



SHUSHAN STREET: Bezalel Smotrich's West Bank Takeover Is What Annexation Looks Like

Dr. Debra Shushan, J Street Director of Policy

March 13, 2023

Less than a week before the [interview](#) in which Finance Minister Bezalel Smotrich stated that Israel should “wipe out” the West Bank town of Huwara, which had been ransacked by a [pogrom](#) perpetrated by hundreds of Israeli settlers, Smotrich had released a different [video](#) on Facebook. In it, Smotrich beamed as he hailed an agreement with Defense Minister Yoav Gallant that will make him, for all intents and purposes, the first civilian governor of the occupied West Bank. Prime Minister Benjamin Netanyahu blessed the deal, and the three men celebrated with an exuberant three-way handshake.

The ramifications of this administrative maneuver are profound. While de facto annexation has been creeping for decades, the Netanyahu government's transfer of responsibility for managing most aspects of civilian life in the occupied West Bank to an Israeli politician is a leap to extending Israeli sovereignty, de jure, into the West Bank.

Simply put: Smotrich's West Bank takeover is tantamount to annexation.

Since Israel conquered the West Bank and additional territories during the 1967 war, the General in charge of Israel's Central Command served as the governing authority of the West Bank. This is consistent with international law governing [belligerent occupation](#), according to which occupied territory must be administered by the occupying army. In managing the occupied territory, the military commander is permitted under international law to consider [only two things](#): security requirements and the needs of the local population (in this case, Palestinians). In 1983, Israel's High Court [ruled](#) that the military commander was prohibited from considering Israel's own national, economic, or social interests in administering the territory.

The extent of Smotrich's massive new powers is [not fully public](#), since the annex that details them (“Appendix B” to the Smotrich-Gallant agreement) has not been released. Here's what we know from the [agreement](#) itself. As indicated in the agreement and enabled by [Knesset's passage](#) in December of an amendment to Israel's Basic Law on the Government, Smotrich will have authority over virtually all aspects of civilian life in Israeli-controlled areas of the West Bank. He will exercise this in his capacity as an additional minister in the Department of Defense, via oversight of the Civil Administration and the Coordinator of Government Activities in the Territories (COGAT). In addition, a new Settlement Administration will be established under his authority. Among its functions will be leading and implementing “equal citizenship” reform – which will speed the process through which Israeli laws are [“pipelined”](#) to apply to Israeli settlers, while military law continues to apply to their Palestinian neighbors. This reform will also streamline the provision of government ministries' provision of services to settlers. The Settlement Administration is also charged with “regularizing” illegal settlement outposts.

[Reports specify](#) additional broad powers allocated to Smotrich. These include: authority over the planning and construction bureaucracy that authorizes construction for settlements; land

purchases, surveys, and registration of land as state land in Area C; declaration and development of nature reserves (which are often [used as tools](#) to expropriate Palestinian land); and enforcement against unauthorized construction in Area C, which [will likely](#) “lead to a situation in which illegal [Israeli] settlement outposts are not removed as they have been in the past, but illegal Palestinian construction is swiftly demolished.”

Defense Minister Gallant will retain overriding security control over the West Bank, though civilian matters (which can directly impact the security situation) are almost entirely under Smotrich’s authority. One exception to the latter is that Central Command of the IDF will have the [authority](#) to initiate enforcement against illegal settler structures when “required for security reasons”), but only after notifying Smotrich. Aside from that, the Smotrich-Gallant agreement contains clauses designed to make it [appear](#) that Smotrich will remain subordinate to the Minister of Defense, but in reality Gallant will only be able to overrule him in extreme cases.

As the Israeli Law Professors’ Forum for Democracy determined in a recent [position paper](#), the transfer of the responsibility for managing the the civilian affairs in the occupied West Bank to Bezalel Smotrich in his capacity as an additional minister in the Ministry of Defense explicitly subordinates management of the territory to Israel’s own national considerations apart from security requirements. The authors note that this is “in complete contradiction to international law,” particularly the Hague Conventions of 1907, which Israel recognizes as applicable to the West Bank – and on which it [relies](#) as it exercises authority there. In the [words](#) of prominent Israeli human rights lawyer Michael Sfard, “Transferring powers to Israeli civilian hands is an act of de jure annexation because it entails removing power from the occupying military and placing it directly in the hands of the government - this is an expression of sovereignty.” Brig. Gen. (res.) Udi Dekel of Israel’s Institute for National Security Studies [agrees](#) that this development indicates there “is no longer a slow process of annexation, but rather, accelerated annexation.” Further, Israel’s Military Advocate General [warned](#) Netanyahu that transferring authority to Smotrich could be viewed by the International Court of Justice and other international bodies as annexation.

The transfer of primary civil authority over the occupied West Bank to Smotrich is a clear indication of annexation, but it is not the only one. Others include the first guiding principle of the new government, which stipulates Jewish supremacy on both sides of the Green Line distinguishing Israel from the occupied West Bank. It [states](#), “The Jewish people have an exclusive and inalienable right to all parts of the Land of Israel. The government will promote and develop the settlement of all parts of the Land of Israel — in the Galilee, the Negev, the Golan and Judea and Samaria.” The government’s [steps](#) to advance thousands of new settlement housing units, “legalize” wildcat outposts, and connect other still-illegal outposts to state-provided infrastructure put this guiding principle into effect.

Nonetheless, there are those who insist that it is wrong to speak of annexation given that “the Government of Israel is not currently considering any proposals to annex territory. In fact,” a right-leaning organization [told lawmakers](#), “any contemplation of annexation [by Israel] was suspended when the UAE entered the Abraham Accords.”

Recent work by Israeli professors Tamar Megiddo, Ronit Levine-Schnur, and Yael Berda indicates how problematic such claims are. They note that because annexation is an “international crime” that “gives rise to international responsibility,” countries will “rarely volunteer to trigger the consequences of being classified as aggressors” by declaring annexation. Megiddo, Levine-Schnur, and Berda offer criteria for determining when annexation is taking place, and [conclude](#) that the transfer of West Bank authority to Smotrich and other measures “qualify as de jure annexation.” In their words, the Netanyahu government’s deferral of a formal declaration of annexation “is a simple attempt at gaslighting.”

The consequences of annexation are likely to prove dire for the human rights of Palestinians in the West Bank, and also for Israel’s democracy. The [plans](#) that Bezalel Smotrich, a self-proclaimed “[fascist homophobe](#),” has long advocated call for the dissolution of the Palestinian Authority, “erasing the paradigm of the Palestinian state from public consciousness,” direct imposition of Israeli law in the West Bank, boosting Israeli settlement activity, and paying West Bank Palestinians to emigrate abroad.

As Justice Minister Yariv Levin – Smotrich’s partner in Knesset’s Land of Israel Caucus – [noted](#) nearly a decade ago, judicial overhaul is a prerequisite for their annexationist designs, as it would become “much easier for us to take tangible steps on the ground that strengthen the process of advancing sovereignty.” More recently, National Missions Minister Orit Strock of Smotrich’s Religious Zionism Party [pointed](#) to Israel’s Supreme Court as an “obstacle” to “legalizing” settlement outposts, and noted, “so long as we do not get it back down to its natural size, we will not be able to get anything done.”

How will the Biden administration respond? US Ambassador to Israel Tom Nides [stated](#) in November that the US “will fight” any West Bank annexation efforts by Israel. Assistant Secretary of State for Near East Affairs Barbara Leaf reportedly [told](#) Israeli officials two weeks before the Smotrich-Gallant agreement was concluded that the Administration would strongly oppose any transfer of authority over the West Bank to Bezalel Smotrich – and would regard it as a step toward annexation.

With the far-right Netanyahu government attempting to eliminate the possibility of a two-state solution – trampling Israeli democracy, Palestinian human rights, and international law in the process – US national interests and credibility are on the line. It’s time for the Biden administration to [act accordingly](#).