

Iran's compliance with the JCPOA, in which Iran had agreed to limit its nuclear program, if the country did not receive respite from sanctions within sixty days.³⁰

STATE DIPLOMATIC AND CONSULAR RELATIONS

United States Recognizes Israeli Sovereignty Over the Golan Heights

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In a reversal of decades of U.S. foreign policy, on March 25, 2019, President Trump issued a presidential proclamation recognizing Israeli sovereignty over the Golan Heights, a strategic piece of territory captured by Israel from Syria during the Six-Day War in 1967. This move, which generated international criticism, is the latest in a series of actions by the Trump administration that advance the interests of the Israeli government.

On March 21, 2019, Trump tweeted that “[a]fter 52 years it is time for the United States to fully recognize Israel’s Sovereignty over the Golan Heights, which is of critical strategic and security importance to the State of Israel and Regional Stability!”¹ In remarks later that day, Israeli Prime Minister Benjamin Netanyahu, joined by Secretary of State Mike Pompeo in Jerusalem, stated that:

President Trump has just made history. I called him. I thanked him on behalf of the people of Israel. He did it again. First he recognized Jerusalem as Israel’s capital and moved the U.S. embassy here. Then he pulled out of the disastrous Iran treaty and re-imposed sanctions. But now he did something of equal historic importance. He recognized Israel’s sovereignty over the Golan Heights, and he did so at a time when Iran is trying to use Syria as a platform to attack and destroy Israel. And the message that President Trump has given the world is that America stands by Israel.²

Four days later, Trump formalized his position by issuing a presidential proclamation declaring the new U.S. position on the status of the disputed territory. It reads, in part:

The State of Israel took control of the Golan Heights in 1967 to safeguard its security from external threats. Today, aggressive acts by Iran and terrorist groups, including

³⁰ Tamer El-Ghobashy, Michael Birnbaum & Carol Morello, *Iran Announces It Will Stop Complying With Parts of Landmark Nuclear Deal*, WASH. POST (May 8, 2019), at https://www.washingtonpost.com/world/iran-to-take-steps-to-reduce-its-commitment-to-landmark-nuclear-deal/2019/05/07/90cc3b1c-70fe-11e9-9331-30bc5836f48e_story.html?utm_term=.525819244bc3.

¹ Donald J. Trump (@realDonaldTrump), TWITTER (Mar. 21, 2019, 9:50 AM), at https://twitter.com/realDonaldTrump/status/1108772952814899200?ref_src=twsrc%5Etfw [<https://perma.cc/4BQY-66CN>].

² U.S. Dep’t of State Press Release, Remarks with Israeli Prime Minister Benjamin Netanyahu Before Dinner (Mar. 21, 2019), at <https://www.state.gov/secretary/remarks/2019/03/290554.htm> [<https://perma.cc/SX9A-87GE>]; Scott R. Anderson, *Recognizing Israel’s Claims to the Golan Heights: Trump’s Decision in Perspective*, LAWFARE (Mar. 22, 2019), at <https://www.lawfareblog.com/recognizing-israels-claims-golan-heights-trumps-decision-perspective> (observing that “[l]eft unclear [from Trump’s tweet] was whether the president was merely calling for U.S. recognition . . . or actually implementing it” and that “the first person to confirm the change in U.S. policy was none other than Israeli Prime Minister Benjamin Netanyahu”).

Hizballah, in southern Syria continue to make the Golan Heights a potential launching ground for attacks on Israel. Any possible future peace agreement in the region must account for Israel's need to protect itself from Syria and other regional threats. Based on these unique circumstances, it is therefore appropriate to recognize Israeli sovereignty over the Golan Heights.³

In a signing ceremony with Prime Minister Netanyahu and U.S. Ambassador to Israel David Friedman on the same day, Trump remarked:

Under my administration, the unbreakable alliance between the United States and Israel has never been stronger. You read things; you hear things. It's never been stronger. Just remember that. People talk, but it's only talk. Our relationship is powerful.

At this moment, the American Embassy stands proudly in Jerusalem, the capital the Jewish people have established. And they've wanted the Embassy for many, many years, for many decades, and frankly, through many Presidents. And we got it done. Not only did we get it done, we also got it built at a slight cost saving, like about \$1 billion cost saving.⁴

For his part, Netanyahu emphasized the importance of the Golan Heights to Israel's strategic interests.⁵ He also lavished praise on Trump:

In the long sweep of Jewish history, there have been a handful of proclamations by non-Jewish leaders on behalf of our people in our land: Cyrus the Great, the great Persian king; Lord Balfour; President Harry S. Truman; and President Donald J. Trump. And you, Mr. President—Mr. President, you've done it not once but twice, with your bold proclamation on Jerusalem and with your bold proclamation today on the Golan.⁶

The U.S. decision was made several weeks before Israeli parliamentary elections on April 9, 2019, in which Netanyahu was locked in a close reelection campaign against rival Benny Gantz.⁷ Netanyahu had reportedly asked Trump to recognize the Golan Heights as part of Israel on at least two prior occasions: once in 2017,⁸ and again in 2018, after Trump declared

³ Donald J. Trump, Proclamation 9852 – Recognizing the Golan Heights as Part of the State of Israel, 2019 DAILY COMP. PRES. DOC. No. 172, at 3 (Mar. 25). As a matter of U.S. domestic law, the Supreme Court held in 2015 that “the power to recognize foreign states and governments and their territorial bounds is exclusive to the Presidency.” *Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2094 (2015).

⁴ Remarks with Prime Minister Benjamin Netanyahu of Israel on Signing a Proclamation Recognizing the Golan Heights as Part of the State of Israel and an Exchange with Reporters, 2019 DAILY COMP. PRES. DOC. No. 171, at 1 (Mar. 25).

⁵ *Id.* at 3.

⁶ *Id.*

⁷ Liz Sly, Loveday Morris & Suzan Haidamous, *Trump's Golan Tweet Inflames Regional Tensions as Syria Vows to Recover the Strategic Plateau*, WASH. POST (Mar. 22, 2019), at https://www.washingtonpost.com/world/middle-east/trumps-golan-tweet-inflames-regional-tensions-as-syria-vows-to-recover-the-occupied-land/2019/03/22/ee13134e-4c1a-11e9-8cfc-2c5d0999c21e_story.html?utm_term=.36c6e58004f4.

⁸ Luke Baker, *Netanyahu Asks Trump to Recognize Israeli Sovereignty Over Golan Heights*, REUTERS (Feb. 16, 2017), at <https://www.reuters.com/article/us-usa-trump-israel-golan/netanyahu-asks-trump-to-recognize-israeli-sovereignty-over-golan-heights-idUSKBN15U2XX>.

that he would move the U.S. embassy in Israel to Jerusalem.⁹ In an interview following his Twitter announcement, Trump stated that he had been contemplating the move for a “long time” and disclaimed any intention to help Netanyahu in the elections, explaining, “I wouldn’t even know about that. . . . I have no idea. I hear he is doing okay?”¹⁰ U.S. National Security Advisor John Bolton justified the decision on national security grounds, writing on Twitter that “[t]o allow Golan Heights to be controlled by the likes of the Syrian or Iranian regimes would turn a blind eye to the atrocities of Assad and the destabilizing presence of Iran in the region. Strengthening Israel’s security enhances our ability to fight common threats together.”¹¹

Captured by Israel during the Six-Day War in June 1967, the Golan Heights is a plateau located between northeastern Israel and southwestern Syria that is home to approximately 20,000 Israeli settlers and 20,000 Syrian Druze.¹² The international community has never recognized Israeli sovereignty over the Golan Heights, consistent with the view that an occupying power cannot unilaterally annex territory.¹³ In November 1967, the UN Security Council unanimously adopted Resolution 242, the most significant provision of which:

Affirms that the fulfillment of [UN] Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

- (i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;
- (ii) Termination of all claims or states of belligerency and respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force[.]¹⁴

Following Resolution 242, Israel continued to occupy the Golan Heights, and Syria attempted unsuccessfully to seize back control during the Yom Kippur War of 1973. Security Council Resolution 338, which called for an end to the Yom Kippur War, also called for the immediate implementation of Resolution 242 after the cease fire.¹⁵ The following

⁹ Karen DeYoung & Carol Morello, *In Trump’s Golan Heights Announcement, Politics Overshadowed Security*, WASH. POST (Mar. 23, 2019), at https://www.washingtonpost.com/world/national-security/how-irans-moves-supercharged-trumps-announcement-on-golan-heights/2019/03/22/80ff2d06-4cce-11e9-b79a-961983b7e0cd_story.html?utm_term=.2e40bc908463.

¹⁰ Sly, Morris & Haidamous, *supra* note 7.

¹¹ John Bolton (@AmbJohnBolton), TWITTER (Mar. 22, 2019, 8:49 AM), at <https://twitter.com/ambjohnbolton/status/1109119841645068289?lang=en> [<https://perma.cc/A5V8-PY36>]; see also DeYoung & Morello, *supra* note 9.

¹² *Golan Heights Profile*, BBC (Mar. 25, 2019), at <https://www.bbc.com/news/world-middle-east-14724842>.

¹³ See EYAL BENVENISTI, *THE INTERNATIONAL LAW OF OCCUPATION* 5–6 (2004) (“The foundation upon which the entire law of occupation is based is the principle of inalienability of sovereignty through the actual or threatened use of force. Effective control by foreign military force can never bring about by itself a valid transfer of sovereignty. From the principle of inalienable sovereignty over a territory spring the constraints that international law imposes upon the occupant.”).

¹⁴ SC Res. 242, para. 1 (Nov. 22, 1967). A few months earlier, the then Legal Adviser of the Israeli Minister of Foreign Affairs, Theodor Meron, had advised the Israeli government that the establishment of civilian settlements in the occupied Golan Heights was prohibited by the Fourth Geneva Convention. Theodor Meron, *The West Bank and International Humanitarian Law on the Eve of the Fiftieth Anniversary of the Six-Day War*, 111 AJIL 357, 358 (2017).

¹⁵ SC Res. 338, paras. 1–2 (Oct. 22, 1973).

year, Resolution 350 established a UN peacekeeping force in the Golan Heights that continues to this day.¹⁶

Several years later, in 1981, Israel legislated to make Israeli law applicable to the Golan Heights,¹⁷ a development that was perceived as a move towards annexation. The Security Council responded by passing Resolution 497, “[d]ecid[ing] that the Israeli decision to impose its laws, jurisdiction and administration in the occupied Syrian Golan Heights is null and void and without international legal effect” and demanding that Israel rescind its decision.¹⁸ When Israel failed to comply with the resolution, the Security Council considered another resolution that would have “decide[d] that all member states should consider applying concrete and effective measures in order to nullify the Israeli annexation of the Syrian Golan Heights and to refrain from providing any assistance or aid to and cooperation with Israel, in all fields,” but that resolution was vetoed by the United States.¹⁹

In keeping with the international community, past presidential administrations declined to recognize the Golan Heights as part of Israel and at times signaled resistance to Israeli efforts to assert sovereignty over the territory. In 1981, for example, following Israel’s passage of the legislation mentioned above, the Reagan administration suspended an agreement with Israel providing for greater military cooperation between the two countries.²⁰ More recently, the Obama administration turned down an Israeli request to recognize Israeli sovereignty over the Golan Heights in 2015,²¹ and it reiterated the view that the Golan Heights was occupied territory following remarks by Netanyahu that Israel would never cede control of the Golan Heights.²²

While recognizing the Golan Heights to be part of Israel, the Trump administration has asserted that its decision should not be taken as a precedent justifying the acquisition of territory through conquest more generally. When asked about this issue at a press briefing on March 26, Secretary of State Pompeo responded, “This is an incredibly unique situation. Israel was fighting a defensive battle to save its nation, and it cannot be the case that a UN

¹⁶ SC Res. 350, para. 3 (May 31, 1974); see also United Nations Peacekeeping, UNDOF Fact Sheet, at <https://peacekeeping.un.org/en/mission/undof> (noting the deployment of roughly 1,100 mission members as of March 2019).

¹⁷ Israel Min. For. Aff., Golan Heights Law (Dec. 14, 1981), at <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/golan%20heights%20law.aspx> [<https://perma.cc/HRV2-P572>].

¹⁸ SC Res. 497, para. 1 (Dec. 17, 1981).

¹⁹ *U.S. Vetos U.N. Resolution on Golan Annexation*, N.Y. TIMES (Jan. 21, 1982), at <https://www.nytimes.com/1982/01/21/world/us-vetos-un-resolution-on-golan-annexation.html>; *U.N. Resolution on Golan*, N.Y. TIMES (Jan. 21, 1982), at <https://www.nytimes.com/1982/01/21/world/un-resolution-on-golan.html?module=ArrowsNav&contentCollection=World&action=keypress®ion=FixedLeft&pgtype=article>.

²⁰ Bernard Gwertzman, *U.S. Suspends Strategic Pact and Arms Deal with Israel Over Annexation of Golan*, N.Y. TIMES (Dec. 19, 1981), at <https://www.nytimes.com/1981/12/19/world/us-suspends-strategic-pact-and-arms-deal-with-israel-over-annexation-of-golan.html>.

²¹ Baker, *supra* note 8.

²² U.S. Dep’t of State Press Release, Daily Press Briefing – April 18, 2016, at 2:00–3:00 (Apr. 18, 2016), at <https://2009-2017.state.gov/r/pa/prs/dpb/2016/04/255946.htm> [<https://perma.cc/NB8Y-HQEK>] (quoting then State Department spokesperson John Kirby as saying in response to Netanyahu’s remarks that “the U.S. position on the status of the Golan Heights is longstanding and is unchanged. Every administration on both sides of the aisle since 1967 has maintained that those territories are not part of Israel. The conditions under which those territories are ultimately returned should be decided through negotiations between the respective parties.”).

resolution is a suicide pact. It simply can't be, and that's the reality that President Trump recognized in his executive order yesterday."²³ In an appearance several weeks later before a Senate appropriations subcommittee, Pompeo and Senator Dick Durbin of Illinois engaged in the following dialogue:

- Durbin: Draw a historic parallel for me between the decision to say to Israel that they could claim sovereignty over the Golan Heights, a territory that was seized during the 1967 war from Syria, and the Russian claims that they can claim Crimea, because they happened to invade it as well.
- Pompeo: Senator, the two situations could not be more starkly different . . . The Golan Heights was—the Israelis ended up with the Golan Heights as the result of having been attacked. . . They were at risk of their very nation being overrun . . . and they defended themselves, and they retained that terrain to continue to defend themselves from the murderous regimes in Syria. Russia, on the other hand, wasn't on the defensive. Russia chose at their own moment in time to go seize land from a people that posed no threat to them whatsoever.
- Durbin: So our diplomatic position is that land seized in the course of a war is then the spoils for those who happen to occupy it?
- Pompeo: I'll say two things about that. So there's international law doctrine on this very point. We don't have time to begin to go through it today. But [I'm] happy to have a team go over and walk you through that element of international law. But the second thing—it's just a practical policy matter. If it's the case that there is absolutely no cost for aggression. That is—if you attack, and you have some of your land taken as a result of an attack that you undertook and you get it back just cause you didn't succeed. . . . That's a bad incentive system to set up.²⁴

In the immediate aftermath of Pompeo's testimony, the State Department did not provide a public explanation regarding how the U.S. recognition of the Golan Heights as part of Israel was consistent with international law.²⁵ On May 14, 2019, Pompeo and Friedman co-authored an editorial arguing that "President Trump's Golan proclamation is entirely consistent with Resolution 242."²⁶ They interpreted Resolution 242 as "provid[ing] that Israel would withdraw from some—but not necessarily all—territory captured in 1967."²⁷ In their view, U.S. recognition of the Golan Heights as part of Israel "afforded Israel the only

²³ U.S. Dep't of State, Remarks to the Press (Mar. 26, 2019), at <https://www.state.gov/remarks-to-the-press-7> [<https://perma.cc/W2MK-CJHP>].

²⁴ *State Department Fiscal Year 2020 Budget Request*, C-SPAN, at 49:00–51:00 (Apr. 9, 2019), at <https://www.c-span.org/video/?459622-1/secretary-state-pompeo-testifies-fiscal-year-2020-budget-request&start=2953>.

²⁵ See Julian Borger, *Pompeo Flounders on Why Annexation is Good for the Golan But Not for Crimea*, *GUARDIAN* (Apr. 11, 2019), at <https://www.theguardian.com/us-news/2019/apr/11/golan-heights-crimea-pompeo-us-state-department> (reporting that the State Department did provide follow-up information that reiterated the situational differences between the situation of the Golan Heights and that of Crimea).

²⁶ Michael R. Pompeo & David Friedman, *International Law Backs the Trump Golan Policy*, *WALL ST. J.* (May 14, 2019), at <https://www.wsj.com/articles/international-law-backs-the-trump-golan-policy-11557875474>.

²⁷ *Id.* (further noting that Israel had returned substantial territory in Sinai that it had occupied during the Six Day War).

secure and recognized boundary that can exist” in light of the appalling behavior of the Syrian government over the years—and thereby furthered “the objective of Resolution 242.”²⁸

The U.S. decision to recognize the Golan Heights as part of Israel generated considerable international resistance. Following Trump’s announcement over Twitter, Syria sent a letter to the UN Security Council asking it to “take practical measures to ensure that the council is fulfilling . . . its mandate in the implementation of its [Golan Heights] resolutions . . .”²⁹ The European Union issued a statement saying that its position on the status of the Golan Heights had “not changed” and that it “does not recognise Israeli sovereignty over the occupied Golan Heights.”³⁰ In a special meeting of the Security Council convened to address the issue, Belgium, China, the Dominican Republic, Equatorial Guinea, France, Germany, Indonesia, Kuwait, Poland, Russia, South Africa, and the United Kingdom criticized the U.S. decision, reiterated the view that the Golan Heights is occupied territory, or did both.³¹ The representative of South Africa described the U.S. recognition as “a unilateral action that is a blatant violation of international law and numerous relevant Security Council resolutions.”³² In his remarks, the U.S. delegate emphasized that the decision was “of critical strategic and security importance to the State of Israel,” highlighted the security concerns that would arise for Israel were Syria to control the Golan Heights, and expressed strong support for the ongoing UN peacekeeping mission.³³

The decision to recognize Israeli sovereignty over the Golan Heights follows other actions by the Trump administration that reflect a distinctively close alignment with the Israeli government. These include the U.S. recognition of Jerusalem as the capital of Israel,³⁴ the closure of the Palestinian Liberation Organization (PLO) office in Washington, D.C.;³⁵ and sharp curtailments of U.S. funding to Palestinian-related aid.³⁶ With Netanyahu’s apparent reelection to a fifth consecutive term as prime minister and subsequent failure to form a government,³⁷ the prospects of renewed peace negotiations between the Israelis and Palestinians remain uncertain. Several days before the election in April of 2019, Netanyahu promised

²⁸ *Id.* The editorial also described as “baseless” the statement of UN Secretary-General Antonio Guterres that “Israel’s 1981 annexation of the Golan [was] ‘null and void and without international legal effect.’” *Id.* The editorial did not discuss Resolution 497, which uses this language. See *id.* For a critique of the editorial, see Oona Hathaway & Scott Shapiro, *Trump’s Golan Policy and Its Threat to the Post-War International Legal Order*, JUST SECURITY (May 16, 2019), at <https://www.justsecurity.org/64141/trumps-golan-policy-and-its-threat-to-the-post-war-international-legal-order>.

²⁹ AFP & Times of Israel Staff, *Syria Asks Security Council to Uphold Resolutions on Golan*, TIMES ISRAEL (Mar. 23, 2019), at <https://www.timesofisrael.com/syria-asks-security-council-to-uphold-resolutions-on-golan>.

³⁰ Delegation of the European Union to Israel Press Release, Declaration by the High Representative on Behalf of the EU on the Golan Heights (Mar. 27, 2019), at https://eeas.europa.eu/delegations/israel/60274/declaration-high-representative-behalf-eu-golan-heights_en.

³¹ United Nations Press Release, Security Council Members Regret Decision by United States to Recognize Israel’s Sovereignty Over Occupied Syrian Golan (Mar. 27, 2019), at <https://www.un.org/press/en/2019/sc13753.doc.htm>.

³² *Id.*

³³ U.S. Mission to the United Nations Press Release, Remarks at a UN Security Council Meeting on the UN Disengagement Observer Force and the Golan Heights (Mar. 27, 2019), at <https://usun.state.gov/remarks/8993> [<https://perma.cc/T5R3-MALC>].

³⁴ Jean Galbraith, Contemporary Practice of the United States, 112 AJIL 306, 306 (2018).

³⁵ Jean Galbraith, Contemporary Practice of the United States, 113 AJIL 143, 147 (2019).

³⁶ *Id.* at 148–49.

³⁷ See Isabel Kershner, *After Coalition Talks Crumble, Israel on Course for Another Election*, N.Y. TIMES (May 29, 2019), at <https://www.nytimes.com/2019/05/29/world/middleeast/israel-election-benjamin-netanyahu.html>

to annex “some or all” of the West Bank if he was reelected.³⁸ When pressed by the Senate Appropriations subcommittee on how the United States would respond to such a move, Pompeo repeatedly avoided giving a direct answer.³⁹

STATE RESPONSIBILITY AND LIABILITY

D.C. District Court Enters Over \$300 Million Default Judgment Award Against Syria for the Death of Marie Colvin
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On February 1, 2019, the United States District Court for the District of Columbia granted a motion for default judgment and entered a \$302,511,836.00 award against the Syrian Arab Republic (“Syria”).¹ The court found the Syrian government liable for the death of Marie Colvin, who died in an artillery shelling on February 22, 2012, at a media center in the city of Homs. Colvin was a heralded war correspondent who had previously “cover[ed] conflict zones in Iraq, Chechnya, the Balkans, East Timor, Sri Lanka, Sierra Leone, and Libya.”² Colvin’s heirs brought suit, claiming that because Syria had been designated a “state sponsor of terrorism,” it could be held liable for an extrajudicial killing of a U.S. national under the Foreign Sovereign Immunities Act (FSIA).³ Judge Amy Berman Jackson concluded that the plaintiffs met the evidentiary burden required to support their claim after finding personal and subject matter jurisdiction.⁴

Marie Colvin’s death occurred during the conflict in Syria, which began in 2011. Relying on evidence presented by the plaintiffs, as Syria did not participate in the case, the court found that her death came as a result of the Assad regime’s deliberate targeting of a civilian media center.⁵ The court concluded that the highest military planning group within the Syrian government had ordered military operations “against those who tarnish the image of Syria in foreign media and international organizations.”⁶ Syrian military forces focused on Homs

(describing Netanyahu’s failure to form a government and the scheduling of new elections, tentatively set for September 17).

³⁸ Edward Wong & Catie Edmondson, *Pompeo Refuses to Say What U.S. Would Do if Israel Annexes West Bank*, N.Y. TIMES (Apr. 9, 2019), at <https://www.nytimes.com/2019/04/09/us/politics/pompeo-israel-west-bank.html>.

³⁹ *Id.*; see generally C-SPAN, *supra* note 24.

¹ Colvin v. Syrian Arab Republic, 363 F. Supp. 3d 141, 146 (D.D.C. 2019).

² *Id.* at 149.

³ *Id.* at 146 & nn. 1–2, 153; see also Complaint at 28–30, Colvin v. Syrian Arab Republic, 363 F. Supp. 3d 141 (D.D.C. 2019) (No. 16-1423).

⁴ Colvin, 363 F. Supp. 3d at 146.

⁵ *Id.* at 146–47 & nn. 3–4. The court drew upon expert reports and upon declarations provided by Syrian government defectors and by individuals present at the events. The expert reports were authored by Ewan Brown (a consultant for the Commission for International Justice and Accountability); David Kaye (the UN special rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression); and Robert Ford (the U.S. ambassador to Syria at the time of the events in question). *Id.* at n. 3.

⁶ *Id.* at 148 (quoting the expert report of Ewan Brown).