



## **LPHR briefing for parliamentary debate on human rights protections for Palestinians - with focus on *de facto* annexation of parts of the West Bank**

**About us:** *LPHR* is a lawyer-based legal charity (Charity No. 1175498) in the UK that works on projects to protect and promote Palestinian human rights. For our briefings we provide accessible expert legal and human rights analysis on issues affecting Palestinians. Our trustees include leading human rights lawyers, Sir Geoffrey Bindman KC, Fiona McKay, Tessa Gregory, Nusrat Uddin and the recent (2016-22) UN Special Rapporteur on the human rights situation in the occupied Palestinian territory, Professor Michael Lynk.

### **Top Line Summary**

#### ***Human Rights Violations***

- Human rights violations are severe and pervasive for Palestinians living in the occupied Palestinian territory, comprising the West Bank, East Jerusalem and Gaza.
- To begin to effectively protect the human rights of Palestinians in the occupied West Bank, it is essential that the overarching strategic purpose which drives and sustains connected violating activities – home demolitions, forced displacement, illegal settlement construction on Palestinian land, settler violence, movement restrictions, arbitrary detention, systematic discrimination – is clearly recognised, expressly named and fundamentally addressed.
- The root cause of these systematic human rights violating activities is Israel's strategic policy of *de facto* annexation of large parts of the occupied West Bank. *De facto*/in fact or *De jure*/formal annexation of territory is absolutely prohibited under international law.
- Willingness to clearly recognise and name the reality of the situation should lead to a more effective policy response, guided by international law. International law imposes identical obligations on all States in response to annexation of territory, irrespective of whether the annexation of territory is *de facto*/in fact, or is *de jure*/formal.

#### ***Annexation***

- The only real distinction between *de facto* and *de jure* annexation is a formal declaration. The ultimate result of forcibly establishing permanent acquisition of territory is the same.
- In the case of Israel and the occupied West Bank, a formal declaration of annexation has not yet been made. Israel's government was on the verge of making a formal declaration in 2020, but then “suspended” its planned announcement following heavy diplomatic pressure. However, clear and compelling evidence continues to overwhelmingly accumulate that Israel is undertaking *de facto* annexation. The absence of a formal declaration provides no legal justification for States not to comply with its legal duties to act against Israel's material *de facto* annexation.



- Israel's *de facto* annexation of large parts of the West Bank has been explicitly entrenched by the overarching principle appearing in [December 2022 coalition agreements](#) for the new Israeli government: “*The Jewish people have an exclusive and uncontestable right on the entire land of Israel. The government will advance and promote settlement in all parts of the land of Israel, in the Galilee, the Negev (south of Israel), the Golan Heights and Judea and Samaria*”. 'Judea and Samaria' is how Israel refers to the West Bank.
- In February 2023, a Minister in the Defence Ministry Bezalel Smotrich – who recently claimed that “*there’s no such thing as a Palestinian people*” – was given control over much of the Civil Administration, the military body that administers the occupied West Bank. This will include heading a new administrative unit [dedicated to settlements](#). By directly subordinating the administration of civil affairs in the West Bank to an Israeli civilian authority and thus to Israel’s national and social interests, a grouping of Israeli law professors has found that the agreement is [in contravention of international humanitarian law](#).

### ***International Response***

- The international community's response to Israel's material acts of *de facto* annexation is markedly inadequate, and arguably unlawful, for not being in full conformity with relevant international law obligations. This has significant real-life consequences for Palestinians whom are being subjected to unrelenting human rights violations with no end in sight.
- Perhaps most significantly, Israel's *de facto* annexation of parts of the West Bank is a serious violation of the fundamental right of self-determination of the Palestinian people, with far-ranging repercussions. This includes the elimination of any prospect of a *Two-State Solution*.

### **Recommendations**

- LPHR makes the following four inexhaustive suggestions to begin to address severe and pervasive human rights violations against Palestinians in the occupied West Bank:
  - i) Follow the lead of the Government of Ireland in May 2021 and **officially recognise, as a clear matter of fact, that there is *de facto* annexation** of parts of the occupied West Bank.
  - ii) **Serious consequences should begin to be implemented by third States, as a matter of full compliance with legal obligations under international law**, in a concerted international response to the *de facto* annexation of parts of the occupied West Bank. The legal obligations on all third states, including the UK, consist of duties not to recognise as lawful, aid or assist an illegal situation, and cooperate to lawfully bring an illegal situation to an end.



**iii) A ban on products made in whole or in part in illegal settlements is a specific serious consequence that should be applied in conformity with these legal duties. Settlements are illegal and also constitute a material act of *de facto* annexation.**

Consecutive Conservative and Labour governments have correctly adopted the position of non-recognition of Israeli settlements due to their illegality under international law. But there is a glaring anomaly: settlement products are permitted entry into the UK. This is not logically consistent with the legal obligation of non-recognition and arguably amounts to aiding and assisting an illegal situation. **This anomaly must be rectified by banning the import of settlement products.**

**iv) Ensure the UK company, JCB, whose heavy machinery products are materially used by Israeli authorities to carry out Palestinian home demolitions and construct illegal Israeli settlements, acts to address and ultimately end its involvement in serious human rights violations against Palestinians, including children.** LPHR is acting against JCB in a human rights complaint we submitted to the OECD UK National Contact Point for the OECD Guidelines for Multinational Enterprises. Details can be seen [here](#).

## Briefing

1. This short briefing with a summary legal analysis provides clarification that international law regards *de facto* annexation and formal annexation as imposing the same legal duties on all States, with consequence for the international community's current policy response to Israel's acts of *de facto* annexation of parts of the occupied West Bank.
2. The urgency of this clarification is underscored by reference to the [observation](#) made by former UN Secretary-General Ban Ki-Moon, in June 2021, that: *“Israel has pursued a policy of incremental **de facto annexation** in the territories it has occupied since 1967, to the point where the prospect of a two-State solution has all but vanished.”* This has led to an all-encompassing range of serious human rights repercussions for Palestinians, including the virtual erosion of their fundamental right to self-determination.
3. This short LPHR briefing is to be read in conjunction with [LPHR's April 2020 briefing](#) on imminent formal annexation. We stated then that tangible actions must be implemented by the UK Government to fulfil necessary compliance with its international law obligations and human rights responsibilities, should Israel proceed with formally annexing parts of the occupied West Bank. We also outlined that urgent action in full conformity with international law obligations is required now in response to ongoing settlement expansion, in recognition that it *“promotes the effective annexation of the West Bank”*, as [expressly stated by then Foreign Secretary Dominic Raab](#) in August 2019.



4. Our April 2020 briefing was prepared following [reporting on the agreement](#) of the new Israeli Government to proceed with formal annexation of parts of the occupied West Bank, including all illegal Israeli settlements and the Jordan Valley, on 1 July 2020.
5. Israel's serious threat was met with strong express warnings from the international community. For example, in the UK, the Minister of State for the Middle East and North Africa, James Cleverly MP, asserted that "[annexation could not go unanswered](#)", and the Labour Party [announced](#) it would call for a ban on the import of settlement products.
6. The Government of Israel later "[suspended](#)" the commencement of formal annexation in August 2020. However, it is strikingly clear as a matter of fact to assert that *de facto* annexation of parts of the occupied West Bank has continued apace. Indeed, the Government of Ireland made a ground-breaking statement through its Minister for Foreign Affairs, Simon Coveney, on 25 May 2021, stating:

*"The scale, pace and strategic nature of Israel's actions on settlement expansion and the intent behind them have brought us to a point where we need to be honest about what is actually happening on the ground. We need to call it out for what it is. **It is de facto annexation.** This is not something that I or this House say lightly. **We are the first EU member state to do so, but it reflects the huge concern we have about the intent of the actions and, of course, their impact.**"*
7. This important recognition by the Government of Ireland conforms with the evidence-based [observation](#) made in October 2018 by then UN Special Rapporteur, Professor Michael Lynk, on the clear material fact of ongoing acts of *de facto* annexation:

*"[T]hroughout the years of occupation since the June 1967 war, **Israel has continuously entrenched its de facto annexation of the West Bank** by imposing intentionally-irreversible changes to occupied territory proscribed by international humanitarian law: the establishment of 230 settlements, populated by more than 400,000 Israeli settlers; the physical and political enclosure of the 2.6 million West Bank Palestinians; the extension of Israeli laws to the West Bank and the creation of a discriminatory legal regime; the unequal access to natural resources, social services, property and lands for Palestinians in the occupied West Bank; and the explicit statements by a wide circle of senior Israeli political leaders calling for the formal annexation of parts or all of the West Bank."*
8. It is perplexing why the international community has not maintained its clear warnings of "[significant consequences](#)" - that arose in its response to imminent formal annexation - in light of the relentless perpetuation of acts of *de facto* annexation of parts of the occupied West Bank.
9. This briefing examines whether the apparent chasm in the approach by third States to *de facto* annexation of parts of the occupied West Bank, in contrast to its position on imminent formal annexation, is justifiable from the perspective of international law. The short answer, as outlined in our summary legal analysis below, is that such a marked discrepancy is not compatible with international law requirements.



10. Our legal analysis clarifies that identical international law obligations are engaged on all States when there is a “serious breach” of the prohibition of annexation, irrespective of whether the annexation is *de facto/in fact*, or is *de jure/expressed by law/formal*.
11. In other words, and as succinctly summed-up by 271 public international law scholars in a June 2020 [open letter](#) to the Government of Israel: “*De facto* annexation entails the same legal consequences [for third States] as *de jure* annexation.”
12. This legal clarification is vital in determining the adequacy of the international community's response to the ongoing *de facto* annexation of parts of the occupied West Bank. In effect, the strong express warnings issued in the period prior to 1 July 2020, should be extant, and moreover implemented, in response to *de facto* annexation.
13. The fact this is not the case leads to the logical conclusion that the international community's response to the Government of Israel's *de facto* annexation of parts of the occupied West Bank is markedly inadequate, and arguably unlawful, for not being in full conformity with relevant international law obligations.
14. In light of the above, LPHR briefing makes the following two urgent suggestions to the UK Government and the wider international community:
  - i) Follow the lead of the Government of Ireland and officially recognise, as a clear matter of fact, that there is *de facto* annexation of parts of the occupied West Bank.
  - ii) Serious consequences should begin to be implemented by third States, as a matter of full compliance with its legal obligations under international law, in a concerted international response to the *de facto* annexation of parts of the occupied West Bank. A ban on products made in whole or in part in illegal settlements is a specific serious consequence that should be applied in conformity with these legal duties.

#### **Accompanying Summary Legal Analysis**

15. The annexation of territory is strictly prohibited by general international law. The prohibition of annexation is also recognised as belonging to a higher status of international law, known as being a *peremptory norm* or *jus cogens*. A key importance of this specific classification, is that a “serious breach” of a peremptory norm by a violator state, has the legal effect under modern international law of imposing specific legal obligations on all other States to respond to the serious breach.
16. Articles 40 and 41 of the [Draft Articles on Responsibility of States for Internationally Wrongful Acts](#), clarify that a serious breach of a peremptory norm of general international law prompt two types of international legal obligation on third States: a positive duty to “*cooperate to bring to an end through lawful means any breach*,” and a negative duty not to “*recognize as lawful a*



*situation created by a serious breach [...] nor render aid or assistance in maintaining that situation.”*

17. For the purpose of analysing whether there is a possible distinction between third States legal consequences in the contexts of *de facto* and *de jure* annexation, it is fundamental to highlight that the strict international prohibition against annexation does not distinguish between these two terms. As acknowledged in the Norwegian Refugee Council commissioned '[Expert Opinion Relating to the Conduct of Prolonged Occupation in the Occupied Palestinian Territory](#)', by Professor Emeritus Michael Bothe, a formal declaration of annexation is not the only way in which the prohibition of annexation is violated: the prohibition of annexation is also violated by use of “*other legal instruments purporting to exercise sovereign rights over an annexed territory or by factual activities having an equivalent effect.*”
18. With this legal position being stated, a couple of factual [definitions](#) provided by the UN Special Rapporteur on the situation of human rights in the occupied Palestinian territory, Professor Michael Lynk, may be helpful in determining what differentiates *de facto* annexation from *de jure* annexation. *De facto* annexation is defined as: “*a term to illustrate the actions of a state in the process of consolidating – often through oblique and incremental measures – the **legislative, political, institutional and demographic facts to establish a future claim of sovereignty over a territory acquired through force or war, but without the formal declaration of annexation.***” On the other hand, *de jure* annexation is defined as the “**formal declaration by a state that it is claiming permanent sovereignty over territory which it had forcibly acquired from another state.**”
19. It is therefore the formal declaration of annexation that provides the only real distinction between *de facto* annexation and *de jure* annexation; the ultimate result of establishing permanent acquisition of territory are the same.
20. Given this understanding, it is crucial next to examine whether international law may permit a set of material acts by a violator State that constitute *de facto* annexation, in the absence of a formal declaration of annexation also being made. If international law does provide such permission, the logical consequence is that implementing a policy of *de facto* annexation without a formal declaration of annexation, can both insulate the violator state from the consequences of the implementation of third States legal obligations, and also serve to facilitate the pursuance of an annexationist policy.
21. To support answering this key question, the authoritative legal source of the International Court of Justice (ICJ) should be cited. In its July 2004 [Advisory Wall Opinion](#), the ICJ found that material factual activities, precisely the construction of the Wall and its associated régime within the occupied West Bank, created realities on the ground that virtually constitutes *de facto* annexation:

*“[T]he construction of the wall and its associated régime create a “fait accompli” on the ground that could well become permanent, in which case, and notwithstanding the*





*formal characterization of the wall by Israel, it would be tantamount to de facto annexation.*" (para. 121 of ICJ Wall ruling)

22. Crucially, in addition to this significant factual finding of apparent *de facto* annexation, the ICJ then expressly stipulated that this material matter of fact is sufficient to activate legal obligations on all third States, in alignment with Articles 40 and 41 of the Draft Articles on State Responsibility:

*"Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction. It is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end."* (para. 159 of ICJ Wall ruling)

23. The ICJ's specific finding on third States legal obligations being engaged by a material factual finding of a situation "tantamount to *de facto* annexation", correlates with the clear assertion made by 271 public international law scholars in a June 2020 [open letter](#) that: "*de facto* annexation entails the same legal consequences as *de jure* annexation."
24. LPHR has sought to find, but has not been able to locate, any credible legal authority that asserts otherwise.

## Conclusion

25. The above summary legal analysis clarifies and underscores that third States legal obligations are the same whether there is *de facto* or *de jure* annexation.
26. Given this legal clarity, the effective inaction by third States in response to the Government of Israel's unrelenting activity of *de facto* annexation of parts of the occupied West Bank is manifestly troubling from a rule of international law perspective.
27. The absence of full implementation of third States legal duties in this specific context runs opposite to the ambition of achieving an international rules-based order, which should include all States supporting the enforcement of general international law in accordance with the principle that States have an interest in the general lawfulness of the international community, even when their own rights are not directly impacted.
28. Furthermore, by allowing *de facto* annexation "to go unanswered" in stark contrast to its position on imminent formal annexation and in lack of full conformity with relevant international law obligations, the international community is effectively adopting a by-stander



role to an all-encompassing range of serious human rights repercussions for Palestinians. It is regrettably clear that failure to act on the most important international law obligations does have significant real-life consequences. Action is deeply imperative.

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