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**The Application of Israeli Law to the West Bank:
De Facto Annexation?
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The Bill

A bill to amend the Law and Administration Ordinance (Legislation in the Region through Order) was recently submitted to the Knesset by Knesset Members Orit Struck, Yariv Levin, Ze'ev Elkin, Menachem Eliezer Moses, David Rotem, Ayelet Shaked, and Avraham Michaeli. According to the proposed bill, dubbed the "Norms Law," any law legislated by the Knesset will also be enacted in the West Bank by order of the commander of IDF forces in the region within 45 days of the law's official publication. In special circumstances, the regional commander will be permitted to recommend that the Knesset committee that drafted the bill issue the order using a different formulation. However, the decision of whether to approve or reject the recommendation of the regional commander will be left to the discretion of the Knesset committee.

According to the bill's explanatory remarks, this legislation is meant to rectify an injustice suffered by hundreds of thousands of Israeli citizens living in the West Bank. It is further argued that although these citizens vote for the Knesset, their lives are not actually governed by the Knesset due to the non-applicability of Israeli law in the West Bank, a situation that discriminates against these citizens and seriously infringes on their rights. On this basis, the bill seeks to create a situation in which the elected members of the Israeli Knesset govern the lives of the Israeli citizens who are residents of the West Bank.

The Political Position

From a political perspective, the customary approach of past and present governments of Israel has been that the territories of Judea and Samaria are "disputed territories." Israel does not regard these territories as "occupied territories" and has never relinquished its legal rights to them. The Israeli government also maintains that although its activity in these territories is subject to the Hague Regulations, which represent customary international law, it is not subject to the Fourth Geneva

Convention because the territories do not meet the condition specified in Article 2(2) of the Convention, which requires that the conquered territory be "the territory of a High Contracting Party" – that is, of a signatory of the convention. Nonetheless, Israel has stated that beyond the letter of the law, it is committed to implementing the Convention's humanitarian directives in the territories. Moreover, in a number of decisions, the Israeli Supreme Court has ruled that Judea and Samaria are territories held under "belligerent occupation."

The Legal Situation

Over the years Israel has consciously refrained from applying Israeli law in the West Bank (unlike in the Golan Heights and East Jerusalem, in which it applies "the law, jurisdiction, and administration" of the state).

The West Bank is characterized by extremely complex everyday realities and a diverse legal system based on various sets of laws. Palestinian residents are subject to two primary sets of laws: the law that was enforced in the territories until its conquest in 1967, i.e., primarily Jordanian law; and the orders issued by or on behalf of the regional commander (security legislation), which serve as primary and secondary legislation in the territories. This legal situation is consistent with the directives of customary international law with regard to the law in force in territories subject to belligerent occupation, as reflected in Article 43 of the Hague Regulations.

In contrast, Israeli residents of the West Bank are subject to yet another legislative layer, referred to as "enclave law," which consists of Israeli legislation applied to Israeli citizens on a personal basis. Israeli law has been applied to these residents of the territories by means of security legislation (primarily by means of special legislation applicable within the areas of local and regional councils) and extra-territorial legislation of the Knesset that extends its applicability to the Israeli residents of the West Bank.

In this manner, over the years the Knesset has enacted a number of laws that are applicable to Israeli citizens living in the West Bank regarding taxation, product supervision, national insurance, and other such distinctively administrative realms. The principle guiding all these legislative acts has been their personal applicability to Israeli citizens, as opposed to territorial applicability. For example, Israeli land laws and planning and zoning laws are not applicable within the West Bank.

In addition to these layers, the complex legal situation in the West Bank includes the rulings of the Israeli Supreme Court, which have also applied Israeli labor laws to Palestinians working in Israeli enclaves in the West Bank under the authority of private international law (the "significant linkages" test) and the principle of equality.

Annexation: An Expected Result of the Legislation?

Thus far, Israeli governments have refrained from annexing some or all of the West Bank territories, and the Knesset has refrained from enacting laws with territorial applicability to avoid a unilateral change in the status of the territory. The new bill appears to be an attempt to fundamentally change this political and legal state of affairs. This raises the question of whether the direct application of Knesset legislation to Israeli citizens in Judea and Samaria constitutes annexation of these territories to the State of Israel.

The present situation is consistent with international law, which regards the military commander as the sovereign in the territory, holder of the powers of government, and responsible for order and security in the region. In this capacity, the military commander is subject to international law and the principles of Israeli administrative law. This legal reality has not changed as a result of the political processes in which Israel has taken part and that ultimately developed into agreements, including the Egypt-Israel Peace Treaty (1979), the Oslo Declaration of Principles (1993), the Israel-Jordan Peace Treaty (1994), and the Israeli-Palestinian Interim Agreement (1995).

The current bill directly applies Knesset legislation to the Israeli residents of the West Bank in a manner that in practice negates the discretion of the military commander by subordinating it to the Israeli Knesset and turning his office into a rubber stamp for the Knesset's policies. By doing so, the Knesset itself becomes the sovereign in the West Bank, a change that undermines the concept of the territories as administered territories under belligerent occupation, which is consistent with international law. By replacing the sovereign, the bill is actually proposing the de facto annexation of the territories of Judea and Samaria to the State of Israel. This measure contradicts the bill's explanatory statement, which specifies that the proposed law is meant to equalize the norms applicable to citizens of the State of Israel with those applicable to Israeli residents of Judea and Samaria, "without changing the political status of the territory and without contradicting the directives of international law according to which Israel, beyond the letter of the law, has agreed to administer Judea and Samaria."

In addition to these factors is the place of the proposed amendment within the Israeli book of statutes. The bill proposes the addition of Section 11c to Section 11 of the Law and Administration Ordinance, which pertains to the application of "state law, jurisdiction, and administration" to all territories specified by government order. This location within the ordinance also appears to bear testament to the true intentions of the amendment's sponsors.

It is therefore important to ask whether the intention of the bill is indeed to make life easier for the Israeli residents of Judea and Samaria, as explained in its explanatory note. If so, this can be achieved in other ways, for example, through the expansion of extra-territorial Knesset legislation, as has been done thus far, in a manner that does not change the status of the territory. The bill's sponsors, however, consciously chose a different approach, and their proposal is one of a larger number of decisions and bills that not only fail to contribute to a peace process but serve to interfere with it. Others have included decisions regarding the borders of National Preference Zones so that they include isolated settlements, changes in administrative procedures regarding the granting of status to foreign spouses (which have had a particularly detrimental impact on Palestinians), and the directive to reduce the number of hours of instruction of Arabic. Regardless of whether they are ultimately rejected or enacted, the frequent submission of private bills also hinders Israel's ability to eventually make progress in political negotiations. Two examples of proposed legislation with such impact have been the bill to annex the Jordan Valley and the bill that would require the government to receive Knesset authorization before entering into negotiations regarding Jerusalem or the Palestinian refugees.

The current bill is under appeal by outgoing Justice Minister Tzipi Livni, chairperson of the Ministerial Committee for Legislative Affairs. Whether or not the bill is ultimately enacted, its very submission can be understood as an act of defiance aimed at changing the complex legal-political realities in the West Bank, with far reaching impact on Israel's diplomatic ability to maneuver and the country's status in the international arena. The situation that has been created in practice – one of separate roads, separate buses, selective law enforcement, and perhaps also de facto annexation of the Israeli settlements in Judea and Samaria – only serves to intensify the discrimination between Israeli residents and Palestinian residents of the territories in question. This reality is likely to serve as ammunition in the delegitimization campaign currently being waged against Israel and the increasing efforts to isolate Israel in the international political and economic arena. For these reasons, Israel would be wise to remove the bill from its agenda.

