

Why Israeli Rule of Golan Is Lawful -- and Wise

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TEL AVIV—In exercising its right of self-defense in the Six Day War, Israel seized from Syria the Golan Heights, a strategically important plateau that looms over northeastern Israel, rising sharply from the eastern bank of the Sea of Galilee to a height of more than 3,000 feet. Since June 1967 a powerful consensus has prevailed in the international community, including the United States, that the Golan is occupied territory.

The Syrian civil war, which has been raging for almost five years, has done little to disturb the consensus. But the chaos in Syria has weighty legal and political ramifications that should impel the international community to revise its understanding of the Golan's status.

Modern Syria, which was born in 1946, has ceased to exist. Bashar al-Assad—who hails from the minority Alawite community, an offshoot of Shia Islam—retains the title of president of Syria though he now controls less than 25 percent of his former country. Despite recent advances by government troops, the Islamic State and other Sunni Islamists continue to dominate much of the territory Assad once governed.

Assad's quest to retain power has produced carnage of epic proportions. When the dictator moved to crush the anti-regime, pro-democracy protests that broke out in Syria in early 2011, the country's population numbered approximately 22 million. Since then violence has taken at least 250,000 lives, with more recent reports putting the figure significantly higher. Between 1 million and 1.5 million people have been wounded. More than 5 million refugees have fled to neighboring countries and to Europe. The Economist estimated in September 2015 that an additional 7 million people have been forced from their homes but remain within Syria's official borders. The United Nations Office for the Coordination of Humanitarian Affairs believes that more than 13 million Syrians are in need of humanitarian assistance.

Few informed observers think that a functioning nation-state can be reconstructed out of the warring Alawite, Shia, Sunni, Kurd, and Druze factions into which Syria has collapsed. The termination, shortly after they began in early February, of peace talks in Geneva suggests that much blood is still to be spilled.

Foreign funds and fighters sustain the killing. With much of the Syrian army having crumbled, Assad is propped up by Shiite Hezbollah fighters from Lebanon; the newly cash-flush Iranians who are pocketing \$100 billion or more as a result of the U.S.-brokered deal

over their nuclear program; and the Russians, whose air power has inflicted punishing blows on Assad's enemies. Saudi Arabia continues to support Sunni rebels.

In these dramatically transformed circumstances, Israel has the strongest legal claim to the Golan Heights. Its political claim is stronger still.

Until the Six Day War, Syria used a heavily fortified Golan as a platform to fire at Israeli villages below. Damascus also permitted the Palestinian Liberation Organization to use the Golan as a staging ground for terrorism. In the immediate aftermath of the Six Day War, Israel offered to negotiate the status of all the territories it had seized—which included the West Bank from Jordan and the Gaza Strip and Sinai Peninsula from Egypt. Syria, along with Israel's other Arab neighbors, emphatically rejected the offer.

In December 1981, the Knesset applied Israeli law to the approximately 500 square miles of the Golan Heights under Israeli control. Syria, Jordan, and Egypt swiftly accused Israel of unlawfully annexing the territory. Much of the Arab world followed suit. The Europeans also regarded the move as contrary to international law. The Reagan administration supported U.N. Security Council Resolution 497, which declared Israel's action "null and void and without international legal effect." The administration, however, vetoed a Security Council proposal to impose sanctions on Israel.

Since 1992, four Israeli prime ministers—center-left Yitzhak Rabin and Ehud Barak, centrist Ehud Olmert, and from the right Benjamin Netanyahu—have sought, to varying degrees, to achieve peace with Syria in exchange for withdrawing from parts or all of the Golan Heights. All initiatives proved futile. In the meantime, the Golan has become a thriving site of agriculture, industry, and tourism.

In addition to approximately 20,000 Jewish Israelis, the Golan is home to about 20,000 Druze, who speak Arabic and practice their own distinctive religion. The Golan Druze reside in four towns in the northernmost part of the territory. Unlike the Druze living in the Galilee region of pre-1967 Israel who are citizens and serve in the army, the vast majority of Golan Druze declined Israeli citizenship. Since the Syrian civil war, however, they increasingly view life in Israel as preferable to the alternatives. Today it is rare to see a picture of Assad in a Golan Druze restaurant or store, although they still hang in private homes.

At a restaurant on the edge of the town of Majdal Shams, which lies at the foot of the snow-capped Mount Hermon, a veteran Golan Druze tour guide explained to me that there were two main reasons for his community's historic support for Assad. First, the president of Syria has provided protection for Syrian Druze against Islamic State jihadists, who see the Druze as infidels. Also, the Golan Druze fear that should Israel strike a deal with Syria, Assad would punish them. He noted, however, that younger Druze are increasingly open in their preference for Israel.

He also stressed that his people generally regard the question of who should rule the Golan as a matter for Syria and Israel to decide. And then, with a shining smile, my Druze companion—who was already in his mid-twenties when Israel took the Golan in 1967 and so has living memories of life under Syrian authority—added that he was quite confident that there is not another group in Israel, including the Jews, who have life as good under the Israeli government as do the Golan Druze.

Meanwhile, Israelis across the political spectrum realize that had a return of the Golan been negotiated, Islamic State jihadists would now control the plateau. The Golan Heights, moreover, does not raise the difficult questions for Israelis posed by the West Bank and its restive population of approximately 2.8 million Palestinians, because the Golan Druze are a small community pleased with their condition and entitled by law to full Israeli citizenship.

A few voices in Israel are calling for international recognition of Israel's sovereignty over the Golan. Former Cabinet Secretary Zvi Hauser argues that Israel should launch “a constructive dialogue with the international community over a change in Middle Eastern borders and recognition of Israeli rule on the Golan Heights, as part of the global interest in stabilizing the region.”

Retired Israeli Gen. Amos Yadlin, now head of Tel Aviv University's Institute for National Security Studies, maintains that in the aftermath of a flawed Iran deal the United States would advance its own interests and those of Israel by “promoting recognition of Israel's sovereignty over the Golan Heights.” This step, Yadlin told me, would establish the salutary precedent in a region racked by religious and sectarian wars that last centuries' borders are not holy and that in sorting out contemporary disputes borders should be adjusted to security exigencies and demographic realities.

But is such adjustment lawful?

Following World War II, international law prohibited the acquisition of territory by force, even in the case of a defensive war. The general tendency is to preserve existing boundaries.

What happens, however, when the party with the claim favored by international law disintegrates? The precedents are few and ambiguous. However, James Crawford's authoritative work, “Brownlie's Principles of Public International Law,” 8th edition, declares that “title prevails over possession, but if title is equivocal, possession under claim of right matters.” Syria's disintegration renders title over the Golan equivocal.

Israel's territorial claim arises in part from the principle of “effective occupation,” which provides that territory can be acquired through the exercise of sovereign power on a peaceful and extended basis. Israeli law has applied to the Golan for almost 35 years and Israel has exercised authority in a manner that suits all the residents of the territory.

Moreover, public international law favors stability, order, and peace; it aims to avoid resolutions that expose individuals to death or injury. Accordingly, it should prefer Israeli sovereignty over the Golan to the grim alternatives for the Golan Druze: the tyrannical rule of Shiite Islamist Iran's puppet Assad, or the tyrannical rule of Islamic State Sunnis.

The international consensus that the Golan belongs to Syria no longer fits the facts and the law. Nor does it coincide with America's interest in checking the spread of Islamist violence throughout the Middle East and in bolstering a democratic ally. At the first opportunity—unlikely to come before the next president's inauguration in January 2017—the United States should affirm Israel's lawful and just exercise of sovereignty over the Golan Heights and urge the international community, particularly U.S. allies in Europe and the Middle East, to do the same.

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