

**Territory, Jus ad Bellum:
The Status of the Golan Heights in Light
of the 2024 ICJ Advisory Opinion
(Original Research)**

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Abstract

This article examines the application of Articles 2(4) and 51 of the UN Charter in relation to Israel's claim of sovereignty over the Golan Heights. Israel has cited historical Jewish rule and invoked "defensive conquest" to justify its position. However, this interpretation misrepresents the non-use of force principle. The article references relevant UN Security Council Resolutions and treaty interpretation rules, emphasizing a strict application of international law, which Israel has overlooked. The UN Charter's main purpose of maintaining international peace supports this strict interpretation. Consequently, the notion of defensive conquest violates Article 2(4) and customary international law. Additionally, the article discusses the 2024 International Court of Justice Advisory Opinion, which reaffirmed the illegality of Israel's annexation of the Golan Heights and highlighted the prohibition of acquiring territory by force, as established by the UN Charter.

Keywords

Golan Heights- *Jus ad Bellum*- Occupation- Self defence- Use of force.

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Preamble

Defensive conquest has been one of the challenging issues under international law of the use of force. One of the recent examples is that of The Golan Heights, a very fertile and strategic territory previously under the Syrian sovereignty. Israeli takeover of the Golan Heights during the six-day war raises a question of whether or not the action taken by Israel may be justified under *jus ad bellum*. There are two different aspects for this issue which must be taken into consideration. One question is whether the preemptive self-defence may be considered as a lawful self-defence under international law. In other words, what is the current status of customary international law when it comes to the requirements for the legality of self-defence; second, in case international law permits the use of force in the form of pre-emptive self-defence when all necessary preconditions of lawfulness are present, a significant difference shall be made between the act of defence on the one hand, and the occupation, on the other hand. It is crucial to be mindful that ‘self-defence’ has been regarded as an exception to the principle enshrined under Article 2(4) of the United Nations Charter. The maxim ‘*Exceptio est strictissimae applicationis*’ makes it crystal clear to adhere to the strictest possible application of exceptions.

1. History, Geography and Geology of Golan Heights

The Golan Heights (Arabic: Al-Jawlān) is an 1,800 kilometers long basaltic plateau that is situated approximately 60 kilometers away from Syria's capital, Damascus, and around 220 kilometers from Israel's capital, Jerusalem. The plateau borders Syria to the east, Lebanon to the north, Jordan to the south, and Israel and the Palestinian territories to the west. With a peak altitude of 2800 meters control over the Golan Heights grants potential occupiers a strategic military advantage. Moreover, the plateau retains fertile soil and is the source of the headwaters of the Jordan River which flow into the Sea of Galilee. Geopolitically, whomever controls this area, maintains a notable tactical advantage. Despite its controversial status Israel largely views the ownership of the plateau as a settled issue. The plateau is known for its cool climate, open spaces, and tourist attractions such as the Israeli ski resort in Mount Hermon; in addition, the plateau offers leisure activities like the “Golan trail” which was inaugurated as a hiking trail in 2007. The trail bears the scars of not-too-distant battles, and even now the anti-tank trenches, minefields, empty outposts, and various fortifications remain viable.¹ Since 1992, almost every Israeli government has sought to secure a

1. Morial Ram, “Creating a Peaceful Place of War: Revisiting the Golan Heights Border Region, Eurasia Border Review, Vol 4 No.1. (2013): 77-80.

peace treaty with Syria under the “Land for Peace” formula.² During negotiations, leaders from both sides demonstrated a willingness to withdraw from all or parts of the Golan Heights in exchange for a peace treaty, security arrangements, as well as American political and military involvement and incentives.³ These efforts failed due to the unwillingness of both sides to sign a deal.⁴ Around 1894, the plateau Ottoman rulers and Arab populace prevented Jewish settlement within the area. Following WWI, France inherited the Golan Heights as part of its mandate over Syria before the Golan Heights were passed to an independent Syria in 1946. During the Six-Day War, Israel gained control over the plateau and established a civilian presence in 1967. Israel effectively annexed the Golan Heights on 14 December 1981.⁵

1-1. The history of the creation of a homeland for Israel: its impact on exercising territorial sovereignty over the Golan Heights

A historically significant period in this analysis is 3200-1200 BC when the Canaanite civilization ruled the region that includes modern Israel, the West Bank, Gaza, Syria, Lebanon, and Jordan.⁶ Various peoples, including Jews, Christians, and Muslims,⁷ inhabited the area over time. Jewish rule lasted for around 414 years, beginning with King David in 1000 BC and ending with the destruction of Judea in 586 BC.⁸ Following the Roman expulsion of Jews in the first and second centuries CE,⁹ the Jewish diaspora was formed. Five centuries later, Arabs arrived, spreading Islam and intermarrying with locals, creating the dominant Islamic Palestinian population.¹⁰ By the early 16th century, the area became part of the Ottoman Empire.¹¹

In the late 19th century, amidst rising European anti-Semitism, Theodor Herzl founded the World Zionist Organization, promoting Palestine as a Jewish homeland.¹² Though Palestine’s land was already occupied,¹³ Jewish

2. Efraim Inbar, “Israeli Control of the Golan Heights: High Strategic and Moral Ground for Israel,” Report. Begin-Sadat Center for Strategic Studies, Mideast Security and Policy Studies No. 90 (2011): 1.

3. Ibid.

4. Ibid.,3.

5. Ibid.,1.

6. “Israel and Palestine: History, Politics and the Pursuit of Peace,” A Matter of Spirit, A Publication of the Intercommunity Peace & Justice Center, No.105 (2015):1.

7. Ibid.

8. Ibid.

9. Ibid.

10. Ibid.

11. Ibid.

12. Gudrun Krämer, *A History of Palestine; From the Ottoman Conquest to the Founding of the State of Israel*. (Princeton University Press, 2011), 138.

13. Ibid.

settlers acquired land¹⁴ through the Ottoman Land Code of 1858.¹⁵ However, many peasants did not register their lands, leading to the transfer of large holdings to Jewish settlers, fueling the Jewish-Arab conflict¹⁶.

The British Government's Balfour Declaration of 1917 supported the establishment of a Jewish homeland in Palestine while promising not to prejudice the rights of the non-Jewish communities. Despite assurances to Arab leaders during WWI, Britain signed the Sykes-Picot Treaty with France in 1916, placing Palestine under international administration.¹⁷

After WWII, Britain withdrew from Palestine in 1947,¹⁸ handing over its bases to Zionist forces, leading to the establishment of Israel in 1948. Arab states declared war, and the UN General Assembly's Resolution 194 recognized the right of return for Palestinian refugees, a right Israel has since neglected.¹⁹ Despite initial opposition, Israel gained recognition from the United States, Soviet Union, and other countries.

1-2. Background of ruling in Golan Heights

Historically, as mentioned above in detail, the Golan Heights had never been a portion of a Jewish State, and the area had not embraced a significant Jewish population for 3000 years.²⁰ The Ottoman Empire, the last of a millennium-long succession of Muslim rulers, ruled the realm until the end of World War I.²¹ Then France took control over it as part of the League of Nations Mandate for Syria, whereas the Palestine was under the Britain Mandate.²² In 1922, the two countries established an international boundary between their Mandates.²³ In 1946, the French Mandate was divided and Syria and four other Arabs States attacked the new State of Israel as it fought to determine its borders among Palestine.²⁴ The cease-fire agreement signed in 1949 left Syria in control of three small regions in northern Israel.²⁵

14. Robert H. Eisenman, *Islamic Law in Palestine and Israel: A History of the Survival of Tanzimat and Shari`a in the British Mandate and the Jewish State.* (Leiden: E.J. Brill, 1978), 56,57.

15. *Ibid.*

16. *Ibid.*

17. Aouni Bey, *The Balfour Declaration*,17.

18. "Israel and Palestine: History, Politics and the Pursuit of Peace," *A Matter of Spirit*, A Publication of the Intercommunity Peace & Justice Center, 2.

19. UN General Assembly, 194 (III). *Palestine - Progress Report of the United Nations Mediator*, A/RES/194, 11 December 1948.

20. *Syria-Israel The Golan Heights in Perspective*, National Foreign Assessment Center, January 1982, 1.

21. *Ibid.*,2.

22. Abraham Bell and Eugene Kontorovich, "Palestine, Uti Possidetis Juris and the Borders of Israel." *Arizona Law Review*, vol. 58 (2016): 646.

23. *Ibid.*, 651.

24. *Ibid.*, 652.

25. *Ibid.*, 636.

After the end of the Six-Day-War, Israel took over the Golan Heights. This war was the result of tensions since 1963 over the matter of exploiting waters of the Jordan River and the Kineret Lake which subsequently gave rise to the escalation of military clashes initiated by Syria.²⁶ Israel Ministry of Foreign Affairs adds that a series of steps led to escalation initiated by Arabs: "the concluding of a Syrian-Egyptian military pact to which Jordan and Iraq later joined, the expulsion of the UN Emergency Force from the Sinai Peninsula and the concentration of Egyptian forces there, and finally the closure by Egypt of the Straits of Tiran to Israeli shipping, constituting a *casus belli* for Israel".²⁷ When Jordan, Iraq, Saudi Arabia, Syria, and Lebanon moved their forces toward the Israeli border, Israel resorted to a pre-emptive aerial strike on 5 June 1967.²⁸

During the Six-Day War, Israeli forces invaded Syria following its preemptive attacks on Egypt and Jordan.²⁹ Israeli forces captured the buffer-zones and invaded two-thirds of the Syrian province of Al-Qunaytirah.³⁰ In response to a UN Security Council request, a cease-fire was enforced on 10 June.³¹ Throughout the next days, the line that determined the bounds of the advance of Israel's forces was demarcated by UN observers.³² A buffer zone moves in breadth from some hundred meters to 205 kilometers as determined east of the line. Israel named the area it occupied the Golan Heights.³³

During the October War (Yom Kippur War), in October 1973, Syria attempted to regain the plateau from Israel.³⁴ By 31 May 1974, a disengagement agreement was signed by Israel and Syria. After this agreement, Syria tried to regain a strip of territory that contained the main city and capital of the Golan Heights, Quneitra.³⁵ However, when Quneitraian citizens returned to their homes, they found that every home, building, Mosque, and Church in the city had been razed.³⁶

On December 14, 1981, Israel annexed the Golan Heights. The UN Security Council Resolution 497 (1981) condemned this annexation, and unanimously held that the annexation was "null and void".³⁷ In the post-

26. Events Leading to the Six-Day War 1967, Israel Ministry for Foreign Affairs, <https://mfa.gov.il/mfa/aboutisrael/maps/pages/events>, Accessed 30 November 2020.

27. Ibid.

28. Ibid.

29. Syria-Israel The Golan Heights in Perspective, National Foreign Assessment Center, January 1982, 4.

30. Ibid.

31. Ibid.

32. Ibid.

33. Ibid.

34. Syrian- Golan, <https://www.un.int/syria/syria/syrian-golan>. Accessed 30 November 2020.

35. Ibid.

36. Ibid.

37. United Nation Security Council, Security Council resolution 497 (1981) [Israel-Syrian Arab Republic], 17 December 1981, S/RES/497 (1981).

annexation era, General Assembly resolutions have all referred to the Golan Heights as “The Occupied Syrian Golan” which absolutely reaffirms that the Israeli annexation is unlawful.³⁸ In 1991, peace talks between Syria and Israel began at the Madrid Conference with the Syrian Golan as a central topic of discussion.³⁹

Nevertheless, as Israel refused to withdraw from the Syrian Golan the negotiations came to a halt, and UN Security Council Resolutions 242 (1967)⁴⁰ and 338 (1973)⁴¹ which required Israel to withdraw from all Arab territories acquired in 1967, including the Occupied Syrian Golan were dismissed. Additionally, Resolution 497 (1981) which confirmed the voidness of Israel's annexation of the Golan was also dismissed.

2. Occupying a territory on the basis of defensive conquest: territorial integrity and Self-Defense

In this section, first, the occupation through the lens of Article 51 of the Charter of the United Nations will be examined; and second, the argument of the State of Israel will be evaluated, and it will be determined whether defensive conquest is permissible from the point of view of international law.

One of the claims resorted by the Israeli government was that it exercised its right to self-defense.⁴² However, this airstrike cannot be regarded as self-defense and, it itself is a violation of the non-use of force principle. In other words, if it does not meet the requirements of self-defense, then it will result in the infringement of Article 2(4) of the UN Charter.

2-1. Scope of Self-Defense under Article 51 of the UN Charter

Under international law, there has been a debate between international law scholars over the scope of self-defense. The controversial question is that: against which violations of Article 2(4) of the UN Charter, a State may resort to self-defense. Can a State defend itself in the wake of a mere threat by another State? The UN Charter reads as follows:

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations ...".⁴³

38. Syrian- Golan, <https://www.un.int/syria/syria/syrian-golan>. Accessed 30 November 2020.

39. Ibid.

40. United Nations Security Council Resolution 242, November 22, 1967, (S/RES/242) (1967).

41. United Nation Security Council, Security Council resolution 338 (1973) [Cease-fire in Middle East], 22 October 1973, S/RES/338 (1973).

42. Enrico Milano, *Unlawful Territorial Situations: Reconciling Effectiveness, Legality, and Legitimacy in International Law*. (Leiden: Martinus Nijhoff, 2006), 113.

43. United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Art. 51.

Understandably, the existence of an 'armed attack' before resorting to self-defense is required. As noted in the commentary to the United Nations Charter, the term 'armed attack' is a necessary prerequisite to self-defense under Article 51.⁴⁴ The International Court of Justice (ICJ), the integrated judicial organ of the UN, has stated in the *Nicaragua* Judgment that the existence of an armed attack is *conditio sine qua non*.⁴⁵

A question then arises as to what is legally meant by the phrase 'armed attack'. Considering general rules of interpretation applicable to international treaties, the 'armed attack' should be interpreted textually and contextually.⁴⁶ The above-mentioned article uses the word 'occurs', the meaning of which is logically limited to physical attack and not the threat to the use of force. It is followed from the observations of the ICJ that not every use of force shall be regarded as an armed attack.⁴⁷ Nor can it be mentioned that a mere threat to the use of force is, in principle, an armed attack.⁴⁸ Therefore, it results that 'armed attack' is the severest state of use of force, and it can equal the term aggression which was recognized as an international crime within the jurisdiction *ratione materiae* of the International Criminal Court.⁴⁹ In other words, armed attack exists when the force has been used 'on a relatively large scale, is of a sufficient gravity and has a substantial effect'.^{50, 51} This argument is strengthened when we refer to the French translation of this term as '*aggression armée*' which literally means armed aggression.

Furthermore, the most crucial and relevant subsequent agreement for the interpretation of Article 2(4) of the UN Charter is the Resolution 3314, which provides that 'aggression is the most serious and dangerous forms of illegal use of force'.⁵²

44. Simma Bruno, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, Nikolai Wessendorf. The Charter of the United Nations (3rd Edition): A Commentary, (Oxford, United Kingdom: Oxford University Press, 2012), 220.

45. ICJ, Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v United States of America*), ICJ Rep 14, 1986, para.237.

46. United Nations, Vienna Convention on the Law of Treaties, United Nations, Treaty Series, vol. 1155, p. 331. Art. 31.

47. ICJ, Military and Paramilitary Activities in and against Nicaragua, para.210.

48. Simma Bruno, Khan Daniel-Erasmus, Nolte Georg, Paulus Andreas, Wessendorf Nikolai. The Charter of the United Nations (3rd Edition): A Commentary.

49. United Nations General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, Art. 8bis.

50. Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v United States of America*), para.191.

51. ICJ, Oil Platforms (*Islamic Republic of Iran v United States of America*) [2003] ICJ Rep 16, Arts. 51, 64, and 72. see also Institute de Droit International, 'Tenth Commission, Present Problems of the Use of Armed Force in International Law', 27 October 2007; Yoram Dinstein, War, Aggression, and Self-Defense, (Cambridge: Cambridge University Press, 2012), 207; Olivier Corten, The Law against War - The Prohibition on the Use of Force in Contemporary International Law, (Hart Publishing, 2010), 403.

52. UN General Assembly, Definition of Aggression, A/RES/3314, UN General Assembly, 14 December 1974.

In the case of Golan Heights, no such armed attack existed, and the prevailing view (restrictive school of thought or 'restrictionists') is intended to argue for a narrow interpretation of self-defense and thus, it excludes anticipatory self-defense. These law scholars believe that a State is not, under international law, allowed to resort to self-defense when an armed attack does not already exist.

However, there has been a viewpoint on the customary nature of preemptive self-defense.⁵³ Assuming this, three requirements should be met: necessity, proportionality, and imminence. The latter has been mentioned in the UN Charter and the first two requirements are part of customary international law.⁵⁴ For this purpose, any act of self-defence must be proportionate to the threat of immediate, and when the threat has been ceased then the plea of self-defence would not be possible. In other word, Self-defence is taken to the preservation or restoration of the status rather than territorial changes. As in the case of Golan Heights, and given that the requirements are not met, then the Israel's attack is a gross violation of the UN Charter.

It should be mentioned that the victim State has the burden of proving the existence of an armed attack or the imminent threat in case of preemptive self-defense.⁵⁵ Thus, the State of Israel has to prove that its air strike had met these requirements. Proof of these requirements needs another detailed legal analysis which falls outside the main subject of this article. Furthermore, if Israel could establish that its air strike had met three requirements of self-defense, another important issue will remain. That issue is whether self-defense shall be merely limited to thwarting the attack or it could be extended to a situation where the State resort to self-defence as a means of conquest and occupation. This question is the concern that will be examined in the following.

2-2. The notion of defensive conquest in international law

Before 1967, there was an ongoing concern over the question whether defensive conquest was lawful under the UN charter.⁵⁶ By defensive conquest, it is meant that whether a State is able to resort to self-defence to occupy another State. In this regard, substantial international law sources provide that the principle of territorial integrity requires inviolability of the

53. Anthony Clark Arend, "International law and the preemptive use of military force." *The Washington Quarterly* 26, no. 2 (2003): 92-101.

54. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, para.194.

55. *Oil Platforms (Islamic Republic of Iran v United States of America)*, para.57

56. Kontorovich Eugene, *International Law and the Recognition of Israeli Sovereignty in the Golan Heights*, Hearing before the U.S. House of Representatives, Committee on Oversight Subcommittee on National Security, 2018, 2.

sovereign State against all sorts of changes of territory. Based on Article 10 of the League Covenant, the members of the League of Nations are obliged “to respect and preserve the territorial integrity and existing political independence of all members against external aggression”.⁵⁷ In addition, the UN Charter contains a similar provision under Art. 2(4) which provides that: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”.⁵⁸ As it explicitly prescribes, the changes of territory by force because of war is prohibited under the UN Charter and it violates the territorial integrity of other States. However, the central question at issue is whether the acquisition of land by resorting to lawful war under the terms of UN Charter is legitimate. For example, is a defending State allowed to occupy the territory of the aggressor in the form of a self-defence?

Some authors argue that defensive conquest is lawful, stating that in 1967, international law only prohibited the acquisition of territory through illegal or aggressive wars. They reference the UN Charter, state practice, and expert opinions to claim that there was no explicit prohibition on defensive conquest at the time.⁵⁹ They cite post-Charter state practices, like the annexations by Holland, Greece, Yugoslavia, and the USSR, as evidence that not all territorial changes due to war were considered illegitimate.⁶⁰ These jurists also invoke the Lotus Principle, suggesting that actions not explicitly prohibited by international law are permitted,⁶¹ thus allowing defensive conquest if not expressly forbidden. Moreover, they argue that international law is non-retroactive, meaning legal norms emerging after 1967 cannot alter the legality of Israel's conquest.⁶²

Conversely, those against defensive conquest argue that military actions, regardless of their legality, cannot justify territorial acquisition.⁶³ They stress that Article 51 of the UN Charter limits self-defense to what is necessary to restore the status quo and prohibits permanent territorial changes.⁶⁴ Self-defense cannot be used to punish aggressors or prevent future attacks, as this

57. League of Nations, Covenant of the League of Nations, 28 April 1919, Art. 10.

58. Charter of the United Nations, Art.2(4).

59. Eugene, *International Law and the Recognition of Israeli Sovereignty in the Golan Heights*, p. 2.

60. Kontorovich Eugene, *International Law and the Recognition of Israeli Sovereignty in the Golan Heights*, 3.

61. PCIJ, S.S. "Lotus", France v Turkey, Judgment, (1927) PCIJ Series A no 10, ICGJ 248 (PCIJ 1927), 7th September 1927, para. 215.

62. Malcolm N. Shaw, *International Law*. 8th edition, (Cambridge: Cambridge University Press, 2017), 377.

63. *Ibid.*

64. Sharon Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice*, (Oxford: Clarendon Press, 1996), 205.

contradicts the principle of territorial integrity enshrined in the UN Charter.⁶⁵ Furthermore, even the UN Security Council lacks the authority to alter borders to maintain peace.⁶⁶

The ILC's Draft Declaration on the Rights and Duties of States and General Assembly Resolution 2625 (1970) affirm that territorial changes resulting from the use of force are not legally valid.⁶⁷ Security Council Resolution 242 (1967)⁶⁸ reaffirmed the inadmissibility of acquiring territory through war and called for Israeli withdrawal from occupied territories, while Resolution 497 (1981) declared the annexation of the Golan Heights "null and void".⁶⁹

This article argues that a strict interpretation of Article 51 of the UN Charter is necessary to maintain the integrity of international law. As Lauterpacht noted, conquest was once a legitimate means of acquiring territory, but instruments like the UN Charter have since prohibited war and rendered conquest illegal, invalidating any gains made through unlawful acts.⁷⁰

3. Application of the recent ICJ's Advisory Opinion to the Golan Heights

The ICJ's 2024 advisory opinion,⁷¹ in its analysis of Israel's policies and practices, provides relevant parallels for examining the Golan Heights situation. Although the opinion focuses on the Palestinian territories, the legal framework governing occupation applies equally to the Golan Heights due to the similar nature of the occupation.

According to the opinion, Israel's long-term occupation, annexation efforts, and settlement policies violate international law, specifically the prohibition of the acquisition of territory by force. This applies to the Golan Heights in the following ways:

1. Prolonged Occupation: The Court emphasized that occupation is, by its very nature, temporary and cannot confer sovereignty. Similarly, the Golan Heights remains under occupation, and Israel cannot claim lawful sovereignty over it, as reaffirmed by UNSC Resolution 497.

65. Eyal Benvenisti, *The International Law of Occupation*, 2nd edn, (Oxford: Oxford University Press, 2012), 94-95.

66. Charter of the United Nations, Art.24(2).

67. UN General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 24 October 1970, A/RES/2625(XXV).

68. United Nations Security Council Resolution 242, November 22, 1967, (S/RES/242) (1967).

69. United Nations Security Council, Security Council resolution 497 (1981) [Israel-Syrian Arab Republic], 17 December 1981, S/RES/497 (1981).

70. Lassa Oppenheim and Hersch S. Lauterpacht, *International Law* (London: Longmans, Green, 1955), 574.

71. ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, 186-20240719-ADV-01-00-EN, Advisory Opinion of 19 July 2024.

2. Annexation and Acquisition by Force: The prohibition of the acquisition of territory by force under international law is a cornerstone of the advisory opinion and applies to the Golan Heights. Israel's 1981 annexation of the Golan Heights is unlawful, mirroring the findings related to the West Bank and East Jerusalem.

3-1. Legal Consequences for Israel's Illegal Annexation of the Golan Heights

The International Court of Justice in its 2024 advisory opinion makes several crucial determinations regarding Israel's obligations under international law, and these findings directly extend to the Golan Heights. Drawing from sections V, VI, and VII of the opinion, the following legal consequences arise from Israel's continued annexation of the Golan Heights.

3-1-1. Illegality of Annexation under International Law

In section V of the advisory opinion, the Court reiterates the fundamental principle that the acquisition of territory by force is prohibited under both the United Nations Charter and customary international law.⁷² The annexation of the Golan Heights by Israel in 1981 directly contravenes this principle, which has been reaffirmed in Article 2(4) of the UN Charter and numerous Security Council resolutions, including Resolution 497 (1981), which declared the annexation "null and void." The ICJ emphasizes that Israel's actions in annexing and integrating the Golan Heights into its legal system do not confer any valid legal title to the territory.⁷³ As with the Occupied Palestinian Territory, the annexation of the Golan Heights violates the prohibition on acquiring territory through military conquest or coercion.

3-1-2. Israel's Obligations to Cease Unlawful Actions

According to section VII of the advisory opinion, Israel is under a binding legal obligation to immediately cease all actions related to the annexation and unlawful occupation of the Golan Heights. This includes:

1. Repealing All Domestic Legislation: Israel must repeal all laws and measures that apply its domestic legal system to the Golan Heights. The extension of Israeli law to this territory, as detailed in section V of the opinion, is a direct violation of international humanitarian law, particularly the Fourth Geneva Convention (Article 49), which prohibits the transfer of the occupier's civilian population into the occupied territory.⁷⁴ This also applies to the Golan Heights, where Israel has encouraged civilian settlements in defiance of international law.
2. Cease Settlement Expansion: As addressed in the opinion's findings on settlement policies, Israel's establishment and expansion of settlements in occupied territories constitute a breach of the Article

72. Ibid, paras. 104-243.

73. Ibid, paras. 157-179.

74. Ibid, paras.115-119.

55 of the Fourth Geneva Convention⁷⁵ and Hague Regulations (Article 43).⁷⁶ This applies equally to the Golan Heights, where settlements are being expanded to solidify Israel's control. The ICJ finds that such actions further entrench the annexation and make the return of the land to Syria more difficult, thus exacerbating the illegal situation.

3-1-3. Restoration of Sovereignty and Right to Self-Determination

In section VII of the advisory opinion, the Court notes the severe impact of Israel's policies on the right to self-determination for the Palestinian people.⁷⁷ Similarly, Israel's occupation and annexation of the Golan Heights impedes Syria's sovereignty and the right of the Syrian people in the Golan Heights to determine their own political future. The principle of self-determination, as highlighted in Article 1 of the International Covenant on Civil and Political Rights (ICCPR), is a peremptory norm of international law, and Israel's prolonged presence in the Golan Heights violates this right. Israel is obligated to withdraw and restore Syrian sovereignty over the region.

3-1-4. International Legal Responsibilities of Other States

In line with section VII(B) of the opinion, the Court clarifies that the international community, including all UN Member States, has an obligation not to recognize or support Israel's illegal annexation of the Golan Heights.⁷⁸ States must avoid any actions that could be seen as endorsing the illegal situation, including trade, military, or political agreements that treat the Golan Heights as part of Israel.⁷⁹ The advisory opinion emphasizes the responsibility of states to cooperate in ending Israel's illegal actions, in accordance with Article 41 of the Articles on State Responsibility, which demands that all states refrain from assisting in maintaining a situation created by a serious breach of international law.⁸⁰

3-1-5. Sanctions Against Israel for the Illegal Annexation of the Golan Heights

The 2024 ICJ advisory opinion underscores the principle that states must not recognize or support unlawful situations arising from the illegal acquisition of territory by force, such as Israel's annexation of the Golan Heights. Beyond legal responsibility, the opinion emphasizes the obligation of third-party states to take proactive steps to address violations of international law. One of the key measures available to the international

75. *Ibid.*, paras. 124-133.

76. *Ibid.*, paras. 134-142.

77. *Ibid.*, paras. 265-283.

78. *Ibid.*, paras. 273-279.

79. *Ibid.*

80. *Ibid.* para. 279.

community is the imposition of sanctions to compel compliance and discourage continued illegal actions by Israel.

3-1-5-1. Legal Basis for Sanctions: Obligation of Non-Recognition and Non-Assistance

The ICJ has consistently maintained that the acquisition of territory by force is unlawful and that other states have a duty not to recognize or legitimize such an act. In the advisory opinion's section VII(B), it highlights the responsibilities of other states in situations of prolonged occupation and annexation:

- **Non-Recognition of Illegal Annexation:** All states are obligated not to recognize Israel's sovereignty over the Golan Heights, as the annexation is considered null and void under international law (per UN Security Council Resolution 497). This non-recognition extends to all forms of economic, political, and legal interactions.⁸¹
- **Non-Assistance in Maintaining the Illegal Situation:** States are prohibited from offering any assistance or support to Israel that would help maintain or entrench its illegal presence in the Golan Heights. This obligation is codified in Article 41 of the International Law Commission's Articles on State Responsibility, which requires all states to refrain from actions that would sustain illegal situations.⁸²

The obligation of non-recognition and non-assistance paves the way for sanctions as a tool to ensure that Israel complies with its international obligations and reverses its illegal annexation of the Golan Heights.

3-1-5-2. Types of Sanctions That May Be Imposed on Israel

To enforce the principle of non-recognition and to exert pressure on Israel, States may impose a range of diplomatic, economic, and political sanctions. Some of the most effective forms of sanctions include: Economic sanctions can be designed to impact Israel's financial and trade activities related to the Golan Heights. These could include:

1. **Trade Restrictions:** States could impose trade embargoes on products and services originating from the Golan Heights, such as agricultural goods, water, and tourism-related businesses like the Mount Hermon ski resort. This would be in line with the duty not to recognize any benefits derived from illegal annexation.
2. **Boycotts of Israeli Businesses:** States could implement boycotts of Israeli companies operating in or profiting from activities in the Golan Heights. This could include freezing assets, halting investments, and prohibiting trade with Israeli companies involved in the exploitation of the region's natural resources.

81. Ibid, para. 278.

82. Ibid, para. 279.

3. Targeted Sanctions on Individuals and Entities: States can impose targeted sanctions on Israeli officials or companies responsible for implementing and maintaining the annexation, such as travel bans, asset freezes, or banking restrictions.

Diplomatic pressure can be exerted through measures such as:

1. Suspending Diplomatic Relations: Some states may opt to downgrade or sever diplomatic ties with Israel to signal strong disapproval of its continued occupation and annexation of the Golan Heights.
2. Limiting Participation in International Forums: States could push for Israel's exclusion from certain international forums, such as regional organizations or international economic institutions, as a way to isolate Israel diplomatically.
3. UN Sanctions: The UN Security Council could, in theory, impose comprehensive sanctions on Israel, though this is politically challenging due to veto power held by permanent members, such as the United States. Nevertheless, individual states or blocs, such as the European Union, could impose their own sanctions independently.

Sanctions have historically been used as a tool to address violations of international law concerning occupation and annexation. Several examples demonstrate the potential effectiveness of sanctions in such contexts. During the apartheid era, South Africa faced international sanctions, including trade embargoes and diplomatic isolation, due to its illegal occupation of Namibia and its human rights abuses. These sanctions significantly contributed to the eventual end of apartheid and South Africa's withdrawal from Namibia. Also, Following Russia's annexation of Crimea in 2014, the European Union, United States, and other states imposed extensive sanctions on Russia. These sanctions targeted Russian financial institutions, key industries, and individuals connected to the annexation. While the effectiveness of these sanctions in reversing the annexation remains debated, they serve as a clear precedent for how the international community can respond to illegal territorial acquisitions.

3-1-6. Duty to Provide Reparation

When a state commits internationally wrongful acts, such as illegal occupation and annexation, it is obligated to make full reparations for the harm caused.⁸³

In the context of Israel's annexation of the Golan Heights, the ICJ advisory opinion from 2024 makes it clear that Israel has a responsibility to remedy the violations of international law it has committed through its prolonged occupation and annexation. Section VII(A) of the opinion focuses on this duty, outlining the legal framework within which reparations are to

83. International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, Supplement No. 10 (A/56/10), chp.IV.E.1, November 2001, Art. 34.

be made.⁸⁴ Here, reparation is meant to address both the material and moral damages caused by the illegal occupation, including the exploitation of resources, harm to the local Syrian population, and environmental damage.

The ICJ has addressed the issue of reparations for unlawful occupations in multiple cases. Two key precedents are worth noting:

The Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) (2005): In this case, the ICJ held Uganda responsible for violations of international law during its occupation of parts of the Democratic Republic of the Congo (DRC). Uganda was found liable for both the damage caused by its military actions and the exploitation of the DRC's natural resources. The Court emphasized that an occupying power must not exploit the resources of the occupied territory for its own benefit, and that reparations must address the harm caused by this illegal exploitation.⁸⁵ The ruling set an important precedent for how an occupying power should be held accountable for economic exploitation during an occupation.

The Wall Advisory Opinion (2004): While primarily focused on the construction of a separation barrier in the Occupied Palestinian Territory, the ICJ's advisory opinion also reinforced the duty of Israel to provide reparations. The Court held that Israel must dismantle the illegal structures it had built and compensate Palestinians for any damage caused.⁸⁶ Although the situation differs from the Golan Heights, the principles of reparation for harm caused by illegal actions in occupied territory remain the same.

3-1-6-1. Forms of Reparation

Reparations for illegal annexation and occupation can take multiple forms, including restitution, compensation, and satisfaction.⁸⁷

Restitution: In the case of the Golan Heights, restitution would entail Israel's withdrawal from the territory and the restoration of Syrian sovereignty over the region. This aligns with the general international legal principle that occupation is temporary and cannot confer permanent rights over the territory.

Compensation: For the Golan Heights, this would involve monetary compensation for the unlawful exploitation of natural resources, the establishment and expansion of settlements, and any economic losses Syria has incurred due to Israel's prolonged occupation. In particular, the exploitation of the Golan's water resources and agricultural lands by Israeli settlers constitutes a violation of Articles 55 and 56 of the Hague Regulations,

84. Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, para. 269.

85. International Court of Justice, Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, para. 344.

86. International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C.J. Reports 2004, para. 162.

87. Draft Articles on Responsibility of States for Internationally Wrongful Acts, Art. 34.

which prohibit an occupying power from using the resources of occupied land for its own benefit.

Satisfaction: In the Golan Heights context, satisfaction could include Israel's formal recognition of Syria's sovereignty and a commitment not to undertake any further actions that violate international law.

4. Conclusion

For the time being, there is no doubt that the acquisition of territory by force is prohibited under international law. The Covenant of the League of Nations, the Kellogg-Briand Pact, the Stimson Doctrine, the United Nations Charter, the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, and the Declaration on Principles of International Law concerning Friendly Relations have all reaffirmed the inadmissibility of territorial conquest. The recent 2024 advisory opinion of the International Court of Justice further strengthens this position, specifically addressing Israel's illegal actions in occupied territories, including the Golan Heights. The Court reaffirmed that the prohibition on acquiring territory through force is a cornerstone of international law, and any annexation resulting from military conquest is void.

It would be an error to assess the rule's effectiveness based solely on occasional disregard or inadequate enforcement. The ICJ's opinion stresses that the duty of all states is not only to refrain from recognizing such illegal annexations but also to actively prevent the consolidation of unlawful territorial acquisitions. This reflects the high value the vast majority of states place on this prohibition, particularly when considering the broader consequences of undermining this principle.

The emergence of situations, such as the conflict in the former Yugoslavia, is a reminder of the potential consequences when the international legal order is not upheld. Conversely, history offers numerous instances of the illegitimacy of foreign rule through conquest being successfully overturned. For example, European powers were compelled to relinquish their colonies as international norms evolved, and the Soviet Union ultimately acknowledged the illegality of its occupation of the Baltic States.

In the case of the Golan Heights, the ICJ's 2024 advisory opinion reiterates that Israel's annexation is null and void and that Israel cannot claim sovereignty over the territory through force. United Nations resolutions have consistently reinforced the inadmissibility of Israel's actions, and the international community, including Israel's strongest allies like the United States, continues to reject the legality of Israel's annexation.

Regardless of whether Israel's decision to extend its domestic law to the Golan Heights is considered an act of annexation, it is clear that the capture of the Golan Heights has not resulted in internationally recognized sovereignty

rights. The recent advisory opinion confirms that Israel's security concerns cannot override the fundamental principle of the non-acquisition of territory by force. No state (aside from Israel) has considered these concerns sufficient to bypass this principle, and the global community remains steadfast in its rejection of any claims to sovereignty arising from illegal actions.

References

- Books

1. Benvenisti, Eyal, *The International Law of Occupation*. Oxford: Oxford University Press, 2012.
2. Cobban, Alfred, *The Nation State and National Self-Determination*. London: Collins, 1969.
3. Corten, Olivier. *The Law against War - The Prohibition on the Use of Force in Contemporary International Law*. Hart Publishing, 2010.
4. Dinstein, Yoram. *War, Aggression, and Self-Defense*. Cambridge: Cambridge University Press, 2012.
5. Eisenman, Robert H. *Islamic Law in Palestine and Israel: A History of the Survival of Tanzimat and Shari'a in the British Mandate and the Jewish State*. Leiden: E.J. Brill, 1978.
6. Granott, Abraham. *The Land System in Palestine: History and Structure*. London: Eyre & Spottiswoode, 1952.
7. Korman, Sharon. *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice*. Oxford: Clarendon Press, 1996.
8. Krämer, Gudrun. *A History of Palestine; From the Ottoman Conquest to the Founding of the State of Israel*. Princeton University Press, 2011.
9. Milano, Enrico. *Unlawful Territorial Situations: Reconciling Effectiveness, Legality, and Legitimacy in International Law*. Leiden: Martinus Nijhoff, 2006.
10. Oppenheim, Lassa, and Hersch S. Lauterpacht, *International Law*. London: Longmans, Green, 1955.
11. Ruedy, John. *Dynamics of Land Alienation,* in Ibrahim Abu-Lughod, ed., *The Transformation of Palestine*. Evanston: Northwestern University Press (1971).
12. Shaw, Malcolm N. *International Law*. 8th edition. Cambridge: Cambridge University Press, 2017.
13. Schacht Joseph. *An Introduction to Islamic Law*. London: Oxford University Press, 1964.
14. Simma Bruno, Khan Daniel-Erasmus, Nolte Georg, Paulus Andreas, Wessendorf Nikolai. *The Charter of the United Nations (3rd Edition): A Commentary*. Oxford, United Kingdom: Oxford University Press, 2012.

- Articles

1. Intercommunity Peace & Justice Center .“Israel and Palestine: History, Politics and the Pursuit of Peace,” *A Matter of Spirit, A Publication of the Intercommunity Peace & Justice Center*, No.105 (2015):1.8.
2. Aouni Bey, Abdul Hadi. “The Balfour Declaration,” *Annals of the American Academy of Political and Social science*, vol.164 (1932):12-21. <https://doi.org/10.1177/000271623216400103>
3. Arend, Anthony Clark. "International law and the preemptive use of military force." *The Washington Quarterly* 26, no. 2 (2003): 89-103.
4. Bell, Abraham and Kontorovich, Eugene. “Palestine, Uti Possidetis Juris and the Borders of Israel.” *Arizona Law Review*, vol. 58 (2016): 633-692. <http://dx.doi.org/10.2139/ssrn.2745094>
5. Bowett, Derek W, “International law relating to occupied territory: a rejoinder.” *Law Quarterly Review*, vol. 87 (1971): 43- 475.
6. Inbar, Efraim. “Israeli Control of the Golan Heights: High Strategic and Moral Ground for Israel,”. Report. *Begin-Sadat Center for Strategic Studies, Mideast Security and Policy Studies No. 90* (2011): 1-3.
7. Kontorovich, Eugene, “Resolution 242 Revisited: New Evidence on the Required Scope of Israeli Withdrawal,” *16 Chicago Journal of International Law* 127, *Northwestern Public Law Research Paper No.* (2015):14-57.
8. Ram, Morial. “Creating a Peaceful Place of War: Revisiting the Golan Heights Border Region, *Eurasia Border Review*, VoL 4, No.1. (2013): 77-93.
9. Schwebel, Stephen M. “What Weight to Conquest?” *The American Journal of International Law* 64, no. 2 (1970): 344–47. <https://doi.org/10.2307/2198669>.
10. Tute, Hon. Mr Justice, “The Law of State Lands in Palestine,” *Journal of Comparative Legislation and International Law*, 3rd series, 9 (1927): 165-166.

- Cases

1. International Court of Justice, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005.
2. ICJ, *Corfu Channel Case (United Kingdom v. Albania)*; Preliminary Objections, International Court of Justice (ICJ), 1948.
3. ICJ, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, 186-20240719-ADV-01-00-EN, Advisory Opinion of 19 July 2024.
4. ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, ICJ Rep 14, 1986.
5. ICJ, *Oil Platforms (Islamic Republic of Iran v United States of America)* [2003] ICJ Rep 16.

6. PCIJ, S.S. "Lotus", France v Turkey, Judgment, (1927) PCIJ Series A no 10, ICGJ 248 (PCIJ 1927), 7th September 1927.

- Documents

1. Institute de Droit International, 'Tenth Commission, Present Problems of the Use of Armed Force in International Law', 27 October 2007.
2. International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, Supplement No. 10 (A/56/10), chp.IV.E.1, November 2001.
3. Kontorovich Eugene, International Law and the Recognition of Israeli Sovereignty in the Golan Heights, Hearing before the U.S. House of Representatives, Committee on Oversight Subcommittee on National Security, 2018.
4. League of Nations, Covenant of the League of Nations, 28 April 1919, Art. 10.
5. Syria-Israel- the Golan Heights in Perspective, National Foreign Assessment Center, January 1982.
6. U.N. Doc, Preparation of a Draft Code of Offences against the Peace and Security of Mankind (1950), 1 Y.B. Int'l L. Comm'n 136, U.N. Doc. A/CN.4/SER.A/1950
7. UN General Assembly Resolution 35/169, A/RES/35/169, 15 December 1980.
8. UN General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 24 October 1970, A/RES/2625(XXV).
9. UN General Assembly, Declaration on the Strengthening of International Security, 16 December 1970, A/RES/2734(XXV).
10. UN General Assembly, Definition of Aggression, A/RES/3314, UN General Assembly, 14 December 1974.
11. United Nation Security Council, Security Council resolution 237, [The situation in The Middle East] S/RES/23(1967).
12. United Nation Security Council, Security Council resolution 338 (1973) [Cease-fire in Middle East], 22 October 1973, S/RES/338 (1973).
13. United Nation Security Council, Security Council resolution 497 (1981) [Israel-Syrian Arab Republic], 17 December 1981, S/RES/497 (1981).
14. United Nations General Assembly, 194 (III). Palestine - Progress Report of the United Nations Mediator, 11 December 1948, A/RES/194.
15. United Nations General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998.
16. United Nations Security Council Resolution 242, November 22, 1967, (S/RES/242) (1967).

17. United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.
18. United Nations, Vienna Convention on the Law of Treaties, United Nations, Treaty Series, vol. 1155, p. 331, 23 May 1969.

- Websites

1. Events Leading to the Six-Day War 1967, Israel Ministry for Foreign Affairs, <https://mfa.gov.il/mfa/aboutisrael/maps/pages/events>, Accessed 30 November 2020.
2. <https://www.haaretz.com/.premium-jurists-debunk-netanyahu-s-golan-claim-annexation-can-t-be-excused-by-defensive-war-1.7067393>
3. Israel and Palestine: History, Politics and the Pursuit of Peace (2016) <https://www.ipjc.org/publications/> Israel and Palestine: History, Politics and the Pursuit of Peace. Accessed 29 November 2020.
4. Syrian- Golan, <https://www.un.int/syria/syria/syrian-golan>. Accessed 30 November 2020.