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OPINION | COMMENTARY

Don't Buy the 'Annexation' Hype

Applying Israeli civilian law to West Bank settlements wouldn't preclude peace or violate Palestinian rights.

By *Eugene Kontorovich*

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Israeli soldiers stand guard near Hebron, June 14.

PHOTO: HAZEM BADER/AGENCE FRANCE-PRESSE/GETTY IMAGES

Israel is expected to announce as early as next week that it is normalizing the legal status of Jewish settlements in the West Bank by fully applying Israeli civilian law. The U.S. is expected to recognize Israeli sovereignty in these areas, marking the culmination of a series of pro-Israel Trump administration policies, as well as the first step in its vision for a negotiated process that could lead to a Palestinian state.

There are many misunderstandings about the planned move—starting with what to call it. It is widely described as an Israeli “annexation” of West Bank territory, also known as

Judea and Samaria. But annexation has a precise meaning in international law: the forcible incorporation by one state of the territory of another state. The land to which Israel seeks to apply its laws isn't legally the territory of any other state, nor has it been since Israel's independence in 1948. Neither the U.S. nor the European Union recognizes the existence of a Palestinian state, and Israel's sovereign claim to the territory is superior to any other country's. Putting this move in the same category as Russia's seizure of Crimea is entirely misleading.

There is no one-word name for what Israel plans to do because it is so technical and pedestrian. Israel already governs the territory in question, as it has since 1967, when it liberated the land from a two-decade Jordanian occupation. But at that time Israel didn't fully apply its domestic laws there, leaving it under military administration. Israel expected the Arab states to sue for peace after the Six-Day War, and it was prepared to transfer some of the land to them. There was no point in hurriedly applying Israeli law to territory that might not remain Israeli after a peace settlement.

The current system of governance was intended to be temporary, but Israel retained it during decades of negotiations, all of which resulted in Palestinian rejection of internationally backed offers of statehood. In the Middle East, nothing is as permanent as the temporary.

Over the past 53 years, Jews have returned to Judea and Samaria, territories from which they had been, to a man, ethnically cleansed by the Jordanians in 1949. Today, more than 400,000 Israelis live in West Bank settlements, still governed by an odd patchwork of military regulations. As a result, property is governed by obscure Ottoman land law. Permitting for infrastructure projects is difficult and burdensome. Most Israeli environmental regulations don't apply. After five decades of Palestinian rejectionism, it is hard to argue that the legal regulation of these communities must remain in limbo until a far-off peace deal is signed.

This doesn't mean giving up on the possibility of a diplomatic settlement. Past peace efforts have been based on the morally repugnant and impractical assumption that the creation of a Palestinian state must be preceded by the expulsion of all Jews from its territory. The acceptance of an ethnic pre-cleansing was one of the reasons the U.S. had previously opposed the application of Israeli civil law: to make life harder and more uncertain for Jewish settlers and thereby encourage them to leave. President Trump's

peace vision rightly rejects this illiberal notion, which hasn't been the basis of realized or proposed peace deals anywhere else in the world, from East Timor to Northern Cyprus.

The application of Israeli law wouldn't affect the treatment of Palestinians. In the West Bank, they would continue to be governed by the Palestinian Authority. Israel's Knesset wouldn't rule over them. The Palestinian Authority would also still have a chance to make peace. While all evidence suggests the authority isn't fundamentally serious about statehood, U.S. recognition of Israeli sovereignty in parts of the West Bank may help bring it to the table. It would show Palestinian leaders that turning down negotiations weakens their hand.

Some Middle East experts say the Israeli move could lead to violence, European sanctions or a reversal of Israel's warming ties with Arab states. But the same predictions of doom were made before Mr. Trump's recognition of Jerusalem and the Golan Heights, and they proved entirely hollow. Critics must explain why this one should be any different.

Others say Israel should desist because its actions would provoke a possible Biden administration. This is heads-I-win-tails-you-lose logic: Israel must accept Democratic policies when Democrats are in office and also when they aren't. President Obama, by contrast, had no problem allowing the United Nations Security Council to pass an anti-Israel resolution even after President-elect Trump asked him to veto it.

U.S. recognition of Israeli sovereignty in parts of the West Bank comes along with upfront Israeli commitments. Israel has agreed to a temporary building freeze in areas of the West Bank that are under Israel's jurisdiction but where Israeli law isn't being extended. This goes beyond what the Trump administration's Vision for Peace requires. Israel also knows that a future U.S. administration could repudiate support for Israeli sovereignty and recognize a Palestinian state anyway.

Israel's friends are right to take such concerns seriously: The plan isn't without risks for Israel. But these can be addressed through a formal memorandum of understanding that would commit the U.S. to recognizing Israeli sovereignty and not recognizing a Palestinian state until the detailed Palestinian prerequisites in the Vision for Peace have been met to America's and Israel's satisfaction. Such an agreement between the U.S. and Israel could be written to limit backsliding by the next U.S. administration.

The application of Israeli civil law to Jewish settlements isn't an annexation or an imposition on Palestinians. It is a long overdue recognition of Israel's legal and moral rights, a step that can no longer be deferred by the Palestinian refusal to make peace.

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