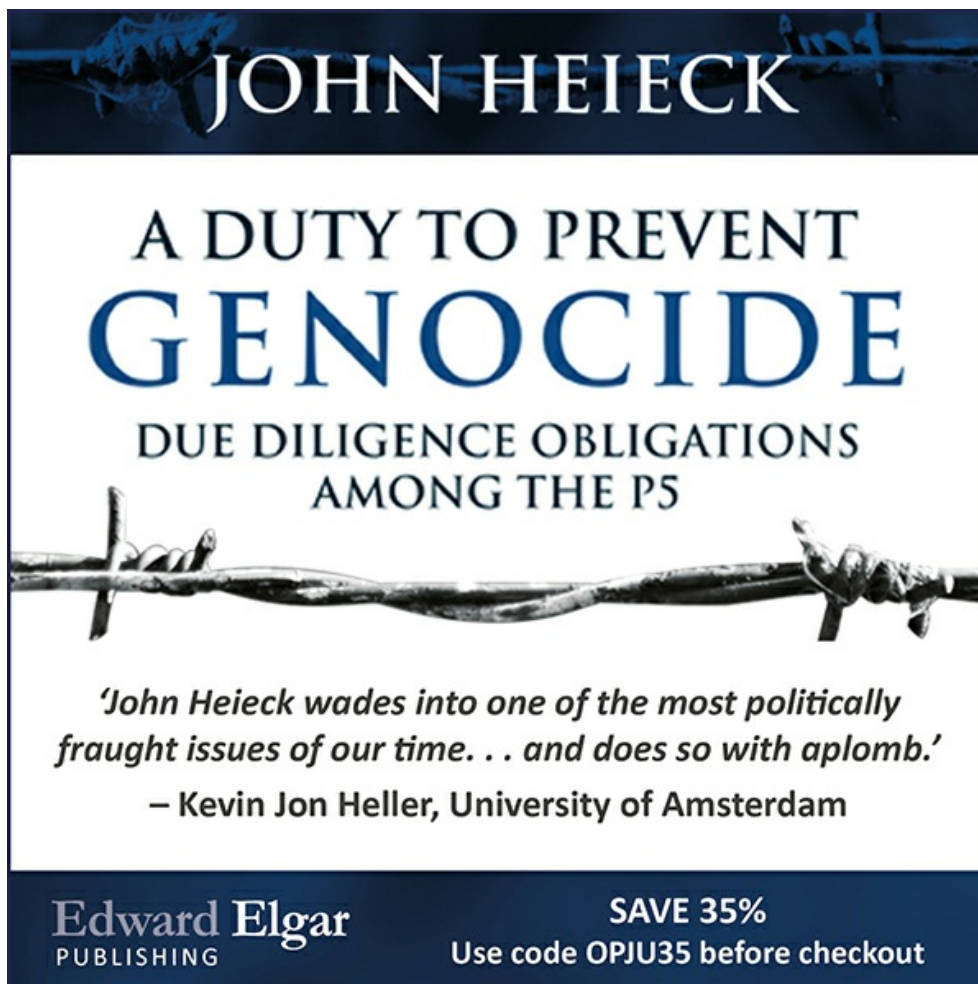


An Open Letter to the Israeli Government Condemning Annexation [Update 5]

 opiniojuris.org/2020/06/11/an-open-letter-to-the-israeli-government-condemning-annexation/

June 11, 2020



Along with 263 of my fellow public international law scholars, I have signed the following open letter condemning Israel's plan to illegally annex large swathes of the West Bank. If you are interested in joining the list, please send an email with your name and affiliation to annexationletter@gmail.com before July 1. I will update this post with new names every few days. (And please note: I did not write the letter.)

June 10, 2020

MK Benjamin Netanyahu, Prime Minister

MK Benny Gantz, Alternate Prime Minister and Minister of Defense

MK Gabi Ashkenazi, Minister of Foreign Relations

MK Avi Nissenkorn, Minister of Justice

Dr. Avichai Mandelblit, Attorney General

State of Israel

Dear Sirs,

We, the undersigned, scholars of public international law, are writing to express our grave concern regarding the intention of the State of Israel, as expressed by Prime Minister Benjamin Netanyahu, to move towards the unilateral annexation of areas in the West Bank on or after 1 July 2020.

Such an action would constitute a flagrant violation of bedrock rules of international law, and would also pose a serious threat to international stability in a volatile region.

The norm prohibiting unilateral annexation of territory acquired by force has come to be universally recognized as a basic rule of international law. All international courts (including the International Court of Justice) and all international institutions (including the UN General Assembly and Security Council) who have considered this matter, as well as the overwhelming majority of international jurists, affirm this rule unequivocally. This prohibition applies equally to territories belonging to other states, as well as to non-self-governing territories in which peoples are entitled to determine their political fate in accordance with the right to self-determination. Furthermore, this prohibition applies to all territories occupied by force, even if it is claimed that force was initially used in an act of self-defense.

The West Bank was taken by force in 1967. It has been consistently recognized by the UN General Assembly, the UN Security Council, and the International Court of Justice as an occupied territory, in which the Palestinian people is entitled to fulfill its right to self-determination. This remains so even if bilateral negotiations could determine the details of security arrangements and final borders. Furthermore, the Israeli government as well as the Israeli Supreme Court have for decades applied the law of belligerent occupation to the West Bank. This is demonstrated in dozens of decisions by the Supreme Court of Israel, as well as in Israel's positions before international treaty bodies, where it argues that the West Bank is not under Israeli jurisdiction for the purpose of application of human rights treaties.

It follows that unilateral annexation of any part of this territory would violate the fundamental norm prohibiting annexation as well as the right to self-determination. As such, it would be null and void, entail consequences of international wrongfulness, and – under certain circumstances – lead to individual international criminal liability. In this context, it matters not whether such actions would be effected through “extension of sovereignty,” “extension of law, jurisdiction, and administration,” or explicit annexation. *De facto* annexation entails the same legal consequences as *de jure* annexation. Additionally, in no case can such an act lawfully bring about or justify discriminatory results, *inter alia* in relation to citizenship or property rights.

We would like to remind you that in a recent memo by Israel's Attorney General, it was argued explicitly that all territorial aspects of the Israeli-Palestinian conflict must be resolved through bilateral negotiations.^[1] Moves to annex parts of the territory would run counter to this pledge. Furthermore, in accordance with its longstanding position that the West Bank is held under belligerent occupation, Israel consistently argued that its actions in the territory are justified by the temporary nature of the situation, and motivated by security concerns alone.^[2] Any move to annex territories will put in question past and future arguments by Israel that its actions are indeed concerned only with legitimate security needs.

We therefore urge you to reconsider this path, which is clearly unlawful and will most likely have adverse consequences, including non-recognition and other consequences of an internationally wrongful act. This is in addition to the harm to the legitimacy and foreign relations of the State of Israel, and to a high likelihood of violent escalation.

[1] State of Israel, Office of the Attorney General, The International Criminal Court's Lack of Jurisdiction over the So-Called "Situation in Palestine" §49 (Dec. 20, 2019).

[2] For instance, concerning the legality of the West Bank Wall/Security Barrier, Israel claimed –indirectly before the International Court of Justice and directly in its own Supreme Court – that the route of the Wall is strictly based on security considerations, and is not designed to determine borders. Indeed, as ruled by the Israeli Supreme Court, sitting as the High Court of Justice, "the military commander is not authorized to order the construction of a separation fence, if the reason behind the fence is a political goal of 'annexing' territories of the area to the State of Israel and to determine Israel's political border." See H CJ 7957/04 Mara'abe v. The Prime Minister of Israel §15 (2005).

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