

Policy

Differentiation is legally necessary and politically beneficial. Given the failure of international efforts to curtail Israel's policy of settlement and annexation of occupied territory, a fuller and more diligent implementation of legally required differentiation measures remains one of the few effective means of countering Israel's annexation and settlement of occupied territory – which contravenes international law.

The UN Security Council enshrined this 'differentiation' policy in Resolution 2334 in December 2016, which calls on all states to distinguish between the territory of the state of Israel and the territories it has occupied since 1967.

Differentiation is primarily grounded in the national policies of EU member states, as well as their obligations under international law – which recognises Israel's pre-1967 borders and prohibits acts such as Israel's settlements and extension of its domestic administrative regime to these settlements.

In the last 100 years, this duty of non-recognition has become deeply embedded in the international legal order – with the aim of disincentivising wars and the forcible acquisition of foreign territory. This has created a powerful legal means of challenging Israel's unlawful annexation of occupied Palestinian and Syrian territory. And it has the potential to challenge the incentive structure that underpins Israeli public support for open-ended occupation.

If third parties are serious about opposing Israel's annexation of the West Bank and preserving the territorial basis for a two-state solution (through respect for the Green Line), differentiation is the minimum requirement. Israel's shift from de facto to de jure annexation of the West Bank makes it all the more important that they implement differentiation measures fully and effectively. This would allow third states to apply a legal tourniquet to their relations with Green Line Israel, to ensure these relations do not extend into annexed territory – to the detriment of Europe's legal order and foreign policy objectives.

Beyond occupied Palestine

Defenders of Israel's settlement enterprise regularly criticise the EU, and international law advocates more broadly, of a disproportionate focus on the Israeli occupation, at the expense of other conflict areas. These 'pro-settlement' talking points are a mixture of spin and disinformation, ignoring important factual and legal differences.

Nevertheless, it is true that governments often underappreciate the importance of third states' responsibilities, and business and human rights practices, in situations of occupation and annexation. It is also true that what limited implementation there has been is often uneven. For example, the EU has been much more diligent in enforcing its non-recognition of Russia's annexation of Ukrainian territory than it has been towards Morocco's annexation of Western Sahara.

Instead of deconstructing international law to make internationally unlawful actions permissible – as supporters of the settler movement seem to advocate – a more viable approach would surely be to improve implementation and respect across the board. In other words, third states should be doing more, not less, to meet their international law-based duties in all situations of annexation and occupation.

As Valentina Azarova explained in her 2017 ECFR report [Israel's unlawfully prolonged occupation](#), "the same [international law] framework may be applied to other ongoing situations of prolonged occupation that resemble annexation or otherwise permanently transform the occupied territory, including northern Cyprus, Nagorno-Karabakh, Transnistria, South Ossetia, and Abkhazia." And indeed, repeated rulings by the Court of Justice of the EU determining that the territory of [Western Sahara](#) falls outside of EU-Moroccan agricultural and fishery agreements offers [another window](#) through which to examine third state responsibilities and EU differentiation practices.