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Guest Essay

International Law Is No Bar to Trump's Gaza Proposal

The strip isn't under the sovereignty of any nation, an uncommon status known as terra nullius.

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An aerial view of Gaza City in the Gaza strip, Feb. 18. PHOTO: DAWOUD ABU ALKAS/REUTERS

It's hard to tell how serious President Trump is about his proposal to take over and redevelop the Gaza Strip. Last week he posted on social media a zany AI-generated video featuring fast-frame images of a Trump-Gaza skyscraper, paper money raining down on dancing children, and Mr. Trump and Benjamin Netanyahu reclining shirtless on beach chairs. The president is successfully trolling *European and United Nations officials, who have insisted the plan would violate international law.*

They're wrong. The legal basis for the proposal is straightforward. Gaza is one of the very few pieces of land not under the sovereignty of any nation, a status known as terra nullius in international law. Such situations are rare because in the postwar era local populations can win recognition for a new sovereign state with relative ease. Once established, sovereignty is hard to extinguish.

But because of a confluence of circumstances, Gaza has a sovereignty vacuum. A distinct Gaza Strip came into being as a result of Egypt's invasion of Israel in 1948. Cairo failed in its attempt to destroy the newly independent Jewish state, but it did occupy a finger of coastal territory between Sinai and Tel Aviv, which came to be known as the Gaza Strip.

When Israel retook Gaza in 1967's Six Day War, it had sovereign claims on it. These were based on Gaza's location within the boundaries of the League of Nations Mandate for Palestine, the predecessor entity to Israel. But the Jewish state, as an experiment in "land for peace," withdrew its entire civilian population and military presence in 2005. The completeness of Israel's evacuation indicates an abandonment of sovereign claims. At least since then, Gaza has been up for grabs.

It had the ingredients to become an independent state. But in 2006 legislative elections Palestinians elected Hamas, with an agenda of destroying and taking over Israel rather than Gazan sovereignty. The following year Hamas staged a coup in Gaza. No Palestinian state has been created. This isn't a Trump position, but the longstanding view of the U.S. and most of its Western allies.

In 2020, during the first Trump administration, the U.S. determined that the West Bank and Gaza are "politically and administratively separate" and should be treated as separate entities—a finding President Biden didn't disturb. *Because Gaza isn't a state, it isn't subject to military occupation under the Fourth Geneva Convention, making the restrictions the treaty places on occupying powers irrelevant.*

*The sovereignty gap doesn't determine what should happen to the territory, but it does make a U.S. bid legally feasible. **Israel, having taken parts of the territory in a war of clear self-defense, should be able to claim sovereignty over all or part of the territory, as it did in the Golan Heights.** Or Washington and Jerusalem could work out a condominium—not the kind envisioned for Gaza's beaches, but an arrangement in which two nations share sovereignty, like Spain and France in Andorra and many countries in Antarctica, or the erstwhile Anglo-Egyptian Sudan.*

*Some have argued that the “right of self-determination” automatically devolves sovereignty onto Gaza residents. **But self-determination doesn't allow local ethnic groups to choose which country they are in—ask the Kurds, the Catalans or the Greenlanders.** In any case, the Palestinian population has categorically rejected sovereignty unless it includes Jerusalem, which is Israeli sovereign territory, and is accompanied by the migration of millions of Arabs into the sovereign borders of Israel.*

Mr. Trump's offer to enable Gazans to leave has also been criticized as “ethnic cleansing” in violation of international law. But he has never suggested a violent or forcible removal. Rather, he seeks to ensure that Gazans are free to leave—which they currently aren't. Egypt and Hamas together maintain a violent system that treats Gazans as serfs, tied to the soil to serve as human shields. This violates international law, in particular Egypt's duties under refugee treaties.

***Mr. Trump seeks to lift an iron curtain from Gaza,** letting people escape tyranny and destruction. No one argued that the campaign for Soviet Jewry was ethnic cleansing. Nor did the international community regard the forcible expulsion of the entire Jewish population of Gaza by Egypt in 1948, and again by Israel in 2005, as ethnic cleansing. *Conventional “two state solution” peace plans are premised on a mass expulsion of Jews from Judea and Samaria.**

***A poll taken before the war showed 44% of young Gazans are interested in emigrating; the share would likely be larger now.** Before the war, the public sector was the largest employer, accounting for 21% of the workforce, followed by jobs in Israel, followed by the United Nations Relief and Works Agency. The public sector and Unrwa are funded largely by foreign countries and run by Hamas. Neither their jobs nor those in Israel are coming back.*

***According to a U.N. report, 80% of the population in Gaza before the war depended on international handouts. They were being paid to stay in Gaza.** Mr. Trump correctly posits that Gaza is unviable without continuing outside subvention. International law doesn't bar outside actors from providing such support, but neither does it ban removing it or offering generous resettlement terms elsewhere.*

American sovereignty extends to a variety of far-flung places, from Alaska and Hawaii to the Virgin Islands and the Northern Mariana Islands, which became American only in 1986. In time, the American Levant—if not “Trump Gaza”—may sound as natural.