

BROOKINGS

COMMENTARY

Trump's proposal to "take over" Gaza would put Americans at risk of prosecution

The International Criminal Court has jurisdiction over anyone who commits war crimes and crimes against humanity on Palestinian territory, regardless of their nationality.

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In a February 4 news conference, President Donald Trump [proposed a U.S. takeover of the Gaza Strip](#) and the displacement of Palestinians from the territory. Israeli Prime Minister Benjamin Netanyahu—who is wanted by the International Criminal Court (ICC) for [suspected war crimes and crimes against humanity](#) in Israel's recently paused war with Hamas—stood beside Trump during the stunning announcement. Netanyahu didn't explicitly endorse the proposal at first, but said it was "[revolutionary and creative](#)" and "[could change history](#)." Netanyahu later [said](#) Israel was "committed to US President Trump's plan for the creation of a different Gaza."

My Brookings colleague Natan Sachs has powerfully argued that [America's annexation of Gaza won't happen](#), explaining the plan's immorality, illegality, and impracticality—and I hope he's right. Trump also might not be serious about annexing Gaza but is instead trying to distract his rivals, at home and abroad, or trying to open the negotiating space between Israel and its Arab neighbors. (He is eager to normalize relations between them.) While we wait to see Trump's true intentions revealed, it's worth considering what annexation would mean, including for the American servicemembers who could be ordered to carry it out.

The upshot is that Trump's plan would violate a long list of international treaties, including the Geneva Conventions—and put Americans at risk of sanctions and prosecutions abroad.

International law prohibits annexing territory

Last July, the International Court of Justice (ICJ)—the world's primary judicial body established under the auspices of the United Nations in 1945—[determined](#) that Israel's presence in the Occupied Palestinian Territory (or OPT, i.e., the Gaza Strip, the West Bank, and East Jerusalem) is [unlawful and must end](#). The court's decision, initiated by a [request for an advisory opinion](#) from the U.N. General Assembly, is binding on the international community as a whole, requiring action not just from Israel but from all states and also international organizations.

The judges [noted](#) the U.N. General Assembly's declared "permanent responsibility towards the question of Palestine until the question is resolved ... in accordance with international legitimacy" and the heretofore unrealized [U.N. General Assembly Resolution 181 \(II\)](#). Adopted in 1947 as the U.K.'s League of Nations mandate over the land of Palestine was drawn to a close, the resolution called for the territory to be partitioned into a Jewish state and an Arab state. On this basis, Israel declared its independence in 1948 and became a U.N. member state in 1949. Later in 1967, after its victory in the [Six-Day War](#), Israel came to occupy the rest of what had been British-controlled Mandatory Palestine, now known as the OPT.

In writing the opinion, the ICJ judges considered the prolonged nature of the occupation, Israel's settlement policy, and [other measures](#) that Israel has taken over the years, including annexing Palestinians' lands and [destroying their homes and property](#). The judges concluded that these policies and practices are unlawful and "are in breach of Israel's obligation to respect the right of the Palestinian people to self-determination." Later in September, the [U.N. General Assembly](#) affirmed the ICJ decision in a [resolution that 124 countries supported](#).

Trump's vision of turning Gaza into a "Riviera of the Middle East," ostensibly in partnership or in coordination with Israel, would extend the policies and practices that the ICJ said were unlawful.

Following an [earlier ICJ decision in May 2024 ↗](#) calling on Israel to halt its incursion into Rafah, in southern Gaza, European foreign ministers gathered to discuss [sanctions against Israel ↗](#) if it didn't comply. But the European Union (EU) ultimately didn't move forward with sanctions. (The EU *has* [levied sanctions against a few Israeli citizens and organizations ↗](#) but not the state itself.)

The annexation of Gaza and the expulsion of its residents could tip the scales in favor of EU sanctions against Israel and perhaps also the United States, given that the EU (like other international organizations) is legally obligated to help bring Israel's presence in the OPT to an end, per the ICJ's July 2024 decision. Beyond legal obligations, it's in the EU's interest not to normalize land grabs—not just for the sake of Palestinians in Gaza but also for the sake of people in [Greenland ↗](#), [Ukraine ↗](#), and other neighbors.

International law prohibits forced deportations and transfers of civilians

Trump's proposal, by his own admission, would require the forced deportation and transfer of the civilian population in Gaza, some 2 million Palestinians, to another territory ([presumably Egypt and/or Jordan ↗](#))—a clear violation of the [Fourth Geneva Convention ↗](#), which protects civilians during armed conflicts and in occupied territories. This would further destabilize the Middle East and could pull the United States into a regional war.

Given that Trump has long inveighed against "forever wars" and advocated for putting America "first," his stated commitment to doing whatever is necessary to "take over" and "develop" Gaza (including possibly deploying U.S. troops) is all the more perplexing. It would also risk criminal liability for involved U.S. personnel, including at the ICC.

[Since 2015 ↗](#), the ICC has been investigating allegations of war crimes and crimes against humanity in Palestine, including in Gaza. The investigation is open-ended and both Palestinian nationals and foreign nationals on Palestinian territory are liable for prosecution. So far, Israelis are the only foreign nationals that the ICC has said it is

investigating in Palestine. But Americans involved in the expulsion of Palestinian civilians could be added to that list.

Risks to Americans

Neither Israel nor the United States is a party to the [Rome Statute](#), which established the ICC and defines its jurisdiction. Ordinarily, Israeli and U.S. nationals are immune from ICC scrutiny, with an important caveat: [nonmember nationals are liable to investigation and prosecution](#) if they are suspected of committing abuses on the territory of an ICC member, which Palestine is. In fact, [the State of Palestine](#) was granted "[nonmember observer state status](#)" at the United Nations in 2012 and acceded to the Rome Statute in 2015.

Israel and the United States don't recognize a Palestinian state and [reject ICC jurisdiction over Israelis and Americans](#). But the law isn't on their side. Moreover, in 2021, [the ICC confirmed that it has jurisdiction](#) to rule on matters concerning Gaza and the West Bank, including East Jerusalem—and numerous states agree and have come to [the court's defense](#).

Trump's Gaza agenda could lead U.S. personnel to be prosecuted at the ICC for the unlawful deportation or transfer of a population—as a [war crime](#) (under Article 8 of the Rome Statute) and/or as a crime against humanity (under Article 7). Americans could also be tried for persecution, another crime against humanity, given that Palestinians in Gaza are an "identifiable group." Servicemembers, it's important to note, couldn't rely on a [superior orders defense](#) if the orders they carried out were "manifestly unlawful." [Article 33](#) of the Rome Statute clearly states this.

On its face, a policy to forcibly deport and transfer a civilian population from one territory to another is unlawful. American servicemembers would know this because of their own rules. [U.S. military manuals](#) going back to the [1863 Lieber Code](#) have [prohibited unlawful deportations](#) or transfers of civilians. U.S. military personnel are also bound by the 1949 Geneva Conventions, which the United States ratified. This means that servicemembers couldn't claim ignorance if they ever faced an ICC arrest warrant or one day stood trial in The Hague. For their part, commanders and other superiors (including civilian leaders) could face criminal charges for ordering their

subordinates to engage in unlawful acts and/or for failing to exercise control over their subordinates, per Article 28 of the Rome Statute.

However, U.S. personnel who are charged with crimes under the Rome Statute would have to come into the ICC's custody for any trial to take place, so they could evade the court by not traveling to one of the ICC's 125 member states.

Looking ahead

Depriving Palestinians of their most basic rights, while alienating allies and destabilizing the Middle East, is too dangerous a step to take—or even to bluff about. Risking the safety and freedom of U.S. servicemembers would also be irresponsible.

Trump could be all bluster, but it would be unwise to write off his words or quietly hope that they don't materialize. His aides have tried [walking back](#) his February 4 announcement, but [Israel is taking it seriously](#). [Trump has also doubled down](#), saying that he is "committed to buying and owning Gaza" and that the Palestinians living there wouldn't have a right to return.

Trump has further [threatened to withhold aid](#) to [Egypt](#) and [Jordan](#) if they don't take in displaced Palestinians. Moreover, during his first trip to the Middle East, Secretary of State Marco Rubio [said](#) that Trump's plan for Gaza was "bold" and "took courage and vision in order to outline"—yet more evidence suggesting that the administration is serious about some type of Gaza takeover, which could require American troops to implement. U.S. and international leaders must push back.

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