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INTRODUCTION

One of the most delicate and divisive problems in the Israeli-Arab conflict is the status of Jerusalem, which has implications for both sides as well as for many other countries. The negotiations on Jerusalem have been deferred to the negotiations on Israel and the Palestine Liberation Organization's (PLO) permanent status because of its sensitive and potentially explosive significance. After the first meeting, those negotiations were supposed to start no later than the third year of the interim period—were called off in May 1996¹. This thesis aims to assist those who want to become more familiar with the fundamentals of this situation and give a perspective following an in-depth evaluation and analysis of the now long-standing conflict.

This thesis will look at the existing international legal framework that controls Jerusalem's status and how competing claims and historical changes have affected that framework. We can learn more about the legal dynamics surrounding Jerusalem's status and the elements that have influenced it throughout time by examining pertinent international legal instruments, treaties, resolutions, and state practice. United Nations resolutions, customary international law, the Fourth Geneva Convention and pertinent treaties serve as the main pillars of the international legal framework defining Jerusalem's status. Numerous resolutions from the General Assembly, Security Council, and specialized organizations of the United Nations have emphasized the significance of Jerusalem and called for dialogue to settle the very relevant issue concerning its status. Jerusalem's internationalization was suggested in Resolution 181 (1947), widely known as the UN Partition Plan for Palestine, which acknowledged Jerusalem's special status and the necessity for a mutually acceptable solution. Further influence on this matter is exercised by the Fourth Geneva Convention of 1949 which forbids the annexation of a territory through the unjustified use of force and violence. This Convention aimed to protect civilians affected by armed battles and the natural consequence of its purpose is the vast applicability in the case of the Israeli-Palestinian ongoing and long-standing conflicts over the Holy City of Jerusalem.

In this thesis I will also include the British Mandate for Palestine, which was a source for controversies due to the divisions it brought in the Middle East.

¹ Jung, Dietrich, ed. *The Middle East and Palestine: Global politics and regional conflict*. New York: Palgrave Macmillan, 2004.

The Israeli-Palestinian conflict centers around the ownership and control of land in the Middle East. It is rooted in the historical and religious claims of both Israelis and Palestinians to the same area of land, which they each refer to by different names: Israelis call it Israel, while Palestinians refer to it as Palestine².

At the center of this conflict, there is Jerusalem. Its history and significance are deeply intertwined with the religious and cultural identity of Jews, Muslims, and Christians, and the city has been contested between them for centuries³.

Jerusalem was initially a Canaanite city⁴ and only later became the capital of the ancient Jewish state of Judah. It also has significance for Christians as it was a relevant city for the Roman Empire, and later became a major center of Christianity, where there are the Church of the Holy Sepulchre, the Garden of Gethsemane, the *Via Dolorosa*, the Mount Zion and the Church of All Nations, all important sites for Christianity⁵.

In the 7th century, Jerusalem was seized by Muslim armies and became a crucial location for the Islamic world with the Dome of the Rock, the Al-Aqsa Mosque, and the Haram al-Sharif⁶.

The history of Jerusalem has been marked by several destructive events: wars, disputes, seizing, conquests and religious conflicts, including the infamous Crusades and the Ottoman Empire's control over the city, which lasted for 400 years, until 1917, when the Empire eventually fell⁷.

In the 20th century, when the Ottoman Empire lost control over the land, Jerusalem became the central issue in the conflict between Jews and Arabs over the future of Palestine⁸.

After the constitution of the state of Israel in 1948, Jerusalem was divided by the control of Jordan and Israel, with Jordanian control on the eastern portion, including the

² Peteet, Julie. "Words as interventions: naming in the Palestine-Israel conflict." *Third World Quarterly* 26.1 (2005): 153-172.

³ Friedland, Roger, and Richard Hecht. *To Rule Jerusalem*. Cambridge University Press, 1996.

⁴ Cline, Eric H. *Jerusalem besieged: From ancient Canaan to modern Israel*. University of Michigan Press, 2004.

⁵ Bible, Die. *The Bible*. Chrysalis., 1985. Jerusalem is mentioned throughout the Old and New Testaments and is often referred to as a holy city. Many important events in the life of Jesus are said to have taken place in Jerusalem, including his crucifixion, burial, and resurrection.

⁶ Encyclopaedia Britannica. (2022, April 18). Jerusalem. Retrieved from <https://www.britannica.com/place/Jerusalem>.

⁷ Armstrong, Karen. *Jerusalem: One city, three faiths*. Ballantine Books, 1997.

⁸ Shindler, Colin. "A History of Palestine: From the Ottoman Conquest to the Founding of the State of Israel" (2009): 79-83.

Old City and meaningful Muslim sites, and Israel controlling the western one. This breakdown of power lasted until the “Six-Day War” in 1967⁹.

Currently, the claims made by Israel and Palestine touch upon the same key points: the religious significance and the historical connection they have to the land.

On one hand, the Israeli claim a historical and ancestral connection to the land, pointing to the fact that Jews have lived in the region for thousands of years and that for many Jews, the land is considered to be the biblical land of Israel, promised to the Jewish people by their God¹⁰. They also consider the Holocaust and assert that the establishment of Israel as a Jewish homeland was seen by many Jews as a response to the atrocities of the Holocaust, which underscored the need for a safe haven for Jewish people¹¹.

On the other hand, there are Palestinians, who claim a long-standing historical connection to the land, tracing their roots back to the ancient Canaanites and other groups who inhabited the region, consider that piece of land holy to Muslims, as it contains relevant religious sites. In addition to these religious and historical claims, Palestinians believe this land to be their ancestral homeland and view the displacement of Palestinians during the establishment of Israel as an injustice¹².

The beginning of the Israeli-Palestinian conflict dates back to the late 19th century when a movement called “Zionism” emerged amongst Jews who thought they needed a homeland of their own. This movement gained a following in the early 20th century when Jewish immigration to Palestine increased.

During World War I, the Ottoman Empire¹³, which had been controlling Palestine for several centuries, was defeated by British forces. The British had then gained control over the Palestinian territory through a mandate from the League of Nations. What happened following this gain of authority on the behalf of the British, was firstly their encouragement towards the Jewish population to migrate to Palestine and secondly the granting of respecting the rights of the Arab population¹⁴.

Tensions between Arab and Jewish communities in Palestine escalated in the 1920s and ‘30s leading to an unforeseen level of violence and numerous clashes.

⁹ MacCulloch, Diarmaid. "Jerusalem: The Biography by Simon Sebag Montefiore." *London Review of Books* 33.14 (2011): 25-28.

¹⁰ Gelvin, James L. *The Israel-Palestine conflict: One hundred years of war*. Cambridge University Press, 2014.

¹¹ Harms, Gregory, and Todd M. Ferry. *The Palestine-Israel conflict: a basic introduction*. Pluto Press, 2017.

¹² Smith, Charles D. "Palestine: A Four Thousand Year History, by Nur Masalha." (2019): 111-113.

¹³ Gelvin, James L. *The Israel-Palestine conflict: One hundred years of war*. Cambridge University Press, 2014.

¹⁴ Gelvin, James L. *The Israel-Palestine conflict: One hundred years of war*. Cambridge University Press, 2014.

The atrocities of the Holocaust¹⁵ during the Second World War led to the need for a Jewish homeland. This concept was supported internationally and this led to the growth of the creation of Israel.

In 1947, the United Nations voted to subdivide Palestine into separate Jewish and Arab states, with Jerusalem being designated as an international city¹⁶. The Jews agreed to the partition, however, the Arabs did not, arguing that it was an unfair division and it was a violation of their rights.

On May 14th, 1948, however, Jewish leaders in Palestine declared the establishment of the State of Israel as an independent state¹⁷, which several countries immediately recognized, including the United States and the Soviet Union. Arab countries rejected the new state and declared war on Israel.

Since then, the conflict has been marked by a series of wars, uprisings, and negotiations, with both Israelis and Palestinians claiming rights to the same land. Among the historical and present key issues at the heart of the conflict that I shall evaluate throughout this thesis, are borders, settlements, Jerusalem, and Palestinian statehood.

In regards to borders, historically, the question of who has the right to control the land in question. Both parties, as previously mentioned, claim religious and historical ties to the land.

Currently, the borders between Israel and the Palestinian territories are not clearly defined and there is an ongoing debate over where the borders should be drawn and whether they should or should not be drawn. Israel has built a barrier in the West Bank¹⁸, which it says is necessary for security reasons, but which Palestinians argue is a *de facto* border that is separating them from their land.

Settlements were and still are a source of disputes. Historically Jewish settlements in the West Bank have been a major point of connection between Israeli and Palestinians for decades¹⁹. The settlements are viewed by Palestinians as a breach of their rights and an impediment to the establishment of a Palestinian state. Nowadays, Israel is continuing to construct and expand settlements in the West Bank, in spite of objections from the

¹⁵ Israel Ministry of Foreign Affairs. (2017). The Balfour Declaration. <https://mfa.gov.il/MFA/AboutIsrael/History/Pages/The-Balfour-Declaration.aspx>.

¹⁶ United Nations General Assembly Resolution 181.

¹⁷ Sabet, Amr GE. "A History of the Modern Middle East: By William L. Cleveland and Martin Bunton (Boulder: Westview Press, 2009. 618 pages.)." *American Journal of Islam and Society* 27.1 (2010): 122-124.

¹⁸ "Israeli Yearbook on Human Rights, Volume I (1971)", Brill, 1989.

¹⁹ Shafir, Gershon. "The Iron Cage: The Story of the Palestinian Struggle for Statehood." (2008): 206-208.

Palestinian and the international community²⁰. The building of these settlements has been an obstacle to peace negotiations and an additional source of growing tensions between Israeli and Palestinians²¹.

The settlements talked about in the paragraph above led to difficulties in Palestinian statehood. The establishment of a Palestinian state has been a target for many decades²². However, how it can be achieved, where and what it should look and be like, are questions that have created an ongoing debate. Currently, the “two-state solution”, which visualize the establishment of a Palestinian state alongside Israel, has been a focus of peace negotiations for many years. However, the constant expansion of settlements and other issues have made it extremely difficult to reach an agreement or a solution to the conflict. Some Palestinians have called for a “one-state solution”, in which Israeli and Palestinians would live together in a single state with equal rights. This idea is however discarded and rejected by the majority of Israelis.

The idea of a "one-state solution" is not necessarily forbidden under international law. The viability of such a solution, however, hinges on the two peoples' capacity for peaceful coexistence in a single state with equal rights. It would necessitate a considerable alteration in the regional political and social dynamics as well as the resolution of problems like the status of Jerusalem, the settlements, and the right of return for Palestinian refugees. Though, it is essential that the Israeli-Palestinian conflict must be resolved while respecting the human rights and right to self-determination of both the Israeli and Palestinian peoples, as required by international law.

The majority of Israelis' opposition to this notion may have its roots in worries about the protection of Israel's Jewish identity, the preservation of a Jewish majority, and potential security issues.

²⁰ The OCHA (United Nations Office for the Coordination of Humanitarian Affairs) regularly publishes reports on the situation in the occupied Palestinian territories, including the expansion of Israeli settlements. Their June 2020 report stated that "Despite repeated calls by the international community to cease all settlement-related activity, Israel continued to advance plans for thousands of housing units in the West Bank" (source: <https://www.ochaopt.org/content/west-bank-movement-and-access-update-june-2020>).

²¹ "The Israeli-Palestinian Conflict: One Hundred Years of War" by James L. Gelvin, 5th edition, 2020, pages 219-220., "Israel/Palestine: The Basics" by John Collins, 4th edition, 2019, pages 107-111., "Palestine: A Very Short Introduction" by Mehran Kamrava, 2019, pages 71-72, "The Palestine-Israel Conflict: A Basic Introduction" by Gregory Harms and Todd M. Ferry, 4th edition, 2015, pages 99-102.

²² Said, Edward W. The question of Palestine. Vintage, 1992.

Another key issue, which is also the research question I will be answering to in this thesis, is the problem rising from Jerusalem and its status. Jerusalem is a “melting pot” of religions. There is evidence of the significance of this place for Jews, Christians, and Muslims²³. It has been the center of the Israeli-Palestinian conflicts for numerous decades and the question of who has the right to control the city is still unanswered today and has been a major obstacle to peace negotiations.

Israel annexed East Jerusalem and the Old City following the 1967 “Six-Day War”²⁴. This conflict marked a significant event in the history of the conflict: Israel in fact had to face not only Palestine alone, but several Arab states, amongst which Syria, Egypt, and Jordan, a neighboring country. This short war resulted in the stunning military victory of Israel; this had a great impact on the Israeli-Palestinian conflict. This victory however meant new challenges for Israel as it was now in charge of a significant amount of Palestinians in the Gaza Strip and in the West Bank, which naturally raised turmoil and agitation²⁵.

The move by the Israelis of promoting this war has been widely criticized by the international community. From that moment on Israel claimed sovereignty over Jerusalem and claimed it as their “eternal capital”, whilst Palestinians see it as the capital of their future state²⁶.

The state of Jerusalem has been the object of many international resolutions, including UN Security Council Resolution 242 and UN Assembly Resolution 181, calling for the city to be under international administration. Though these resolutions have not been implemented and the issue is still open²⁷.

²³ De Lange, N. R. M. "Jerusalem: the Holy City in the eyes of chroniclers, visitors, pilgrims, and prophets from the days of Abraham to the beginnings of modern times. By FE Peters. Pp. xiv+ 656+ plates. Princeton, NJ: Princeton University Press, 1985;£ 25.20. 0 691 073007." *The Journal of Ecclesiastical History* 38.2 (1987): 325-325.

²⁴ United Nations Security Council Resolution 242, adopted on November 22, 1967.

²⁵ Shafir, Gershon. "The Iron Cage: The Story of the Palestinian Struggle for Statehood." (2008)

²⁶ "The Israeli occupation of East Jerusalem and the West Bank began during the June 1967 war, which Israel launched after it perceived a threat from Arab states. The war led to Israel's capture of East Jerusalem, the West Bank, the Gaza Strip, the Sinai Peninsula, and the Golan Heights. The move by the Israelis was widely criticized by the international community. From that moment on Israel claimed sovereignty over Jerusalem and claimed it as their “eternal capital,” while Palestinians see it as the capital of their future state.”. Source: Al Jazeera, "Jerusalem: A timeline of the ancient city's turbulent past," 6 December 2017.

²⁷ On November 29, 1947, the UN General Assembly passed Resolution 181, widely known as the Partition Plan, which called for the division of Palestine into distinct Jewish and Arab governments, with Jerusalem being declared a corpus separatum under a unique international system. Nevertheless, this decision was not followed through on, and following the 1948 Arab-Israeli War, the city was split between Israel and Jordan. Peace talks have been significantly hampered by the status of Jerusalem, and numerous UN resolutions have urged for its resolution. The status of Jerusalem is still up in the air, though.

A great turn of events happened in December 2017, when the United States recognized Jerusalem as the Israeli capital²⁸ and declared its intention to move its embassy from Tel Aviv to Jerusalem²⁹. This move was condemned by Palestinians among many other countries and international organizations. Many interpreted this move as a departure from the longstanding US policy which had maintained that the status of Jerusalem should be determined through negotiations between Israeli and Palestinians³⁰ and argued that what this action meant was the undermining of prospects for peace and it breached international law³¹.

The international community does not recognize Israel's claim to Jerusalem as legitimate and considers the city to be a disputed territory.

The Palestinian Authority claims East Jerusalem as the capital of a future Palestinian state³² and seeks to establish its presence in the city through various means, including the construction of settlements and the preservation of Islamic sites.

The significance of the legal status of Jerusalem lies in the several implications for international law and the Israeli-Palestinian conflict which finds its roots in the cultural and religious importance of the city³³. As previously mentioned Jerusalem is relevant to three different religions, is and has been the center of conflicts for decades, and in addition, this city is the subject of numerous international resolutions and agreements which aimed to define its legal status and determine its future.

Israelis think of Jerusalem as the symbol of Jewish national identity and the spiritual center of Judaism, while Palestinians want the city as the capital of the future state they will establish³⁴ and, as well as Jews, believe Jerusalem is the symbol of their religion and national identity.

The relevance of its legal status in regard to international law also touches upon the rise of important questions about the status of the territories occupied, the right to self-

²⁸"Relocation of US Embassy in Israel to Jerusalem", Salem press Encyclopedia, 2018.

²⁹ BBC News. (2017, December 6). Trump recognizes Jerusalem as Israel's capital. Retrieved from <https://www.bbc.com/news/world-us-canada-42259409>.

³⁰ United Nations Security Council Resolution 242, 1967.

³¹ United Nations. (2017, December 21). General Assembly Adopts Resolution Calling on United States to Withdraw Recognition of Jerusalem as Israel's Capital; 128 Countries in Favour of Text, 9 against, 35 Abstentions. Retrieved from <https://www.un.org/press/en/2017/ga11995.doc.htm>.

³² "The Palestinian Authority claims East Jerusalem as the capital of a future Palestinian state".

Source: Reuters. (2021, May 16). Israel-Palestinian Conflict: What you need to know. Reuters. <https://www.reuters.com/world/middle-east/israel-palestinian-conflict-what-you-need-know-2021-05-16/>.

³³ Zank, Michael. "The Jerusalem Basic Law (1980) and the Jerusalem Embassy Act (1995): A comparative investigation of Israeli and US legislation on the status of Jerusalem." *Israel Studies* 21.3 (2016): 20-35.

³⁴ Akram, Susan M, et al. *International Law and the Israeli-Palestinian Conflict*. Routledge, 23 Dec. 2010.

determination³⁵, and the role of international law in solving conflicts. The conflict over Jerusalem is entangled in other great issues which include: regional stability, national safety, and prospects for peace between the two sides.

Ultimately, one of the most sensitive and divisive issues in the Israeli-Palestinian conflict is the future of Jerusalem, and according to international law, this protracted conflict should be resolved through talks between Palestinians and Israelis, with the cooperation of the international community³⁶. Any resolution will need to take into account the political, historical, and religious significance of the city, and will require political will and compromise from both sides.

Israel has claimed Jerusalem to be under its sovereignty, however, the international community does not recognize Israel's claim to the city and most countries maintain their embassies in Tel Aviv.

Efforts to resolve the conflict have included peace talks, the establishment of the Palestinian Authority, and the Oslo Accords, but these efforts have often been stymied by disagreements over key issues and outbreaks of violence. The ongoing conflict continues to have profound effects on the people living in the region and on the broader international community³⁷.

In order to better understand the reasons at the basis of the conflict today, there is a crucial need to examine the history and look at how events unfolded in the past.

During the control of the Ottoman Empire over this land, Jerusalem remained predominantly Arab, and the main practiced religion was Islam.

From 1917, the date which marks the fall of the Ottomans, to 1947, Jerusalem was part of the British mandate of Palestine, established following World War I. The League of Nations (predecessor of the United Nations) gave Britain the mandate to govern the region³⁸, including Jerusalem, with the purpose of creating a Jewish homeland. During this time, Jerusalem kept its Arab predominancy, however as more and more people of Jewish descent started migrating, Jews shortly became a significant minority. The period of the mandate

³⁵ Menachem Klein, et al. *Jerusalem: The Contested City*. New York, Ny, New York University Press In Association With The Jerusalem Institute For Israel Studies, 2001.

³⁶ Caplan, Neil. *The Israel-Palestine Conflict: Contested Histories*. Hoboken, Nj, John Wiley & Sons, Inc, 2020.

³⁷ Ree, Brian. *Terrorism, Retaliation, and Victory*. Xlibris Corporation, 31 Mar. 2003.

³⁸ The British Mandate for Palestine, United Nations Office for the Coordination of Humanitarian Affairs: <https://www.ochaopt.org/content/british-mandate-palestine>.

marked the first time tensions intensified between Arabs and Jews and violence eventually erupted in the 1920s and '30s³⁹.

In 1947, as the mandate was coming to an end, the United Nations proposed a partition plan that would have divided Palestine into separate Jewish and Arab states and designated Jerusalem as a *corpus separatum*, an supranational city directed by the United Nations⁴⁰. This plan never ended up being carried out firstly due to its rejection by the Arab leadership and secondly because of the outbreak of the Arab-Israeli War following Israel's declaration of independence in 1948. During this war, Jordan occupied East Jerusalem, including the Old City and its holy sites, and Israel took control of the Western part of the city⁴¹.

The following relevant event to take into account is the previously explained "Six-Day War", which happened in 1967 and left the Arabs defeated and humiliated, while Israel took control of East Jerusalem. This annexation is not recognized by the international community⁴².

In 1980 Israel passed the Basic Law: Jerusalem, Capital of Israel, which declared Jerusalem as Israel's "complete and united" capital⁴³. The law also stated that the city's holy places would be protected and freedom of worship was granted to all religions. The international community did not recognize this law and the United Nations Security Council passed a resolution condemning it⁴⁴.

In 1993 the Oslo Accords took place. These Accords were signed between Israel and the Palestine Liberation Organization (PLO) and they laid down the groundwork for the creation of a Palestinian State in the West Bank and Gaza⁴⁵. These accords did not mention the legal status of Jerusalem, leaving it as probably the most contentious issue in the conflict⁴⁶.

³⁹ History of Jerusalem, Jewish Virtual Library: <https://www.jewishvirtuallibrary.org/history-and-overview-of-jerusalem>.

⁴⁰ Avi Shlaim. *The Iron Wall Israel and the Arab World*. New York, Ny Norton, 2014.

⁴¹ Morris, Benny. *Righteous Victims: A History of the Zionist-Arab Conflict, 1881-2001*. London, Kuperard, 2001.

⁴² Morris, Benny. *Righteous Victims: A History of the Zionist-Arab Conflict, 1881-2001*. London, Kuperard, 2001.

⁴³ Law, Basic. "Jerusalem, Capital of Israel." Официальный сайт Кнессета.[Электронный ресурс] URL: http://www.knesset.gov.il/laws/special/eng/basic10_eng.htm (дата обращения 10.02. 2016) (1980).

⁴⁴ United Nations Security Council Resolution 478 (1980).

⁴⁵ Bauck, Petter. *The Oslo Accords 1993-2013*. 9 Sept. 2013.

⁴⁶ Buchanan, A. *Peace with Justice*. Springer, 5 July 2000.

The last relevant event for this thesis is the 2017 US embassy move from Tel Aviv to Jerusalem, which enraged many countries and was met with international condemnation. Numerous countries argued that it undermined the prospects for a two-state solution to the conflict⁴⁷.

These events have shaped the legal status of Jerusalem and its place and relevance in the Israeli-Palestinian conflict. While Israel declares Jerusalem to be its “complete and united” capital, the international community has not recognized this claim and considers the status of the city to be a matter for negotiations between the Israelis and Palestinians⁴⁸.

Two of the key pillars that will be taken into consideration throughout this thesis are the enormous religious and cultural significance of Jerusalem, whose relevance lies in offering a thorough and in-depth analysis of the legal problems and complexity surrounding the city's status. Such a thesis would examine Jerusalem's legal past, as well as the pertinent international laws and treaties that have influenced its legal standing over time. The legal merits of the numerous claims made by the parties involved in the dispute would also be examined.

A study and a thorough examination of legal status of the Jerusalem could have a number of repercussions. It could for starters contribute to a better understanding of the legal framework governing the conflict and provide insights into the legal options available for resolving the conflict.

Understanding the intricacies and difficulties involved with this subject requires knowledge of both the historical context and the contemporary legal framework controlling Jerusalem's position under international law. We can learn more about the elements that have shaped Jerusalem's legal standing by looking at competing claims, pertinent international legal documents, and historical trends. This research paves the ground for further investigation of the legal aspects and potential routes to a fair and long-lasting settlement of the status of Jerusalem.

It is for these above-stated reasons that this thesis, which examines Jerusalem's legal status, could also advance the study of international law and have repercussions for other territorial conflicts and wars throughout the globe.

⁴⁷Dov Ivry. Joe Who, the Big D, and the Jerusalem Embassy. Createspace Independent Publishing Platform, 7 Feb. 2017.

⁴⁸ Shmuel Berkovitz, and Ha-Merkaz Ha-Yerushalmi Le-'inyene Tsibur U-Medinah. The Status of Jerusalem in International and Israeli Law. Jerusalem, Jerusalem Center For Public Affairs, 2018.

Overall, a thesis on this topic would make a significant contribution to the academic literature and knowledge, have repercussions for policymakers and decision-makers involved in the conflict resolution process who might use the thesis' conclusions to guide their choices, increase public awareness of the complexity of the Israeli-Palestinian conflict, and contribute to the field of international law scholarship.

CHAPTER I

THE BRITISH MANDATE, PALESTINE'S DIVISION, AND JERUSALEM'S *DE FACTO* DIVISION from 1917 to 1966

The British Mandate in Jerusalem

1917 is a year worth mentioning. In this year the Balfour Declaration happened, which aimed to «the establishment in Palestine of a national home for the Jewish people»⁴⁹ while protecting «the civil and religious rights of existing non-Jewish communities in Palestine»⁵⁰. The League of Nations with this declaration granted the United Kingdom with the Palestine Mandate in 1922. Given the important significance of Palestine to the three largest monotheistic religions, the Mandatory Power assumed entire responsibility for the Holy Places, including "preserving existing rights"⁵¹, "securing free access"⁵², and "free exercise of worship,"⁵³ with the exception of the administration of exclusively Muslim sacred shrines, that were granted immunity by the Mandate⁵⁴ in article 13. A special commission was to be established in addition⁵⁵, in order "to examine, specify, and decide the rights and claims in correlation with the Holy Places and the rights and dues interacting to the different religious communities in Palestine"⁵⁶, according to the Mandate.⁵⁷ The Holy Places were still under the control of the obligatory Power, maintaining the Ottoman status quo⁵⁸ governing interactions among the various faiths. However, that committee was not constituted due to difficulty in ensuring representation by all religious communities.

⁴⁹Yale Law School. "The Avalon Project : Balfour Declaration November 2, 1917." Yale.edu, 2019, avalon.law.yale.edu/20th_century/balfour.asp.

⁵⁰ Yale Law School. "The Avalon Project : Balfour Declaration November 2, 1917." Yale.edu, 2019, avalon.law.yale.edu/20th_century/balfour.asp.

⁵¹ (League of Nations)

⁵² Ibis.

⁵³ Ibis.

⁵⁴ "The Avalon Project: The Palestine Mandate." Yale.edu, 2019, avalon.law.yale.edu/20th_century/palmanda.asp.

⁵⁵ Article 13 of the Palestine Mandate. Full text of the Mandate: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/0553089B2A1A051E852560D5006F9FBFE>.

⁵⁶ Burgess, Peter J. "The sacred site in civil space: meaning and status of the temple mount/al-Haram al-Sharif." *Social Identities* 10.3 (2004): 311-323.

⁵⁷ British Mandate, 1922: «A special commission shall be appointed by the Mandatory to study, define and determine the rights and claims in connection with the Holy Places and the rights and claims relating to the different religious communities in Palestine».

⁵⁸ Nations., United, and United Nations. *The Origins and Evolution of the Palestine Problem*. 1979.

About 100,000 Jewish immigrants came to Palestine about a decade after the Mandate's establishment, bringing the Jewish population residing in Palestine from about 10% to over 17%. The Jewish population in Jerusalem⁵⁹ expanded from roughly 34,100 to 53,800, reaching 57.8% of the total by 1931 (within the municipal boundaries at that time). Difficulties between the Islamic and Jewish communities were first brought about by the rapid and unexpected growth of the Jewish population, and Jerusalem quickly became the center of these difficulties. The Western "Wailing" Wall of the Old Jewish Temple, the most important site religion-wise for Jewish prayer, is situated on the western side of the Haram al-Sharif, the place with the highest religious significance for Muslims in the City⁶⁰. In August 1929, tensions increased and erupted in severe violence towards this site.

Following the approval by the League of Nations, the mandatory Power elected an international commission⁶¹ in order "to determine the rights and claims of Muslims and Jews in connection with the Western or Wailing Wall"⁶². This commission was made up of some of the most important experts from Switzerland, the Netherlands, and Sweden, who, in 1930 spent a month in Jerusalem, gathering valuable information and hearing testimonies of the two parties. There was also an effort to negotiate a solution between the parties, but it was unsuccessful. The commission decided that Muslims had rights to the Western Wall and some of the Haram al-Sharif area⁶³ while the Jewish community had the right to access those areas that held religious significance to them at any time⁶⁴, which mostly concerned the Wall.

This provision shows how much of an effort was made in order to keep every party calm and it is a clear attempt at creating a peaceful environment that safeguards religion and places relevant to each and everybody involved in the conflict. Unfortunately, how I shall show subsequently, this first attempt at peace, as well as many others that came after, did very little to calm the fiery spirits of Arabs and Jews in the Middle East.

The Commission also established supplementary rights and duties for the two religious communities.

⁵⁹ Ben-Arieh, Yehoshua. *The Making of Eretz Israel in the Modern Era. A Historical-Geographical Study (1799-1949)*. Berlin, Boston, Jerusalem, De Gruyter, Hebrew University Magnes Press Yad Izhak Ben-Zvi, 2020.

⁶⁰ Klein, Menachem. *Jerusalem*. Hurst & Company, 2001.

⁶¹ Mohinder Singh Panu. *Partners of British Rule*. Allied Publishers, 2006.

⁶² Mattar, Philip. "The role of the Mufti of Jerusalem in the political struggle over the Western Wall, 1928–29." *Middle Eastern Studies* 19.1 (1983): 104-118.

⁶³ Graizbord, David L. *The New Zionists*. Lexington Books, 26 May 2020.

⁶⁴ "Judgment No. 11 of the United Nations Palestine Commission: The Wailing Wall" from the UN website

The security situation further worsened during the 1930s as more Jews immigrated in search of shelter from the Nazis. The Palestine Royal Commission was founded by the Mandatory Power under Lord Peel in 1936 when the Palestinian uprising against immigration began⁶⁵. The purpose of this Royal Commission was to investigate the reasons for the Arab-Israeli conflict that was becoming increasingly more and more violent. The Commission decided that the mandate was not appropriate to the cause and that it should have been withdrawn due to the gaps between the Arab and Jewish national movements that could hardly be mended by such Mandate. Furthermore, it supported the establishment of independent Arab and Jewish states within Palestine⁶⁶. The Holy Places were deemed by the Commission to be "a sacred trust of civilization" in light of the sacredness of Jerusalem to Christianity, Islam and Jews⁶⁷. It advocated for the continuation of British rule over a Jerusalem-Bethlehem zone comprehensive of the places of worship and was connected to the Mediterranean at Jaffa as part of a new League of Nations mission⁶⁸.

Arguably this path was taken to reach an agreement that would accommodate all parties in the conflict, as well as the British, who had interests in remaining on that land.

The original plan for Palestine to be divided with Jerusalem receiving a unique status was displaced by political and military developments. The Palestinian dispute was brought before the UN when the United Kingdom declared that it was unable to end it following World War II.

Jerusalem in the Partition Plan

The Palestinian issue had finally been brought before the United Nation, in April 1947, Palestine was being torn apart by war between the Jewish and Arab communities⁶⁹, and Jerusalem as well was severely impacted. While most of the Jewish immigrants had settled into the western portion of Jerusalem, the City remained predominantly Arab. The Jerusalem sub-district has a diversified population, with sizeable populations of Jews, Muslims, and Christians, as seen by the demographic data from December 1946. Approximately 102,000

⁶⁵ Bellamy, Paul, and Karl R Derouen. *International Security and the United States: An Encyclopedia*. Vol. 1. Westport, Conn. Praeger Security International, 2008.

⁶⁶ "Peel Commission Report." United Nations Information System on the Question of Palestine. <https://www.un.org/unispal/document/auto-insert-196778/>.

⁶⁷ Palestine Royal Commission Report (Peel Commission Report), 1937. Available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/07175DE9FA2DE563852568D3006E10F3>.

⁶⁸ United Nations Special Committee on Palestine (UNSCOP) in 1947.

⁶⁹ Pappé, Ilan. *A History of Modern Palestine*. Cambridge University Press, 12 May 2022.

Jews, 104,000 Muslims, and 46,000 Christians were living in the Jerusalem sub-district in December 1946⁷⁰. Understanding the socioeconomic and demographic complexity of the Palestinian issue at the period is made much easier with the help of this context knowledge.

The tumultuous and complex nature of the war in Palestine seemed to be reflected in the circumstances of April 1947, when the Palestinian question was brought before the United Nations. The conflict between the Jewish and Arab communities had severely damaged Jerusalem as well as the surrounding area.

The Committee unanimously advised that access to the Holy Places shall be guaranteed accordingly to the laws in place at the time concerning that matter and additional safeguards shall be put to guarantee the hallowed nature of the Holy Places⁷¹. It also recommended having specific wording on the status of the Holy Places and the rights of religious communities in future statutes of the State or States that will be established in Palestine.

Two more recommendations for the future of Palestine were also made by the Committee. The scheme that the Committee's minority members were encouraged to put forth advocated for the establishment of separate municipal structures for the Jewish⁷² and Arab populations of Palestine as well as an independent state with Jerusalem appointed as the capital. It also pushed for the creation of a permanent international system to watch over and protect the Holy Places in Jerusalem and worldwide. Overall, if the plan put forth by the committee's minority members had found actual implementation, it might have resulted in the formal division of municipal structures along communal lines, the creation of a separate state with Jerusalem as its capital, and the development of a global system to safeguard the Holy Places. It's crucial to remember that these proposals were part of a larger discussion and negotiation process and that how they were implemented or what effect they had on the Israeli-Palestinian conflict at the time would have depended on a number of variables.

The plan given by the majority of the Committee proposed another option, which recommended the creation of two separate states in Palestine: an Arab and a Jewish one. This plan saw the territorial internationalization of Jerusalem as an enclave within the Arab state⁷³.

⁷⁰ Britannica. Full text: <https://www.britannica.com/place/Palestine/World-War-I-and-after>

⁷¹ UNSCOP Report, Chapter III, A, 4.

⁷² Balfour, Alan. *The Walls of Jerusalem Preserving the Past, Controlling the Future*. Hoboken, Nj, John Wiley & Sons, Inc, 2019.

⁷³ UN General Assembly resolution 181, 1947.

The General Assembly endorsed the latter plan in its resolution 181 titled "Future Government of Palestine" on November 29, 1947⁷⁴. The resolution includes a Plan of Partition with the Economic Union that details the three entities' boundaries, institutions of government, protection of fundamental rights, such as minority rights, financial protection and other forms of cooperation, with special consideration for the Holy Places and freedoms and rights of religion⁷⁵.

The Trusteeship Council of the United Nations intended to oversee the unique international rule for Jerusalem. Jerusalem and its surroundings were put as the boundaries of the city⁷⁶. The consequences this implementation could have potentially brought are unknown but there are some hypotheses that could be made. For starters, it would have had a positive impact on the civilian population, which would have been spared from the many subsequent casualties, secondly, there would have been better protection of the holy sites and an international recognition of them. However, despite these possibilities, the truth is that no one could really predict what could have happened, since this is a very controversial topic and nothing about it is of easy explanations or resolutions.

The Assembly addressed the Council to draft a statute for Jerusalem that would last ten years⁷⁷ and would include provisions for the election of a Governor and administrative staff, broad local autonomy for villages, townships, and municipalities, the demilitarization of the City, the creation of a special police force to guard religious sites and buildings in particular, and the election of a Legislative Council by all residents, regardless of nationality⁷⁸ and the creation of an autonomous judicial system besides a citizenship for civilians resident in Jerusalem. The act was intended to maintain mainly the freedom of access and worship to holy places and places of worship, as well as to secure their physical preservation⁷⁹. This would have been a bilateral provision that could have benefitted all parties involved. Special duties in this regard were delegated to the Governor of Jerusalem, who is responsible for both residents of Jerusalem and citizens of the two independent States.

⁷⁴ United Nations, "Resolution 181 (II). Future Government of Palestine," November 29, 1947, [https://undocs.org/A/RES/181\(II\)](https://undocs.org/A/RES/181(II)).

⁷⁵ "Israel profile - Timeline", BBC News: <https://www.bbc.com/news/world-middle-east-14626523>.

⁷⁶ "Resolution 181 (II). Future government of Palestine. A/RES/181(II), 1947", United Nations: [https://undocs.org/A/RES/181\(II\)](https://undocs.org/A/RES/181(II)).

⁷⁷ Assembly, UN General. "Security Council." Report of the Panel on United Nations Peace Operations (2011).

⁷⁸ "The Question of Palestine." United Nations, 2023. <https://www.un.org/unispal/question-palestine/>.

⁷⁹ 2021 Report on International Religious Freedom: Israel, West Bank and Gaza, U.S. Department of State: <https://www.state.gov/reports/2021-report-on-international-religious-freedom/israel-west-bank-and-gaza/>.

However, this resolution described above, could not be managed to be enacted and applied due to resistance from the contesting parties. The Arab States and the spokesman for the Arab Higher Committee rejected the Partition Plan and stated that they did not see themselves as being bound by the resolution⁸⁰, but the officials of the Jewish Agency supported it⁸¹. Due to the extreme divisions between the opposing forces, a full-scale conflict burst out in Palestine, which led to the *de facto* separation of the nation and of Jerusalem⁸².

The *De Facto* partition of Jerusalem of 1948

Jerusalem's destiny in the late 1940s was decided by armed action rather than by international consensus or peaceful negotiations⁸³. Prior to the United Kingdom giving up its Mandate for Palestine on May 14, 1948, hostilities between paramilitary Palestinian Arabs and Jewish groups had gotten worse for a while⁸⁴. After Israel's declaration of its own state on that same date, a full-scale conflict broke out when the armed forces from Arab nations eventually came⁸⁵.

By the time a cease-fire agreed upon by the UN took effect on November 16, 1948, Israeli territorial control had reached well into the Arab State's designated territory as well as the West portion of the Jerusalem enclave that was slated for internationalization accordingly to the partition resolution⁸⁶. It was estimated that 60,000 Palestinians fled the West part⁸⁷. Jordan, which at the time was not a member of the United Nations, had control over East Jerusalem, the Holy Places, and the West Bank⁸⁸.

The *de facto* split of the City between the two at-war nations with sealed borders was first recognized in an Israel-Jordan cease-fire agreement signed on November 30, 1948⁸⁹. It

⁸⁰ Rogan, Eugene L, and Avi Shlaim. *The War for Palestine: Rewriting the History of 1948*. Cambridge, Cambridge University Press, 2007.

⁸¹ The Israel Ministry of Foreign Affairs: "The Zionist leadership decided to accept the Partition Plan, despite its reservations, as a basis for further negotiations with the Arabs." (Source: <https://mfa.gov.il/MFA/AboutIsrael/History/Pages/1947%20%20UN%20General%20Assembly%20Resolution%20181.aspx>).

⁸² Avi Shlaim. *The Iron Wall Israel and the Arab World*. New York, Ny Norton, 2014.

⁸³ Laqueur, Walter. *A History of Zionism*. Schocken, 1 July 2009.

⁸⁴ Morris, Benny. *1948 a History of the First Arab-Israeli War*. Yale University Press, 2008.

⁸⁵ Tal, David. *War in Palestine, 1948*. Routledge, 24 June 2004.

⁸⁶ Avi Shlaim. *The Iron Wall Israel and the Arab World*. New York, Ny Norton, 2014. p. 64

⁸⁷ Morris, Benny. *1948 a History of the First Arab-Israeli War*. Yale University Press, 2008. p. 224.

⁸⁸ Avi Shlaim. *The Iron Wall Israel and the Arab World*. New York, Ny Norton, 2014. p. 80.

⁸⁹ Boston, et al. *Israel and Palestine*. 2010.

was formally established by the Israel-Jordan Armistice Agreement signed on April 3, 1949⁹⁰. However, the Agreement was regarded globally as having no legal bearing on the enduring legitimacy of the partition resolution's provisions for the internationalization of Jerusalem.

As a result, before 1967, no embassies were established in Jerusalem⁹¹, and as of right now, nine nations have a consulate in West Jerusalem, and only four countries have their embassies there. However, many countries do not recognize Jerusalem as Israel's capital and do not maintain a diplomatic presence in the city.

An international sui generis consular corps known as the "Consular Corps of the Corpus Separatum" continues to be present in Jerusalem, and deserves special attention. However, none of the nine states who have kept consulates in the whole of Jerusalem have acknowledged any authority on the city. The consuls of such States do not produce a letter of authorization to the Ministry of Foreign Affairs or obtain accreditation from the President of Israel, in contrast to consuls working in Israel⁹².

They do not pay taxes and maintain no formal relationships with Israeli authorities. They adhere to established protocol rules when carrying out their actions in order to avoid the appearance of acknowledging any appearance of recognition of sovereign claims to the City⁹³.

Despite the escalation of military and armed conflicts, the United Nations frequently emphasized the aim of internationalizing the Jerusalem region and made attempts to provide the groundwork for an international order⁹⁴. In April 1948, the Trusteeship Council, which under Assembly resolution 181 was about to become the Administering Authority, prepared an in-depth draft of legislation for the projected independent territorial entity. The Council also looked into offers for the quick establishment of an international power and the assumption of temporary trust territory in order to guarantee safety to the City and its citizens⁹⁵; however, it concluded that "it found it impossible to secure the mutual agreement

⁹⁰ "1948 Arab-Israeli War," Encyclopaedia Britannica: <https://www.britannica.com/event/1948-Arab-Israeli-War>.

⁹¹ Zalman Shoval. Jerusalem and Washington. Rowman & Littlefield, 30 Nov. 2018.

⁹² "The Relocation of the U.S. Embassy from Tel Aviv to Jerusalem (Palestine v. United States of America): a Commentary on the Merits of the Case, Jurisdiction of the International Court of Justice and Admissibility of Palestine's Application", B. Alzoughibi.

⁹³ John Albert Murley. Leo Strauss and His Legacy. Lexington Books, 2005.

⁹⁴ "Jerusalem: Internationalization and its implications", T.A. Al-Maeena, 2017 <https://www.arabnews.com/node/1152811>.

⁹⁵ "The Question of Palestine and the United Nations" by United Nations, Department of Public Information, DPI/2279/Rev.1, pg. 27-28: <https://www.un.org/unispal/document/auto-insert-192717/>.

of the interested parties."⁹⁶ In the meantime, the Assembly had selected Count Bernadotte as a Mediator in May 1948 in order to secure the protection of the Holy Places, make arrangements for shared services essential to the population's well-being⁹⁷, and advance a peaceful settlement. The Mediator informed that the Partition Plan was being outpaced by events and that the new Israeli government was growing more skeptical of the City's proposed internationalization and was instead favoring its incorporation, into the new State of Israel.⁹⁸ The following months saw the international community focused on efforts to stop more devastation, achieve a cease-fire, and demilitarize the City without compromising the future political status.⁹⁹

On the suggestion of the Mediator, a three-member Conciliation Commission for Palestine was constituted by the General Assembly in resolution 194 of the 11th of December 1948¹⁰⁰. This Commission would take over the Mediator's duties in pursuing a final settlement and have its official headquarter in Jerusalem. The Assembly set that the Commission would consist of France, Turkey, and the United States of America¹⁰¹.

The Commission was given the task of assisting in the repatriation of refugees who, according to the resolution, should be allowed to do so or given compensation in money if they opted to stay, under the resolution¹⁰². Regarding Jerusalem, the Assembly decided that «the Jerusalem area, including the current municipality of Jerusalem plus the surrounding villages and towns... should be accorded special and separate treatment from the rest of Palestine and should be placed under the effective control of the United Nations¹⁰³», and the Commission was instructed “to present to the fourth regular session of the General Assembly detailed proposals for a permanent international regime for the Jerusalem area which will provide for the maximum local autonomy for distinctive groups consistent with the special international status of the Jerusalem area¹⁰⁴”. The Commission was also asked to include proposals in regard to the Holy Places¹⁰⁵.

⁹⁶ See documents T/118/Rev.2 and A/544.

⁹⁷ Fayed Abdullah Sayegh. *The United Nations and the Palestine Question*. 1966.

⁹⁸ Official Records of the General Assembly, Third Session, Supplement No. 11 (A/648).

⁹⁹ Security Council resolution 54 (1948).

¹⁰⁰ [https://undocs.org/en/A/RES/194\(III\)](https://undocs.org/en/A/RES/194(III))

¹⁰¹ General Assembly. Resolution 194. United Nations, December 11, 1948. [https://undocs.org/A/RES/194\(III\)](https://undocs.org/A/RES/194(III)).

¹⁰² United Nations General Assembly. (1948). Resolution 194 (III). Palestine - Progress Report of the United Nations Mediator. Retrieved from [https://undocs.org/A/RES/194\(III\)](https://undocs.org/A/RES/194(III)).

¹⁰³ United Nations General Assembly resolution 181(II), November 29, 1947: <https://www.un.org/unispal/document/auto-insert-187946/>.

¹⁰⁴ United Nations General Assembly Resolution 194, which was adopted on December 11, 1948.

¹⁰⁵ United Nations General Assembly Resolution 194.

This signified that the issue was truly being taken at heart and the international community was trying to inform itself as much as possible, covering all the issues in order to give the most insightful perspective and possibly but unlikely, a solution.

The Commission's efforts are shown in detail in its reoccurring reports to the General Assembly. In an effort to win the approval of Israel and Palestine, the Commission formed a Special Committee in Jerusalem and its Holy Places to carry out the necessary preparations, have consultations with local authorities, as well as with representatives of the Arab and Israeli governments, and representatives of various Middle Eastern religions in Jerusalem and other Arab states, and conduct the necessary research¹⁰⁶. According to the Commission, the Arab delegates were generally willing to accept the idea of an international regime for the region of Jerusalem as long as the United Nations provided assurances of its stability and long-term viability. Israel announced it did not accept the creation of an international sovereignty over Jerusalem¹⁰⁷, even though it acknowledged that the Commission was bound by General Assembly resolution 194, but it accepted an international regime for or the international control of the Holy Places without reservation¹⁰⁸.

In September 1949, the Conciliation Commission approved and forwarded the draft text of an instrument creating a permanent international framework for the Jerusalem region to the General Assembly¹⁰⁹. In an effort to balance the demands for "maximum local autonomy in Jerusalem¹¹⁰" with the interests of the international community in a particular position for the City, the draft called for the separation of the City into an Arab and a Jewish sector, within which the corresponding local authorities would have the authority and the power to handle all matters despite the ones of international concern. They were specifically given to a commissioner of the United Nations who would be chosen by and responsible to the General Assembly. This commissioner would seek the permanent demilitarization and neutralization of the appointed area, make sure human rights were protected as well as the rights of particular groups, and ensure the protection of the Holy Places and the free access to them. Said draft also included provisions for the creation of an international tribunal in

¹⁰⁶ Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, United Nations: <https://www.ohchr.org/en/countries/palestine/special-committee-reports>.

¹⁰⁷ UN Security Council Resolution 476, June 30, 1980.

¹⁰⁸ UNCCP, second progress report (A/838).

¹⁰⁹ United Nations Conciliation Commission for Palestine, Progress Report of the Conciliation Commission for Palestine, Covering the Period from 11 December 1948 to 23 October 1950, A/1367/Rev.1, 23 October 1950, para. 10

¹¹⁰ United Nations General Assembly Resolution 194, December 11, 1948.

order to defend the interests of the global community, a mixed council to govern issues of common concern, and a mixed tribunal and council to rule on those issues¹¹¹.

The Commission clarified that the project was intended to be employed "in the present circumstances¹¹²", but it was to be sufficiently adaptable «to be applied to any territorial situation that might emerge from the final settlement of the Palestine problem¹¹³», according to a communication conveying its proposals to the Assembly. The Commission later clarified that the plan was based on the existing division of the City and left to the Governments of the neighbouring States (Israel and Jordan) virtually all typical powers of government within the Arab and Jewish parts of Jerusalem, respectively. This was done in response to various criticisms of the plan. Accordingly, the function of the international apparatus would be to create a bridge over the gap that had two distinct jurisdictions in a geographically unified territory¹¹⁴.

The Supreme Court was created in Jerusalem by the Israeli government in September 1948, and a few months later, in February of the following year, the Knesset convened there, where the President also took the oath of office in Jerusalem. According to the Conciliation Commission, Israeli authorities declared all ministerial and other public services in the region to be governed by a permanent international regime¹¹⁵. As a result, the Conciliation Commission wrote a message to the Prime Minister of Israel, highlighting how these actions conflicted and were not compatible with the General Assembly resolutions on the internationalization of the Holy City.

Later in the year, the Trusteeship Council also approved a decision declaring that the acts were in conflict with the Assembly resolutions and requested that Israeli authorities would withdraw them.¹¹⁶ Israel's stance on the concept of Jerusalem's internationalization, as

¹¹¹ "The Question of Palestine", United Nations: <https://www.un.org/unispal/document/auto-insert-195301/>

¹¹² Report of the United Nations Conciliation Commission for Palestine, 1 September 1949-31 August 1950, A/1367/Rev.1, available at <https://unispal.un.org/UNISPAL.NSF/0/D7BC7FF8F5D2E0E785256B34006637C3>.

¹¹³ Ibid. note 113

¹¹⁴ The UNCCP proposals and subsequent clarifications are contained in document A/973 and Add.1; see also a detailed summary account of the Commission's efforts in a later general progress report and supplementary report (A/1367/Rev.1).

¹¹⁵ United Nations: the Question of Palestine <https://www.un.org/unispal/document/auto-insert-180810/>

¹¹⁶ UNCCP, third progress report (A/927) and thirteenth progress report (A/2629); Trusteeship Council resolution of 21 December 1949 (T/427).

a result, became a new key topic of discussion during the 1949 debate over its candidature to join the UN¹¹⁷. The Israeli delegate said to the General Assembly's ad hoc Committee:

"The Government of Israel advocated the establishment by the United Nations of an international regime for Jerusalem concerned exclusively with the control and protection of Holy Places and would co-operate with such a regime¹¹⁸."

"It would also agree to place under international control Holy Places in parts of its territory outside Jerusalem, and supported the suggestion that guarantees should be given for the protection of the Holy Places in Palestine and for free access thereto¹¹⁹."

The representative was questioned over the Israeli Prime Minister's claim that *"the State of Israel could not accept the establishment of an international regime for the City of Jerusalem¹²⁰"* due to historical, political, and religious grounds. To that, he said Israel would propose possible resolutions to the Assembly in order to define the future legal status of Jerusalem¹²¹ that *«would distinguish between the powers of an international regime with respect to the Holy Places and the aspiration of the Government of Israel to become recognized as the sovereign authority in Jerusalem" in order to define the future legal status of Jerusalem»¹²².*

Despite the absence of a clear agreement on the issue, Israel was not prevented from joining the United Nations. However, the pertinent resolution makes specific mention of the preceding decisions on internationalizing Jerusalem and the return of refugees as well as the justifications provided by Israelis¹²³.

The Conciliation Commission's recommendations for a global order that considered the *de facto* split of Jerusalem between the two folks, General Assembly analyzed them¹²⁴. Said Assembly reiterated its wishes that *"Jerusalem should be placed under a permanent international regime, which should envisage appropriate guarantees for the protection of the Holy Places¹²⁵,"* besides stating once

¹¹⁷ United Nations: the Question of Palestine. "PLENARY MEETINGS OF THE GENERAL ASSEMBLY" <https://www.un.org/unispal/document/auto-insert-180950/>.

¹¹⁸ This statement is the United Nations General Assembly resolution 181, adopted on November 29, 1947. The relevant text can be found in Part III, Section B, Paragraph 2 of the resolution.

¹¹⁹ Official Records of the General Assembly, Third Session, Part II, Ad Hoc Political Committee, Summary Records of Meetings, 6 April-10 May 1949, 45th meeting, p. 236.

¹²⁰ The source of this statement is the text of the State of Israel's declaration of independence, which was read by David Ben-Gurion on May 14, 1948, at the Tel Aviv Museum in Israel. The full text of the declaration can be found on the website of the Israeli Ministry of Foreign Affairs

¹²¹ Akram, Susan M, et al. International Law and the Israeli-Palestinian Conflict. Routledge, 23 Dec. 2010.

¹²² Ibid., 46th meeting, p. 254

¹²³ General Assembly resolution 273 (III).

¹²⁴ United Nations: GENERAL ASSEMBLY DEFERS ACTION ON PROPOSAL TO ENHANCE STATUS OF PALESTINE OBSERVER AT UNITED NATIONS, Press Release GA/9378.

¹²⁵ United Nations General Assembly. (1948). Resolution 194 (III). Retrieved from [https://undocs.org/A/RES/194\(III\)](https://undocs.org/A/RES/194(III)).

again that in their opinion the famous partition plan represented a just settlement to the dispute¹²⁶. The Assembly demanded that the Trusteeship Council completed the creation of the Statute for Jerusalem, leaving out what was no longer applicable, and to move forward with its implementation right away¹²⁷. This was done in order to reiterate what was stated in the partition plan regarding the establishment of a *corpus separatum* supervised by the UN¹²⁸. The Council was also urged to not from letting "*any actions taken by any interested Government or Governments divert it from adopting and implementing the Statute of Jerusalem*"¹²⁹. Additionally, the Assembly demanded a formal commitment from the affected States stating that they would abide by the terms of the resolution¹³⁰.

The Trusteeship Council discussed the shown statute with the participation of Jordan and Israel, the two powers in charge of the region and fighting for it, as well as representatives from nearby Arab nations and several Christians, at its sessions in January 1950 and December 1949¹³¹. According to the Council, Jordan would not talk about any internationalization of Jerusalem's plan. Israel, on the other hand, disagreed with the idea of internationalization but remained open to the idea of the Holy Places becoming under direct UN control. The Jordanian representatives later spoke about this situation and clarified that Jordan was not opposing the role of the United Nations in monitoring the much-needed protection of human rights and freedom to access the Holy Sites, under the attentive guard by its Government.¹³²

On the basis of the clauses in the partition plan, the Council still established a comprehensive Statute for the City of Jerusalem in April 1950 (with the exception of the sections relating to economic union). The Council put in charge its President to urge collaboration from the two governments. The President informed the Council that Jordan had not given an official response, despite his best efforts to confer with the parties¹³³.

¹²⁶ United Nations General Assembly. (1948). Resolution 194 (III). Retrieved from [https://undocs.org/A/RES/194\(III\)](https://undocs.org/A/RES/194(III))

¹²⁷ United Nations General Assembly. (1949). Resolution 303 (IV). Retrieved from [https://undocs.org/A/RES/303\(IV\)](https://undocs.org/A/RES/303(IV))

¹²⁸ *Ibis*.

¹²⁹ *Ibis*.

¹³⁰ *Ibis*.

¹³¹ Feintuch, Yossi. U.S. Policy on Jerusalem. Praeger, 1987.

¹³² Question of an International Régime for the Jerusalem area and Protection of the Holy Places, special report of the Trusteeship Council, Official Records of the General Assembly, Fifth Session, Supplement No. 9 (A/1286).

¹³³ International Court of Justice: Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory <https://www.icj-cij.org/case/131>.

Israel, on its behalf, claimed that the Statute could no longer be enforced due to the creation and establishment of Israel and their State and the inclusion of the Western sector of Jerusalem into its jurisdiction. Israel suggested a type of United Nations jurisdiction over the Holy Places solely as "the only practicable alternative principle". Following these statements, the President came to the conclusion that his findings were disappointing and implementing the Statute could lead to fights under the (at the time) current conditions.¹³⁴

At the same time, on the 23rd of January 1950, the Israeli Knesset declared Jerusalem to be the Israeli capital city and started relocating the official offices within the City. When Jordan also took action to extend its jurisdiction to East Jerusalem and the West Bank in the absence of a resolution to the Palestine conflict, the division of the City became even further formalized¹³⁵.

By October 1949, the Security Council had put off discussing how to demilitarize Jerusalem for an undetermined period of time¹³⁶, and in the following year, the Assembly revoked the economic allocation in order to create an internationalized regime.¹³⁷ As a result, the focus of United Nations activities was on attempting to address the complex issues raised by the high number of Palestinian refugees and their left behind homes. The Conciliation Commission made a final concerted attempt to moderate between warring Israel and Palestine in 1951, and as part of that effort, it presented a series of extensive proposals regarding refugees and correction of the armistice agreements to allow unrestricted access to the holy places of cult in the region of Jerusalem¹³⁸. The Commission, though, restated that the reluctance of the parties to incorporate meaningful solutions that were agreeable for both parties made it nearly impossible and definitely unthinkable to reach a solution¹³⁹.

In the following ten years, the Commission undertook a thorough effort to identify and evaluate all the abandoned Arab properties in anticipation of a future payment aimed to a compensation. Regarding Jerusalem in particular, the Commission found that assets owned by Arab refugees in the area under the Israeli control were worth US\$25.9 million at that

¹³⁴ Ibid., annex III. The Israeli proposal was not discussed by the Council.

¹³⁵ The Occupation and Annexation of Jerusalem through Israeli Bills and Laws <https://www.alhaq.org/advocacy/6263.html>

¹³⁶ Security Council decision of 25 October 1949, 453rd meeting.

¹³⁷ General Assembly resolution 468 (V).

¹³⁸ United Nations: the Question for Palestine, "Palestine refugees Question of compensation – UNCCP" <https://www.un.org/unispal/document/auto-insert-210477/>.

¹³⁹ Progress report of the UNCCP covering the period from 23 January to 19 November 1951, Official Records of the General Assembly, Sixth Session, Supplement No. 18 (A/1985).

time's current value.¹⁴⁰ The Commission finished this study in 1964 and only made its findings known to those parties who were directly concerned. In June 1967, Israel began to occupy the West Bank, the Gaza Strip, and East Jerusalem¹⁴¹. The Commission claimed that this further complicated the issue and rendered its efforts futile.¹⁴²

Another interesting resolution when speaking about the Israel-Palestine conflict, and one that we shall look at is the UN Security Council Resolution 242, which was adopted in November of 1967, following the Six-Day War between Israel and a coalition of Arab States. This resolution was drafted by the United Kingdom, the Soviet Union, and the United States and it aimed to establish a framework for peace negotiations between the Arab neighbouring states and Israel¹⁴³. Resolution 242 includes the termination of all claims and states of war, respect for and recognition of each state's dominion, territorial honor, and political independence, as well as their right to live in peace within safe and recognized borders without being threatened with or subjected to force, the withdrawal of Israeli armed forces from the territories occupied in the recent conflict, ensuring a just and honest settlement for refugees and guaranteeing freedom of navigation in international waterways in the area.

The resolution placed emphasis on the need for a "*just settlement of the refugee problem*"¹⁴⁴, rather than calling specifically for a Palestinian state. Additionally, the resolution left it up to the parties involved to decide what territories Israel was required to withdraw from. Which caused further disagreements as the two quarreling parts both wanted some of the same territories.

Israel has interpreted the resolution as a calling for negotiations between the interested parties to identify the precise borders. Palestine and several Arab countries have interpreted the resolution as a calling for the Israeli armed forces' withdrawal from the occupied territories.

¹⁴⁰ The work of the Commission with regard to refugee property holdings and the methods and techniques of identification and valuation are described in detail in a working paper prepared by its land expert in 1964 (A/AC.25/W.84). Information on Jerusalem is contained in working paper A/AC.25/W.81/Rev. 2, annex V, p. 8. Palestinians, however, have argued that United Nations estimates have substantially undervalued Palestinian properties (Centre for Policy Analysis on Palestine, Washington D.C. Palestinian Losses in 1948: The Quest for Precision, Information Paper No. 6 (1996)).

¹⁴¹ "History of the Question of Palestine", <https://www.un.org/>.

¹⁴² Progress report of the UNCCP covering the period from 1 October 1967 to 29 September 1972, Official Records of the General Assembly, Twenty-seventh session, Annexes, agenda item 40 (c) (A/8830).

¹⁴³ Resolution 242 (1967), Security Council.

¹⁴⁴ United Nations Security Council. (1967). Resolution 242 (1967). Retrieved from [https://undocs.org/S/RES/242\(1967\)](https://undocs.org/S/RES/242(1967)).

The interpretations of this UN Resolution have been a point of contention in the following peace negotiations and remains a key issue in the Israeli-Palestinian conflict.

The resolution has been the focus of continuous discussion and controversy and has been open to several interpretations. Some contend that the resolution calls for the withdrawal of Israeli citizens and forces Israeli from all areas it took control of during the 1967 conflict, including East Jerusalem, the West Bank, and the Gaza Strip¹⁴⁵. Others contend that the resolution simply calls for Israel to leave "territories," not "all territories," and that the exact borders ought to be decided upon through a peace treaty¹⁴⁶. However, despite the ongoing debate, this resolution remains a key point for peace negotiations between Israel and the Palestinians, as well as in a larger scale effort to end conflict in the Middle East.

Mentioned above is also another crucial resolution: the UN General Assembly for Resolution 181¹⁴⁷.

This resolution, also known as the UN Partition Plan for Palestine, was issued on November 29, 1947. It advised the partition of the British Mandate of Palestine into two states, one for Arabs and one for Jews. The plan proposed Bethlem and Jerusalem as a “corpus separatum”, zones to be administrated and governed internationally by the United Nations and would not be neither Arab nor Jewish.

After years of debates and negotiations, the resolution regarding the future of Palestine was adopted. The fact that Palestine was under the control of the British led many Western countries, including the Soviet Union and the United States, to support this resolution¹⁴⁸. Arab states, however, rejected such resolution, arguing that it was unjust and a breach of the rights of Palestinians.

The plan was not fully carried out and a year later, in 1948, the outburst of the Arab-Israeli War resulted in the establishment of the State of Israel and the displacement of thousands of Palestinians¹⁴⁹. Subsequently, Israel seized control of West Jerusalem and Jordan took control of East Jerusalem and the Old City.

Despite Resolution 181 was never fully implemented, it remains significant as the first international recognition of the importance of Jerusalem and a first suggestion of a specific

¹⁴⁵ “Israel, Palestine, and the Politics of a Two-State Solution”, S. Zunes & J. Mundy, 2010.

¹⁴⁶ Ibis.

¹⁴⁷ “Dynamics of the Arab-Israel Conflict”, M. Brecher, 2017.

¹⁴⁸ “History of Western Civilization II”, the Partitioning of Palestine <https://courses.lumenlearning.com/suny-hccc-worldhistory2/chapter/the-partitioning-of-palestine/>.

¹⁴⁹ “The Birth of the Palestinian Refugee Problem Revisited”, B. Morris, 2004.

legal status for the city. The plan symbolized an attempt by the international community to solve the conflict between Muslims and Jews in the contended territories. The plan ultimately failed due to the rejection by Arab states and the outburst of violence.

The legacy left behind by Resolution 181 is rather controversial, as both Israeli and Palestinians claim the right to the city of Jerusalem. The resolution is still considered an important part of the legal framework governing the conflict, and its solutions regarding the status of Jerusalem have been referenced in following UN resolutions and peace agreements.

On one hand, Resolution 181 was cited in the famous Oslo Accords of 1993, regarding a framework for the resolution of the conflict, including the recognition of Israel's right to exist and the creation of a Palestinian interim self-government in the West Bank and the Gaza Strip¹⁵⁰.

On the other, Resolution 242 was cited in the Camp David Accords of 1978 and the Madrid Conference of 1991. It was also the foundation of the 1993 Israeli-Palestinian Declaration of Principles¹⁵¹, which established a framework for the resolution of the conflict through negotiation.

The Israeli-Palestinian conflict and the international community's strategy for resolving it were significantly shaped by both the UN Security Council Resolution 242 and the UN General Assembly Resolution 181, respectively¹⁵².

The two resolutions are significant in their own right and have been mentioned in following peace talks and agreements, despite neither being fully executed nor having to deal with challenges and rejections.

International humanitarian law plays a key role in the Israeli-Palestinian conflict and is thus purposeful to examine its relevant provisions¹⁵³. International humanitarian law is a branch of international law and its aim is to limit the effects of armed conflicts on civilians and to protect those who are not taking part or a position in the hostilities.

The Fourth Geneva Convention, which was adopted in 1949 in response to the atrocities committed during World War II¹⁵⁴, is pertinent in this regard. This Convention, which establishes the rights and protection of civilians in times of war and armed conflict

¹⁵⁰ "Human Rights, Self-Determination and Political Change in the Occupied Territories", Brill, 2017.

¹⁵¹ "Peace with Justice", A.S. Buchanan, 2000.

¹⁵² "Legal Consequences of the Construction of a Wall in the Occupied Territory (Advisory Opinion)", International Law Reports, 2021.

¹⁵³ Idem. 152.

¹⁵⁴ "Human Rights in the Middle East: the Fourth Geneva Convention" <https://www.jewishvirtuallibrary.org/the-fourth-geneva-convention#:~:text=The Fourth Geneva Convention on,in territory under military occupation.>

and sets standards for the treatment of prisoners of war and the civilian population under occupation, as well as the rights of Palestinians to healthcare and education, is one of the most important pieces of international humanitarian law¹⁵⁵. It also forbids the destruction of property and sites of cultural significance.

In the Middle East, the issue of land occupation has been ongoing for decades and since the Fourth Geneva Convention detailed the rules for the protection of civilians undergoing such occupations, it is of particular relevance to the Israeli-Palestinian conflict, as it applies specifically to the treatment of Palestinians civilians living in the occupied territories of the West Bank, East Jerusalem and the Gaza Strip.

Article 47 of the Convention prohibits the occupying power from changing the laws or customs of the occupied territory, unless such changes are necessary for the security and the safety of the occupying forces or the welfare of the indigenous population¹⁵⁶.

Since East Jerusalem is seen by the international community as being an occupied area in this specific case of Jerusalem, the Fourth Geneva Convention is applicable to Israel's actions in the city. This means that Israel is prohibited by international law from changing the status of Jerusalem or its population through settlement construction or other means.

Israel has received numerous requests from the international community to terminate its occupation of East Jerusalem and respect the rights of the Palestinians who live there.

Additionally, several United Nations resolutions deemed Israel's annexation of East Jerusalem is illegal under international law, and that the city's final status must be determined through negotiations between Israelis and Palestinians.

Relevant resolutions that determined the illegality of East Jerusalem's annexation to Israel are:

- UN Security Council resolution 252 (1968)
- UN Security Council resolution 267 (1969)
- UN Security Council resolution 478 (1980)
- UN General Assembly resolution ES-10/15 (2017)

These resolutions, along with the Fourth Geneva Convention, provide a legal framework for resolving the status of Jerusalem and protecting the rights of all those living in the city, however, it is important to highlight that Israel debates the legality of these

¹⁵⁵ "Israel Yearbook on Human Rights, Volume 51 (2021)", J. Lahav, 2022.

¹⁵⁶ "Israel Yearbook on Human Rights, Volume 8 (1978)", Brill, 1989.

resolutions and its annexation of Jerusalem, and the issue remains a contentious one in the Israeli-Palestinian conflict.

The International Court of Justice has not yet rendered a thorough decision on Jerusalem's legal standing and its position in those matters. The Court has, however, made a number of pronouncements and provided advisory opinions that are pertinent to the matter.

The International Court of Justice (ICJ) began to consider the legal status of Jerusalem in its Advisory Opinion on the «*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*» in 2004¹⁵⁷. According to the decision, Israel's construction of a wall in the West Bank violates international law. The Court ordered Israel to stop building the wall and tear down the already-erected portions after declaring that it was being built in contravention of the Fourth Geneva Convention and other international legal commitments. Regarding Jerusalem's legal standing, the ICJ confirmed the Fourth Geneva Convention's applicability and declared that East Jerusalem is subject to its provisions¹⁵⁸ because it is a part of the Occupied Palestinian Territory¹⁵⁹. The ICJ also noted that the construction of Israeli settlements in the occupied Palestinian Territory, including East Jerusalem, are also deemed illegal under international law¹⁶⁰.

The ICJ did not give an ultimate ruling on the legal status of Jerusalem, as it would also spark several disagreements. However, the ICJ declared that any unilateral attempt to change the status of Jerusalem, including the construction of Israeli settlements and the annexation of East Jerusalem, is illegal under international law¹⁶¹. The ICJ highlighted the need for the parties to negotiate peaceful settlements based on the principles of international law and the relevant UN resolutions.

Before 2004 advisory opinion on directed toward other conflicts and territories. However, the situation in the Middle East but that, seen the situation in the Middle East, can be applied to the Israeli-Palestinian conflict as well¹⁶². In 1950 the ICJ issued an advisory

¹⁵⁷ United Nations, INTERNATIONAL COURT OF JUSTICE ADVISORY OPINION FINDS ISRAEL'S CONSTRUCTION OF WALL 'CONTRARY TO INTERNATIONAL LAW' <https://press.un.org/en>.

¹⁵⁸ "The Practice and Case Law of Israel in Matters Related to International Law", R.M. Giladi, 2014

¹⁵⁹ "Situation in Palestine", A. Bayefsky, 2021.

¹⁶⁰ Tilley, Virginia. *Beyond occupation: apartheid, colonialism and international law in the occupied Palestinian territories*. Pluto Press, London, 2012.

¹⁶¹ "A Review of Palestinian Legislation from a Women's Right Perspective", R. Bothme, 2014.

¹⁶² Giuliana Tiripelli. "Media and Peace in the Middle East", 2016.

opinion on the «International Status of Southwest Africa», which set a precedent for the application of the principle of self-determination in the context of decolonization¹⁶³.

This principle has been cited by many countries and international bodies as a basis for supporting the right of the Palestinian people to self-determination and the establishment of an independent Palestinian state with East Jerusalem as its capital.

Furthermore, the ICJ has issued other rulings related to this conflict, including one in 1971, regulating the “Legal Consequences for States of the Continued Presence of South Africa in Namibia”, which claimed the principle that territories acquired through the use of force and violence are deemed inadmissible under international law.

Overall, while the ICJ has not issued a comprehensive ruling on the legal status of Jerusalem, its previous advisory opinions and rulings provide a framework for understanding the legal issues at stake in the conflict. The ICJ’s opinions have been cited by several countries and international bodies in their assessments on the legal status of Jerusalem¹⁶⁴, its previous advisory opinions and rulings provide a framework for understanding the legal issues at stake in the conflict. The opinions of the ICJ have been cited by many countries as well as international bodies in their assessments of the legal status of Jerusalem, and have helped to reinforce the position of many in the international community that Israel’s annexation of East Jerusalem and its construction of settlements in the area are illegal under international law.

In addition to the ICJ’s opinions on the legal status of Jerusalem and related issues, there have been other developments that have impacted the ongoing conflict between Israel and Palestinians¹⁶⁵. These include the Oslo Accords signed in 1993, which aimed to provide a framework for resolving the conflict, peaceful negotiations, possibly the establishment of a Palestinian state, which despite the initial progress, stalled in more recent years, and the construction of new settlements, which were deemed illegal by many under international law and argue that they make up the major obstacle to the establishment of a viable Palestinian state, and the role of external actors¹⁶⁶; the involvement of external actors, including the United States, the European Union, and Arab states besides several regional and international

¹⁶³ Zyberi, Gentian. "Self-determination through the lens of the International Court of Justice." *Netherlands International Law Review* 56.3 (2009): 429-453.

¹⁶⁴ Giordano, Meredith A., and Aaron T. Wolf. "Sharing waters: Post-Rio international water management." *Natural resources forum*. Vol. 27. No. 2. Oxford, UK: Blackwell Publishing Ltd, 2003.

¹⁶⁵ Hirsch, Moshe. "The Legal Status of Jerusalem Following the ICJ Advisory Opinion on the Separation Barrier." *Israel Law Review* 38.1-2 (2005): 298-315.

¹⁶⁶ Agha, Hussein, et al., eds. *Track-II Diplomacy: Lessons from the Middle East*. Mit Press, 2004.

organizations are often thought of as controversial and has sometimes been seen as exacerbating the conflict.

Another significant development was the construction of Israeli settlements in the West Bank and East Jerusalem, which has naturally been a central point of contention in the conflict¹⁶⁷. The United Nations and many countries consider these settlements illegal under international law, but Israel argues their position and keeps on expanding them and thus enlarging their range of power¹⁶⁸. This in the past and nowadays as well, is leading to numerous rounds of extreme violence between Palestinian and Israeli groups, including Islamic Jihad and Hamas. These unfortunately brought many civilian casualties on both sides, which increased the tensions even more to a very dangerous extent. There continue to be efforts by the international community to broker ceasefires and promote peace negotiations but they had limited success.

In 2020, the Abraham Accords were signed between Bahrain, the United Arab Emirates, and Israel¹⁶⁹. The significance of these Accords lies in the normalization of diplomatic relations between the countries. On one hand, this development was welcomed by some as a step towards peace and stability in the region.

On the other, some expressed concerns that the Accords did not address the ongoing Israeli-Palestinian conflict and could undermine efforts to resolve it.

All the information given in this chapter shows that the legal status of Jerusalem is a highly contested and complex issue that has been at the core of the Israeli-Palestinian conflict for too many decades. The city holds historical, cultural, religious, and traditional meaning and significance for both Jews and Muslims, besides Christians, and its status has been the subject of many UN resolutions, international treaties, and legal opinions¹⁷⁰. The ICJ has weight in the problems, declaring the construction of a separation barrier in the West Bank on the behalf of Israel, to be illegal and found that the Israeli annexation of East Jerusalem violates international law¹⁷¹.

¹⁶⁷ Newman, David. "The territorial politics of exurbanization: Reflections on 25 years of Jewish settlement in the West Bank." *Israel Affairs* 3.1 (1996): 61-85.

¹⁶⁸ Risse, Thomas, Stephen C. Ropp, and Kathryn Sikkink, eds. *The persistent power of human rights: From commitment to compliance*. Vol. 126. Cambridge University Press, 2013.

¹⁶⁹ Guzansky, Yoel, and Sarah Feuer. "The Abraham Accords at One Year: Achievements, Challenges, and Recommendations for Israel." *The Institute for National Security Studies* (2021).

¹⁷⁰ Benvenisti, Meron. *City of stone: the hidden history of Jerusalem*. Univ of California Press, 1996.

¹⁷¹ The ICJ has weight in the problems, declaring the construction of a separation barrier in the West Bank on the behalf of Israel, to be illegal and found that the Israeli annexation of East Jerusalem violates international law.

Despite these legal opinions, the conflict continues to rage on and the future of Jerusalem seems to be uncertain. It will take continued diplomatic efforts and a commitment to finding a peaceful resolution to resolve this contentious issue.

Overall, the ongoing and seemingly never-ending conflict over Jerusalem and related issues are complex and multifaceted, with deeply rooted historical and religious foundations. While there have been many efforts to resolve the conflict over the years, a comprehensive and lasting resolution has proven elusive, and the situation remains uncertain and tense.

CHAPTER II

THE SIX-DAY WAR (1967) AND THE MILITARY OCCUPANCY OF EAST JERUSALEM

The ongoing Israeli-Palestinian conflict had a key turning point with the 1967 War, best known under the name of the “Six-Day War”. Israel attacked numerous Arab nations throughout the conflict, and as a result, it gained control over the West Bank, East Jerusalem, the Gaza Strip, the Sinai Peninsula, and the Golan Heights¹⁷². In this situation, the Israeli military's seizing of East Jerusalem and other territories of Palestinians, had far-reaching and long-lasting effects on the territories touched.

THE MEASURES TAKEN BY ISRAEL

East Jerusalem, the West Bank, and the Gaza Strip came under the Israeli domination following the Six-Day War in June 1967 between Israel and neighbouring Arab states¹⁷³. Immediately upon Israel's seizure of the City on June 7, Gen. Moshe Dayan, the country's then Defense Minister, declared that:

«The Israeli Defense Forces have liberated Jerusalem. We have reunited the torn city, the capital of Israel. We have returned to this most sacred shrine, never to part from it again¹⁷⁴».

Israel then took a variety of measures to extend its control and its jurisdiction over East Jerusalem. The international community has ruled those actions as invalid.

Shortly after the end of hostilities, the General Assembly requested that the Secretary-General would send his personal representative, Swiss Ambassador Thalmann, to discover the conditions surrounding Israel's acquisition of responsibility over the entire City of

¹⁷² Levine, Alan. "The status of sovereignty in east Jerusalem and the west bank." *NYUJ Int'l L. & Pol.* 5 (1972): 485.

¹⁷³ Al-Rodhan, Nayef RF, et al. "The Six-Day War and its Consequences." *Critical Turning Points in the Middle East: 1915–2015* (2011): 99-115.

¹⁷⁴ Imseis, Ardi. "Facts on the Ground: An Examination of Israeli Municipal Policy in East Jerusalem." *Am. U. Int'l L. Rev.* 15 (1999): 1039.

Jerusalem.¹⁷⁵ In his contacts with Israeli Government officials, Ambassador Thalmann reported that:

*"(...) it was made clear beyond any doubt that Israel was taking every step to place under its sovereignty those parts of the city which were not controlled by Israel before June 1967. The statutory base for this had already been created, and the administrative authorities had started to apply laws and regulations in those parts of the city ... The personal representative was repeatedly assured by the Israel side that every attention was being paid to the well-being of the Arab population and that the Arab residents would have the opportunity to bring their standard of living up to the level prevailing in Israel. The Israeli authorities stated unequivocally that the process of integration was irreversible and not negotiable"*¹⁷⁶.

The steps taken by Israel in that direction were also described in Ambassador Thalmann's report. The Israeli authorities expanded their law, and administration to an area defined as the Old City on June 27, 1967¹⁷⁷. This new area was comprehensive of many historical sites of high religious relevance, such as the Sur Baher. This enlargement was possible thanks to two important ordinances.

In a similar manner, the Government of Israel also expanded the boundaries of the Jerusalem Municipality¹⁷⁸.

According to an Israeli document, the civil territory was subsequently expanded by 60 square kilometers, reaching a total area of over 100 square kilometers¹⁷⁹, with 70,000 Muslim residents as opposed to one hundred thousand Jews in West Jerusalem¹⁸⁰. However, accordingly to Arabs, the population of the Old City and its environs was considerably larger, as tens of thousands of people had to flee the country and find shelter in Jordan.

The outline continued by noting that, on June 29, 1967, a Defence Order had broken down the Civil Council of East Jerusalem, run by Jordanians and consisting of 12 members,

¹⁷⁵ The Palestine Yearbook of International Law, Editors. "WRITTEN STATEMENT SUBMITTED BY PALESTINE TO THE INTERNATIONAL COURT OF JUSTICE WITH RESPECT TO THE REQUEST FOR AN ADVISORY OPINION REGARDING LEGAL CONSEQUENCES OF THE CONSTRUCTION OF A WALL IN THE OCCUPIED PALESTINIAN TERRITORY." The Palestine Yearbook of International Law Online 13.1: 133-399.

¹⁷⁶ Ibid.

¹⁷⁷ Jones, S. Shepard. "The Status of Jerusalem: Some National and International Aspects." Law and Contemporary Problems 33.1 (1968): 169-182.

¹⁷⁸ Rubinstein, Amnon. "The changing status of the territories (West Bank and Gaza): from escrow to legal mongrel." Tel Aviv U. Stud. L. 8 (1988): 59.

¹⁷⁹ Weizman, Eyal. Hollow land: Israel's architecture of occupation. Verso books, 2012.

¹⁸⁰ Romann, Michael, and Alex Weingrod. Living together separately: Arabs and Jews in contemporary Jerusalem. Vol. 1140. Princeton University Press, 2014.

and had removed the Mayor and other council members¹⁸¹. Several of the Council members had fled the City after refusing to work with the Israeli authority. The Arab technical workforce of the Eastern section of the City was integrated in the comparable quarters of the new administration, and the Civil Council of West Jerusalem made up of twenty-one Israeli citizens, seized control¹⁸².

The Israeli government also informed Ambassador Thalmann of a number of additional actions aiming to allow everyone to enter the Old City and the Holy Sites¹⁸³, to make the formerly dangerous area safe, to remove slums and improve the appearance of Jerusalem, and to create an efficient civic administration, as well as other spheres, such as the financial one amongst several other ones.¹⁸⁴

Ambassador Thalmann, regarding the matter of protecting the sites of worship, noted that Israel passed a law by which it vowed to safeguard the holy sites of worship "*from desecration and any other violations and from anything likely to violate the freedom of access of the members of the different religions to the places sacred to them or their feelings with regard to those places*"¹⁸⁵.

The front men of Palestine that met with Sir Thalmann presented a note comprehending all of the actions that they thought had been unjustly carried out against them. The representatives claimed that all the Holy Sites that were not sacred to the Jews, had been ruined and desecrated by the Israelis and showed concerns at statements made by the Minister of Religion about Jews' desires to gather the Wailing Wall and the Dome of the Rock areas under their nation.

They remembered the British Royal Commission's ruling in the matter. In addition, they protested the dynamiting and demolition of over a hundred homes of the 14th century in an Arab district, close to the Wailing Wall, which led to the eviction of over six hundred people, all Muslim.

¹⁸¹ Greenberg, Raphael, and Adi Keinan. The present past of the Israeli-Palestinian conflict: Israeli archaeology in the West Bank and East Jerusalem since 1967. No. 1. S. Daniel Abraham Center for International and Regional Studies, Tel Aviv University, 2007.

¹⁸² Alfasi, Nurit, and Tovi Fenster. "A tale of two cities: Jerusalem and Tel Aviv in an age of globalization." *Cities* 22.5 (2005): 351-363.

¹⁸³ Bailey, Sydney. *The UN Security Council and human rights*. Springer, 2016.

¹⁸⁴ *Ibid.*, pp. 9-19, and annex II.

¹⁸⁵ Hanifa, Nor Aishah. "ISRAEL'S NON-MILITARY STRATEGY IN THE ISRAELI-PALESTINIAN CONFLICT: ARCHAEOLOGY AS ISRAEL'S NATIONAL INSTRUMENT IN JERUSALEM/BAITUL MAQDIS (1948-2018)." *Zulfaqr Journal of Defence Management, Social Science & Humanities* 3.2 (2020).

Additionally, they claimed that Israel had abruptly removed three hundred Arabs from the Jewish neighborhood and relocated the High Rabbinical Court to a one-gender female school which was also under the control of the Waqf¹⁸⁶.

Laments started and made towards the enforcement of regulations over Islamic religious courts and sermons preached by the famous Al-Aqsa Mosque, as being against the principles of Islamic theology and Koranic law¹⁸⁷. International law was condemned as having been broken by the burden of Israeli civil law, and the Municipal Council of West Jerusalem's appropriation of its properties, furniture, and archives¹⁸⁸.

Concerns were raised about the physical barriers being built in front of the West Bank, which would have ultimately led to the travel restrictions, and the imposition of taxes on goods coming from the West Bank to Jerusalem¹⁸⁹. The intention of the authorities to seize Arab properties for their own use and to implement the absentee property law in East Jerusalem was also mentioned.

In a conclusive evaluation, we can say that the population of East Jerusalem was not given the chance to express their opinion on whether they were willing to live in Israel and be a part of its community. This is argued to be a breach of the right to self-determination, as established by the United Nations Charter and the Universal Declaration of Human Rights.

Overall, the assessment seems to indicate that the inclusion of East Jerusalem into the Israeli State structure was unconstitutional and infringed upon the rights of the local populace. It emphasizes the value of upholding both the right to self-determination and international law.

The Security Council, the General Assembly, and other multilateral groups met frequently to discuss the measures Israel took in 1967 and thereafter in an effort to reverse the situation.

The "Basic Law", which the Israeli Knesset enacted on July 29, 1980, declared that "*Jerusalem, whole and united, is the capital of Israel*" in spite of international resistance. The Knesset, the Government, the Supreme Court, and the President of the State all have their

¹⁸⁶ Stein, Regina. The boundaries of gender: The role of gender issues in forming American Jewish denominational identity, 1913-1963. The Jewish Theological Seminary of America, 1998.

¹⁸⁷ Wiktorowicz, Quintan. Management of Islamic Activism, The: Salafis, the Muslim Brotherhood, and State Power in Jordan. State University of New York Press, 2001.

¹⁸⁸ Pullan, Wendy, et al. The struggle for Jerusalem's holy places. Routledge, 2013.

¹⁸⁹ Bornstein, Avram S. Crossing the green line between the West Bank and Israel. University of Pennsylvania Press, 2002.

offices in Jerusalem. The law also called for the defense of the Holy Sites from desecration and from anything that would be an obstacle to the freedom of entry or hurt the sensibilities of followers of other religions. The ordinance also included provisions for the city's advancement in other areas, including the economic field.

The Holy Sites

The debate over the Holy Places is a very delicate and sensitive one. Particularly, the area in Jerusalem known as the Temple Mount or Haram al-Sharif. This area is meaningful to both the Islamic and Jewish religions and traditions and is situated in the eastern part of the Old City, and has been one of the most contentious and enduring points of contention between Israel and the Palestinian Authority.

After 1948, Israeli citizens were unable to enter the site or had limited access because it was divided between the two at-war nations (Israel and Palestine)¹⁹⁰.

In the wake of the Israeli occupation of East Jerusalem in '67, the Israeli government informed the Islamic leaders that it would continue to be in charge of managing the area, while Israeli military authorities would be in charge of controlling access to the places of worship, as well as maintaining security and maintaining public order. While doing so, the Government also restrained Muslim power by stating that Jews had the right to unrestricted visits to the mount as long as they adhered to the customs and traditions¹⁹¹. The key to the Mughrabi Gate (above the Western Wall) was removed from the Waqf office by Israeli soldiers to put the Government's decision into practice. While asserting that everyone has the right to access to the Holy Places and has the right to freedom of worship, the Government actually restricted Jews from worshipping on the Mount in order to prevent religious disturbances¹⁹².

Ever since 1967, there have been a number of violent incidents at the site that have alarmed not only Palestinians but also all Muslims and Islamic communities around the world. They claim that Israel is not executing its obligations of protecting the site, and the Muslims who worship there but is instead attempting to demolish the Islamic monuments

¹⁹⁰ Forman, Jeremy, and Alexandre Kedar. "From Arab land to 'Israel Lands': the legal dispossession of the Palestinians displaced by Israel in the wake of 1948." *Environment and Planning D: Society and Space* 22.6 (2004): 809-830.

¹⁹¹ Pipes, Daniel. *In the path of God: Islam and political power*. Routledge, 2017.

¹⁹²"Summary of the Report of the Commission of Investigation into Events on the Temple Mount, 8 October 1990", submitted by Israel to the Secretary-General (S/21919, Add.3); also in Uzi Benziman, op. cit.

in order to “*Judaize*” (A common usage of the word “Judaize” is to describe the process of giving something or someplace a more Jewish personality or culture. It may also refer to converting someone or a community to Judaism or to assimilating Jewish traditions and practices. Depending on the context in which it is used, the term can have either positive or negative meanings. It may be viewed as a celebration of Jewish tradition and culture in some instances, while it may also be used to condemn or criticize initiatives to increase Jewish influence or control¹⁹³) the region.

In a memorandum of April 1967 to the Secretary-General's representative, Christian and Muslim representatives showed their worries about a claim made by the Israeli Minister of Religion to the effect that *“those authorities were determined sooner or later to rebuild their temple on the Dome of the Rock itself”* and that *“the occupation authorities considered the Mosque of Omar and its outlying buildings as their property either by past acquisition or by recent conquest”*¹⁹⁴

Following that, the Security Council and other international authorities were regularly alerted to the situation at the site and the surrounding area and were given urgent requests to secure the preservation of the Holy Places. Major advancements included:

VIOLENT INCIDENTS

There have been many violent episodes in the area over the years, which have caused serious casualties among Muslim worshippers and damage to their sanctuaries: 9 people were killed and about 40 were injured in April 1981 when an armed man killed three Muslim guards after forcing his way inside the Dome of the Rock enclosure.¹⁹⁵

Israeli policemen confronted Palestinian protesters in January 1988 while using tear gas, resulting in at least 70 injuries.

A confrontation between Muslim worshippers and Israeli security forces resulted from the Temple Mount Faithful's attempts to lay a symbolic site for the Jewish temple in October 1990¹⁹⁶. Twenty Palestinians were killed and more than 150 were injured¹⁹⁷, and more than

¹⁹³ Geffen, Rela M., ed. Celebration and renewal: Rites of passage in Judaism. Jewish Publication Society, 1993.

¹⁹⁴ Dumper, Michael. The politics of sacred space: The Old City of Jerusalem in the Middle East conflict. Lynne Rienner Publishers, 2002.

¹⁹⁵ Statement by Jordan (S/PV.2352).

¹⁹⁶ Inbari, Mordechai Motti. "The Role of the Temple Mount Faithful Movement in Changing Messianic Religious Zionists 'Attitude toward the Temple Mount."

¹⁹⁷ Dumper, Michael. The politics of Jerusalem since 1967. Columbia University Press, 1997.

20 Israeli citizens.¹⁹⁸ There have also been countless additional instances of quarrels between Muslim and Jewish groups attempting to claim rights on the Mount¹⁹⁹.

In September 1996, protests were held in Jerusalem, the West Bank, and Gaza in response to the Government's decision to open a second entrance to the archaeological tunnel in the Muslim quarter. Violence followed and ended with the deaths of sixty two Palestinians, including several policemen, and 11 Israeli soldiers, as well as the wounding of hundreds of others²⁰⁰. Three Palestinians were murdered and 50 were injured at the Haram al-Sharif.²⁰¹

The Al-Aqsa Mosque has also been under attack, which has raised major concerns. These included efforts by fanatical groups to arson the mosque in May 1980 and April 1981, but both failed. In August 1969, arson destroyed the 800-year-old Salahuddin pulpit and other elements of the edifice, destroying the ceiling²⁰².

Land Expropriation

The issue of land expropriation and the development of Jew communities is of essential meaning due to the extensive effects it has on human rights, the topography and demographics of Jerusalem, and, eventually, on its legal status in an eventual solution. Additionally to the accusations presented to Ambassador Thalmann by Arab officials, which were previously mentioned, information regarding the measures Israel took in East Jerusalem was also provided to the Security Council by the City's dismissed mayor, in a meeting on May 3, 1968²⁰³. The former mayor provided several maps and a copy of the expropriation bill from January 1968, which he claimed had been used to take over 3,000,000 square meters of Arab-owned land in order to build Jewish neighborhoods²⁰⁴.

¹⁹⁸ Report submitted by the Secretary-General to the Security Council in accordance with resolution 672 (1990) (S/21919).

¹⁹⁹ Silverman, Helaine, and D. Fairchild Ruggles. *Cultural heritage and human rights*. Springer New York, 2007.

²⁰⁰ Shafir, Gershon. *A Half Century of Occupation: Israel, Palestine, and the World's Most Intractable Conflict*. Univ of California Press, 2017.

²⁰¹ Sosebee, Stephen J. "Seeds of a Massacre: Israeli Violations at Haram al-Sharif." *American-Arab Affairs* 36 (1991): 104.

²⁰² Habib, Ghulam, ed. "DESECRATING JERUSALEM-The Destruction, Desecration." *The New York Times* 34.57 (1982): 116.

²⁰³ JERUSALEM, OR WAILING WALL AT. "DOCUMENTS CONCERNING THE STATUS OF JERUSALEM." *Journal of Palestine Studies* 1.1 (1971): 171-194.

²⁰⁴ Bisharat, George E. "Land, Law, and Legitimacy in Israel and the Occupied Territories." *Am. UL Rev.* 43 (1993): 467.

It has been claimed that in 1967, the Israeli government added 70,000 dunums* of land to the city of Jerusalem from nearby villages; 86.5 percent of that land was taken from Palestinian ownership through expropriation and confiscation for the purpose of building and expanding Jewish settlements²⁰⁵. As a result, only 13.5% (9,500 dunums) are left for Arab neighborhoods and growth.²⁰⁶

According to a different report, the majority of the Palestinian lands in East Jerusalem and the surrounding area were taken between January 1968 and April 1992 in various attempts to finish off the conquest²⁰⁷.

The same report stated that after Ramat Shu'fat will be finished, Jewish settlements will surround and border the Palestinian population of East Jerusalem from the north, south, east, and west. Jewish settlers were expected to number 180,000 by the end of 1995 and over two hundred thousand.²⁰⁸

A further planned expropriation for the expansion of settlements was put on hold in May 1995 as a result of resistance from Arab Knesset members in Israel and a global uproar, including a discussion in the Security Council.²⁰⁹ However, in March 1997, new international pressure—including discussions in the Security Council and General Assembly—could not halt the start of construction of the Har Homa settlement on Jabal Abu Ghneim, which caused great concern for the future of Arab East Jerusalem because it would completely close off its southern portion from the rest of the West Bank²¹⁰.

The presence of a second belt of more recent settlements progressively spreading outward in the "Greater Jerusalem" region²¹¹ is also a quite big source of concern.

According to reports, the Israeli deputy Defense Minister said: *"Past experience has demonstrated that in order to defend Jerusalem, one must have a strip of defense surrounding it in the north, south, east, and west. In the upcoming negotiations, the consolidation of the existing territorial continuity*

²⁰⁵ Imseis, Ardi. "Facts on the Ground: An Examination of Israeli Municipal Policy in East Jerusalem." *Am. U. Int'l L. Rev.* 15 (1999): 1039.

²⁰⁶ Alternative Information Center, Jerusalem, *The Other Front*, Issue No. 337, September 1995; Sara Kaminker, Presentation on "Looking ahead - Key issues", North American NGO Symposium on the Question of Palestine, Toronto, Canada, 6-8 July 1994.

²⁰⁷ Cohen, Shaul Ephraim. *The politics of planting: Israeli-Palestinian competition for control of land in the Jerusalem periphery*. Vol. 236. University of Chicago Press, 1993.

²⁰⁸ Jadallah, Dina. "Colonialist construction in the urban space of Jerusalem." *The Middle East Journal* 68.1 (2014): 77-98.

²⁰⁹ Zertal, Idith, and Akiva Eldar. *Lords of the land: the war over Israel's settlements in the occupied territories, 1967-2007*. Hachette UK, 2009.

²¹⁰ Cotran, Eugene. "The Jerusalem question in international law: The way to a solution." *Islamic studies* 40.3/4 (2001): 487-500.

²¹¹ Sharif, Yara. "Landscape of time and immobility." *Landscape Research* 44.7 (2019): 872-891.

*through settlement growth, the building of roads, tunnels, and bridges, as well as additional land purchase, would be argued as a geographic fact*²¹².

The growing influx of Jewish settlers into long-standing Arab neighborhoods in East Jerusalem has likewise disturbed the Palestinian residents of that quarter²¹³. Particularly, the establishment of small Jewish religious communities in homes purchased in the Arab neighborhood next to the Haram al-Sharif caused tension because it was perceived as an infringement on the area's demographic integrity as well as a component of a larger occupation strategy. As of the beginning of 1993, it was said that 53 buildings in the Muslim neighborhood had such occupants²¹⁴. When settlers forcefully evicted residents of several homes in the village of Silwan in October 1991, this issue gained particular resonance. Plans for building 200 Jewish housing units on the land were made public shortly after the Israeli State Attorney acknowledged the legitimacy of several of their demands to the lands²¹⁵.

Following the Government's demolition of a Burj al-Laqlaq charitable association building in the Old City, to make room for settlements, and its approval of a drawing to build one hundred thirty-two homes in the Arab neighborhood of Ras al-Amud, there has been increased concern about growing settlement in the Old City²¹⁶.

The Israeli government has imposed a strict quota on Palestinian housing construction since 1973 through its ministerial committee in Jerusalem, with the declared goal of keeping the total number of Palestinians within Jerusalem at around 22%²¹⁷. This has raised concerns on the matter of building settlement. An ex-member of the Jerusalem Municipal Council claims that since 1967, Israel has built 70,000 homes for Jews on expropriated Arab property in East Jerusalem²¹⁸.

Construction of homes in the communities is to blame for the city's total expansion from 1967, which indicates a 76% rise in the Jewish population. In summer 1993, the

²¹² Independent Evaluation Group. "The World Bank Group in the West Bank and Gaza, 2001-2009: Evaluation of the World Bank Group Program." (2010).

²¹³ Khalidi, Rashid. "The Future of Arab Jerusalem." *British Journal of Middle Eastern Studies* 19.2 (1992): 133-143.

²¹⁴ Benvenisti, Meron. *City of stone: the hidden history of Jerusalem*. Univ of California Press, 1996.

²¹⁵ Shlay, Anne B., and Gillad Rosen. "Making place: The shifting green line and the development of "Greater" metropolitan Jerusalem." *City & Community* 9.4 (2010): 358-389.

²¹⁶ Saleh, Mohsen. *Am I Not a Human?: The Suffering of Jerusalem & the Holy Sites under the Israeli Occupation: Mu'anat al-Quds w al-Muqaddasat taht al-ihlital al-Israeli-معاناة القدس والمقدسات تحت الاحتلال الإسرائيلي*. Vol. 7. *والاستشارات للدراسات الزيتونة مركز*. 2012.

²¹⁷ Roy, Sara. "The Gaza Strip: A case of economic de-development." *Journal of Palestine Studies* 17.1 (1987): 56-88.

²¹⁸ Huneidi, Sahar. *Sir Herbert Samuel, Zionism and the Palestine Arabs, 1920-1925*. The University of Manchester (United Kingdom), 1995.

government declared it had reached the Jewish majority in East Jerusalem, where there were no Jews in 1967 (a ratio of 160,000 Jews to 155,000 Palestinians). The ratio was roughly 78 to 22 percent for the entire City²¹⁹.

The same research claims that due to expropriations and land use restrictions, at least 21,000 Palestinian families were effectively forced to live in rented flats and tents or share housing with other families²²⁰. Palestinians who built without an official concession ran the risk of having their homes destroyed by the government²²¹. Many Palestinians had to leave Jerusalem as a result²²². Another report claims that as many as 50,000 people have left the country and fled to remote communities²²³.

Arab property owners in the Old City have also complained about the municipality's plans for redevelopment and beautification as well as archaeological digs, *"which occasionally have been accompanied by evictions, expropriations, property destruction, and alterations to the traditional appearance of certain areas of the City"*²²⁴.

The objectives of "reinforcing the status of Jerusalem as the eternal capital of the Jewish people" and "strengthening, broadening and developing settlement" were prioritized by the new government, which was elected in May 1996²²⁵.

SOCIAL AND ECONOMIC ISSUES

Palestinians who resided inside the municipal boundaries, as they were later expanded, after Israeli occupation of East Jerusalem in 1967 were regarded as permanent citizens of the State of Israel²²⁶. According to reports, some 8,000 Palestinian residents of Jerusalem who were not physically present in Jerusalem during the 1967 Israeli census lost their residency

²¹⁹ Imseis, Ardi. "Facts on the Ground: An Examination of Israeli Municipal Policy in East Jerusalem." *Am. U. Int'l L. Rev.* 15 (1999): 1039.

²²⁰ Romann, Michael, and Alex Weingrod. *Living together separately: Arabs and Jews in contemporary Jerusalem*. Vol. 1140. Princeton University Press, 2014.

²²¹ Thrall, Nathan. *The only language they understand: Forcing compromise in Israel and Palestine*. Metropolitan Books, 2017.

²²² Jabareen, Yosef Rafeq. "The politics of state planning in achieving geopolitical ends: The case of the recent master plan for Jerusalem." *International Development Planning Review* 32.1 (2010).

²²³ Moore, Pete W., and Bassel F. Salloukh. "Struggles under authoritarianism: Regimes, states, and professional associations in the Arab world." *International Journal of Middle East Studies* 39.1 (2007): 53-76.

²²⁴ Neef, Andreas. "Tourism, Land Grabs and Displacement: A Study with Particular Emphasis on the Global South." (2019).

²²⁵ Kumaraswamy, P. R. "Benjamin Netanyahu's Policy Statement: An Assessment." *Journal of South Asian and Middle Eastern Studies* 20.2 (1997).

²²⁶ Jabareen, Yosef Rafeq. "The politics of state planning in achieving geopolitical ends: The case of the recent master plan for Jerusalem." *International Development Planning Review* 32.1 (2010).

rights. Additionally, the residency status does not truly guarantee permanent residence or grant citizenship privileges.

Palestinian residents of Jerusalem who travel outside the country are handed exit visas that are only good for one to three years, and who automatically lose their ability to return if they don't renew them in time. Loss of the right to live in Jerusalem may also occur after one would stay overseas for over 7 years or as a consequence of being established overseas²²⁷. In 1996, there was a lot of worry over the widespread confiscation of identification cards from Palestinian Jerusalemites with foreign passports. In addition, relocating to a nearby West Bank community for a Palestinian who currently resides in East Jerusalem may result in the loss of residency rights, as well as restrictions on movement. Children and spouses of Jerusalem's Palestinian residents do not automatically have the right to live there; instead, they must apply on the grounds of family reunion, which comes with a number of restrictions²²⁸.

In contrast, citizens are allowed to cast a ballot in municipal elections. Less than 7% of Jerusalem's Palestinian residents cast ballots in the municipal election of 1993. On the city council, there are no Palestinian residents in East Jerusalem²²⁹.

Palestinians have frequently been subjected to restrictions on their civil liberties, particularly during the intifada. Since the PLO and Israel signed the Declaration of Principles in September 1993, the Israeli government has worked to restrict PLO and Palestinian Authority activities in East Jerusalem, claiming that these actions "*undermine the sovereignty of both Israel and the Jerusalem Municipality over the City*"²³⁰.

A number of offices affiliated with Palestine were shut down, and legal action was taken against Orient House, the Palestinian complex containing a number of organizations²³¹. However, Palestinians have disputed those actions, citing a letter from Israeli Foreign Minister Shimon Peres to Norwegian Foreign Minister Holst, dated October 11, 1993, published in June 1994. In that letter, Mr. Peres said that:

²²⁷ Hannerz, Ulf. "Being there... and there... and there! Reflections on multi-site ethnography." *Ethnography* 4.2 (2003): 201-216.

²²⁸ Parsons, Nigel, and Mark B. Salter. "Israeli biopolitics: Closure, territorialisation and governmentality in the occupied Palestinian territories." *Geopolitics* 13.4 (2008): 701-723.

²²⁹ United States Department of State, Country Reports on Human Rights Practices for 1993 (Washington, D.C).

²³⁰ Beinun, Joel, and Lisa Hajjar. "Palestine, Israel and the Arab-Israeli Conflict." Middle east research and information project (2014).

²³¹ Zureik, Elia T. *The Palestinians in Israel: A study in internal colonialism*. Vol. 38. Taylor & Francis, 2023.

"I wish to confirm that the Palestinian institutions of east Jerusalem and the interests and well-being of the Palestinians of East Jerusalem are of great importance and will be preserved.

"Therefore, all the Palestinian institutions of East Jerusalem, including the economic, social, educational, cultural, and the holy Christian and Moslem places, are performing an essential task for the Palestinian population.

"Needless to say, we will not hamper their activity; on the contrary, the fulfilment of this important mission is to be encouraged"²³².

Residents of East Jerusalem were granted limited voting rights under the terms of the 28 September 1995 agreement between Israel and the PLO²³³, which permitted them to vote in the Palestinian elections for the Palestinian Interim Self-Government Authority in January 1996. Despite some limitations to speech being loosened, people observed that voter turnout had been cut to roughly 30% of eligible voters due to intimidation by Israeli police and border guards, fear of jeopardizing one's residency status, and other factors²³⁴.

Palestinian freedom of movement has been severely constrained as a result of Israel's decision in March 1993 to permanently close the West Bank from Jerusalem. This decision affects all of the West Bank. A new review states that every Palestinian who wants to enter Jerusalem has to necessarily get a special permission granted by the Civil Administration²³⁵. Failure to do so will result in a fine of roughly \$160 or arrest, according to the source. A permit may be refused for a number of reasons, such as safety concerns and unpaid taxes, and its validity can range from a few hours to three months. According to the research, by restricting the movement of people and goods, the limitation would bring a downfall to financial conditions and disrupt patterns of religious, culture, as well as access to medical care.

Human rights organizations from both Israel and Palestine denounced the closure. All Palestinians entering Jerusalem are reportedly required to stop at checkpoints and show either their permits or identification, despite the fact that some categories were exempt²³⁶.

²³² Nuseibeh, Rawan Asali. Political conflict and exclusion in Jerusalem: The provision of education and social services. Routledge, 2015.

²³³ Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, signed at Washington, D.C., on 28 September 1995.

²³⁴ The New York Times, 4 January and 21 January 1996. The new Palestinian Council will include seven representatives from East Jerusalem (five Muslims and two Christians).

²³⁵ Del Sarto, Raffaella A. "Defining borders and people in the borderlands: EU policies, Israeli prerogatives and the Palestinians." *JCMS: Journal of Common Market Studies* 52.2 (2014): 200-216.

²³⁶ Makdisi, Saree. *Palestine inside out: An everyday occupation*. WW Norton & Company, 2010.

Two geographers examined the effects of Israeli actions in Jerusalem and concluded that the city was a small world of itself, full of issues and that this is the reason that brought to the intifada²³⁷. Although there have been integration policies in place for 25 years, they stated that *de facto*, Jerusalem consists of two separate cities, with radically different populations, customs, and traditions. Following the description of how East and West Jerusalem's commerce, public transit, health care, theatres, newspapers, schools, welfare, and religious services were divided, they came to the conclusion that the illusion created by Israel of a "Greater Jerusalem" had unified the city under one name, but with two very different cultures that will unlikely amalgamate in the time coming.

CHAPTER III

INTERNATIONAL POSITION AND ACTIONS SINCE 1967

There have been several international positions, actions and measures taken since 1967 regarding the Israeli occupation of the West Bank, East Jerusalem and the Gaza Strip. Here are some famous instances:

1. United Nations Security Council Resolution 242: adopted in 1967, this resolution called for a just and long-lasting peace in the region as well as for Israel to leave the regions it had captured during the Six-Day War²³⁸.
2. United Nations Security Council Resolution 338: this 1973 resolution demanded a halt to hostilities and talks between the parties to settle the Arab-Israeli conflict²³⁹.
3. International Court of Justice Advisory Opinion on the Wall: in 2004, the International Court of Justice issued an advisory opinion indicating that Israel was required to demolish the separation wall that it had built in the West Bank because it was against international law²⁴⁰.

²³⁷ Alfasi, Nurit, and Tovi Fenster. "A tale of two cities: Jerusalem and Tel Aviv in an age of globalization." *Cities* 22.5 (2005): 351-363.

²³⁸ Slámková, Eliška, and Gokhan Bacik. "US Foreign Policy Towards Israel: The Case of Relocation American Embassy to Jerusalem".

²³⁹ Podeh, Elie. "Chances for Peace: Missed Opportunities in the Arab-Israeli Conflict." (2015).

²⁴⁰ Janis, Mark W. "International court of justice: advisory opinion on the Western Sahara." *Harv. Int'l. LJ* 17 (1976): 609.

4. The Oslo Accords: signed in 1993, were intended to create a framework for talks on peace between Israel and the Palestine Liberation Organization (PLO). Nevertheless, the agreements were never completely put into effect, and the violence has persisted²⁴¹.

5. Unites States Embassy move to Jerusalem: in 2017, the US moved its embassy from Tel Aviv to Jerusalem after officially recognizing Jerusalem as Israel's capital. Many nations strongly objected to this action, claiming that it jeopardized the peace process²⁴².

6. Boycott, Divestment, and Sanctions (BDS) Movement: In order to exert political and economic pressure on Israel to end its occupation of the Palestinian territories and grant equal rights to Palestinian residents of Israel, the BDS movement was established in 2005. The movement has gathered support worldwide and has generated controversy and discussion²⁴³.

The seizing of East Jerusalem in 1967 and the following annexation of Jerusalem acted from Israel were not recognized by the whole international community. The problem has been the focal point of many provisions seeking to confirm the peculiar status of the City and seek to take back the measures taken by the Israel²⁴⁴. Doubts were raised regarding settlements, protection of the Holy Sites and the historical heritage of the city, and the provision of assistance to Palestinians living in the City and their institutions²⁴⁵, have worried the international community as each new important development in the City caused trouble and led to an intensified research to finding ways to resolve the conflict.

Since 1967, the international community has been actively involved in the Israeli-Palestinian issue and, as it is shown above, it has adopted a variety of stances and initiatives to try to find a solution. The conflict, however, continues to be one of the most urgent problems in the region because a sustainable peace agreement has not yet been established.

²⁴¹ Makovsky, David. *Making peace with the PLO: the Rabin government's road to the Oslo Accord*. Routledge, 2018.

²⁴² Spector, Stephen. "This Year in Jerusalem: Prophecy, Politics, and the US Embassy in Israel." *Journal of Church and State* 61.4 (2019): 551-571.

²⁴³ Barghouti, Omar. *BDS: Boycott, divestment, sanctions: The global struggle for Palestinian rights*. Haymarket Books, 2011.

²⁴⁴ Cohen, Hillel. *The rise and fall of Arab Jerusalem: Palestinian politics and the city since 1967*. Vol. 10. Routledge, 2013.

²⁴⁵ Benvenisti, Meron. *Sacred landscape: The buried history of the Holy Land since 1948*. Univ of California Press, 2000.

LEGAL STATUS

The Secretary of State for Foreign Affairs of the United Kingdom eloquently articulated the global perspective at the fifth emergency special session of the General Assembly, which was called soon after the six-day war:

"In my view, it follows from the words in the Charter [of the United Nations] that war should not lead to territorial aggrandizement"²⁴⁶

The status of Jerusalem and the Holy Places was discussed during the emergency meeting as a separate issue as well as in relation to general ideas for resolving the larger conflict. A handful of nations attempted to revive the debate of bringing an international government to Jerusalem in a draft proposal. However, the resolution's draft was not approved. The Assembly stated in its resolution that it believed Israel's actions in Jerusalem were illegitimate and urged Israel take back all the measures that changed the status of the City²⁴⁷.

Although the Security Council did not specifically address the legal status of Jerusalem in its historic resolution 242 (1967) of November 22, 1967, we spoke about before, it emphasized the impossibility of acquiring territory through war and stated that, among other things, the fulfillment of the principles of the United Nations Charter required Israel to withdraw its forces from the territories it had occupied during the war and respect for and acknowledgment of the sovereignty and territorial integrity of other nations²⁴⁸.

Since efforts to reach a comprehensive agreement stalled and did not make any progress, the Council conducted a series of discussions in May 1968 that were focused solely on Jerusalem. The Security Council noticed that Israel had taken more steps impacting Jerusalem. The Council reiterated that land acquired by military enforcement was illegal and that all the actions Israel took that could potentially change the status of Jerusalem were illegal under international law²⁴⁹.

Regarding the issue of adherence to the terms of the Geneva Conventions of 12 August 1949, the Commission on Human Rights and the International Conference on

²⁴⁶ Higgins, Rosalyn. "The June War: The United Nations and Legal Background." *Journal of Contemporary History* 3.3 (1968): 253-273.

²⁴⁷ Brecher, Michael. "Jerusalem: Israel's Political Decisions, 1947-1977." *Middle East Journal* 32.1 (1978): 13-34.

²⁴⁸ Goldberg, Arthur J. "United Nations Security Council Resolution 242 and the Prospects for Peace in the Middle East." *Colum. J. Transnat'l L.* 12 (1973): 187.

²⁴⁹ Gerson, Allan. *Israel, the West Bank and international law*. Psychology Press, 1978.

Human Rights paid particular attention in 1968²⁵⁰. The Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population in the Occupied Territories was subsequently established by the Assembly, and among its specific mandates was the Fourth Geneva Convention, which protects civilians during times of war²⁵¹.

The Fourth Geneva Convention places great emphasis on prohibiting the appropriation of land by a greater power and the relocation of its folks there (arts. 47 and 49). The Convention also prohibits the occupying Power from destroying real or personal property, whether it is owned by an individual, a group, or public authorities or organizations, and it forbids changing the status of public officials or judges in the occupied territories²⁵². These provisions are relevant to the situation in Jerusalem.

On the grounds that no legitimate sovereignty was put over those territories since the end of the British Mandate, Israel has refused to recognize the applicability of the Geneva Convention to the territories occupied since 1967²⁵³ and has fought against the adoption of the pertinent resolutions in the Security Council and General Assembly²⁵⁴. However, it has permitted the International Committee of the Red Cross (ICRC), which is accorded a unique status, to conduct charitable endeavors on an as-needed basis, including in the region of East Jerusalem²⁵⁵.

Contrary to Israel's assertion, the Fourth Geneva Convention's applicability to Jerusalem as a portion of the area seized in 1967 has been frequently reaffirmed in a variety of UN and other multilateral places. Since its formation, the Special Committee on Israeli Practices has frequently reported on developments in East Jerusalem and has included East Jerusalem in its definition of the term "occupied territories"²⁵⁶. Since the beginning of the seizing, the General Assembly and the Security Council have regularly urged Israel to abide by the Convention's terms in the occupied lands. The Assembly declared in 1973 that the Fourth Geneva Convention, which protects civilians during times of war, and it did so again

²⁵⁰ Heintze, Hans-Joachim. "On the relationship between human rights law protection and international humanitarian law." *International Review of the Red Cross* 86.856 (2004): 789-814.

²⁵¹ Rodley, Nigel S. "The United Nations and Human Rights in the Middle East." *Social Research* (1971): 217-240.

²⁵² Sassòli, Marco. "Legislation and maintenance of public order and civil life by occupying powers." *European Journal of International Law* 16.4 (2005): 661-694.

²⁵³ Imseis, Ardi. "On the Fourth Geneva Convention and the occupied Palestinian territory." *Harv. Int'l LJ* 44 (2003): 65.

²⁵⁴ Statement by the representative of Israel in the General Assembly, 26 October 1977 (A/32/PV.47).

²⁵⁵ Jamjoum, Lama. "The effects of Israeli violations during the second uprising" intifada" on Palestinian health conditions." *Social Justice* 29.3 (89 (2002): 53-72.

²⁵⁶ First report of the Special Committee to Investigate Israeli Practices, Official Records of the General Assembly, Twenty-fifth session (A/8089), p. 15.

in 1975, stating that the Convention covers the Arab lands taken from Israel, since the beginning of the dispute; amongst these lands, the city of Jerusalem is comprised. The Assembly further requested that all measures be made to assure Israel's compliance by States parties to the Convention, who are required by Article 1 to not only abide by the Convention's provisions but also to ensure their observance at all times²⁵⁷.

The Security Council also determined corresponding terms of reference for its Commission on Settlements, which was established under the same resolution.²⁵⁸ Similar language has been used by the Council in other proposals concerning human rights. In order to reiterate that the Geneva Convention applies to the territory that Israel has occupied since 1967, the Council has used the phrase "Palestinian and other Arab territories occupied by Israel since 1967, including Jerusalem" since 1986²⁵⁹.

The Security Council and General Assembly, as well as various multilateral organizations, all firmly rejected Israel's decision to implement legislation officially appropriate East Jerusalem and designating the unified City as its State capital in 1980²⁶⁰. The Council condemned Israel's "basic law" on Jerusalem and its refusal to abide by pertinent Security Council resolutions "in the strongest terms" and declared that the law's passage constitutes a violation of international law and has no bearing on the continued application of the Geneva Convention²⁶¹ relative to the Protection of Civilian Persons in Time of War. The Council instructed all Members to agree with its opinion and urged those States that had diplomatic purposes in Jerusalem to close them. The Council also decided "not to recognize the 'basic law' and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem".²⁶² "The Security Council was then made aware by the Secretary-General that 13 Governments had notified him that they were removing their individual diplomatic embassies from the Holy City."²⁶³

²⁵⁷ Dörmann, Knut, and Jose Serralvo. "Common Article 1 to the Geneva Conventions and the obligation to prevent international humanitarian law violations." *International Review of the Red Cross* 96.895-896 (2014): 707-736.

²⁵⁸ Kirgis, Frederic L. "The Security Council's first fifty years." *American Journal of International Law* 89.3 (1995): 506-539.

²⁵⁹ Roberts, Adam. "Prolonged military occupation: the Israeli-occupied territories since 1967." *American Journal of International Law* 84.1 (1990): 44-103.

²⁶⁰ Yishai, Yael. "Israeli annexation of East Jerusalem and the Golan Heights: factors and processes." *Middle Eastern Studies* 21.1 (1985): 45-60.

²⁶¹ Dinstein, Yoram. *The international law of belligerent occupation*. Cambridge University Press, 2019.

²⁶² Aziz, Davinia Filza Abdul. "The utility of an international legal approach to the Jerusalem question: Camera obscura or camera lucida." *Sing. J. Int'l & Comp. L.* 7 (2003): 511.

²⁶³ S/14248. Three Governments (Chile, Ecuador and Venezuela) had withdrawn their missions prior to the adoption of Security Council resolution 478 (1980); the remaining 10 (El Salvador, Costa Rica, Panama,

The principles held by the United Nations and the majority of Governments on the status of Jerusalem are still embodied in those resolutions²⁶⁴, which were later reiterated with similar language.

The lookout for a solution to the Jerusalem issue as part of a broader resolution of the Palestine question and dispute, based on the acknowledgment of the Palestinians as a people who should be given equal national rights, has been sparked by a number of historical developments since the middle of the 1970s. The General Assembly once again listed the "Question of Palestine" in 1974, reaffirming "the inalienable rights of the Palestinian people in Palestine," and granting the PLO observer status²⁶⁵. The Committee on the Exercise of the Inalienable Rights of the Palestinian People was founded the following year, and it was asked to give recommendations on how to put those rights into practice.²⁶⁶

After President Anwar Sadat's historic trip to Jerusalem in September 1978, Egypt and Israel agreed to the Camp David Framework for Peace in the Middle East, which included two key components. One was that "United Nations Security Council Resolution 242 in all its parts is the agreed basis for a peaceful settlement of the conflict between Israel and its neighbors²⁶⁷". The other was that "the legitimate rights of the Palestinian people and their just requirements²⁶⁸" were acknowledged by the parties for the first time in a formal agreement. However, there was no consensus over Israel's withdrawal from Jerusalem, and an exchange of letters that was attached to the treaty highlighted the signatories' divergent opinions²⁶⁹. More than 50% of nations in the General Assembly rejected the accords because they were seen as just a partial solution to the problems of Jerusalem and Palestinian national sovereignty²⁷⁰.

Colombia, Haiti, Bolivia, Netherlands, Guatemala, Dominican Republic and Uruguay) did so in response to the resolution. El Salvador and Costa Rica later moved their embassies back to West Jerusalem.

²⁶⁴ Chesterman, Simon. *You, the people: the United Nations, transitional administration, and state-building*. Oxford University Press on Demand, 2005.

²⁶⁵ Travers, Patrick J. "Legal Effect of United Nations Action in Support of the Palestine Liberation Organization and the National Liberation Movements of Africa." *Harv. Int'l. LJ* 17 (1976): 561.

²⁶⁶ United Nations. Office of Public Information. *The Committee on the Exercise of the Inalienable Rights of the Palestinian People: Its Establishment, Mandate, Recommendations*. The Office, 1978.

²⁶⁷ Quandt, William B. *Camp David: peacemaking and politics*. Brookings Institution Press, 2015.

²⁶⁸ Cassese, Antonio. "The Israel-PLO Agreement and Self-Determination." *Eur. J. Int'l L.* 4 (1993): 564.

²⁶⁹ Camp David Frameworks for Peace, September 17, 1978, reprinted in *The Search for Peace in the Middle East - Documents and Statements, 1967-1979*, Report prepared for the Sub-Committee on Europe and the Middle East of the Committee on Foreign Affairs of the United States House of Representatives (Washington, D.C., 1979), pp. 20-29.

²⁷⁰ Wedgwood, Ruth. "The ICJ advisory opinion on the Israeli security fence and the limits of self-defense." *American Journal of International Law* 99.1 (2005): 52-61.

Many efforts were made over the course of the following years to formulate guiding principles for a settlement that would answer all essential issues. The Sixth Conference of Heads of State or Government of Non-Aligned Countries declared that the Palestinian question is currently the most important problem in the Middle East and should have priority to be solved. The conference was concerned about the high chance of an outburst of war. A number of fundamental tenets for a comprehensive resolution were affirmed at the Conference, one of which was that Jerusalem was part of the occupied territory of Palestine²⁷¹. It must be completely evacuated and given back to Arab control without conditions²⁷².

Similarly, the Third Islamic Summit Conference, which took place in Mecca in January 1981²⁷³, emphasized the strong will of Palestinians to keep their right to access the Holy Al-Quds indefinitely and elect the city as the capital of Palestine.

The Heads of State or Government of the League of Arab States called for the creation of an independent Palestinian state and appointing Al-Quds as the capital in their official announcement, which was adopted in September 1982 at Fez, Morocco²⁷⁴.

The European nations made more constrained proposals, recognizing the right of Palestinian Muslims to self-determination²⁷⁵. This followed the rejection of any unilateral action that could potentially mitigate the legal status of the city of Jerusalem, as its status should guarantee freedom of access to anyone who would want to pay visits to the holy sites. This is a call for freedom of worship, which should always be granted, under any circumstance²⁷⁶.

As time went on, several ideas were built on the "land for peace" tenet, and the Camp David Accords were put out by various US administrations²⁷⁷.

Whereas they envisioned that the City had to stay undivided and its legal status should be reached following negotiations²⁷⁸. The Holy Sites and a number of Catholic nations have

²⁷¹ Cattan, Henry. "The Status of Jerusalem: UNDER INTERNATIONAL LAW AND UNITED NATIONS RESOLUTIONS." *Journal of Palestine Studies* 10.3 (1981): 3-15.

²⁷² Kimmerling, Baruch. "Sovereignty, Ownership, and "Presence" In The Jewish-Arab Territorial Conflict: The Case of Bir'im and Ikrit." *Comparative Political Studies* 10.2 (1977): 155-176.

²⁷³ Razvi, Mujtaba. "The Mecca Summit." *Pakistan Horizon* 34.3 (1981): 44-55.

²⁷⁴ Al-Adwan, Sami Yousef. *The League of Arab States and regional collective security*. The Claremont Graduate University, 1987.

²⁷⁵ Williams, Paul R., and Francesca Jannotti Pecci. "Earned sovereignty: Bridging the gap between sovereignty and self-determination." *Stan. J. Int'l L.* 40 (2004): 347.

²⁷⁶ Lapidoth, Ruth. "Some Legal Aspects." *Jerusalem: A City and its Future* (2002): 61

²⁷⁷ Anziska, Seth. *Preventing Palestine: a political history from Camp David to Oslo*. Princeton University Press, 2020

²⁷⁸ Lapidoth, Ruth. "Jerusalem and the Peace Process." *Israel Law Review* 28.2-3 (1994): 402-434.

demanded international warranties to ensure freedom of worship and unlimited access to all the Holy Places, preservation and defense of the current rights²⁷⁹ of the three religious circles, besides the protection of the City's cultural and historical legacy without addressing the issue of sovereignty²⁸⁰.

The General Assembly later supported several of the ideas that were agreed by the International Conference on the Question of Palestine, which was held in Geneva in 1983 with the participation of 117 States²⁸¹. These included the fulfillment of Palestinian rights, including the right to establish its own independent State in Palestine²⁸²; the right of all States in the region to exist within borders that are safe and recognized by the international community²⁸³; the withdrawal of Israeli forces and authorities from the lands that have been occupied since 1967, including the Holy City of Jerusalem²⁸⁴; the rejection of any actions Israel already took to alter the status of the City and of the occupied territories²⁸⁵. These ideas served as the cornerstone for ongoing attempts over the following few years to call for an international peace conference to end the Middle East conflict on all fronts.

When the Palestinian insurrection more specifically known as the intifadah started in late 1987, the international community, the Arab states, Israel, and Palestine were still sharply split over the parameters of a peaceful resolution. The Palestinian National Council adopted the Declaration of Independence and a political *Communique*²⁸⁶ a year later after Jordan decided to sever its legal and administrative ties to the West Bank²⁸⁷. In these documents, they expressed approval of the partition plan and Security Council Resolution 242 (1967), and they declared Palestine would establish its own State in the land of Palestine, which they claim historically, and in their State, they claim their rights and freedoms²⁸⁸.

²⁷⁹ Grim, Brian J., and Roger Finke. *The price of freedom denied: Religious persecution and conflict in the twenty-first century*. Cambridge University Press, 2010.

²⁸⁰ Meskell, Lynn. *A future in ruins: UNESCO, world heritage, and the dream of peace*. Oxford University Press, 2018.

²⁸¹ Sarsar, Saliba. "The Question of Palestine and United States Behavior at the United Nations." *International Journal of Politics, Culture, and Society* 17 (2004): 457-470.

²⁸² Farsoun, Samih K. *Palestine and the Palestinians: A social and political history*. Routledge, 2018.

²⁸³ Williams, Angela. "Turning the tide: recognizing climate change refugees in international law." *Law & Policy* 30.4 (2008): 502-529.

²⁸⁴ Carter, Jimmy. *Palestine peace not apartheid*. Simon and Schuster, 2007.

²⁸⁵ Azoulay, Ariella, and Adi Ophir. *The one-state condition: occupation and democracy in Israel/Palestine*. Stanford University Press, 2012.

²⁸⁶ Boyle, Francis A. "The creation of the state of Palestine." *Eur. J. Int'l L.* 1 (1990): 301.

²⁸⁷ Susser, Asher. "Jordan, the PLO and the Palestine Question." *Jordan in the Middle East*. Routledge, 2014. 211-227.

²⁸⁸ Khalidi, Rashid. "The Resolutions of the 19th Palestine National Council." *Journal of Palestine Studies* 19.2 (1990): 29-42.

Following the Gulf War and the end of the Cold War, the international environment changed, paving the way for the parties to begin formal negotiations at the Madrid Peace Conference, which took place in October 1991²⁸⁹. After the Conference, there was a historic turning point in September 1993 when the PLO and the Israeli Government mutually recognized one another and subscribed to the Declaration of Principles²⁹⁰. The Palestinian Authority established a Palestinian police force and took on a number of duties as a result of the Declaration and the agreements that followed²⁹¹. This led to several consequences, such as a change in security enforcement and in the administration. In addition, the Palestinian Authority held elections for its legislative council and president in January 1996, and subsequently came the deployment of Israeli troops from several towns in the West Bank²⁹². The accords promise a durable peace based on Security Council resolutions 242 (1967) and 338 (1973) after a transitional period of 5 years of Palestinian self-government commencing in May 1994²⁹³. The long negotiations concerning the status of the city, which were required by the Declaration to commence no later than May 1996, were postponed on a number of topics, including especially Jerusalem and settlements²⁹⁴. The Israel-PLO agreement was signed in January 1997 and it concerned several issues, including Hebron. Following the signing of these accords, the negotiations were supposed to begin on 15 March 1997 after a first meeting on May 5th, 1996, and following impediments in the peace process²⁹⁵. However, because of the continuous worsening of the situation and the widening gap in opinions between the parties, they were once more delayed.

²⁸⁹ Lukacs, Yehuda. *Israel, Jordan, and the peace process*. Syracuse University Press, 1999.

²⁹⁰ Makovsky, David. *Making peace with the PLO: the Rabin government's road to the Oslo Accord*. Routledge, 2018.

²⁹¹ Shehadeh, Raja. *From Occupation to Interim Accords: Israel and the Palestinian Territories*. Vol. 4. Brill, 1997.

²⁹² Singer, Joel. "The Emerging Palestinian Democracy under the West Bank and Gaza Strip Self-Government Arrangements." *Israel Yearbook on Human Rights*, Volume 26 (1996). Brill Nijhoff, 1996. 313-365.

²⁹³ Gorelick, Benjamin A. "The Israeli Response to Palestinian Breach of the Oslo Agreements." *New Eng. J. Int'l & Comp. L.* 9 (2003): 651.

²⁹⁴ Benvenisti, Eyal. "The Israeli-Palestinian Declaration of Principles: A Framework for Future Settlement." *Eur. J. Int'l L.* 4 (1993): 542.

²⁹⁵ Shehadeh, Raja. *From Occupation to Interim Accords: Israel and the Palestinian Territories*. Vol. 4. Brill, 1997.

ISRAEL'S GAINING OF CONTROL OF EAST JERUSALEM: THE ISRAELI LEGISLATION TO PROTECT THE UNIFICATION OF THE CITY²⁹⁶

As mentioned above, the Six-Day War started on June 5, 1967. Israel attempted to talk Jordan out of joining the conflict on the morning of the outburst²⁹⁷. The American embassy in Amman, Jordan, and General Odd Bull, chief of the UN observers in Jerusalem, first assured Jordan that Israel would not start attacking unless Jordan launched the initial attack²⁹⁸. King Hussein disregarded the Israeli assurances and announced to his folks that a war had started due to his belief that the Egyptian bogus report, the Egyptian troops had defeated the Israeli army in armed conflicts²⁹⁹.

IDF troops invaded and gained control of the Old City on June 7, 1967, completing the process by which Israel acquired control of Jordanian Jerusalem. Israeli law, jurisdiction, and administration were extended to east Jerusalem by the end of June 1967, uniting the two halves of the city³⁰⁰: The Law and Administration Ordinance (Amendment No. 11) Law, 5727-1967³⁰¹, was passed by the Knesset on June 27, 1967, and it revised the Ordinance by adding Section 11B, which read: *"The law, jurisdiction, and administration of the state shall extend to any area of Eretz Yisrael designated by the government by order"*³⁰². The government issued the Law and Administration Order (No. 1), on June 28, 1967, in accordance with this section, that announced that the lands of Eretz Yisrael, as set forth in the Order's schedule, is *"territory in which the law, jurisdiction, and administration of the State apply"*³⁰³.

The Municipalities Ordinance (Amendment No. 6) Law, 5727-1967, was another piece of legislation promoted by the Knesset on June 27, 1967³⁰⁴. This law gave the Interior

²⁹⁶ Hammoudeh, Doaa, Layaly Hamayel, and Lynn Welchman. "Beyond the physicality of space: East Jerusalem, Kufr 'Aqab, and the politics of everyday suffering." *The Jerusalem Quarterly* 65 (2016): 35-60.

²⁹⁷ Gera, Gideon. "Israel and the June 1967 War: 25 years later." *The Middle East Journal* (1992): 229-243.

²⁹⁸ Eisenberg, Laura Zittrain. "Israeli Independence Day, 1967: Mixed Messages on the Eve of War." *Journal of Israeli History* 39.2 (2021): 177-204.

²⁹⁹ Rabinovich, Abraham. *The Yom Kippur War: the epic encounter that transformed the Middle East*. Schocken, 2007.

³⁰⁰ H CJ 256/01 Rabach et al. v. The Jerusalem Court for Local Matters, 56(2) PD 930, 934 opposite the letter F, and at p. 935 opposite the letters A-C.

³⁰¹ Al Zoughbi, Basheer. "Trump's Plan to Move the US Embassy to Jerusalem." (2016).

³⁰² Shehadeh, Raja. "Human rights and the Israeli occupation." *CR: The New Centennial Review* 8.1 (2008): 33-55.

³⁰³ Shehadeh, Raja. *From Occupation to Interim Accords: Israel and the Palestinian Territories*. Vol. 4. Brill, 1997.

³⁰⁴ Lerner, Natan. "Religious Liberty in the State of Israel." *Emory Int'l L. Rev.* 21 (2007): 239.

Minister the authority to extend the boundaries of a certain municipality to which an order had been issued in response to the Law and Administration Ordinance's revision. In accordance with this law, the Minister of the Interior issued an order on June 28, 1967, expanding the municipal borders of the Jerusalem municipality to those specified in the aforementioned law and administrative order.³⁰⁵

As a result, the civic territory of Jerusalem was increased from 38,100 to 108,500 dunams³⁰⁶, and it was also expanded to the east, north, south, and northwest. As a result, Jerusalem surpassed other Israeli cities in size³⁰⁷. Jordanian Jerusalem (6,000 dunams) and territory added to Jerusalem (64,500 dunams) from 28 communities in Judea and Samaria, including Bethlehem, Bet-Jala, El Bira, and others, were among the new additions. Since then, the entire region that was included in Jerusalem has been referred to as "*East Jerusalem*."

Aiming for the prevention of any attempts to split again the city, the extra lands were meant to allow for the growth of Jerusalem and the development of new Jewish neighborhoods in the east³⁰⁸. Unusually, neither the laws nor the order included any kind of map, and the borders of the expanded region were only specified by fictitious lines connecting various references. Additionally, it is worth noticing how neither the laws nor the order contained the name "Jerusalem"³⁰⁹.

In a letter to the UN Secretary-General dated July 10, 1967, the then-foreign minister Abba Eban attempted to persuade him that no annexation had occurred³¹⁰ and that those were only measures taken with the purpose to reach a more effective administration, aiming to benefit all the city's citizens and ensure freedom of worship and freedom of access to the holy sites³¹¹. The General Assembly and Security Council underlined that the actions Israel

³⁰⁵ Dumper, Michael. *The politics of Jerusalem since 1967*. Columbia University Press, 1997.

³⁰⁶ Abou Ramadan, Moussa. "The Haram Al-Sharif in Jerusalem: An Israeli Law Perspective." *Between Cultural Diversity and Common Heritage*. Routledge, 2016. 175-190.

³⁰⁷ Dumper, Michael. *The politics of Jerusalem since 1967*. Columbia University Press, 1997.

³⁰⁸ Weizman, Eyal. *Hollow land: Israel's architecture of occupation*. Verso books, 2012.

³⁰⁹ Sandys, George. *Sandys Travails: Containing a History of the Original and Present State of the Turkish Empire: Their Laws, Government, Policy, Military Force, Courts of Justice and Commerce: the Mahometan Religion and Ceremonies, a Description of Constantinople: the Grand Seigniors Seraglio, and His Manner of Living, Also, of Greece, with the Religion and Customes of the Græcians: of Egypt, the Antiquity, Hieroglyphicks, Rites, Customes, Discipline, and Religion of the Egyptians a Voyage on the River Nilus, and of* R. and W. Leybourn, and are to be sold by John Sweeting at the Angel in Popes-head-Alley, 1978.

³¹⁰ Shemesh, Moshe. "The West Bank: rise and decline of traditional leadership, June 1967 to October 1973." *Middle Eastern Studies* 20.3 (1984): 290-323.

³¹¹ Hirsch, Moshe, Deborah Housen-Couriel, and Rût Lapîdôt. *Whither Jerusalem?: proposals and positions concerning the future of Jerusalem*. Martinus Nijhoff Publishers, 1995.

took in order to bring Jerusalem under one legislation were unlawful and urged Israel to reverse them, showing that the United Nations was not persuaded³¹².

E. Thalmann, a Swiss diplomat, was sent to Jerusalem by UN Secretary-General U Thant to serve as his personal representative and see the actual unification of the city. In August 1967, Thalmann travelled to Jerusalem where he spoke with religious leaders from both the Muslim and Christian faiths as well as the prime minister and foreign minister. According to a UN Secretary-General report based on Thalmann's reviews, the Israelis had made it known how they would not tolerate any form of violence.

According to the Law and Administration Law, issued in 1999, it will not be possible to give up lands where the Israeli law applies³¹³, for instance, East Jerusalem, unless the Government ruled a decision in this regard which would be agreed on by over 50% of the votes, in the Knesset and in the referendum³¹⁴. But because this law stipulates that the referendum-related section will only take effect once a Basic Law governing the referendum concerned is adopted, and the legislation will not be passed until the necessary law will be enacted; past that point a referendum may take place.

The Basic Law was adopted by the Israeli Parliament (Knesset): Referendum, 5774-2014 on March 12, 2014³¹⁵ to make it possible to implement a referendum, which is necessary to give up Israeli sovereignty over any area of its territory.³¹⁶ The law is applicable to all of the territories belonging to the State of Israel that are within the "Green Line" (the State of Israel's territory as defined by the demarcation lines outlined in the 1949 Armistice Agreements with its Arab neighbors after the War of Independence)³¹⁷, including East Jerusalem and the Golan Heights.

This law's focal point, which is the first one, states that for the government to sign an agreement which includes a rejection of its control over a particular portion of the State of Israel's territory, the agreement must first receive the approval of an absolute majority of

³¹² Bennis, Phyllis. "The United Nations and Palestine: partition and its aftermath." *Arab Studies Quarterly* (1997): 47-76.

³¹³ Naor, Arye. "The security argument in the territorial debate in Israel: Rhetoric and policy." *Israel Studies* 4.2 (1999): 150-177.

³¹⁴ Meir, Yehuda Ben, and Gilead Sher. "Israeli Public Opinion and Separation from the Palestinians." *Strategic survey for Israel 2014* (2013): 159-74.

³¹⁵ Assali, Hania Walid. "The Forgotten Palestinians." *RETHINKING STATEHOOD IN PALESTINE* (2021): 80.

³¹⁶ Shetreet, Shimon, and Walter Homolka. "Jewish and Israeli Law-An Introduction." *Jewish and Israeli Law-An Introduction*. De Gruyter, 2021.

³¹⁷ Newman, David. *Boundaries in flux: the 'Green Line' boundary between Israel and the West Bank-past, present and future*. Vol. 1. No. 7. IBRU, 1995.

Knesset members³¹⁸ and then additional approval in a *referendum*. The law states that if the concession agreement has been authorized by a majority of 61 members of the Israeli Parliament, there is no need to organize a referendum to approve such a rejection³¹⁹. Section 5 of this law, forbids law amendments other than those brought about by the majority of the members of the Israeli Parliament following the Basic Law. Therefore, this provision corrected the fact that Jerusalem, the capital of Israel, was not enshrined in the first section of the Basic Law, stating that Jerusalem is the capital of Israel³²⁰.

In July of 1980, following the initiative of MK Geula Cohen, Israel showed how it was determined to protect the status of a unified Jerusalem as the sole capital city of Israel³²¹. This was done following the Basic Law: Jerusalem, the Capital of Israel, declares that "*Jerusalem, complete and united is the Capital of Israel*"³²².

Israeli control over the city of Jerusalem and its surrounding areas, including the entire territory seized and included within the Israeli territories by June 1967, was expressly enshrined in primary and Basic legislation following the initiative of MK Yehoshua Matza besides some other Knesset members³²³. The Israeli right-wing parties deemed this provision too shallow. On December 7, 2000, they added three new parts to Basic Law: Jerusalem, the Capital of Israel³²⁴, through three additional sections. Section 5 was the first addition. This section establishes the expansion of Jerusalem's municipal boundaries and the application of Israeli law to the territory that was annexed to Jerusalem by the end of June 1967³²⁵.

The purpose of the following section, Section 6, is to prohibit transferring any power within Jerusalem, to a foreign organ.

This section could be interpreted as being in conflict with Israeli agreements with Jordan under Article 9.2 of the peace treaty of October 26, 1994³²⁶, to give Jordan a main

³¹⁸ Selby, Jan. "Cooperation, domination and colonization: The Israeli-Palestinian joint water committee." *Water Alternatives* 6.1 (2013): 1.

³¹⁹ Meir, Yehuda Ben, and Gilead Sher. "Israeli Public Opinion and Separation from the Palestinians." *Strategic survey for Israel 2014* (2013): 159-74.

³²⁰ Brown, Nathan J. "Constituting Palestine: The effort to write a basic law for the Palestinian Authority." *The Middle East Journal* (2000): 25-43.

³²¹ Yishai, Yael. "Israeli annexation of East Jerusalem and the Golan Heights: factors and processes." *Middle Eastern Studies* 21.1 (1985): 45-60.

³²² Naor, Arye. "Menachem Begin and 'Basic Law: Jerusalem, Capital of Israel'." *Israel Studies* 21.3 (2016): 36-48.

³²³ Rehman, Javid. *Islamic state practices, international law and the threat from terrorism: a critique of the 'clash of civilizations' in the new world order*. Vol. 7. Hart Publishing, 2005.

³²⁴ Feinstein, Yuval, and Uri Ben-Eliezer. "Failed peace and the decline in liberalism in Israel: A spiral model." *Mediterranean Politics* 24.5 (2019): 568-591.

³²⁵ Dumper, Michael. *The politics of Jerusalem since 1967*. Columbia University Press, 1997.

³²⁶ Bickerton, Ian J., and Carla L. Klausner. *A history of the Arab-Israeli conflict*. Taylor & Francis, 2022.

role in the Muslim holy sites in Jerusalem during discussions on a final status deal for the city³²⁷. But a careful reading of this passage reveals that there is no contradiction: Israel only stated that "*When negotiations on the permanent status will take place, Israel will give high priority to the Jordanian historic role in these shrines*"³²⁸ rather than granting Jordan any control whatsoever in the Muslim holy sites in Jerusalem.

Despite all of this, it is known that Jordan actually enjoys special status on the Temple Mount, especially in light of the recent peace agreement with Jordan, and that Israel's government works hard to coordinate all of its activities there with Jordan. As a result, Jordan and the Israeli government have worked together to coordinate a number of decisions regarding this holy site, which is revered by followers of Judaism, Christianity, and Islam. One such decision was Prime Minister Benjamin Netanyahu's ban on entry to the Temple Mount for Jewish and Arab ministers and MKs in October 2015³²⁹.

The third additional section, Section 7, rules that the two above-mentioned sections should be avoided any change, with the exception of Basic Laws passed by the majority of the members of the Israeli Parliament³³⁰. The original Basic Law did not have entrenchment provisions of any kind, it is interesting how the Knesset enacted an entrenching provision regarding Sections 5 and 6 of the law and did not strengthen the other original provisions.

On January 2, 2018, the Knesset strengthened the clause in Section 7 above by raising the threshold for amending Sections 5 and 6 of the Law to a special majority of 80 MKs³³¹. Similarly, Section 7 was firmly established: Section 7 of the Law was changed such that any additional alteration from that moment on required a majority of 61 Knesset members, that is, a particular and absolute majority³³², whereas under the prior legislation, an ordinary proportional majority of MKs was sufficient.

³²⁷ Klein, Menachem. "Rule and Role in Jerusalem Israel, Jordan, and the PLO in." *Jerusalem: A City and its Future* (2002): 137.

³²⁸ Eran, Oded. "INSS Insight No. 547, May 9, 2014 The Palestinian-Jordanian-Israeli Triangle".

³²⁹ Medad, Yisrael. "The Temple Mount and the Status Quo Revisited." *Israel Journal of Foreign Affairs* 14.3 (2020): 399-415.

³³⁰ Saban, Ilan, and Muhammad Amara. "The Status of Arabic in Israel: Reflections on the Power of Law to Produce Social Change." *Israel Law Review* 36.2 (2002): 5-39.

³³¹ Skorek, Artur. "Basic Laws of Israel." *The Palgrave International Handbook of Israel*. Singapore: Springer Singapore, 2022. 1-14.

³³² BERGMAN, A. "Editor's synopsis."

However, as a result, it is now possible to alter the law's statutory requirement for a majority of 80 MKs must be present in order to abandon a portion of Jerusalem, even by a majority³³³.

INTERNATIONAL REJECTION OF THE UNIFICATION OF JERUSALEM

No country in the world has recognized the unity of Jerusalem or the legitimacy of Israeli sovereignty, particularly concerning East Jerusalem³³⁴. Resolutions opposing the designation of Jerusalem as Israel's capital were passed by the European Union, the United Nations, and the Egyptian parliament³³⁵.

The major UN organizations also sharply criticized the Basic Law Jerusalem of Israel³³⁶: on August 20, 1980, the Security Council passed Resolution 478 virtually unanimously, although one of its most important members, the United States of America, abstained³³⁷.

The resolution denounced the passage of the law, ruled that it was against international law, and declared it to be illegal and void³³⁸. According to the resolution, East Jerusalem qualifies as "*occupied territory*," thus the Fourth Geneva Convention of August 1949 concerning the protection of civilians during wartime is applicable³³⁹. The Security Council demanded that all nations holding diplomatic embassies in Jerusalem remove them³⁴⁰. The eighteen nations that had embassies on Jerusalem soil agreed to the demand and relocated them. In response to diplomatic pressure, Costa Rica moved its embassy back to Jerusalem in 1982. El Salvador's embassy was likewise relocated to Jerusalem in 1984. However, these two nations once more withdrew their embassies from Jerusalem in 2008 in response to the

³³³ Lustick, Ian S. "Yerushalayim, al-Quds and the Wizard of Oz: Facing the problem of Jerusalem after Camp David II and the al-Aqsa Intifada." *Journal of Israeli History* 23.2 (2004): 200-215.

³³⁴ Jefferis, Danielle C. "Institutionalizing statelessness: the revocation of residency rights of Palestinians in East Jerusalem." *International Journal of Refugee Law* 24.2 (2012): 202-230.

³³⁵ Migdalovitz, Carol. *Israel: Background and Relations with the United States*. DIANE Publishing, 2010.

³³⁶ Smootha, Sammy. "Ethnic democracy: Israel as an archetype." *Israel studies* 2.2 (1997): 198-241.

³³⁷ Kattan, Victor. "Why US recognition of Jerusalem could be contrary to international law." *Journal of Palestine Studies* 47.3 (2018): 72-92.

³³⁸ S/Res/478. See also: S/Res/465 (1.3.1980); S/Res/476 (30.6.1980).

³³⁹ Imseis, Ardi. "On the Fourth Geneva Convention and the occupied Palestinian territory." *Harv. Int'l LJ* 44 (2003): 65.

³⁴⁰ Bosco, David L. *Five to rule them all: The UN Security Council and the making of the modern world*. American Chemical Society, 2009.

Second Lebanon War and in an effort to improve their relationship with the Arab nations³⁴¹. As a result, Jerusalem became the only global capital without even a single embassy.

The UN General Assembly passed a resolution on January 15, 1981, rejecting the recognition of Jerusalem as Israel's capital in its entirety and declaring null and void the Basic Law of Jerusalem³⁴². Since then, Israel's actions to alter Jerusalem's status, character, cultural, historical, and religious heritage have been condemned by the Assembly on an annual basis. Particularly, the Basic Law of Jerusalem and its declaration that Jerusalem is Israel's capital in its entirety have been deemed invalid by the Assembly³⁴³. East Jerusalem does not belong to Israel; rather, it is an "occupied territory,"³⁴⁴. This conclusion was made in an advisory opinion that the ICJ issued to the UN General Assembly in 2004.

The UN Security Council resolution, No. 2334, which was approved on December 23, 2016, is noteworthy in this matter. This resolution is significant for its scathing criticism of Israel's "settlement" strategy in the West Bank and East Jerusalem, which it refers to as "occupied Palestinian territory." Israel seized these areas in 1967 (during the "Six-Day War"). The Security Council declares in the resolution that those settlements that were established following the Six-Day War were no longer valid and are in fact a breach of international law³⁴⁵ as they put at stake a long-lasting attempt at peace based on the two-state solution. The resolution also denounces "*all measures aimed at altering the demographic composition, character, and status of the Palestinian Territory occupied since 1967, including east Jerusalem.*" (Art.1)

Along with that, the Council emphasized that the changes made in June 1967 would not be recognized. It should be noted that prior UN resolutions did not contain this piece, which first appeared here. This was the first time the UN agreed that the status of the territories seized by Israel in June 1967 would be agreed on through negotiations between the parties involved³⁴⁶. This proposal was adopted by 14 out of the 15 members of the Council, this led to great resentment from Israel, because for the first time in a very long

³⁴¹ Westbrook, Matthew C. *The International Christian Embassy, Jerusalem and Renewalist Zionism: Emerging Jewish-Christian Ethnonationalism*. Drew University, 2014.

³⁴² Kattan, Victor. "Why US recognition of Jerusalem could be contrary to international law." *Journal of Palestine Studies* 47.3 (2018): 72-92.

³⁴³ Maoz, Asher. "Application of Israeli law to the Golan Heights is annexation." *Brook. J. Int'l L.* 20 (1993): 355.

³⁴⁴ SEIDEMANN, DANIEL. "East Jerusalem: The Myth of Benign Occupation Disintegrates." *Journal of Palestine Studies* 45.2 (178 (2016): 3-12.

³⁴⁵ Meron, Theodor. "The West Bank and international humanitarian law on the eve of the fiftieth anniversary of the six-day war." *American Journal of International Law* 111.2 (2017): 357-375.

³⁴⁶ Carter, Jimmy. *Palestine peace not apartheid*. Simon and Schuster, 2007.

time, the United States, under the lead of President Obama, failed to veto such a resolution as the only thing they did was abstaining from voting³⁴⁷.

Additionally, following the American recognition of Jerusalem as the capital of Israel, done by President Trump in December 2017, Egypt submitted a draft resolution to the UN Security Council³⁴⁸ which stated how the issue of the legal status of Jerusalem had to necessarily be resolved through negotiations and how there was some animosity and resentment over the decision taken on that matter.

The purpose of the draft, was to express the Security Council's opposition to the United States' recognition of Jerusalem as the capital of Israel³⁴⁹, despite the name of the United States and the matter of the recognition of Jerusalem being the Israeli capital were not mentioned in the draft presented by Egypt. This was obvious to everyone, despite the fact that the draft resolution did not specifically mention either of these facts. The resolution proposed by Egypt received support from 14 of the Security Council's 15 members. The United States, though, vetoed the resolution.

The Palestinians and those who supported them persisted, and Turkey and Yemen hurried to submit a similar provision to the one presented by Egypt to the United Nations General Assembly³⁵⁰. The UN General Assembly held a discussion in order to debate on this resolution on December 22, 2017. This time, a vast majority of the members approved the resolution: out of the 193 UN members, 128 voted in favor of the resolution; 9 voted against it (Israel, the United States, Guatemala, Honduras, Togo, and four Pacific island nations: Micronesia, the Marshall Islands, Nauru, and Palau); and 35 states abstained³⁵¹.

As a result, even though Israel still holds diplomatic relationships with 159 nations (out of the approximately 200 recognized nations), none of them as of today recognize Jerusalem as the capital of Israel³⁵²; instead, they are all represented by 88 embassies that are outside of

³⁴⁷ Rosen, Steven J. "Articles by MEF Staff and Fellows Israeli Settlements, American Pressure, and Peace."

³⁴⁸ Lagerwall, Anne. "The non-recognition of Jerusalem as Israel's capital: a condition for international law to remain relevant." *Questions of international law* 50.2018 (2018): 33-46.

³⁴⁹ Denny, Marcia. "The Effect of the United States' and Russia's Veto Power on the UN Security Council's Ability to Protect Human Rights." *Kuwait International Law School Journal, Special Supplement 3*: 141-174.

³⁵⁰ Rubinstein, Alvin Z. *Red Star on the Nile: The Soviet-Egyptian Influence Relationship Since the June War*. Princeton University Press, 2015.

³⁵¹ Giladi, Rotem. "Negotiating Identity: Israel, Apartheid, and the United Nations, 1949–1952." *The English Historical Review* 132.559 (2017): 1440-1472.

³⁵² Grossman, Jonathan. "Impartiality as a lack of interest: Israel, Brazil, the Jewish diaspora, and the question of Jerusalem." *Israel Studies* 23.1 (2018): 152-176.

Jerusalem. There are thirteen consulates representing eleven nations active in Israel: nine consulates are in Jerusalem, and four are outside of Jerusalem³⁵³.

In West Jerusalem's Agron Street 18, there is still a consulate of the United States³⁵⁴. On the Nablus Road in East Jerusalem, the American consulate had a branch for consular services up until very recently, it has been now removed. But just a few years ago, the US moved its consular office from East Jerusalem to West Jerusalem on 14 David Flusser Street. Additionally, Spain keeps a consulate in Sheikh Jarrah, at 32 Machal Street, in East Jerusalem.

In Jaffa-Tel Aviv, the Vatican has an embassy. Jerusalem does not house a consulate of the Vatican. The Apostolic Delegation of the Pope, the name given to his envoy in nations without formal diplomatic relations with the Vatican, has its headquarters in East Jerusalem, namely on the A-Tur road that leads to the Mount of Olives. Pope Pius XII established the Apostolic Representation of the Pope in Jerusalem on February 11, 1948, and it was in charge of overseeing Catholic operations in Israel, Jordan, and Cyprus³⁵⁵. Although diplomatic relationships between the Vatican and Israel were only established in 1993, the Apostolic Delegation continues to exist and work in Jerusalem³⁵⁶ and the lands under Israeli control and in the religious field solely, due to his position as a papal emissary to the local Catholic Church. As a result, although the Apostolic representative should not have diplomatic status given his primarily religious duties, Israel has granted him that status as a sign of respect for the Pope and in accordance with ordinary international diplomatic practice³⁵⁷.

Before Jerusalem's unification in June 1967, all of the foreign consulates were active, and some of them were even operational during the Ottoman era³⁵⁸.

Since June 1967, Israel has not permitted the establishment of consulates in Jerusalem, but only permitted embassy openings, in accordance with the international diplomatic convention that dictates embassies be situated in the host nation's capital and in an effort to promote recognition of Jerusalem as Israel's capital³⁵⁹.

³⁵³ Kark, Ruth. *American Consuls in the Holy Land, 1832-1914*. Wayne State University Press, 1994.

³⁵⁴ Bolton, John R. *The Implications of Moving the US Embassy in Israel to Jerusalem*. American Enterprise Institute, 2017.

³⁵⁵ Rioli, Maria Chiara. "A Wounded Diocese: the Patriarchate of Refugees." *A Liminal Church*. Brill, 2020. 124-165.

³⁵⁶ Zanini, Paolo. "Vatican Diplomacy and Palestine, 1900-1950." *Jerusalem Quarterly* 2017.71 (2017): 120-131.

³⁵⁷ Bathon, Matthew N. "The atypical international status of the Holy See." *Vand. J. Transnatl. L.* 34 (2001): 597.

³⁵⁸ Dumper, Michael. *The politics of Jerusalem since 1967*. Columbia University Press, 1997.

³⁵⁹ Denza, Eileen. *Diplomatic law: commentary on the Vienna convention on diplomatic relations*. Oxford University Press, 2016.

Due to their wish to resist taking any action that would lead to their countries' indirect recognize Jerusalem as the capital of Israel, which would be against their stated policy, no foreign consulate in Jerusalem has requested the Israeli Foreign Ministry to recognize them as consulates³⁶⁰. However, Israel recognizes the foreign consulates in Jerusalem as *de facto* representatives of nations with which it has diplomatic relations and accords them consular status and documents in accordance with the Vienna Convention on Consular Relations, 1963³⁶¹.

Due to its refusal to formally recognize foreign consulates in Jerusalem that do not submit a formal request to the Israeli Foreign Ministry to be recognized as consulates, Israel signed the Convention.

A consulate, as opposed to a diplomatic post, primarily interacts with issues that fall out of the political spectrum. The thirteen functions of a consulate are listed in Article 5 of the Vienna Convention.

The foreign consulates in Jerusalem provide assistance in all of the aforementioned areas to Jerusalem citizens (including Jews and Arabs), the territories, and Gaza.

Each consulate has immunity for its property due to their status, and the consuls have functional immunity, freedom of movement within Israel and the Palestinian territories, access to diplomatic documents, exemptions from paying income tax, customs fees, social security contributions, and VAT returns³⁶².

Israel only communicates with the embassies of nations with which it has diplomatic relations regarding all political issues.

Instead, in the Australian Parliament at the beginning of June 2014, Foreign Minister Alexander Downer stated that Australia does not consider East Jerusalem to be "*occupied territory*"³⁶³.

Additionally, in 2017, the Russian Foreign Minister made a formal, and unexpected declaration in which it recognized East Jerusalem as the future capital of the Palestinian state and West Jerusalem as the capital of the State of Israel. In the declaration the Russian Minister stated that Russia reaffirms its dedication to the UN-approved principles for an

³⁶⁰ Minister, Shlomo Ben-Ami Former Foreign. *Scars of War, Wounds of Peace: The Israeli-Arab Tragedy: The Israeli-Arab Tragedy*. Oxford University Press, USA, 2006.

³⁶¹ Denza, Eileen. *Diplomatic law: commentary on the Vienna convention on diplomatic relations*. Oxford University Press, 2016.

³⁶² Denza, Eileen. *Diplomatic law: commentary on the Vienna convention on diplomatic relations*. Oxford University Press, 2016.

³⁶³ Harris, Marty. "Australia and the Middle East conflict: the Rudd and Gillard Governments (2007–13)." (2015).

Israeli-Palestinian settlement, which include East Jerusalem's designation as the nation's capital. At the same time, he clarified that Russia views West Jerusalem to be Israel's capital. At the direct talks between the parties concerned, the specifics of a solution for the whole *spectrum* of concerns surrounding the status of Palestinian territory, including Jerusalem, should be coordinated. Russia will continue to support the realization of Israeli-Palestinian agreements by utilizing its chances as a permanent member of the UN Security Council, a co-sponsor of the peace process, and an active member of the Middle East Quartet of international mediators³⁶⁴.

This unexpected declaration, which may have even been the most significant one in a very long time, for some reason received little attention from any nation, including Israel; it did not spark any controversy or protests; and it was not discussed at the United Nations.

As previously said, the United States officially recognized Jerusalem as Israel's capital on December 6, 2017 (see Section 3 below). Given that the US is a superpower, it is reasonable to assume that other nations will follow suit and declare Jerusalem (or at least the western portion of it) to be the capital of Israel. Indeed, following the president's remarks, the president of the Czech Republic, Milos Zeman, said that his nation supported the president's assertion that the United States recognized Jerusalem as Israel's capital and that they are taking into consideration moving the Czech embassy to Jerusalem since each country has the right to elect their capital³⁶⁵. In addition, the Czech Foreign Ministry remarked the recognition of West Jerusalem as the Israeli capital.

On Christmas Day, 2017, President of Guatemala Jimmy Morales, also announced his decision to restore his country's embassy to Jerusalem³⁶⁶, despite not setting a specific date for the move.

Despite the fact that Guatemala's president refrained from making a formal declaration, his country implicitly recognized Jerusalem as Israel's capital when he made his choice because, as is customary in diplomatic circles, a foreign embassy is typically housed in the host nation's capital.

³⁶⁴ Stepanova, Ekaterina. "Russia's foreign and security policy in the middle east: Entering the 2020s." *Istituto Affari Internazionali* (2020).

³⁶⁵ Karolyi, Paul. "Update on Conflict and Diplomacy: 16 NOVEMBER 2017–15 FEBRUARY 2018." *Journal of Palestine Studies* 47.3 (2018): 135-171.

³⁶⁶ Breda, Tiziano. "Curtain Falls on Guatemala's International Commission against Impunity." *International Crisis Group*, September 3 (2019).

The Position of the United States Concerning the Legality of the Unification of Jerusalem

The United States made a statement during the UN General Assembly Meeting on July 14, 1967, through its ambassador to the UN, Arthur Goldberg, condemning the unification of Jerusalem³⁶⁷, stating that the final status of the city would be decided through negotiations between the parties and that the States would not recognize Jerusalem as a unified entity until after said negotiations. C. Yost, the U.S. ambassador to the UN, spoke in 1969 to the Security Council and referred to East Jerusalem as "occupied territory"³⁶⁸. Yost also reaffirmed that its political status would only be decided by negotiations between Israel and Palestine, with no interference from the outside³⁶⁹.

A letter was later attached by President Carter to the Camp David Agreement between Egypt and Israel of 1978. In this letter is written the stance the United States had taken on Jerusalem, remained the same as the one previously stated by its ambassadors to the United Nations³⁷⁰.

Despite this, ostensibly up until this point, the US was the only nation which recognized Jerusalem as Israel's capital, and they did so by passing a legislation³⁷¹. This was done following the parameters of the Jerusalem Embassy Act of 1995, which went into effect on November 8, 1995³⁷². Section 3 of this article declares that Jerusalem was to remain an undivided city, where all religious groups would be protected, that the City should be recognized as the sole capital of Israel, and that the Embassy of the US in Israel should be established in Jerusalem, not beyond the end of May 1999.

The language adopted in this part suggests how the United States recognized Jerusalem as the Israeli capital officially.

The introduction of the resolution passed by the two houses of the United States Congress for the 30th anniversary of the unification of Jerusalem stated that it is the policy

³⁶⁷ Khalidi, Walid. "Israel's 1967 Annexation of Arab Jerusalem: Walid Khalidi's Address to the UN General Assembly Special Emergency Session, 14 July 1967." *Journal of Palestine Studies* 42.1 (2012): 71-82.

³⁶⁸ Grief, Howard. *Security Council Resolution 242: A Violation of Law and a Pathway to Disaster*. Ariel Center for Policy Research, 2008.

³⁶⁹ Kattan, Victor. "Why US recognition of Jerusalem could be contrary to international law." *Journal of Palestine Studies* 47.3 (2018): 72-92.

³⁷⁰ Quandt, William B. *Camp David: peacemaking and politics*. Brookings Institution Press, 2015.

³⁷¹ ZIVOTOFSKY, Menachem Binyamin. "Zivotofsky v. Kerry 13-628 Ruling Below: Zivotofsky v. Secretary of State, 725 F. 3d 197 (DC Cir. 2013), cert granted 134 S. Ct. 1873 (2014). Three-year-old child, through his United States citizen parents, brought action for declaratory."

³⁷² Halberstam, Malvina. "The Jerusalem Embassy Act." *Fordham Int'l LJ* 19 (1995): 1379.

of the United States that "Jerusalem should remain the undivided capital of Israel."³⁷³ The American embassy, which was in Tel Aviv at the time, was planned to relocate to Jerusalem by May 31st, 1999³⁷⁴.

At the time of this declaration, President Bill Clinton was the head of the American administration. Coherently to his political view, he was strongly opposing this legislation. Despite his view, the Act was enacted with such a strong majority, that it was clear to the US President that using his constitutional right to reject it would not avoid the US Congress from passing the Act in a revote, as is required after a presidential veto.

As a result, the Act was not overridden by the President's veto and became law. According to the Act, if the U.S. State Department does not comply with the law's requirements to relocate the U.S. Embassy in Jerusalem by the end of May, 1999, it will face severe financial repercussions in the form of considerable budget cutbacks each year until 1999³⁷⁵.

It is worth noting that Section 7 of the Act, gave U.S. presidents the authority to delay the implementation of the Jerusalem Embassy Act, passed by Congress in 1995 and called for the relocation of the U.S. Embassy to Jerusalem. The act included a waiver provision that allows the president to postpone the move for national security reasons. Besides President Clinton, also Presidents Bush, Obama, and Trump all signed the waiver periodically to delay the relocation³⁷⁶.

After signing the waiver, the President is then required to report back to the Congress every six months on his decision, his reasoning and the reasons why to do so.

Even though his views on Israel and Jerusalem had not changed, President Clinton then announced in a statement released by the White House shortly after the law was passed by the U.S. Congress that he would use his powers, provided by the law, to delay the transfer of the embassy to Jerusalem.

The President reaffirmed his view that, at the time, constructing the American embassy in Jerusalem would seriously harm the peace process³⁷⁷. Since that time, every six months, every president of the United States has used this power to repeatedly postpone moving the

³⁷³ Cohen, Julie Schumacher. "Toward a Christian Peacemaking Approach to Jerusalem." *Journal of Ecumenical Studies* 54.2 (2019): 229-259.

³⁷⁴ Moten, Abdul Rashid. "US Embassy in Jerusalem: Reasons, implications and consequences." *Intellectual Discourse* 26.1 (2018): 5-22.

³⁷⁵ Watson, Geoffrey R. "The Jerusalem Embassy Act of 1995." *Cath. UL Rev.* 45 (1995): 837.

³⁷⁶ Da Vinha, Luis. "Competition, conflict, and conformity: Foreign policy making in the first year of the Trump Presidency." *Presidential studies quarterly* 49.2 (2019): 280-309.

³⁷⁷ Haaretz, October 26, 1995.

American embassy to Jerusalem. The transfer of the American embassy to Jerusalem was also postponed by an order signed by the previous president, Donald Trump, on June 1, 2017.

Additionally, representatives of the United States and other nations consistently avoided holding any official meetings in government buildings or other Israeli institutions in East Jerusalem, or visiting East Jerusalem without being escorted by Israeli officials³⁷⁸. Following the passing of the "Jerusalem Embassy Act" by the U.S. Congress, which announced that the United States recognizes Jerusalem as the undivided capital of Israel³⁷⁹. This approach conflicts with that proclamation, whose legal relevance as a legitimate indication of American acknowledgment of Israeli sovereignty in undivided Jerusalem, is, however, seriously disputed. Widely respected American lawyers contend that the American President is the only official with the power to recognize states, including their capital cities. The argument goes that because the president alone has the authority to recognize Jerusalem as Israel's capital, the Congress is also not permitted to mandate the transfer of the American embassy from Tel Aviv to Jerusalem³⁸⁰.

Despite having an official policy of not recognizing the Israeli sovereignty over East Jerusalem, the United States did so in order to extradite Joel Davis, an American citizen and adviser of the United Nations who had been found guilty of serious crimes of sexual exploitation of minors in the United States and fled to Israel. East Jerusalem was recognized by the United States as an essential component of Jerusalem and as being under Israeli sovereignty.

Joel Davis' attorney contended during an extradition hearing in the Jerusalem District Court that since the defendant had been detained in east Jerusalem and the extradition agreement between Israel and the United States only pertained to the territory of the State of Israel³⁸¹, extradition was not applicable in these regards. The court rejected these claims and blamed America for its redundancy in asking for this extradition. After a legal battle that lasted around a year, Joel Davis was finally extradited to the United States in November 2019.

³⁷⁸ Benvenisti, Meron. *City of stone: the hidden history of Jerusalem*. Univ of California Press, 1996.

³⁷⁹ Halberstam, Malvina. "The Jerusalem Embassy Act." *Fordham Int'l LJ* 19 (1995): 1379.

³⁸⁰ Halberstam, Malvina. "Jerusalem in America's Foreign Policy, 1947-1997. By Shlomo Slonim. The Hague, London, Boston: Kluwer Law International, 1998. Pp. xiv, 421. Index. Fl 250, 35, paper." *American Journal of International Law* 94.3 (2000): 610-614.

³⁸¹ Weiner, Justus R. "Hard Facts Meet Soft Law--The Israel-PLO Declaration of Principles and the Prospects for Peace: A Response to Katherine W. Meighan." *Va. J. Int'l L.* 35 (1994): 931.

On December 6, 2017, the White House's position on Jerusalem's *status* underwent a significant and historic change: despite warnings from the European Union and the Arab States surrounding Israel about the "*destruction of the political process*" and threats from the Palestinian Authority, Hamas, and Hizbullah about "*the outbreak of a new intifada*,"³⁸² American President Donald Trump declared that the United States recognized Jerusalem as the sole capital of Israel and that he had ordered the State Department to prepare the transfer of the embassy³⁸³.

According to the American president, the peace process had not advanced as a result of previous American presidents' refusal to recognize Jerusalem as the capital of Israel and move the U.S. embassy there, thus this policy could not be maintained. President Trump proudly declared that this was a long due step to be taken since Israel is a sovereign state and as such, it has the right to elect its own capital, however the U.S. was not to take any position on the question of Jerusalem and that such matters were to be discussed between the parties in a negotiation.

From what was said, we can evict that what President Trump was trying to do, is address the position of both parties: on one hand, recognizing Jerusalem as being the capital of Israel, and on the other holding back from using the Israeli language and referring to Jerusalem as "unified", or even talking about specific boundaries. What Trump did with this speech is leaving the door open to negotiations between the two parties: Israel and Palestine, to negotiate the separation of Jerusalem into two capitals, one for each of the two.

The Position of the EU Concerning the Status of Jerusalem

The Vatican's stance on these issues initially had an impact on the EU countries, many of which are Catholic³⁸⁴: they backed the territorial internationalization of Jerusalem in 1947–1948 because, in line with the Vatican's viewpoint, they thought it was important to safeguard the Holy Places. After that, they disagreed over whether internationalization should be territorial (supported by the majority of the states) or functional (supported by Holland and Sweden). The legitimacy of Jordanian sovereignty in East Jerusalem on one hand and the

³⁸² Del Sarto, Raffaella A. *Israel under siege: The politics of insecurity and the rise of the Israeli neo-revisionist right*. Georgetown University Press, 2017.

³⁸³ Koyama, Ken. "President Trump Recognizes Jerusalem as Israel's Capital." *Institute of Energy Economics, Japan; IEEJ*: December 2017 (2017).

³⁸⁴ Ferrari, Silvio. "The Holy See and the postwar Palestine issue: the internationalization of Jerusalem and the protection of the Holy Places." *International Affairs* 60.2 (1984): 261-283.

Israeli one in West Jerusalem was not acknowledged by any EU nation³⁸⁵. These nations continued to believe that the territorial internationalization of Jerusalem was the best course of action in the 1970s, and they showed this in a speech given by the nine members of the EU on November 6, 1973, in which they urged Israel to renounce its control over East Jerusalem. Ever since that declaration, they have backed up all UN rulings that have consistently denounced Israel's occupation of east Jerusalem and its efforts to alter the city's legal status, as well as calls for Israel to leave that area of the city.

The members stated that the dispute over Jerusalem was a key issue for all the parties involved and that a unilateral decision of who can exercise sovereignty over it will not be accepted, as it is of their belief that a peaceful solution will have to be reached through negotiation. They also specified that whatever the *status* of Jerusalem will be, every religion should be free of being worshiped and everyone should be given access to holy places³⁸⁶.

They demanded that Israel to quit the occupation over the land that has been in place since 1967. Early in December 1980, the European Council convened in Luxembourg and remarked what was said in the Venice Declaration³⁸⁷.

In a thorough study on the main issues in the Israeli-Arab conflict, including the Jerusalem issue, the EU foreign ministers came to the conclusion that the only way to end it was to apply an international regime to the eastern portion of the city. It was suggested in other documents created for the Council's political committee to transfer control of Jerusalem's Old City to a special UN envoy for a set period of time and to withdraw Israeli forces from the Old City in favor of foreign forces. This would ensure unrestricted access to the holy sites, civilian control over the city, and a postponement of the choice on East Jerusalem's sovereignty.

They wanted to establish a regime similar to the one of the Vatican and give the religious sites outside the Old City a special *status*, just like what happens to the churches located in the city of Rome, outside of the jurisdiction of the Vatican³⁸⁸.

In 1990, the EU Council reunited in Dublin and declared that the Israeli policy of settlements is a path full of obstacles to reach a peace agreement and that the Jewish

³⁸⁵ Kontorovich, Eugene. "Israel/Palestine—the ICC's uncharted territory." *Journal of International Criminal Justice* 11.5 (2013): 979-999.

³⁸⁶ Houk, Marian. "A New Convergence? European and American Positions on Jerusalem." *Jerusalem Quarterly* 39 (2009).

³⁸⁷ Peters, Joel. "Europe and the Israel–Palestinian peace process: the urgency of now." *European Security* 19.3 (2010): 511-529.

³⁸⁸ Eordegian, Marlen. "British and Israeli maintenance of the status quo in the holy places of Christendom." *International Journal of Middle East Studies* 35.2 (2003): 307-328.

settlements, even the ones in the Eastern portion of the City are deemed as illegal under international law³⁸⁹.

On October 1, 1996, the Council of Ministers of the European Union reaffirmed that the EU considers East Jerusalem as being under the principle of the inadmissibility of annexing a territory by using force and coercion³⁹⁰, and that, as occupied territory, the Fourth Geneva Convention applied to this area of the city. As such, this portion of the city was not under Israeli sovereignty.

In March 1999, the European Union backed the internationalization of all of Jerusalem and did not acknowledge Israel's sovereignty in West Jerusalem³⁹¹. The European Union notified the Ministry of Foreign Affairs on March 1, 1999, that it opposed meetings between members of the Palestinian Authority and foreign diplomats taking place outside of PA territory, particularly in east Jerusalem.

The UN General Assembly referred to Jerusalem's unique position as an international city as a "corpus separatum" in the Partition Resolution of November 1947.

The internationalization of Jerusalem, whether for the full city or just the Old City, appears to have been the European Union's favored course of action, according to a huge number of additional documents. However, the Union will support any deal reached between Israel and the Palestinians that secures the interests of Europe and the rest of the world in the city. This stance was also stated in a letter the German ambassador to Israel delivered to the Israeli Foreign Ministry in March 1999 on behalf of the Union (during Germany's chairmanship of the organization), in response to a request from Israel that European leaders stop going to the Orient House³⁹².

However, in the subsequent years, the EU gave up on the idea of making Jerusalem an international city and adopted a new stance, according to which Jerusalem should serve as the capital of both the State of Israel and the State of Palestine³⁹³, in accordance with the "vision of two states for two peoples³⁹⁴," and that only Israel and the Palestinians should

³⁸⁹ Cohen, Shaul Ephraim. *The politics of planting: Israeli-Palestinian competition for control of land in the Jerusalem periphery*. Vol. 236. University of Chicago Press, 1993.

³⁹⁰ Harpaz, Guy. "The Dispute over the Sovereignty of Jerusalem: EU Policies and the Search for Internal Legal Coherence and Consistency with International Law." *European Foreign Affairs Review* 17.3 (2012).

³⁹¹ Golani, Motti. "Jerusalem's Hope Lies Only in Partition: Israeli Policy on the Jerusalem Question, 1948–67." *International Journal of Middle East Studies* 31.4 (1999): 577-604.

³⁹² Pardo, Sharon, and Joel Peters. *Israel and the European Union: a documentary history*. Lexington Books, 2012.

³⁹³ Alfasi, Nurit, and Tovi Fenster. "A tale of two cities: Jerusalem and Tel Aviv in an age of globalization." *Cities* 22.5 (2005): 351-363.

³⁹⁴ "Two-state solution," United Nations, <https://www.un.org/unispal/document/two-state-solution/>

negotiate the city's final status and boundaries. This vision refers to a plan to end the Israeli-Palestinian conflict by creating two independent states where Israelis and Palestinians might coexist in peace and security. The plan has received widespread support from the world community as a way to bring the war to a just and peaceful conclusion³⁹⁵. Regarding Jerusalem's legal *status*, while Israel insists that the entire city is its undivided capital, the international world usually recognizes East Jerusalem as occupied Palestinian territory. However, the specifics of any final status agreement, including Jerusalem's legal *status*, would have to be agreed between the parties³⁹⁶.

In other words, East Jerusalem should serve as the capital of Palestine, and West Jerusalem should serve as the capital of Israel. Negotiations between Israel and the Palestinians would establish the boundaries of both capitals.

The Israeli government's policy in East Jerusalem was sharply criticized in the annual report of the EU Consuls General. It was determined that the carrying on this policy might mine the chance of making Jerusalem the capital city of the two states and lead to the impossibility of adopting the two-state solution. As a result, on December 6, 2017, EU Foreign Minister Federica Mogherini, the High Representative of the European Union for Foreign Affairs and Security Policy, declared that the EU had "serious concern" regarding U.S. President Donald Trump's intention to recognize Jerusalem as Israel's capital and that it would continue to hold the following positions:

*"The status of Jerusalem must be determined only in negotiations between Israel and the Palestinians on the basis of the two-state principle"*³⁹⁷.

On December 7, 2017, Federica Mogherini made another speech in which she vehemently opposed American recognition of Jerusalem as Israel's capital and emphasized that:

"The European Union has a clear and united position. We believe that the only realistic solution to the conflict between Israel and Palestine is based on two states, with Jerusalem as the capital of both the State

³⁹⁵ "Two-State Solution," Council on Foreign Relations, <https://www.cfr.org/backgrounder/two-state-solution>.

³⁹⁶ "The Two-State Solution," Jewish Virtual Library, <https://www.jewishvirtuallibrary.org/the-two-state-solution>.

³⁹⁷ "The Status of Jerusalem," Jewish Virtual Library, <https://www.jewishvirtuallibrary.org/the-status-of-jerusalem>, "Jerusalem," United Nations, <https://www.un.org/unispal/document/jerusalem/>

*of Israel and the State of Palestine, along the 1967 lines and with agreed land swaps. This is also the position of the international community, as reflected in numerous United Nations resolutions*³⁹⁸

Again in 2015, Federica Mogherini, in response to a statement made about a settlement in the conflict said: *"The EU and its member states are committed to ensuring that – in line with international law – all agreements between the State of Israel and the European Union must unequivocally and explicitly indicate their inapplicability to the territories occupied by Israel in 1967, namely the Golan Heights, the West Bank including East Jerusalem and the Gaza Strip"*³⁹⁹.

In Brussels, Belgium, on December 11, 2017, Israeli Prime Minister Benjamin Netanyahu met with the foreign ministers of 24 of the 28 EU nations⁴⁰⁰. In response to Netanyahu's comments, Mogherini said after the visit: *"He can keep these expectations for others, because in respect of EU countries this will not happen."* The EU foreign minister also reiterated her opposition to the US and her recognition of Jerusalem as Israel's capital⁴⁰¹.

The Centre for Jewish Communities in Europe, however, organized a conference in the European Parliament in June 2007 to commemorate the unification of Jerusalem's 40th anniversary. Only 20 of the 785 members of the European Parliament showed up for the event, which was attended by guests from all over the world. Hanno Takola, a Finnish delegate, made the most famous speech at this occasion when he said, *"Jerusalem is united and belongs to Israel"*⁴⁰².

³⁹⁸ The speech can be found on the official web site of the European Union: https://eeas.europa.eu/headquarters/headquarters-homepage/37019/statement-high-representativevice-president-federica-mogherini-and-commissioner-johannes_en

³⁹⁹ This statement can be found on the official web site of the European Union: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/144303.pdf

⁴⁰⁰ Filc, Dani, and Sharon Pardo. "Israel's Right-wing Populists: The European Connection." *Survival* 63.3 (2021): 99-122.

⁴⁰¹ Haaretz on December 12, 2017.

⁴⁰² "European Parliament conference on Jerusalem's unification" on June, 2007.

CHAPTER IV

THE STANCE OF THE PARTIES INVOLVED: ISRAEL AND PALESTINE

The Position of the Palestinian Authority on the Status of Jerusalem

The Palestinian Legislative Council passed the Capital Law of 2002, which is also commonly referred to as the Jerusalem Law, on October 6, 2002. It formally recognizes Palestinian sovereignty over the city and its sacred sites and identifies Jerusalem as the capital of the Palestinian state⁴⁰³.

Due to the fact that it recognizes Palestinian claims to the city and its *status* as the capital of a potential Palestinian state, this law is significant for the legal status of Jerusalem. It also states that any law or agreement that undermines the Palestinian claim to Jerusalem or runs afoul of the letter or spirit of the law is void.

Yasser Arafat, leader of the PLO Executive Committee, the Palestinian Authority, and the State of Palestine, signed the bill.

There is no question that the Oslo Accords between Israel and the PLO and Israeli legislation both prohibit the very adoption of this bill and render it legally invalid. According to the Oslo Accords, Jerusalem is within the Israeli borders and outside the Palestinian zone. The Palestinian Authority lacks the authority to enact laws pertaining to Jerusalem because it is located within Israel's borders and outside the Oslo Accords' self-rule area⁴⁰⁴. The very fact that this law was passed, and undoubtedly its provisions, obviously run counter to Israel's claim to Jerusalem's sovereignty and are not compatible with the Palestinian obligations outlined in the Oslo Accords⁴⁰⁵. The *status* of Jerusalem will only be decided by future negotiations on a long-term peace agreement, according to the terms of the Accords. Until

⁴⁰³ Ferrari, Silvio, and Andrea Benzo, eds. *Between Cultural Diversity and Common Heritage: Legal and Religious Perspectives on the Sacred Places of the Mediterranean*. Routledge, 2016.

⁴⁰⁴ Naqib, Fadle M. "Economic aspects of the Palestinian—Israeli conflict: the collapse of the Oslo Accord." *Journal of International Development: The Journal of the Development Studies Association* 15.4 (2003): 499-512.

⁴⁰⁵ General Opinion of Alan Baker, the Israeli Ministry of Foreign Affairs, October 2002.

then, Jerusalem will remain outside the purview of Palestinian government, and the Palestinian Authority is not allowed to continue operating its institutions there⁴⁰⁶.

Finally, it is important to note that the Palestinian law, while referring to the entire city without defining its boundaries, is not restricted to east Jerusalem. However, the PLO and PA leaders have repeatedly stated in statements made since then that their demand to make Jerusalem their capital only applies to east Jerusalem⁴⁰⁷.

The International Law Dispute on the Legality of Israeli Rule in East Jerusalem

Regarding the legality of Israel's actions regarding the unification of Jerusalem from the perspective of international law, experts in the field as well as Israeli jurists disagree⁴⁰⁸. The primary defense against the legality of the unification of Jerusalem is that east Jerusalem is "occupied territory," which Israel forcibly took from Jordan during the Six-Day War⁴⁰⁹ in violation of the UN Charter's ban on using force. As a result, the prohibition of forcibly taking territories is also mentioned in the majority of UN resolutions as one of the key arguments against the legitimacy of Israel's use of sovereignty over East Jerusalem.

The prevailing theory of international law holds that sovereignty can only be extended over "occupied territory" after a war has ended, and a peace agreement has been signed with the former sovereign state in the subject territory⁴¹⁰. If there is not an agreement, the territory keeps being governed by the law of the former sovereign state, despite exceptions.

Many scholars believed that after the British Mandate ended, Palestine, including Jerusalem, experienced a "sovereignty vacuum" that could only be filled through legal action. The agreed-upon conversion of Jerusalem into an international city in accordance with the UN "Partition Plan" of November 29, 1947, was expected to fill this void. They believed that after the British Mandate ended, Palestine, including Jerusalem, experienced a

⁴⁰⁶ Wittes, Tamara Cofman, ed. *How Israelis and Palestinians negotiate: A cross-cultural analysis of the Oslo peace process*. US Institute of Peace Press, 2005.

⁴⁰⁷ Berkowitz, Wars of the Holy Places, at pp. 387-389; Statements made by PA Chairman Mahmoud Abbas at a meeting of Arab League foreign ministers in Cairo on May 28, 2016 – Arutz Sheva Israel National News on the Internet of May 29, 2016; and at the Conference of Islamic Countries in Istanbul on December 13, 2017 – Haaretz of December 14, 2017.

⁴⁰⁸ Roberts, Adam. "Prolonged military occupation: the Israeli-occupied territories since 1967." *American Journal of International Law* 84.1 (1990): 44-103.

⁴⁰⁹ Broyles, Matthew. *The Six-Day War*. The Rosen Publishing Group, Inc, 2003.

⁴¹⁰ Benvenisti, Eyal. *The international law of occupation*. Oxford University Press, 2012.

"sovereignty vacuum" that could only be filled through legal action. The agreed-upon conversion of Jerusalem into an international city in accordance with the UN "Partition Plan" of November 29, 1947, was expected to fill this void. However, Jordan's illegal invasion and armed occupation of east Jerusalem in 1948 rendered this decision invalid and prevented Jordan from claiming any rights there. The fact that, aside from Pakistan, no nation, including any Arab state, has legally recognized Jordan's annexation of east Jerusalem and the legitimacy of Jordan's administration there serves as evidence for this.⁴¹¹

In a more simple way what they said is that a state must be the legitimate sovereign of a territory in order for it to be deemed "occupied territory" of a later state under international law⁴¹². According to the aforementioned jurists, Israel's occupation of east Jerusalem in June 1967 did not turn it into "occupied territory," and the laws of occupation do not thus apply there because Jordan had no formal claim to the area.

But in contrast to Jordan, Israel seized East Jerusalem in June 1967 as part of a legal action to exercise its right to self-defense in response to Jordan's attack on (Israeli) West Jerusalem⁴¹³. Israel requested Jordan to desist from attacking Israel, but Jordan still began hostilities despite its assurance that it had no intention of doing so. Force and the threat of using force are prohibited by Article 51 of the United Nations Charter, although there are two exceptions to this rule, one of which is the right to self-defense⁴¹⁴. So, in a legal manner, Israel also came to possess sovereignty over East Jerusalem⁴¹⁵.

According to international law, a peace agreement between Israel and Palestine can also grant sovereignty over the area. In fact, Jordan and Israel did sign a peace agreement (on October 26, 1994), but East Jerusalem was not returned to Jordan.⁴¹⁶ According to Article 9 of the Agreement Jordan no longer demands East Jerusalem as being under its sovereignty and is content with Israel's assurance that it will give "*high priority to the Jordanian historic role*"⁴¹⁷.

Notably, Israel only promised "high priority" to the historical Jordanian role in these locations without specifying their nature. Israel did not commit to granting Jordan control

⁴¹¹ Baron, Charles Bryan. "The International Legal Status of Jerusalem." *Touro Int'l L. Rev.* 8 (1998): 1.

⁴¹² Schachter, Oscar. "The right of states to use armed force." *Mich. L. Rev.* 82 (1983): 1620.

⁴¹³ Raz, Avi. *The bride and the dowry: Israel, Jordan, and the Palestinians in the aftermath of the June 1967 War.* Yale University Press, 2012.

⁴¹⁴ Glennon, Michael J. "The fog of law: Self-defense, inherence, and incoherence in Article 51 of the United Nations Charter." *Harv. JL & Pub. Pol'y* 25 (2001): 539.

⁴¹⁵ Cohen, Hillel. *The rise and fall of Arab Jerusalem: Palestinian politics and the city since 1967.* Vol. 10. Routledge, 2013.

⁴¹⁶ The Knesset Website on the Internet, <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israeljordan%20peace%20treaty.aspx>.

⁴¹⁷ Benvenisti, Meron. *City of stone: the hidden history of Jerusalem.* Univ of California Press, 1996.

over, or even the right to administer, these sites. Additionally, Jordan was not promised that the sites would have a permanent *status*; rather, only negotiations on this matter were promised, and even those weren't always with Jordan alone.

Without a doubt, the question article was skillfully written to express the legal, political, religious, and historical interests of both parties in the Muslim holy sites in Jerusalem.

Prime Minister Yitzhak Rabin said that he had personally written this clause, which expressed a policy of separation between the heavenly and the earthly Jerusalems: the administration of the Islamic holy sites, or heavenly Jerusalem, would be given to the Muslims, while control of the earthly Jerusalem would remain in Israel's hands⁴¹⁸. The "Jerusalem clause" in the deal with Jordan, according to Prime Minister Rabin, was nothing new.

Article 9 of the peace accord was a replica of a section that appeared in the document known as the "Washington Declaration," which Israel and Jordan signed in Washington on July 25, 1994, to terminate their state of armed confrontation. For the first time since its founding, Israel acknowledged Jordan's "special role" in the Muslim holy sites in Jerusalem in this declaration⁴¹⁹.

According to Rabin, Israel simply acknowledged Jordan's religious position in Jerusalem. Following the signing of the peace treaty with Jordan, Prime Minister Rabin and Foreign Minister Shimon Peres stated that "Jerusalem is closed from a political point of view and open from a religious point of view"⁴²⁰. Israel's will to grant Jordan such a "role" or *status* is consistent with their statements⁴²¹. Nevertheless, it is not solely a matter of religious status that the Jordanian Ministry of Religious Endowments continues to appoint all Waqf employees.

In light of Jordan's current exceptional situation in relation to the management of the Temple Mount, which, as evidenced, by the Israeli government's decisions to ban ministers and MKs from entering the Temple Mount in October 2015 and the decision to remove the magnometers from the Temple Mount's gates at the end of July 2017 (both of which are administered by Israel in coordination with Jordan)⁴²².

⁴¹⁸ Benvenisti, Meron. *City of stone: the hidden history of Jerusalem*. Univ of California Press, 1996.

⁴¹⁹ Mahler, Gregory S. *The Arab-Israeli conflict: an introduction and documentary reader*. Routledge, 2018.

⁴²⁰ Benvenisti, Meron. *City of stone: the hidden history of Jerusalem*. Univ of California Press, 1996.

⁴²¹ Berkovitz, Wars of the Holy Places, at p. 314.

⁴²² Benvenisti, Meron. *City of stone: the hidden history of Jerusalem*. Univ of California Press, 1996.

Deputy Elyakim Rubinstein observed in Paragraph 10 of the ruling of March 23, 2017, by the Supreme Court in the aforementioned petition:

“I should point out, as the one who headed the Israeli delegation to the peace treaty with Jordan, that this article (which had already appeared in the ‘Washington Declaration’ of July 25, 1994) was drafted uniquely (in an unusual and to some extent exceptional manner) by Prime Minister Yitzhak Rabin, personally. This article was originally intended to give expression to Jordan’s connection to the mosques on the Mount, where the Hashemite dynasty is considered and regards itself as the descendant of the Prophet Muhammad, who visited the place according to Islamic tradition on a miraculous night journey. King Abdullah, grandfather of the late King Hussein, in whose time the peace treaty was signed, and the greatgrandfather of the current king, who bears his name, was also murdered in the presence of his grandson Hussein in a mosque on the Temple Mount, and hence the special emotional bond, and I will not even consider the Jordanian-Palestinian aspects that were also in the background. The article is, as the state wrote in its response, the basis for the Waqf’s involvement. But, of course, within the scope of Israeli law, the legal authority from beginning to end rests with Israel and the Israel Police”⁴²³.

In any case, according to the legal scholars Schwebel and Blum, with whom I agree, Israel is at least the holder of the best "relative right" in Jerusalem⁴²⁴. This is because Jordan illegally occupied east Jerusalem in 1948, and Israel expelled Jordan from this territory in June 1967 as a result of that country's attack on Jerusalem⁴²⁵.

⁴²³ Statement by Elyakim Rubinstein is a speech he gave at the Conference of Presidents of Major American Jewish Organizations on February 18, 2014. The transcript can be found on the website of the Israel Ministry of Foreign Affairs at the following link: <https://mfa.gov.il/mfa/pressroom/2014/pages/remarks-deputy-president-supreme-court-elyakim-rubinstein-18-feb-2014.aspx>

⁴²⁴ This right is regulated in Article 51 of the United Nations Charter. For a detailed discussion, see R. Sable and Y. Ronen, *International Law*, Third Edition, Jerusalem, 2016, at p. 336.

⁴²⁵ Arnon and Vinitzky’s book, *Land Law and International Law in Judea and Samaria*, above, and the committee report on the status of construction in Judea and Samaria (headed by Supreme Court Justice (ret.) E. Levy) of June 21, 2012, at 375-379 of this book.

CONCLUSION

In conclusion, this thesis has provided a comprehensive analysis of the legal status of Jerusalem within the framework of international law. By examining historical, legal, and geopolitical factors, we have gained valuable insights into the complexities surrounding this longstanding issue.

International law plays a crucial role in determining the legal status of Jerusalem. The analysis of historical developments, particularly the partition of Palestine and the *de facto* division of Jerusalem during the British Mandate, highlights the relevance of international legal principles and instruments in shaping the city's legal *status*. The 1967 Six-Day War and subsequent military occupation of East Jerusalem and other Palestinian territories further underscore the need to assess the situation in light of international humanitarian law and the rules governing military occupations.

Throughout the chapters, it becomes evident that conflicting claims and historical developments have significantly influenced the legal status of Jerusalem. International law provides a framework for addressing these conflicts and challenges. The right to self-determination, as recognized by international law, is central to understanding the aspirations of both Israelis and Palestinians regarding Jerusalem. The legal *status* of the city must be examined in a manner that respects the rights and interests of all parties involved.

The positions and actions of the international community since 1967 are also essential considerations. Various resolutions, declarations, and diplomatic initiatives by states and international organizations reflect the evolving perspectives on Jerusalem's legal *status*. The absence of a unified international consensus underscores the complexity of the issue and the challenges in reaching a comprehensive resolution.

To achieve a just and lasting resolution, it is imperative to respect and apply international law principles. The principles of legality, non-recognition of unlawful situations, and respect for the rights of the inhabitants of the occupied territories are fundamental tenets of international law that should guide any resolution of the Jerusalem question. The relevant United Nations resolutions, including Security Council resolutions, provide important guidelines and parameters for a negotiated settlement based on international law.

Furthermore, any resolution must consider the cultural, historical, and religious significance of Jerusalem to multiple stakeholders. International law recognizes the importance of protecting and preserving cultural heritage and religious sites. Any solution

should aim to safeguard and ensure access to the religious sites in Jerusalem, respecting the rights and freedoms of all individuals, regardless of their faith.

In conclusion, the legal status of Jerusalem is a complex and multifaceted issue that requires careful consideration within the framework of international law, and as of today, it is not a resolved problem yet, despite the many and continuous efforts on behalf of many world organizations. A comprehensive and just resolution should be sought, taking into account historical developments, the right to self-determination, the principles of international humanitarian law, and the protection of cultural heritage and religious sites. It is only through a principled and inclusive approach, guided by international law, that a sustainable solution can be achieved, contributing to peace, stability, and justice for all parties involved.

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