



AL - HAQ



## Executive Summary

# Establishing Guidelines

To Determine whether the Legal Status of 'Area C'  
in the Occupied Palestinian Territory represents  
Annexed Territory under International Law

## Executive Summary: Establishing Guidelines to Determine whether the Legal Status of 'Area C' in the Occupied Palestinian Territory represents Annexed Territory under International Law

Al-Haq's publication, "Establishing Guidelines to Determine whether the Legal Status of 'Area C' in the Occupied Palestinian Territory (OPT) represents Annexed Territory under International Law," provides a practical set of guidelines to determine when the administration of occupied territory veers into unlawful *de facto* annexation. The report comparatively tests twelve guidelines outlining criteria that might indicate *de facto* annexation of Area C of the West Bank, an area occupied since 1967 and characterised as an area under full Israeli civil and military control under the 1995 Israel-Palestinian Interim Agreement on the West Bank and the Gaza Strip. The report is the culmination of two years of research prepared by the IHL Clinic of the Kalshoven-Gieskes Forum on International Humanitarian Law, Leiden Law School, and developed by Al-Haq.

Annexation constitutes a unilateral act of a State proclaiming its sovereignty over the territory of another State, usually under the threat or use of force. It is distinguished by two constitutive elements, a physical occupation of territory and the intention to integrate the territory permanently. Annexation can be *de jure* or *de facto*. *De jure* annexation occurs with an official declaration from the annexing State expressly crystallising its intention to annex the occupied territory. *De facto* annexation takes the form of a series of measures and actions on the ground that indicate the implied intention of the annexing State to permanently incorporate the occupied territory.

Annexation is prohibited under Article 2(4) of the United Nations Charter, as it involves the "threat or use of force against the territorial integrity or political independence of any state," and infringes on fundamental principles of sovereign equality and territorial integrity, non-intervention and self-determination of peoples which are universally recognised as intransgressible *jus cogens* norms of international law.<sup>1</sup> Principle 1 of the UN Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States, which is legally binding as customary international law, further states that "no territorial acquisition resulting from the threat or use of force shall be recognised as legal."<sup>2</sup> While Article 47 of the Fourth Geneva Convention specifically prohibits annexation during

1 UN Charter (signed 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI.

2 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the UN Charter, UNGA Res 2625 (24 October 1970) UN Doc. A/RES/25/2625, Principle 1.

belligerent occupation.<sup>3</sup> In addition, annexation may be considered an act of aggression under Article 1(1) of the United Nations Charter, and can give rise to individual criminal responsibility under Article 8 bis 2(a) of the Rome Statute of the International Criminal Court (ICC).<sup>4</sup>

It is a longstanding principle of international law that no rights can arise from illegal acts, including illegal annexation. Specifically, Article 41(2) of the International Law Commission's Draft on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) states that "no State shall recognize as lawful a situation created by a serious breach [of peremptory norms] nor render any aid or assistance in maintaining that situation."<sup>5</sup> Further, any treaty concluded by the threat or use of force, including annexation as an act of aggression is rendered null and void under Article 52 of the Vienna Convention on the Law of Treaties.<sup>6</sup>

Belligerent occupation is not prohibited under international law, provided that the laws of occupation are respected. A territory is considered under belligerent occupation "when it is placed under the authority of the hostile army," as provided for under Article 42 of the Regulations annexed to the 1907 Hague Regulations. A belligerent occupation demands the actual or potential effective control of the Occupying Power over the occupied territory, entailing the presence of foreign armed forces, the exercise of authority by foreign forces, and the absence of the local authorities' consent.<sup>7</sup>

Annexation often occurs within the context of a pre-existing and effective occupation. However, annexation differs from belligerent occupation, in that the Occupying Power is the administrator of occupied territory and does not hold sovereign rights over the occupied territory.<sup>8</sup> In this regard, the occupation remains of temporary nature, and the Occupying Power and the occupied population are bound by a trustee-beneficiary relationship whereby the Occupying Power must preserve the laws in force in the country

3 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 25 UNTS 287 (GCIV), art 47.

4 Rome Statute of the ICC (adopted 17 July 1998, entered into force 1 July 2002) UNTS Vol. 2187, No 38544, Resolution ICC-ASP/16/Res 5 on the activation of the jurisdiction of the Court over the crime of aggression, adopted at the 13th plenary meeting, on 14 December 2017.

5 ILC, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts' (November 2001) Supplement No.10 (A/56/10), art 41(2).

6 VCLT (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 52.

7 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Reports 136 [78]; *Armed Activities on the Territory of the Congo* (DRC v Uganda), 19 December 2005, 172-7; *Prosecutor v M. Naletilić and Martinović*, Judgment, Case No IT-98-34-T, Trial Chamber, 31 March 2003, 216-8; *Prosecutor v Tadić*, Judgment, Case No IT-94-1-T, Trial Chamber, 7 May 1997, 580. See also *Prosecutor v J. Prlić et al.*, Judgment, Case No IT-04-74-A, Appeals Chamber, 29 November 2017, n 964 (using the notion of 'actual authority' over the occupied territory).

8 See more in ICRC, "Report of the Expert meeting on Occupation and Other Forms of Administration of Foreign Territory" (ICRC 2012) 17-23 .

and is generally precluded from introducing long-term changes in the occupied territory.<sup>9</sup>

Amounting to more than 60 per cent of the West Bank, Area C has been placed under complete Israeli military and administrative control, including in relation to security and land-related matters, since the signing of Oslo I and Oslo II Accords in 1993 and 1995. Because Israel has never expressly asserted sovereignty over the area, Area C cannot be defined as having been *de jure* annexed. Israel has altered Area C's demographics by two means. First, it has encouraged the establishment of approximately 135 settlements in Area C, with an estimated illegally transferred in settler population of 426,925 settlers through financial and infrastructure incentives.<sup>10</sup> Second, it has fostered a coercive environment causing the forcible removal of the Palestinian local population, through restrictive planning, denial of building permits, administrative demolitions and intentional deprivation of natural resources.<sup>11</sup>

Al-Haq has identified twelve Guidelines outlining criteria that might indicate *de facto* annexation of Area C of the West Bank. It bears emphasizing, with the exception of Guideline 1, that none of the Guidelines identified below is in itself essential for annexation to occur, nor are all of them cumulative. It is possible that in a given factual scenario some Guidelines may be fulfilled with a higher degree of intensity (qualitative and/or quantitative) than in other contexts, yet both situations can be regarded as examples of annexation. Each Guideline has been applied to Area C, in order to determine if the criteria indicating annexation are fulfilled and to assess the extent to which Area C has been *de facto* annexed by Israel in whole or in part.

The report concludes that a) there is a strong argument establishing the *de facto* annexation of the area which comprises the settlements, the closed military zones, the seam zone and the expropriated state land and natural parks; and b) that Area C is *de facto* annexed by Israel in its entirety.

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9 *Prosecutor v M. Naletilić and V. Martinović*, Judgment, Case No IT-98-34-T, Trial Chamber, 31 March 2003.

10 Population - Statistical Abstract of Israel 2019 – No. 70, Population of Jews and Others by Natural Region (2018); OCHA, “Under Threat: Demolition orders in Area C of the West Bank” 3.

11 B’Tselem, “Restrictions on Movement” (11 November 2017).

## Guidelines to Establish if Area C has been De Facto Annexed

Guideline	Action	Yes √	No X	De Facto Annexation of Area C
Guideline 1	Assertion of Title over the Occupied Territory – <i>De Jure</i> Annexation		X	To date in Jerusalem only
Guideline 2	<i>De Facto</i> Assertion of Title	√		Israel treats the settlements located in Area C as inseparable from Israel, and the entire Area C as a territory for which it can conclude agreements with states, international organisations and foreign corporations, a prerogative belonging to a sovereign. This Guideline seems to be fulfilled for the settlements in the West Bank, as well as for the entirety of Area C, considering that Israel is demonstrating a sense of entitlement to conclude agreements over any (and every) part of Area C.
Guideline 3	Application of the Occupying Power's Domestic Legislation to the Occupied Territory	√		This Guideline is definitely fulfilled in relation to the settlements because of a) the extraterritorial application of Israeli domestic laws to individual settlers and institutions, b) the channeling of Israeli laws through military orders with effects on the territory and on individual Israelis, c) direct application of Knesset laws to the occupied territory. These are strong indicators of Israel's intention to incorporate the settlements and appropriated land.
Guideline 4	Application of Occupying Power's Judicial Authority in the Occupied Territory	√		This Guideline is fulfilled in the entirety of Area C. Israeli settlers and settlements are used as an extension of Israeli (domestic) judicial authority in the OPT. This may demonstrate the intention of the Occupying Power to extend its judicial power to the OPT, specifically to the settlements. Furthermore, the situation in the rest of Area C is far from meeting the legal standards of occupation law, namely of Article 66 GCIV. Israeli authorities often extend the <i>ratione materiae</i> jurisdiction of Israeli military courts to non-security offenses, which should not be within their jurisdiction. Additionally, they also apply their jurisdiction extraterritorially, over territory where they do not have administrative authority, such as Area A and B.

Guideline 5	Alteration of the Occupied Territory's Demographics	√	<p>This Guideline is fulfilled in Area C. Israel has unlawfully transferred in around 426,925 settlers to colonise the West Bank, (excluding East Jerusalem). Israel has created a coercive environment that has prompted Palestinians, including the Bedouin communities, in Area C to leave. These measures include Israel's restrictive planning processes towards the local community; the issuing of home demolition orders and seizure of property; the obstruction to the development of infrastructure and services in Area C that could benefit the local population; the discrimination between settlers and Palestinians; the restrictions on the freedom of movement of the local population. In 2021, Al-Haq's documentation recorded that home demolitions resulted in the displacement of 941 persons, of which 462 are women and girls, 442 are children, 267 are school students, and 124 are Palestinian refugees already displaced from their original homes.</p>
Guideline 6	Imposition of Occupying Power's Citizenship or Revocation of Occupied Population's Citizenship	√	<p>X</p> <p>Partially fulfilled Guideline. Israel has frozen the population registry and only registers children with a resident parent. This means that a substantial number of Palestinians are not registered. These individuals may not be eligible for the issuing of a travel document or other relevant identification documents. Therefore, it is possible to say that the present Guideline is partially fulfilled in relation to the local population that is not registered in Area C.</p>
Guideline 7	<i>De Facto</i> Alteration of the Borders of the Occupied Territory	√	<p>This Guideline is fulfilled in Area C. Through the construction of the Wall and its associated regime, Israel has created a <i>fait accompli</i> on the ground and modified the borders of the OPT to include parts of Area C into its territory.</p>
Guideline 8	Long-Term Alteration of the Infrastructure of the Occupied Territory for the Benefit of the Occupying Power	√	<p>Israel has constructed a system of by-pass roads and highways in the West Bank, which are for the exclusive benefit of the settlers who reside in civil, commercial, military or industrial illegal settlements in the West Bank. In addition, Israel has taken over Palestine's electricity grid. Israeli authorities have also embarked on a policy of destruction of Palestinian infrastructure, including Palestinian houses and water infrastructure. After analysing the situation on the ground, it is argued that this Guideline is fulfilled. By altering the infrastructure of Area C in ways that appear irreversible, Israel shows an intention to retain permanent control over Area C.</p>

Guideline 9	Treatment of the Occupied Territory's Economy as part of the Occupying Power's Economic Area	√	<p>This Guideline is fulfilled in Area C of the West Bank. The economic integration does not only pertain to the settlements, but to the entirety of Area C. This is particularly evident in light of the fiscal and monetary integration of the two economic zones (use of Israeli shekel and VAT imposition), as well as the expansion of business settlements in Area C. Israel has incorporated the economy of Area C as part of its own economy, and imposes restrictions and impediments for Palestinian development.</p>
Guideline 10	Exploitation of the Occupied Territory's Natural Resources for the Benefit of the Occupying Power	√	<p>Israel exploits the natural resources of Area C, including water, Dead Sea minerals, mud, quarries and agricultural lands for its own benefit. Further, it risks permanently damaging the environment and depleting the OPT's natural resources. By so doing, Israel exceeds the limits of usufruct and acts like a sovereign power. Taking into account especially the exploitation of land and water resources, this Guideline should be considered fulfilled in the entirety of Area C. It is fulfilled with an even higher degree of intensity in relation to the industrial and agricultural settlements in Area C.</p>
Guideline 11	Erasing the National Identity of the Population of the Occupied Territory	√	<p>There are many examples of measures that show how Israel is slowly imposing the Jewish identity over Area C, while at the same time trying to suppress expressions of Palestinian identity. These measures include the addition of Jewish symbols in the buildings belonging to settlers, signs written in Hebrew and Israeli flags raised within the Occupied Palestinian Territory.</p> <p>These actions seem to be part of a system designed to interfere with the normal life and identity of the Palestinian people whether located in Israel or in Area C. In conclusion, there are strong indications that Israel applies a policy that subjugates the cultural identity of the occupied population of Area C and systematically discriminates against the Palestinian population, which amount to apartheid.</p>
Guideline 12	Suppression and Restriction of Civil and Political Rights of the Population of the Occupied Territory	√	<p>Israel has introduced policies aimed at fragmenting Palestinian civil society. There are military orders that apply to Area C which criminalise political activities and documented cases of persecution of Palestinian political leaders. This Guideline is fulfilled in respect of the entirety of Area C, since Israel applies policies that aim to fragment Palestinian civil society and therefore maintain its subjugation to the Israeli regime.</p>

## Recommendations

In light of the *de facto* annexation of the territory classed as Area C of the West Bank, Al-Haq urges Third States to address the root causes of Israel's settler colonialism in acts amounting to a widespread and systematic attack against the civilian population and calls on Third States:

- To fulfil their international responsibility of non-recognition of Israel's unlawful *de facto* annexation as legal. Given that the prohibition on annexation is a violation of *jus cogens* norms, it gives rise to *erga omnes* obligations on all States not to recognize the illegal situation, not to render aid or assistance in its maintenance, and to cooperate to bring the illegal situation to an end.
- Despite EU guidelines on labelling settlement-made products, EU Member States are still allowing such products to be imported, thus imposing little consequences for Israel's disregard of international law. It is therefore critical that Third States take concrete and immediate steps to prohibit the import of settlement goods and services through the adoption of prohibiting domestic legislation, such as, for example, the Control of Economic Activities in Occupied Territories Bill (Ireland, 2018).<sup>12</sup>
- Third States have a responsibility not to render aid or assistance in maintaining Israel's illegal activities. One such step would be for States to cease all military aid to Israel and to adopt effective concrete measures including sanctions and countermeasures to ensure annexation is deterred.
- In particular, given that the EU is Israel's largest trade partner, with nearly a third of Israel's exports going to the bloc, the EU has unique leverage and should review and cease existing trade and cooperation agreements with Israel, including the Horizon 2021-2026, the EU-Israel Association Agreement, the EU-Israel Euro-Mediterranean Aviation Agreement, and the EU should immediately halt the conclusion of the Euro Asia Interconnector until Israel complies with international law.
- Third States should support the annual update of the UN Database on Businesses Active in the Settlements, including through budgetary contributions to ensure the long-term viability of the Database, and ensure the findings of the Database

<sup>12</sup> Al-Haq, "Two Voting Stages Left: An Explainer on the Passage of the Occupied Territories Bill through the Lower House of the Irish Parliament" (5 February 2019), available at: <<https://www.alhaq.org/advocacy/6109.html>>



are adhered to in their public procurement activities.

- For States to fully support the investigation of the Prosecutor of the International Criminal Court (ICC) into the Situation in Palestine. In addition, where possible, for States parties to the Rome Statute to increase their financial contributions to the ICC to ensure the viability of the Court, and to protect when necessary, the Prosecutor, judges, personnel of the ICC, victims, victims lawyers, and NGO's who may be threatened in relation to their work on the Situation in Palestine.
- For States parties on the UN Security Council to address the root causes of the prolonged occupation of Palestine, including *de facto* annexation and apartheid and to actively take concrete measures to bring the prolonged occupation, including the fourteen year siege of Gaza and colonisation to an end, in the interests of maintaining international peace and security.