

# BOFAXE

## NEW PEAK IN THE DISPUTE CONCERNING THE GOLAN HEIGHTS ON THE RECOGNITION OF THE GOLAN HEIGHTS AS ISRAELI TERRITORY BY DONALD TRUMP

— On Monday, 25 March 2019, US President Donald Trump accepted Israel's sovereignty over the Golan Heights by stating that "the United States recognizes that the Golan Heights are part of the State of Israel" (see [here](#)). The Golan Heights are an area located in Syria close to the Israeli border and are of strategic importance, given their location in between the two states. The Six-Day War in 1967 resulted in the occupation of two thirds of the Golan Heights by Israel and was followed by its annexation in 1981. The issue of the Golan Heights has been addressed various times by the UN Security Council (UN SC) – e.g. in [Resolution 242](#) (1967) and in [Resolution 497](#) (1981) – which set out that both Israel's occupation and annexation are unlawful. The recognition by President Trump is therefore at variance with the Security Council's explicit resolutions and reignites this territorial dispute.

An annexation is the forcible acquisition of territory belonging to another state (see Ipsen, *Völkerrecht*, 7<sup>th</sup> ed., p. 93). The general prohibition of the use of force is enshrined in [Art. 2 \(4\) UN Charter](#) and for annexations further specified in the 1970 [Friendly Relations Declaration](#). The latter – though as a resolution by the UN General Assembly (UN GA) not binding – reflects customary international law and provides that annexations are unlawful. Accordingly, the UN SC condemned the annexation in Resolution 497, stating that the Israeli exercise of sovereign rights in the Golan Heights is "null and void". Notably, this resolution was adopted unanimously, meaning with US support, and, according to Art. 25 UN Charter, all states have to accept and carry out the resolutions by the UN SC. Additionally, as provided not only by the Friendly Relations Declaration, but also by Art. 5 (3) of the [UN GA Resolution 3314](#) (1974) on the definition of aggression, the recognition of an act of aggression, such as an annexation, is unlawful.

Nevertheless, President Trump signed the abovementioned proclamation. According to President Trump, the recognition is required by "unique circumstances" and necessary to achieve future peace in the region. While this sets a precedence of accepting the legality of annexations, this unilateral statement does not affect the legality of the annexation. Nevertheless, the recognition itself by the USA is inconsistent with international law, unless the legal classification of Israel's annexation would have changed since 1981. In this case, the USA would violate Art. 25 UN Charter in connection with UN SC Resolution 497 as well as customary international law as reflected in the abovementioned UN GA resolutions. Arguably, the recognition of an annexation can also amount to a violation of Art. 2 (1) UN Charter. The ICJ specified in its 1986 [Nicaragua](#) judgment that the prohibition of interventions is not limited to the direct use of force, but also encompasses indirect interventions, such as supporting military activities. The legality of President Trump's recognition therefore depends crucially on the legality of Israel's activities in the Golan Heights.

An annexation, however, cannot lead to the acquisition of territory by the lapse of time (in line with the principle "*ex iniuria ius non oritur*"), as this would foil Art. 2 (4) UN Charter (see for the related case of Crimea and the Russian annexation: Behlert, IFHV Working Papers, Vol. 5, Nr. 2 (see [here](#))). Moreover, it is no "unique circumstance" that the use of force might be reciprocated with force, unlike President Trump seems to suggest. Besides, Art. 39 UN Charter vests the authority to determine the existence of a threat to international peace and security on the UN SC, not on the head of state of one country alone. Therefore, this annexation cannot be justified with considerations of peace or security (irrespective of the fact that it remains unclear on which legal grounds exactly President Trump bases this justification at all).

In conclusion, not only Israel's annexation, but also President Trump's recognition of Israeli sovereignty over the Golan Heights is inconsistent with international law.