Law of Occupation. Israel can only attain sovereignty over the occupied Golan Heights if the sovereign state or the local inhabitants through negotiations allow for the same. Furthermore, its recognition by the US is illegitimate & violates the UNSC resolutions of 242 & 338 of the 1967 & 1973 war. If Israel & Syria have to attain peace, both sides have to initiate negotiations based on the adopted resolutions of UNSC. Israel has to agree on giving up the occupation of Golan Heights in exchange for Syria’s giving up on the destruction of the Jewish state for both sides to co-exist with peace & tranquillity in the future.

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