

Framing an EU Response to Israel's Annexation of the West Bank

by Nathalie Tocci

It could happen any moment now.

Or it may not happen at all.

Either way, Europeans should reflect on the consequences of Israel's ongoing disenfranchisement of Palestinian rights, the last iteration of which is Prime Minister Benjamin Netanyahu's threat of annexation of parts of the occupied West Bank. Paradoxically, Israel's threat of annexation should be viewed as an opportunity to focus politics and policy on a decades-long drama unfolding before our eyes and on which we as Europeans have become progressively more complicit as the decades have gone by.

As of 1 July 2020, Netanyahu could announce the beginnings of an annexation process. Many are the questions surrounding annexation: whether it will actually happen, what territories will be annexed, how annexation will take place and, perhaps

above all, what its implications may be, both in Israel and Palestine as well as the wider region, starting with Jordan.

On most of these questions, Europe's impact is limited. The timing and content of an Israeli decision are unlikely to be swayed by European words, less still are Europeans likely to contain the chain of events that could be unleashed by annexation. However, Europe's limited influence does not mean that its actions are inconsequential. Aside from considerations of causality, the European Union should use the looming threat of annexation to determine the consequences Israeli actions may have on bilateral relations and do this for reasons pertaining to itself more than to the effect this action may have on others.

Upon invitation by several member states, a famed EU options paper on annexation has been in the works for some time. Within it, the European

Nathalie Tocci is Director of the Istituto Affari Internazionali (IAI) and Honorary Professor at the University of Tübingen. She is Special Advisor to the EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission (HRVP), Josep Borrell.

External Action Service and the European Commission are meant to elaborate on the steps the EU could take in response to annexation. High Representative Josep Borrell has not minced words, expressing clearly, albeit generally, that “annexation would inevitably have significant consequences”¹ on the close ties currently enjoyed by the EU and Israel. France and Germany echoed the line, when in a joint declaration with Egypt and Jordan, they also referred to the consequences annexation would have on bilateral relations.²

The devil, as always, is in the details. But to frame a more detailed reflection on content, two preliminary remarks are of order.

First, the timing and content of annexation will be determined, first and foremost, by Israeli dynamics. True, Israel does not operate in a vacuum. The current Israeli government must know that the “safe” window for annexation is between now and the US presidential election. Today, Netanyahu can count on US acquiescence, even support, given the current administration’s readiness to back partial annexation in the infamous Trump Plan. Whereas the debate on annexation is not new in Israel, it has become an imminent

¹ European External Action Service, *European Parliament: Remarks by the HR/VP Josep Borrell on the Foreign Policy Consequences of the COVID-19 Crisis, on the PRC National Security Law for Hong Kong and on the Possible Israeli Annexation in the West Bank*, 18 June 2020, https://eeas.europa.eu/headquarters/headquarters-homepage_en/81104.

² “Egypt, France, Germany, Jordan Warn Israel on Annexation”, in *Reuters*, 7 July 2020, <https://reut.rs/2ZLyqvb>.

prospect precisely because of the unprecedented US signalling of its acceptance of such move.

After 3 November, who knows what may happen? As Donald Trump faces a decidedly uphill presidential campaign amidst a COVID-19 health and economic meltdown in the country, it is reasonable to assume that if annexation will take place, it will do so before the November vote. Everything else – whether, how and what exactly will happen – will likely be decided by Israeli dynamics alone. A second wave of the pandemic spiralling out of control and the dire economic consequences, beginning with unemployment, COVID-19 is triggering in Israel, are far more influential factors than any European move, no matter how meaningful this may be.

Second, annexation is annexation, whether it applies to 30 per cent or to 3 per cent of the West Bank. Regardless of whether Israel will annex “only” large settlement blocks surrounding Jerusalem or also scattered settlements across the West Bank and the Jordan Valley is irrelevant. This is because its significance is legal, far more than it is political. Israel already violates international humanitarian law in the conduct of its occupation as foreseen by the Geneva Conventions. Annexation of any such occupied territory and thus the acquisition of territory by force would mark an egregious next step in Israel’s long list of violations. Annexation, in other words, matters from a legal standpoint.

Does it matter politically? Yes and no. On one level, annexation does not



matter politically because it does not change reality on the ground. The land grabs, the house demolitions, the assassinations and all that long list of violations that lie at the core of Israel's denial of Palestinian rights would not change with annexation.

Much in the same way, the prospect of a viable two state solution would not disappear with annexation: it has long since gone. In fact, annexation would arguably end the senseless diplomatic dance that has been keeping the international illusion of a Middle East Peace Process on life support, an illusion that has been complicit in covering the entrenching occupation on the ground. With annexation, the stark truth would emerge: the emperor has no clothes; the Oslo-based two-state framework is dead.

On another level, the threat of annexation does matter politically, it matters tremendously. If annexation is viewed as a milestone along the spectrum of Palestinian dispossession, a spectrum that begins with occupation passes through annexation and ends with expulsion and population transfers, alongside representing an existential threat to neighbouring Jordan, crossing that milestone is hugely relevant politically, and dramatically so.

Taken together, these reflections mean two things for Europeans. First, that in deliberating and eventually deciding their reaction, Europeans should reflect on the actual legal and political significance of annexation and what it means for them, more than on the persuasive or dissuasive effect their

actions may have on Israel's calculus. Persuasion and dissuasion of course will be part of the action, but the guiding light should be what is right for us rather than what effect it would have on them.

When the EU for instance imposed sanctions on Russia following the annexation of Crimea, it never genuinely thought that such sanctions would induce Russia to retreat from the peninsula. It did so, and continues to do so, because of what it believes is right, even if such sanctions may also have the effect of dissuading Russia to escalate further in the Donbass.

Second, as Europeans think about how to react, they should look at annexation for what it is: a step, indeed a meaningful one, along a spectrum of progressive dispossession and disenfranchisement. Hence, if annexation does not take place, it should not be seen as a victory, for which Israel should be rewarded. All the violations that have existed, persisted and become entrenched over the decades would remain unaltered. Annexation is a dramatic step, but within an already tragic landscape.

Having framed the debate about European consequences to annexation, let us briefly turn to the content of what such consequences may be. Consequences can be economic, political or legal in nature. The three are intimately related and one set of consequences does not, or rather should not, exclude the other. Yet, given that in practice they may well end up being mutually exclusive, it is worth disentangling and assessing them in turn.

Economically, the most obvious course of action is that of sanctions. The European Union rarely adopts sanctions in response to human rights violations within states. There are exceptions of course, but rarely do these apply to strategically relevant states, less still if these are in Europe's vicinity. The EU has also resisted the imposition of restrictive measures in response to violations of the laws of occupation, as the case of Israel itself demonstrates, but also that of Morocco with respect to Western Sahara or Turkey vis-à-vis Northern Cyprus. Annexation is a different ball game.

In the rare cases of annexation, the EU has imposed sanctions, including on strategically relevant neighbouring states. The case of Russia over Crimea stands out. Is it realistic to imagine EU sanctions in response to Israel's annexation? At first glance, the answer is no, decidedly so. It is difficult, if not impossible, to imagine a consensus at 27 over sanctions on Israel with the likes of Hungary, the Czech Republic, Greece or Cyprus in the room. Said this, circumstances matter, often turning the impossible into the only possible course of action.

Back in 2014, before the downing of the Malaysia Airline Flight-17 (MH17) in eastern Ukraine, imagining serious EU sanctions on Russia was difficult, perhaps impossible. It certainly was for member states such as my own. At the time, I was advisor to the Italian foreign minister, with her on a trip to the Middle East. I recall vividly the mood and the discussions the day Russia downed MH17. The change was abrupt and sudden, turning long-held convictions

on their head in one evening. The impossible became not only possible, it became urgent, necessary. As late British Prime Minister Harold Macmillan would have put it: "events deal boy, events".

A second set of possible consequences is political. Political responses would include a string of member state recognitions of the State of Palestine, following the example that Sweden and eight other member states set five years ago. Recognition would strengthen the Palestinian case at the International Criminal Court and the International Court of Justice, even though European support for recourse at such tribunals should be steadfast regardless and tied to the EU's broader support for international law.

Of all measures, recognition would score high on the "feel good" scorecard, but it would be the least meaningful in practice. The recognition of Palestine would reaffirm the principle that Europeans do not and will not recognize annexation, yet this is a principle that they have and will foreseeably continue to adhere to in future. At the same time, it would have the anachronistic taste of a European latching on to a political paradigm – the two-state paradigm – that annexation will have brought to a definitive end.

Following this line of reasoning, the opposite political response to annexation would be the diversion of all European funds to Palestine – approximately 30 million euro per month – away from the Palestinian Authority and towards Palestinian civil society, thus returning to the pre-Oslo

set up. EU funds to the Palestinian Authority were always meant, in theory, to support the Palestinian state in the making. As years went by and the prospect of such state became more elusive, those funds continued to flow into the coffers of the PA (and in fact in Israel's coffers too).

Without them, the Authority would collapse and with it Oslo's dream of a two-state solution. No matter how elusive that dream was, no European wanted to reawaken from it. On top, suspending aid to the PA could have serious security implications. For one, it would threaten to halt security cooperation between the PA and Israel. All this has had real political costs. It is precisely that matrix of control,³ within which the PA – and EU funding of it – plays a key role – that has represented a cornerstone of Israel's architecture of occupation.

With annexation, the EU calculus could change. With the chimera of a two-state solution gone, and with Israel-PA security cooperation already grounded to a halt, the political costs of complicity with Israel's occupation through the funding of the PA would become more apparent. This is not to say that EU funds to Palestinians would disappear. They could be diverted away from a stillborn state and towards a society struggling for its individual rights within a one state reality.

³ Jeff Halper, "The Key to Peace: Dismantling the Matrix of Control", in Roane Carey and Jonathan Shainin (eds), *The Other Israel. Voices of Refusal and Dissent*, New York, New Press, 2002. Text available in the website of the Israeli Committee Against House Demolitions (ICAHD): <https://icahd.org/?p=463>.

The third set of actions is legal. This course of action is the only one that is truly non-causal in essence, delineating an EU response grounded upon what is right for Europe, over and above all theoretical speculations of what effect such actions may have. Moreover, this is the only course of action that treats annexation as a step along a spectrum, rather than the be all and end all of the Israeli-Palestinian conflict. It is, in fact, a course of action that has not emerged with the debate on annexation, but which annexation could and should reawaken from its sleep.

This would essentially mean reviving the differentiation agenda, that is the distinction made in all domains of EU-Israel cooperation between the territory of Israel proper – as recognized by international law and thus by the EU – and occupied and eventually annexed territory. The purpose of differentiation is that of ensuring the EU itself abides by international law by not extending benefits to and thus becoming complicit with illegal actions perpetrated by others.

As said, the differentiation agenda is not new. Over the last fifteen years, the EU has taken a number of steps along this path. Amongst these, the 2005 technical arrangement to avoid preferential treatment being extended to settlement products in the framework of the EU-Israel association agreement and the 2013 funding guidelines to prevent Horizon 2020 funds being directed to research entities based in Israeli settlements stand out. Yet over the last five years, this agenda has been dormant due to the mistaken assumption that it would somehow



hamper a (non-existent) peace process.

The threat of annexation provides the opportunity to revamp this agenda, by revisiting existing arrangements and speeding up unfinished business. The EU, for instance, could apply the territorial clause to EU–Israel data transfers, marketing standards for fruit and vegetables and develop new law-based measures based on the post-annexation reality. Revamping the differentiation agenda is something that should happen regardless of whether, when and how annexation happens, of what the Israeli government does, how the Arab world reacts and who sits in the White House.

In other words, revamping the differentiation agenda need not be an alternative to other political or economic steps the EU may take. But unlike these, it does not require political consensus within the EU, as it is not, in fact, a political decision at all. It is something that responds to the logic and integrity of EU law. In this respect, this is an agenda that speaks more about who the EU is rather than merely what it does in the world.

15 July 2020

Istituto Affari Internazionali (IAI)

The Istituto Affari Internazionali (IAI) is a private, independent non-profit think tank, founded in 1965 on the initiative of Altiero Spinelli. IAI seeks to promote awareness of international politics and to contribute to the advancement of European integration and multilateral cooperation. Its focus embraces topics of strategic relevance such as European integration, security and defence, international economics and global governance, energy, climate and Italian foreign policy; as well as the dynamics of cooperation and conflict in key geographical regions such as the Mediterranean and Middle East, Asia, Eurasia, Africa and the Americas. IAI publishes an English-language quarterly (*The International Spectator*), an online webzine (*Affarinternazionali*), three book series (*Global Politics and Security*, *Quaderni IAI* and *IAI Research Studies*) and some papers' series related to IAI research projects (*Documenti IAI*, *IAI Papers*, etc.).

Via Angelo Brunetti, 9 - I-00186 Rome, Italy

T +39 06 3224360

F + 39 06 3224363

iai@iai.it

www.iai.it

Latest IAI COMMENTARIES

Director: Andrea Dessì (a.dessi@iai.it)

- 20 | 51 Nathalie Tocci, *Framing an EU Response to Israel's Annexation of the West Bank*
- 20 | 50 Amer Al-Hussein, *EU Policy and the Humanitarian Crisis in Syria: Time for a Reassessment*
- 20 | 49 Matteo Bonomi, *Has a Red Line Been Crossed in Serbia? Enlargement as Yet Another Crucial Test for the German EU Presidency*
- 20 | 48 Michele Collazzo and Alexandra Tyan, *Emergency Powers, COVID-19 and the New Challenge for Human Rights*
- 20 | 47 Marco Giuli, *Bringing Paris into the EU's Energy Infrastructure Policy: What Future for Gas?*
- 20 | 46 Antonio Bultrini, *EU "Sanctions" and Russian Manoeuvring: Why Brussels Needs to Stay its Course while Shifting Gears*
- 20 | 45 Ferdinando Nelli Feroci, *EU–UK Relations After the High Level Conference*
- 20 | 44 Stefano Cont, *European Defence in the Post-COVID World*
- 20 | 43 Stefano Cont, *Geopolitical Shifts and the Post-COVID-19 World: Europe and the Multipolar System*
- 20 | 42 Claire Darmé, *When the Franco–German "Couple" Starts Making Sense Again*