



Legal Scholar: Israeli Possession of Golan Heights is Both Legal and Sensible

Israeli rule over the Golan Heights should be considered “lawful and just” and should be supported by the United States and the international community, Peter Berkowitz, a senior fellow at the Hoover Institution, argued in an analysis ⁱⁿ Real Clear Politics.

Israel captured the Golan Heights in the 1967 Six-Day War. Prior to that, the Heights had been used by Syria as a platform to shoot at the Israeli villages below and even as a launching point for terror attacks inside Israel. Following the war, Israel offered to discuss withdrawals of the West Bank, Sinai Peninsula and Golan Heights with its neighbors, but they all refused.

Israel fully extended its law to the Golan in 1981, a few years after it ceded the Sinai to Egypt as part of a peace deal. Since 1992, Prime Ministers Yitzchak Rabin, Ehud Barak, Ehud Olmert, and Benjamin Netanyahu have all sought to make peace deals with Syria involving exchanging some or all of the Golan, only to be rebuffed. “In the meantime,” Berkowitz observed, “the Golan has become a thriving site of agriculture, industry, and tourism.”

In addition to 20,000 Israeli Jews living in the area, there are 20,000 Druze who (unlike the Druze in the rest of Israel) have declined Israeli citizenship. However, since the beginning of the Syrian civil war just beyond the border five years ago, the Golan Druze increasingly “view life in Israel as preferable to the alternatives.”

The Golan Druze once supported Assad because they saw him as a protector against militants like ISIS, who view the Druze as infidels. The Druze also feared that if the Golan was ever returned to Syria, Assad would punish them for supporting Israel. However, a Druze tour guide told Berkowitz that most younger Druze are now becoming more openly supportive of Israel.

The disintegration of Syria and the growth of ISIS have prompted many Israelis to reconsider the wisdom of ceding the Golan to Syria. Former Cabinet Secretary Zvi Hauser argued last year that Israel should begin “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.” Similarly, Amos Yadlin, the former director of Israel’s military intelligence and currently the head of the Institute for National Security Studies, argued last August that in the wake of the nuclear deal with Iran, the United States could help its and Israel’s security by “promoting recognition of Israel’s sovereignty over the Golan Heights.” Yadlin told Berkowitz

that old borders shouldn't be viewed as sacrosanct and that new borders should address both security and demographic needs.

Yadlin's explanation prompted Berkowitz to consider whether redrawing Israel's borders to include the Golan would be consistent with accepted principles of international law. Acquiring territory through force has generally been prohibited since World War II, even in the case of a defensive war. But Syria is hardly the country it was in 1967. Berkowitz acknowledged that there are few precedents for Israel to rely on, but noted a principle in the authoritative *Brownlie's Principles of Public International Law* that "title prevails over possession, but if title is equivocal, possession under claim of right matters." Given Syria's collapse, its title to the Golan is now "equivocal." In addition, Berkowitz wrote, by applying Israeli law to the Golan, Israel has established an "effective occupation," which allows for the acquisition of territory "through the exercise of sovereign power on a peaceful and extended basis."

Given that "public international law favors stability, order, and peace," Berkowitz concluded that it should favor 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."

Last November, former Israeli ambassador to the United States Michael Oren made a similar [argument](#)^[2], urging the United States to support Israel's claim to the Golan. "By backing Israel's historic claims," he wrote on CNN.com, "the United States could send a potent message to the entire Middle East — that the Golan Heights will never again be a battlefield."

Sources

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www.thetower.org

[former-amb-oren-obama-can-boost-israels-security-by-backing-its-claim-to-the-golan](#)

<http://www.peterberkowitz.com/>

This information is current as of 2016.