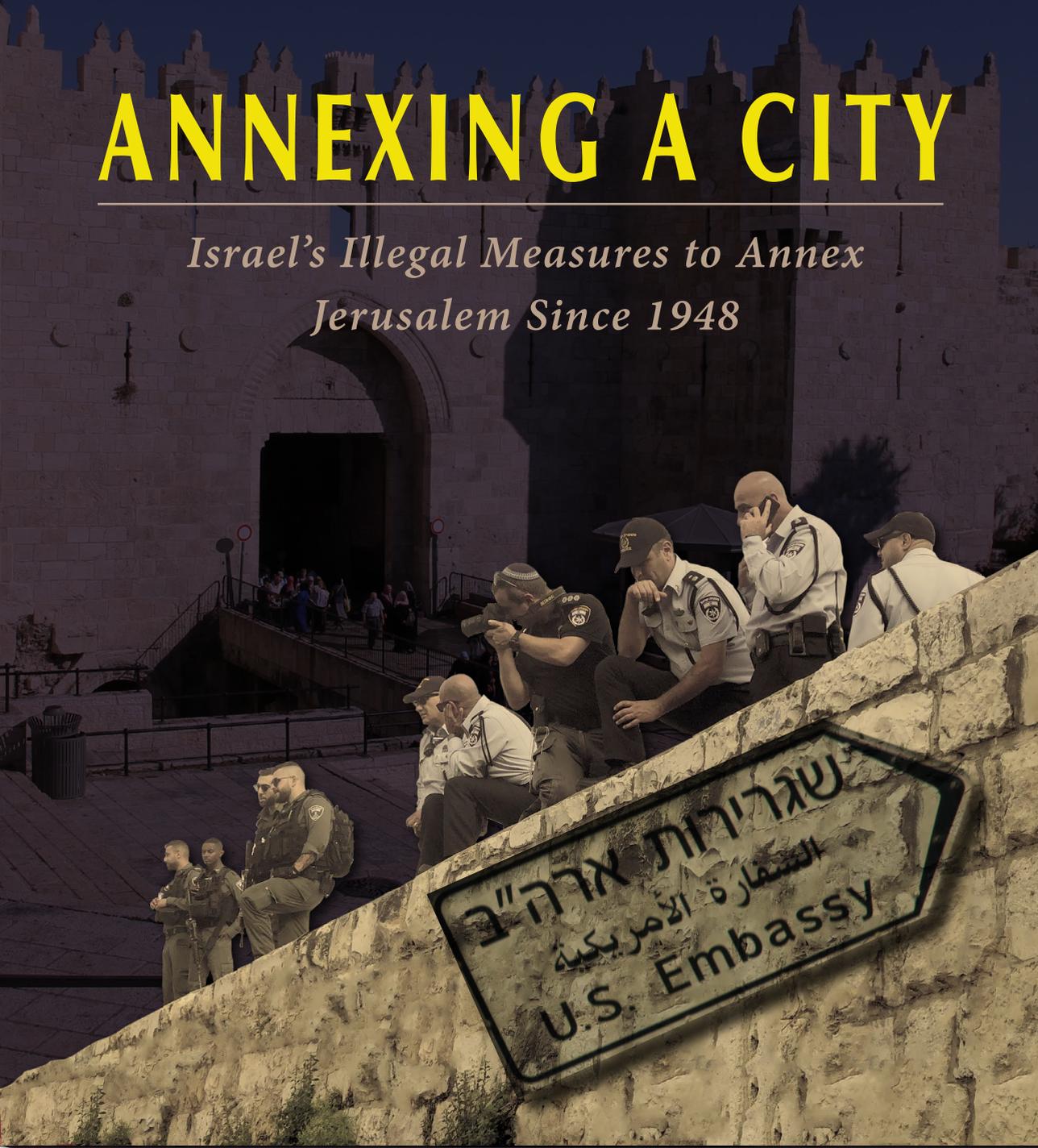




AL-HAQ

ANNEXING A CITY

*Israel's Illegal Measures to Annex
Jerusalem Since 1948*





AL-Haq - 54 Main Street 1st & 2nd Fl. - Opp. Latin Patriarchate
Saint Andrew's Evangelical Church - (Protestant Hall)
P.O.Box: 1413 - Ramallah - West Bank - Palestine
Tel: + 972 (0) 2 2954646/7/9
Fax: + 972 (0) 2 2954903
www.alhaq.org

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AL-HAQ
2020

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TABLE OF CONTENTS

PART I

1 Introduction	9
2 The Legal Status of Jerusalem	12
2.1 Evolution of Status	12
2.1.1 <i>The British Mandate, The Right to Self-Determination, and the Status of Jerusalem</i>	<i>12</i>
2.1.2 <i>United Nations Resolutions</i>	<i>16</i>
2.2 Defying the Legal Status: Israel's Consolidation of Jerusalem	19
2.2.1 <i>Annexing West Jerusalem</i>	<i>20</i>
2.2.2 <i>Extending Annexation to occupied East Jerusalem</i>	<i>24</i>
2.3 Laying the Framework to Extend the Colonisation into East Jerusalem	27
2.3.1 <i>Israeli Policies to Force the Transfer of Palestinians from East Jerusalem</i>	<i>27</i>
2.3.2 <i>Israel's Policies for Land Appropriation in Jerusalem</i>	<i>31</i>

PART II

3 Final Plans for Israeli Colonisation of Occupied East Jerusalem	41
3.1 Israeli Legislative Measures to Alter the Status of Jerusalem	41
3.1.1 <i>Law for the Regularisation of Settlement in Judea and Samaria, 2017</i>	<i>43</i>
3.1.2 <i>Bill for the Proposed Greater Jerusalem Law, 2017</i>	<i>44</i>
3.1.3 <i>The Bill for the "Jerusalem and Its Daughters" Law, 2017</i>	<i>46</i>
3.1.4 <i>Basic Law Bill: Jerusalem, Capital of Israel (Amendment – Supermajority [i.e. Qualified Majority]), 2017</i>	<i>48</i>
3.1.5 <i>Proposed Basic Law: Jerusalem Capital of Israel Amendment – Referendum, 2017</i>	<i>49</i>

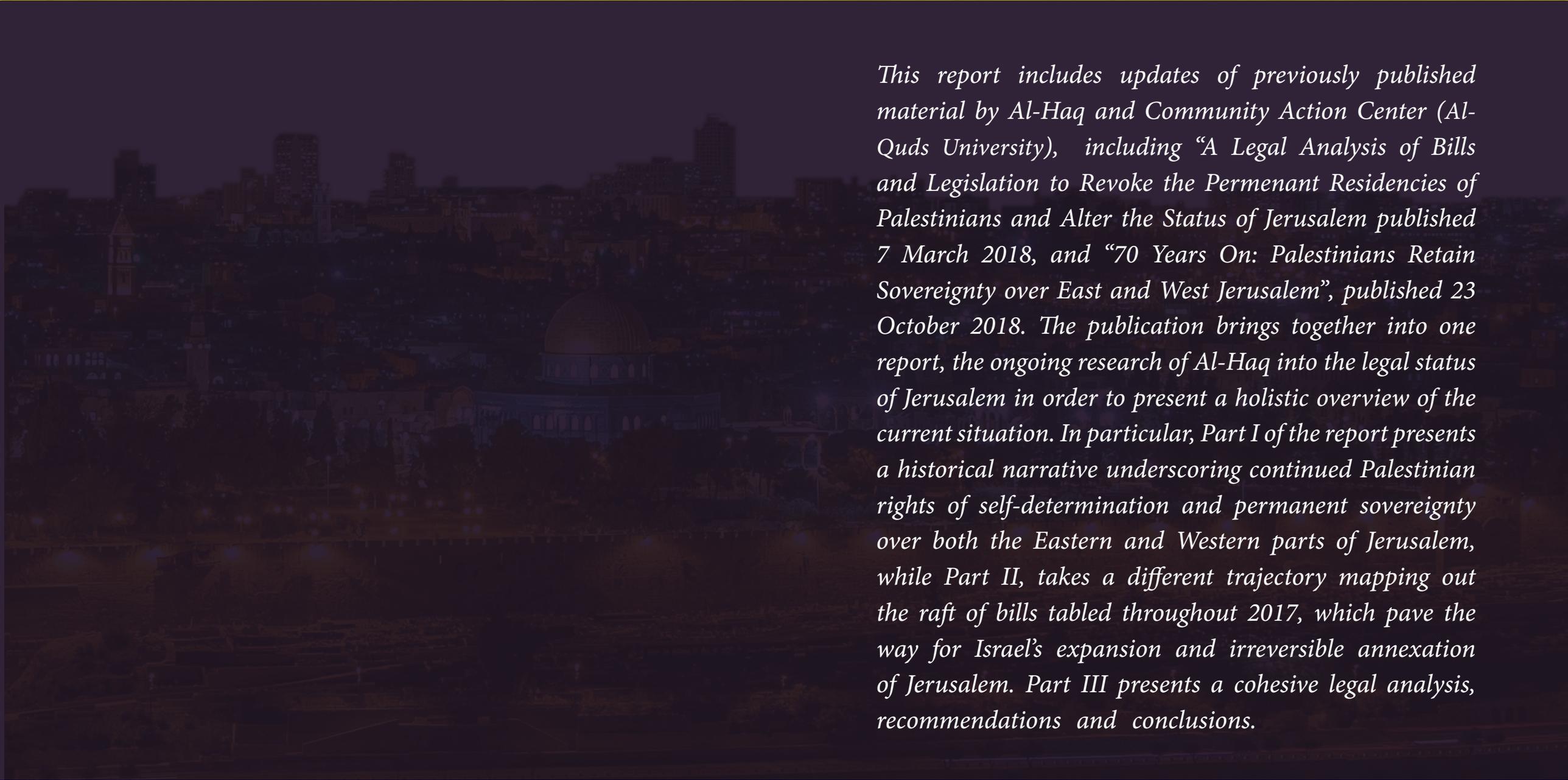


TABLE OF CONTENTS

3.1.6 <i>Proposed Law for the Rescue of Jerusalem as a Jewish and Democratic Capital City, 2017.....</i>	<i>49</i>
3.2 Legislation and Bills before the Knesset to alter the Demographic Composition of Jerusalem	51
3.2.1 <i>Entry into Israel Law (Amendment – Applicability to East Jerusalem's Residents and Resorting to the Interior Minister's Judgment), 2017</i>	<i>54</i>
3.2.2 <i>Entry into Israel Law (Amendment – Revocation of a Permit for Permanent Residency of Terrorists and Their Families), 2016 and 2017</i>	<i>57</i>
3.2.3 <i>The Entry into Israel Law (Amendment No. 28) (Boycott Law), 2017</i>	<i>61</i>
3.3 Legislative Measures After the United States Declaration on Jerusalem	62
3.3.1 <i>Basic Law: Israel as the Nation-State of the Jewish People</i>	<i>62</i>
3.3.2 <i>Amendment to the Administrative Affairs Courts Law (5760-2000)</i>	<i>63</i>

PART III

4 Legal Analysis	67
4.1 <i>Israel's Illegal Annexation of East and West Jerusalem</i>	<i>67</i>
4.2 <i>Israel's Obligations as Occupying Power</i>	<i>69</i>
4.3 <i>Alteration of Legal Status and Residency Revocations as Forcible Transfer</i>	<i>70</i>
5 Conclusions and Recommendations	73



This report includes updates of previously published material by Al-Haq and Community Action Center (Al-Quds University), including “A Legal Analysis of Bills and Legislation to Revoke the Permanent Residencies of Palestinians and Alter the Status of Jerusalem published 7 March 2018, and “70 Years On: Palestinians Retain Sovereignty over East and West Jerusalem”, published 23 October 2018. The publication brings together into one report, the ongoing research of Al-Haq into the legal status of Jerusalem in order to present a holistic overview of the current situation. In particular, Part I of the report presents a historical narrative underscoring continued Palestinian rights of self-determination and permanent sovereignty over both the Eastern and Western parts of Jerusalem, while Part II, takes a different trajectory mapping out the raft of bills tabled throughout 2017, which pave the way for Israel’s expansion and irreversible annexation of Jerusalem. Part III presents a cohesive legal analysis, recommendations and conclusions.



1

INTRODUCTION

Throughout history, Jerusalem has been administered by foreign powers with colonial interests, to the detriment of the native Palestinian population – a history which continues to resonate and drive the discourse on the city today. As a result, Jerusalem is either characterized, by the international community, as the “capital for two peoples” or, by Israel, as the “undivided capital”, both imposing a fixed outcome for indigenous Palestinians in disregard of their wishes, connection, and legitimate rights to the city.

In this vacuum, and within the context of Israel’s colonization of Palestine, Israel has implemented a 71-year campaign to erase Palestinian presence from and establish full control over the city of Jerusalem. Indeed, Israel’s actions towards the city, from beginning to move its Government ministries to West Jerusalem in 1949, to redrawing the municipal boundaries of the city in 1967, have all been aimed at establishing irreversible facts on the ground before concrete action is taken by the international community.¹ Accordingly, Israel’s policies and practices imposed today in occupied East Jerusalem, ranging from residency revocations to house demolitions, form part of a continuing effort to displace and dispossess Palestinians in Jerusalem, thereby feeding into Israel’s calculated efforts to alter the legal status, character, and demographic composition of the city, in violation of its protected status under international law.

Undoubtedly, both the failure of third States to take genuine action to counter Israel’s pervasive violations of international law, coupled with their willingness to directly facilitate international law breaches, have directly contributed not only to maintaining the *status quo*, in favour of the Israeli occupying authorities,

¹ For example, Eyal Weizman writes in *Hollow Land*, “The new delimitations were designed by a military committee with the aim of redrawing the state’s 1949 borders, prior to any evacuation of occupied territories that might have been forced on Israel by international agreement.” Eyal Weizman, *Hollow Land: Israel’s Architecture of Occupation* (Verso, 2007) 25.

PART I

but also to the deteriorating situation on the ground. The recent recognition by United States President Donald Trump of Jerusalem as the capital of Israel on 6 December 2017, and the subsequent relocation by the United States of its embassy from Tel Aviv to Jerusalem, is a culmination of 71 years of illegal Israeli actions towards permanently altering the status of Jerusalem. In response, in December 2017, the UN General Assembly affirmed that any decisions and actions which purport to alter the character, status or demographic composition of Jerusalem have no legal effect, are null and void, and must be rescinded in compliance with relevant resolutions of the Security Council, and in this regard called upon all States to refrain from the establishment of diplomatic missions in Jerusalem.² Nevertheless, the United States opened its embassy in West Jerusalem on 14 May 2018, a day prior to Palestine's 70th commemoration of the Nakba. The international community failed to follow through with sanctions, whereupon Guatemala relocated its embassy to Jerusalem,³ and Honduras and the Czech Republic subsequently indicated that they may also move their embassies, while Australia recognised West Jerusalem as Israel's capital.⁴

This report seeks to highlight the legal status of the city of Jerusalem, as well as to outline Israel's policies imposed on Palestinians in Jerusalem, which have changed the physical, social, economic, and cultural landscape of the city, and the effects such changes have had on the Palestinian population. The report also highlights Israel's legislative measures that aim to drastically alter the character and demographic composition of the city, and to fast-track the forcible transfer of the Palestinian population from occupied East Jerusalem. Specifically, this report will illustrate how the shift in United States' policy on Jerusalem after December 2017, effectively green-lighted a number of illegal unilateral measures by Israel,

including bills and laws, that aim to secure Israel's full and exclusive control over Jerusalem, the continuous oppression of Palestinians, and the systematic denial of their rights, as enshrined in international law.

Notably, this report will reflect on such measures and analyse their compatibility with international law, while focusing on how the international community has effectively enabled Israel's illegal consolidation and annexation of the city of Jerusalem. In particular, this report rejects the notion of Jerusalem as a *corpus separatum* to be placed under international control. The report establishes and emphasizes that the rights of the Palestinian people to self-determination and permanent sovereignty, although violated since 1948, extend nonetheless to the present day, over Jerusalem in its entirety.

² UN General Assembly Resolution ES-10/19, A/RES/ES-10/19 (21 Dec 2017).

³ Paraguay has stated its intention to move its embassy back to Tel Aviv in September 2018. Al-Haq, "Guatemala and Paraguay Embassy Relocation to Jerusalem Blatantly Disregards Jerusalem's Internationally Protected Status and Violates United Nations Resolutions" (23 May 2018), available at: <http://www.alhaq.org/advocacy/6200.html>

⁴ Guatemala opens embassy in Jerusalem after US move, Al Jazeera, "Guatemala opens embassy in Jerusalem after US move" (16 May 2018), available at: <https://www.aljazeera.com/news/2018/05/guatemala-opens-embassy-jerusalem-move-180516082355162.html>; Czech Republic Considering Moving Embassy to Jerusalem, Haaretz, 13 September 2018, available at <https://www.haaretz.com/israel-news/czech-republic-considering-moving-embassy-to-jerusalem-1.6468901>; Al-Haq, "Al-Haq Condemns Australia's Recognition of West Jerusalem as Israel's Capital" (15 December 2018), available at: <http://www.alhaq.org/advocacy/targets/third-party-states/1337-al-haq-condemns-australias-recognition-of-west-jerusalem-as-israels-capital>



2 THE LEGAL STATUS OF JERUSALEM

2.1 EVOLUTION OF STATUS

The city of Jerusalem was shaped economically, socially and culturally by consecutive historical events throughout the 20th century, from Ottoman rule, to the British Mandate, to Jordanian rule, and more recently the Israeli annexation of West Jerusalem, followed by Israel's occupation and annexation of East Jerusalem since 1967. However, as this Part will establish, the Palestinian people hold and retain an inherent right to self-determination, including permanent sovereignty, over East and West Jerusalem.

2.1.1 The British Mandate, The Right to Self-Determination, and the Status of Jerusalem

From approximately 1516 until 1918, Palestine was under the rule of the Ottoman Empire. Following World War I and the break-up of the Ottoman Empire, the Covenant of the League of Nations (Versailles Treaty) sought to establish a system whereby mandatories provided “tutelage” to peoples in colonies or territories formerly governed under the Empire.⁵ This system created three classes of mandates, which differed in character according “to the stage of the development of the people, the geographical situation of the territory, its economic conditions, and other similar circumstances.”⁶ Palestine was categorized as class A: a stage where it could be provisionally recognised as an independent nation “subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone.”⁷ Further, under Article 22 of the Versailles Treaty, the selection of the Mandatory had to take into account the wishes of

⁵ Versailles Treaty June 28, 1919, The Covenant of the League of Nations, Part I, Article 22, available at: <http://avalon.law.yale.edu/imt/parti.asp>.

⁶ Id.

⁷ Id.

the communities; after the mandate was established, mandatory powers were also supposed to administer the territory in the interests of the indigenous population.⁸ Notably, other class A mandates, including Iraq, Syria, and Lebanon, all became independent nations.

The Right to Self-Determination

The principle of self-determination can be traced to political documents and movements, including the 1776 Declaration of Independence of the United States,⁹ and was prominently examined by the League of Nations in the case of the Aaland Islands. The International Committee of Jurists examined the issue in 1920, prior to the League of Nation's settlement of the dispute. The Committee noted that while the right of self-determination may be the most important principle “governing the formation of States, geographical, economic and other similar considerations may put obstacles in the way of its complete recognition. Under such circumstances, a solution in the nature of a compromise, based on an extensive grant of liberty to minorities, may appear necessary according to international legal conception and may even be dictated by the interests of peace.”¹⁰

Nearly 20 years after the Aaland Islands case, the Atlantic Charter of 1941, a joint declaration of common principles between the United States and the United Kingdom, asserted the right to self-determination. Importantly, the Charter stated that the parties hoped to “see no territorial changes that

⁸ Article 22 of the Versailles Treaty guided the Mandates, and declared that certain territories were able to become independent nations with “advice and assistance” by a Mandatory. In these situations, “the wishes of these communities must be a principal consideration in the selection of the Mandatory.” Other territories were deemed to require greater administration and control by the Mandatory, subject to certain limitations, which should be “in the interests of the indigenous population.” Both cases described in Article 22 recognized the position of the native communities present in the territory.

In its Advisory Opinion on the Status of South-West Africa, the International Court of Justice affirmed, “The Union Government was to exercise an international function of administration on behalf of the League, with the object of promoting the well-being and development of the inhabitants.” International Status of South-West Africa, Advisory Opinion of July 11th, 1950, p.132, available at: <https://www.icj-cij.org/files/case-related/10/010-19500711-ADV-01-00-EN.pdf>.

⁹ Daniel Thürer, Thomas Burri, “Self-Determination”, Oxford Public International Law, available at: <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e873>

¹⁰ Report of International Committee of Jurists entrusted by the Council of the League of Nations with the task of giving an advisory opinion upon the legal aspects of the Aaland Islands question, October 1920, available at: <https://www.ilsa.org/jessup/jessup10/basicmats/aaland1.pdf>

do not accord with the freely expressed wishes of the peoples concerned," and that they respected the "right of all peoples to choose the form of Government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them."¹¹ A few months later, on 1 January 1942, the Atlantic Charter was included in the "Declaration by the United Nations."¹² The Charter of the United Nations, which entered into force on 24 October 1945, affirmed that one purpose of the United Nations was "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples."¹³

Although Palestinians had the right to self-determination in Mandatory Palestine, and the Mandatory was required to administer the territory in the interest of the native Palestinian population, these principles were contravened when Great Britain was given the Palestine Mandate. The League of Nations incorporated pledges made to Zionists by Britain under the Balfour Declaration in the Palestine Mandate. Article 6 of the Mandate, for example, affirmed that the Administration would "facilitate Jewish immigration under suitable conditions and shall encourage... close settlement by Jews on the land, including State lands and waste lands not required for public purposes."¹⁴ The Palestine Mandate's acknowledgment of the rights of "non-Jewish communities" and "natives,"¹⁵ was secondary to its objective of establishing "a national home for the Jewish people."¹⁶ These provisions effectively contradicted Article 22 of the League of Nations, which solely emphasized the "indigenous population" or peoples inhabiting the "colonies and territories," and made central the "wishes of these communities."

11 The Atlantic Charter, Declaration of Principles issued by the President of the United States and the Prime Minister of the United Kingdom, 14 August 1941, Principles 2 and 3 of the Atlantic Charter, available at: https://www.nato.int/cps/en/natohq/official_texts_16912.htm

12 Declaration by the United Nations, 1 January 1942, available at: <https://www.unmultimedia.org/searchers/yearbook/page.jsp?volume=1946-47&page=36&searchType=advanced>

13 Article 1, UN Charter, entered into force 24 October 1945, available at: <http://www.un.org/en/sections/un-charter/chapter-i/index.html>

14 Article 6, Palestine Mandate, 24 July 1922. Available at: http://avalon.law.yale.edu/20th_century/palmanda.asp

15 See, for example: Preamble of Palestine Mandate stating "nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine," and Article 9, "the judicial system in Palestine shall assure to foreigners, as well as to natives, a complete guarantee of their rights."

16 Preamble of the Palestine Mandate. Supra at note 14.

Indeed, a plain reading of Article 22 in no way condones prioritizing the wishes of foreigners to colonize.¹⁷ This conflict was recognized in the period leading up to 1948, with Arab States having asserted that the Mandate for Palestine was illegal, and that its terms were "inconsistent with the letter and spirit of Article 22 of the Covenant of the League of Nations."¹⁸

Irrespective of such objections, as Mandatory Power, Britain was able to change the course of Palestine by obstructing the right of Palestinians to self-determination and instead prioritizing non-residents, and, more broadly, the country's colonization.¹⁹ This occurred even in the face of internal British government reports calling for the limitation of Jewish immigration to Palestine.²⁰ During British rule, the Jewish population increased from less than ten percent in 1917 to over 30 percent by 1947 in Mandate Palestine.²¹ Immigration inevitably also materially impacted the demography of Jerusalem, where the Jewish population tripled from 33,971 in 1918 to 99,400 in 1947.²²

Crucial to the current status of Jerusalem, irrespective of the power Great Britain held to facilitate the demographic shift as Mandatory Power, sovereign rights over Palestine were not transferred from the Ottoman Empire to the mandatory

17 The inconsistency between the Mandate and the League of Nations Covenant was also noted by the UN Sub Committee. Ad Hoc Committee on the Palestinian Question, Report of Sub-Committee 2, 11 November 1947, A/AC.14/32, Chapter I, para. 11, available at <https://unispal.un.org/pdfs/AAC1432.pdf>

18 Official Records of the Second Session of the General Assembly, Supplement No. 11, United Nations Special Committee on Palestine, 3 September 1947, A/364, para. 160, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/07175DE9FA2DE563852568D3006E10F3>

19 In describing the inconsistency between Article 22, the Balfour Declaration, and the Palestinian right to self-determination, Professor William Hocking noted "[t]he Declaration makes such a mandate impossible. There can be no provisional independence in a land subject to a protected immigration. The A-Mandate considers the welfare of the residents; whereas the Declaration considers also the welfare of a nation of non-residents, making the Jewish people of the world as a whole virtual or potential citizens of the state to be." The Right of Self-Determination of the Palestinian People, United Nations, 1979, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/b987b5db9bee37bf85256d0a00549525/e72c9bc38a5e62568525721b007a7729?OpenDocument>

20 The 1929 Shaw Commission concluded that the mandatory administration limit Jewish immigration, and protect "Arab peasants from eviction by Jewish land purchases," amongst other recommendations. A 1930 report by agricultural economics expert Sir John Hope Simpson reached the same conclusion. Although the British Colonial Secretary ratified the findings in a white paper, they were not implemented. See Michael Palumbo, *The Palestinian Catastrophe* (Quartet Books, 1987) 16.

21 The Origins and Evolution of the Palestine Problem: 1917-1988, Part II, 30 June 1979, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/D442111E70E417E3802564740045A309>

22 Henry Cattin, *Jerusalem* (St. Martin's Press New York, 1981) 35.

authority.²³ As noted in a separate opinion of the International Court of Justice (ICJ) on the Status of South-West Africa, “Sovereignty over a Mandated Territory is in abeyance; if and when the inhabitants of the Territory obtain recognition as an independent State, as has already happened in the case of some of the Mandates, sovereignty will revive and vest in the new State.”²⁴ The ICJ also elucidated two principles in regards to the mandates systems, that of non-annexation and “the principle that the well-being and development of such peoples form ‘a sacred trust of civilization.’... The two fundamental principles... apply to all former mandated territories which have not gained independence.”²⁵

The inhabitants of the Mandate, the people of Palestine, thus “had a right to sovereignty based on its connection to the territory, and on the principle of self-determination.”²⁶ Even after Israel forcibly took control of the western part of Jerusalem and changed the demography of the city, it did not attain sovereign rights. This continues to be reflected in statements and resolutions by the United Nations.

2.1.2 United Nations Resolutions

Following Britain’s announcement in February 1947 that it would withdraw from Palestine, the United Nations formed the Special Committee on Palestine (UNSCOP) in April 1947. While UNSCOP quickly recommended that Palestine be partitioned into an Arab State and a Jewish State, there was clear acknowledgement of the possible violations of international law that were taking place. In its report to the General Assembly, UNSCOP itself noted:

“With regard to the principle of self-determination, although international recognition was extended to this principle at the end of the First World War and it was adhered to with regard to the other Arab territories, at the time of the creation of the ‘A’ Mandates, it was not applied to Palestine,

²³ Supra at note 5, Article 22.

²⁴ Separate Opinion by Sir Arnold Nair, International Status of South West Africa, International Court of Justice, 11 July 1950, p.150, available at: <https://www.icj-cij.org/files/case-related/10/010-19500711-ADV-01-01-EN.pdf>

²⁵ Summary of 1950 judgment in: Separate opinion of Judge Elaraby, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, International Court of Justice, 9 July 2004, pp. 250-251 (emphasis in the original), available at: <https://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-06-EN.pdf>

²⁶ John Quigley, “Sovereignty in Jerusalem”, 45(3) Catholic University Law Review (1996) 778, available at: <https://scholarship.law.edu/cgi/viewcontent.cgi?article=1576&context=lawreview>

obviously because of the intention to make possible the creation of the Jewish National Home there. Actually, it may well be said that the Jewish National Home and the *sui generis* Mandate for Palestine run counter to that principle.”²⁷

Even with such an acknowledgment, the 1947 UNSCOP report to the United Nations General Assembly went on to recommend a partition plan for Palestine. Following the UNSCOP report, two committees were formed by the United Nations Ad Hoc Committee on the Palestinian Question, with Sub-Committee 2 tasked with examining legal questions arising from the so-called ‘Palestine problem’.²⁸ In its report, Sub-Committee 2 affirmed that UNSCOP “failed to consider and determine some issues and juridical aspects of the Palestine question, and came to wrong and unjustified conclusions in relation to other matters which it did not consider.”²⁹ The Sub-Committee affirmed that the partition proposal was “contrary to the principles of the Charter, and the United Nations have no power to give effect to it.”³⁰ The report further stated: “[t]he imposition of the partition of Palestine against the expressed wishes of the majority of its population can in no way be considered as respect for, or compliance with, any of the principles of the Charter.”³¹ The Sub-Committee report also noted:

“[a] refusal to submit this question for the opinion of the International Court of Justice would amount to a confession that the United Nations are determined to make recommendations in a certain direction, not because those recommendations are in accord with the principles of international justice and fairness, but because the majority of the delegates desire to settle the problem in a certain manner, irrespective of what the merits of the questions, or the legal obligations of the parties, might be.”³²

²⁷ Official Records of the Second Session of the General Assembly, Supplement No. 11, United Nations Special Committee on Palestine, 3 September 1947, A/364, para. 176 (emphasis in the original), available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/07175DE9FA2DE563852568D3006E10F3>.

²⁸ Ad Hoc Committee on the Palestinian Question, Report of Sub-Committee 2, 11 November 1947, A/AC.14/32, Introduction, para. 4, available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/BA8F82C57961B9FC85257306007096B8>

²⁹ Id. at para. 7.

³⁰ Id. at para. 24

³¹ Id.

³² Id. at para. 40.

Indeed, prior to the partition vote, delegations from Arab States called for an advisory opinion by the International Court of Justice on issues including in part, whether partition was consistent with the principles of the Charter of the United Nations and “whether it lay within the power of any [United Nations] member or group of members to implement partition without the consent of the majority of the people living there.”³³ Colombia also called for the issue of competency to go before the Court.³⁴ The draft resolution requesting the opinion, however, was not approved.

Irrespective of the detailed arguments put forth by the Sub-Committee, on 29 November 1947, the United Nations General Assembly adopted Resolution 181 (II), a non-legally binding resolution, calling for a partition of Palestine. Although the native Palestinian population reached two-thirds of the population and owned the majority of the land, the plan allocated to them was only 45.5 percent of their country; on the other hand, the Jewish population was allotted 55.5 percent of the land.³⁵ The Jewish population owned approximately seven percent of the land, and the majority were recent immigrants at the time.³⁶

The Partition resolution also called for Jerusalem to be established as a *corpus separatum*, an international city administered by the United Nations via the Trusteeship Council.³⁷ The unusual plan was a way for third States to guarantee access to the holy sites in Jerusalem.³⁸ The borders of the city of Jerusalem under the proposed *corpus separatum* regime were established as the “present municipality of Jerusalem plus the surrounding villages and towns, the most eastern of which shall be Abu Dis; the most southern, Bethlehem; the most western, Ein Karim (including the built-up area of Motsa); and the most northern

³³ Supra at note 1, p.9.

³⁴ Ad Hoc Committee on the Palestinian Question, Summary Record of the Thirty-Second Meeting, 24 November 1947, A/AC.14/SR.32, available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/F16FFB0D40BEF49085256E6D006C9FBC>

³⁵ Supra at note 1, p.11.

³⁶ Id.

³⁷ Resolution 181 (II). Future Government of Palestine, United Nations General Assembly, 29 November 1947, A/RES/181(II), Part III, available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/7F0AF2BD897689B785256C330061D253>

³⁸ “Moreover, Catholic countries persuaded the UN to make Jerusalem an international city given its religious significance, and therefore UNSCOP also rejected the Zionist claim for the Holy City to be part of the future of the Jewish State.” Ilan Pappé, *The Ethnic Cleansing of Palestine*, (One World, 2006) 32.

Shu’fat.”³⁹ The resolution also offered guidelines as to how the city would be governed, including instructions on citizenship for the residents of Jerusalem.

After the resolution was passed, the Arab Delegations continued to voice their condemnation of it, and of the manner in which the resolution was approved, including the role of the United States and others in pressuring States to vote in favour.⁴⁰

2.2 DEFYING THE LEGAL STATUS: ISRAEL’S CONSOLIDATION OF JERUSALEM

While the Jewish Agency accepted the United Nations partition resolution but not its “territorial limits,”⁴¹ the plan was rejected by the Palestinian population and Arab States on the grounds that it “violated the provisions of the United Nations Charter, which granted people the right to decide their own destiny.”⁴² Violence erupted throughout Palestine, as Zionist groups began implementing Plan Dalet to ethnically cleanse Palestine.⁴³ Jerusalem and its environs became a prime target of Jewish terrorist groups.⁴⁴ While Jerusalem was already the target of Jewish immigration, these attacks hastened the changing landscape of the city through the expulsion of Palestinians.

³⁹ Plan of Partition with Economic Union, Part III City of Jerusalem, Resolution 181 (II). Future Government of Palestine, United Nations General Assembly, 29 November 1947, A/RES/181(II), Part III, available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/7F0AF2BD897689B785256C330061D253>

⁴⁰ “It is an established fact that strong pressure was put on the Philippines Government by the United States Government and, according to reliable information, the United States Government threatened the Philippines Government that it will not grant it the loan it is asking for if its delegation fails to support partition. In this way the Arabs lost the Philippines vote.” United Nations Palestine Commission, Statement of 6 February 1948 Communicated to the Secretary-General by Mr. Isa Nakhleh, Representative of the Arab Higher Committee, para. 2(c), available at: <https://www.un.org/unispal/document/un-palestine-commission-partition-recommendation-statement-from-the-arab-higher-committee/>

⁴¹ The Plan of Partition and End of the British Mandate, available at: <http://www.un.org/Depts/dpi/palestine/ch2.pdf>

⁴² The Question of Palestine and the United Nations, 2008, p.9, available at: <https://unispal.un.org/pdfs/DPI2499.pdf>

⁴³ Ilan Pappé, “The 1948 Ethnic Cleansing of Palestine” 36(1) *Journal of Palestine Studies* (Autumn 2006) 6-7.

⁴⁴ “Although Jewish terrorists struck in various parts of Palestine, their worst deeds were perpetrated in and around Jerusalem which was their prime target.” Supra at note 21, p.44.

2.2.1 Annexing West Jerusalem

Palestinian villages included in the western area of Jerusalem, including Ein Karem, Deir Yasin, Al-Malha, and Lifta, were violently emptied of their Palestinian inhabitants, and in most cases razed. The massacre of 110 Palestinian men, women, and children in Deir Yasin,⁴⁵ in particular, created deep fear and terror designed to accelerate the flight of many Palestinians from Jerusalem and its surrounding villages.⁴⁶ It is estimated that approximately 60,000 Palestinians from Jerusalem became refugees.⁴⁷ Notably, the majority of urban refugees from Jerusalem ended up living within a close distance from their homes in East Jerusalem, Ramallah, and Bethlehem.⁴⁸ In contrast, Palestinians from the rural areas of Jerusalem predominantly fled to Jordan.⁴⁹

Within this context of planned and deliberate violence, on 14 May 1948, the last day of the British Mandate, the Jewish Agency declared the establishment of the State of Israel without declaring the State's borders.⁵⁰ By this time, it had controlled the western part of Jerusalem, two-thirds of which had been inhabited by Palestinians.⁵¹ It is estimated that, by then, Jews had owned under 31 percent of the land that was included in the West Jerusalem municipality.⁵² Within a few months, Israel implemented the Absentee Property Regulation of 1948 and confiscated "all Arab homes, including any contents that had not already been

45 Testimonies from the Censored Deir Yassin Massacre: "They Piled Bodies and Burned Them", (Haaretz, 16 July 2017), available at: <https://www.haaretz.com/israel-news/MAGAZINE-testimonies-from-the-censored-massacre-at-deir-yassin-1.5494094>

46 Nathan Krystall, "The Fall of the New City" in "Jerusalem 1948 – The Arab Neighborhoods and Their Fate in the War" (Badil, 2002) 100-101, available at: http://www.badil.org/phocadownloadpap/Badil_docs/publications/Jer-1948-en.pdf

47 "By late 1948, three quarters of a million Arabs had left Palestine, and the Arab population of Jerusalem, which at the start of the year stood at 65,000, was less than 4,000." *Supra* at note 26, p.771-772.

48 Salim Tamari, "Jerusalem 1948: The Phantom City", 3 *Jerusalem Quarterly* (1999), available at: <http://www.palestine-studies.org/jq/fulltext/78215>

49 *Id.*

50 To date, Israel has yet to declare its borders.

51 *Supra* at note 23, p.48

52 *The Politics of Jerusalem*, Michael Dumper, (Columbia University Press, 1997) 36.

looted, as well as lands and businesses."⁵³ In the 'new city' of Jerusalem alone, Israel took possession of some 10,000 Palestinian homes and their contents.⁵⁴

The division of Jerusalem according to the November 1948 Cease-Fire Agreement, and as included in the Armistice Agreement of April 1949 between Jordan and Israel, was therefore not reflective of any historical separation of the city between Palestinians and Jews. Notably, the Agreement between the two parties was only for military consideration and affirmed that it would not "prejudice the rights, claims and positions of either Party hereto in the ultimate peaceful settlement of the Palestine question."⁵⁵ The Agreement affirmed that "[t]he injunction of the Security Council against resort to military force in the settlement of the Palestine question shall henceforth be scrupulously respected by both Parties."⁵⁶

The following month, and after two previously failed applications, on 11 May 1949, the United Nations General Assembly granted Israel admission to the United Nations.⁵⁷ Importantly, the resolution granting Israel admission recalled Resolutions 181 (II) and 194 (III), which reaffirmed the United Nations' determination to place the Jerusalem area under an international regime.⁵⁸ It also recalled "declarations and explanations made by the representative of the Government of Israel before the *ad hoc* Political Committee in respect of the implementation of the said resolutions."⁵⁹ In particular, the position Israel expressed in the Political Committee was one amenable to the plan for the internationalisation of the city

53 The De-Arabization of West Jerusalem 1947-1950, Nathan Krystall, *Journal of Palestine Studies* Vol. 27, 1997/98, p.15, available at: <http://www.palestine-studies.org/jps/fulltext/40506>; The Regulation formed the basis for the 1950 Absentees' Property Law.

54 *Supra* at note 21, p.61.

55 Israel-Jordan Armistice Agreement, 3 April 1949, Article 2(1) and 5(1)(b).

56 *Id.* at Article 1(1).

57 Resolution 273 (III), Admission of Israel to membership in the United Nations, UN General Assembly, 11 May 1949, A/RES/273, available at: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/044/44/IMG/NR004444.pdf?OpenElement>

58 Resolution 194 (III), Palestine- Progress Report of the United Nations Mediator, UN General Assembly, 11 December 1948, A/RES/194 (III), available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/5ba47a5c6cef541b802563e000493b8c/c758572b78d1cd0085256bcf0077e51a?OpenDocument>

59 *Id.*

of Jerusalem.⁶⁰ This was likely to ensure that Israel's application for admission to the United Nations was accepted, but was not representative of Israel's genuine intent.⁶¹ A few months later, on 5 December 1949 and after Israel's membership within the United Nations was accepted, all Israeli pretenses were dropped when Israel's Prime Minister at the time, David Ben-Gurion, proclaimed Jerusalem as the capital of Israel.⁶²

In response, on 9 December 1949, the United Nations General Assembly passed Resolution 303 (IV), affirming that: "[t]he Trusteeship Council shall not allow any actions taken by any interested Government or Governments to divert it from adopting and implementing the Statute of Jerusalem."⁶³ It further called on concerned States, in line with their obligations as UN members to, "approach these matters with good will." In blatant disregard for Resolution 303 (IV) and others, on 13 December 1949, Ben-Gurion addressed another statement to the Israeli Parliament (the Knesset), asserting that the decision of an international regime for Jerusalem was "utterly incapable of implementation – if only because of the determination and unalterable opposition of the inhabitants of Jerusalem themselves."⁶⁴ This was in reference to the Israeli civilians transferred into Jerusalem, not the native Palestinian inhabitants, including refugees, who were denied the right to return to their homes and property. Ben-Gurion went on to hope that "the General Assembly will in the course of time amend the error."⁶⁵

60 "The Israeli Government had suggested at the first part of the current session that the problem might be solved by limiting the area in which the international régime operated, so that it would apply not to the entire city but only to that part of it which contained the largest number of religious and historic shrines. Another possibility was to envisage an international régime applying to the whole city of Jerusalem but restricted functionally, so that it would be concerned only with the protection of the Holy Places and not with any purely secular aspects of life and government." 54. Application of Israel for admission to membership in the United Nations (A/818) (continued), UN General Assembly, A/AC.24/SR.45, 5 May 1949, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/1DB943E43C280A26052565FA004D8174>

61 Supra at note 21, 58-61.

62 Statement to the Knesset by Prime Minister Ben-Gurion, 5 December 1949, Israel Ministry of Foreign Affairs, available at: <http://www.mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook1/pages/5%20statement%20to%20the%20knesset%20by%20prime%20minister%20ben-g.aspx>

63 UNGA Resolution 303 (IV) Palestine: question of an international regime for the Jerusalem area and the protection of the Holy Places, 9 December 1949, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/2669D6828A262E8B852560E50069738A>

64 Statement to the Knesset by Prime Minister Ben-Gurion, 13 December 1949, Israel Ministry of Foreign Affairs, available at: <http://www.israel.org/MFA/ForeignPolicy/MFADocuments/Yearbook1/Pages/7%20Statement%20to%20the%20Knesset%20by%20Prime%20Minister%20Ben-G.aspx>

65 Id.

West Jerusalem as Occupied and Annexed Territory

The history of West Jerusalem's status as unlawfully annexed territory has largely been obscured by recent discourse on Jerusalem as a "shared" capital. However, the manner in which Israel and the international community discussed the city in and around 1948 remains relevant to its current status. For example:

- On 2 August 1948, Israel declared Jerusalem as "Israel-occupied territory."⁶⁶ A few months later on 2 February 1949, and after the adoption of United Nations Resolution 194 (III), which called for the creation of an international regime in Jerusalem, the Israeli Government abolished military rule in Jerusalem and instead instituted a civil administration.⁶⁷ Israel further took actions to cement and formally signal its *de facto* annexation of West Jerusalem.⁶⁸
- In 1949, during discussions on Israel's membership of the United Nations, the representative of Lebanon noted that Israel had not only taken "territories which had been allotted to the Arabs, but upon what might be termed United Nations territory", adding: "[w]hile it could claim, rightly or wrongly, that Western Galilee, Jaffa, Lydda and Ramleh had been annexed as a result of war gains, there was no justification for the annexation of part of the proposed international territory of Jerusalem."⁶⁹

66 "2 Jerusalem Declared Israel-Occupied City- Government Proclamation", Israeli Ministry of Foreign Affairs (12 August 1948), available at: <http://mfa.gov.il/MFA/ForeignPolicy/MFADocuments/Yearbook1/Pages/2%20Jerusalem%20Declared%20Israel-Occupied%20City-%20Governm.aspx>

67 "4 Jerusalem-s Military Government Abolished- Government Proclamation", Israeli Ministry of Foreign Affairs (4 February 1949), available at <http://mfa.gov.il/MFA/ForeignPolicy/MFADocuments/Yearbook1/Pages/4%20Jerusalem-s%20Military%20Government%20Abolished-%20Gover.aspx>

68 "On 14 February 1949, the first Knesset convened in Jerusalem symbolising the political significance of the city and signaling the *de facto* annexation of West Jerusalem to the new State. Military rule was subsequently abolished and the Israeli government declared that it no longer considered the city to be occupied territory. As a final measure, the cabinet decided to transfer officially the government to the city, declaring effectively West Jerusalem as the political capital of Israel. The Cabinet decree which declared Jerusalem as the capital of Israel came on 11 December 1949, one year to the day following the adoption of UN Resolution 194." Terry Rempel, in Salim Tamari, "Dispossession and Restitution, Jerusalem 1948" (Badil, 2002) 221-222, available at: http://www.badil.org/phocadownloadpap/Badil_docs/publications/Jer-1948-en.pdf

69 Application of Israel for admission to membership in the United Nations (A/818) (continued), A/AC.24/SR.45, 5 May 1949, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/1DB943E43C280A26052565FA004D8174>

- In 1952, the non-recognition of Israel's annexation was highlighted in the case of the *Heirs of Shababo v. Roger Heilen, the Consulate General of Belgium and the Consul General of Belgium in Jerusalem*. In the deliberations before the Jerusalem District Court, the respondents (Heilen et al.) "denied the jurisdiction of the Israeli courts over the accident since it had taken place in Jerusalem."⁷⁰

2.2.2 Extending Annexation to occupied East Jerusalem

Due to the international community's failure to implement numerous United Nations resolutions on Jerusalem, and within the context of Israel's annexation of West Jerusalem and denial of the right of return of Palestinian refugees, as reaffirmed in General Assembly Resolution 194 (III),⁷¹ the Jewish population in the defined *corpus separatum* area of Jerusalem expanded from 99,690 in 1947 to 194,000 in 1967.⁷²

Following Israel's occupation of the West Bank, including East Jerusalem, and the Gaza Strip in 1967, the United Nations Security Council adopted Resolution 242 (1967), calling for the "[w]ithdrawal of Israel armed forces from territories occupied in the recent conflict" and emphasising Member States' commitments under Article 2 of the Charter of the United Nations, enshrining respect for the principle of equal rights and self-determination of peoples.⁷³ As with previous United Nations resolutions, Resolution 242 (1967) was also disregarded by Israel. According to the September 1967 report of the United Nations Secretary-General, "[t]he Israel authorities... stated that the municipality of West Jerusalem began operations in East Jerusalem the day after the fighting ceased. In the beginning it acted as the agent of the Military Government, but from 29 June [1967] municipal

⁷⁰ Jerusalem and the Peace Process, Ruth Lapidot, *Israel Law Review*, Vo. 28, Nos. 2-3, Spring-Summer 1994, available at: <http://www.mfa.gov.il/mfa/mfa-archive/1994/pages/jerusalem%20and%20the%20peace%20process%20-%20jul-94.aspx>

⁷¹ On 11 December 1948, the United Nations General Assembly adopted Resolution 194(III) resolving that: "the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible."

⁷² *Supra* at note 21, 81.

⁷³ UN Security Council Resolution 242 (1967) of 22 November 1967, S/RES/242 (1967), available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/7D35E1F729DF491C85256EE700686136>

processes started to function according to Israel law."⁷⁴ It was "clear beyond any doubt" to the United Nations Secretary-General "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."⁷⁵

Following the unlawful annexation of occupied East Jerusalem in the immediate aftermath of the 1967 War, Israel continued to deepen its grasp over the city, including through forcible and radical alteration of its demographic composition, in favour of an Israeli-Jewish majority. Between 1967 and 1971 alone, the Israeli Mayor of Jerusalem Teddy Kollek claimed that 4,000 Palestinians were evacuated from their homes in the city.⁷⁶ In continuing to affirm its exclusive control, in 1980, Israel issued its widely-criticised 'Basic Law' on Jerusalem, declaring "Jerusalem, complete and united"⁷⁷ as the capital of Israel. The Israeli Knesset member who proposed the Bill stated that it was "designed to ensure that there will never be any compromise over the sovereignty of Jerusalem."⁷⁸ In response, the United Nations Security Council issued Resolution 478 (1980), "[r]eaffirming again that the acquisition of territory by force is inadmissible", and determining "that all legislative and administrative measures and actions taken by Israel, the Occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent "basic law" on Jerusalem, are null and void and must be rescinded forthwith."⁷⁹

Deciding not to recognise Israel's 'Basic Law' on Jerusalem, Security Council Resolution 478 (1980) further called upon "[a]ll Member States to accept this

⁷⁴ Report of the Secretary-General Under General Assembly Resolution 2254 (ES-V) Relating to Jerusalem, 12 September 1967, S/8146, para. 28, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/B78930C63D3BB4D285256265005EC4E1>

⁷⁵ *Id.* at para. 33.

⁷⁶ A/8389, Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories, (5 October 1971) para. 48(c)(i), available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/858C88EB973847F4802564B5003D1083>

⁷⁷ Basic Law: Jerusalem, Capital of Israel (Unofficial translation), Knesset, available at: https://www.knesset.gov.il/laws/special/eng/basic10_eng.htm

⁷⁸ *Supra* at note 53, 41.

⁷⁹ UN Security Council Resolution 478 (1980) of 20 August 1980, S/RES/478 (1980), para. 3, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/DDE590C6FF232007852560DF0065FDDB>

decision”⁸⁰ and on “[t]hose States that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City.”⁸¹ Nearly four decades since Resolution 478 (1980), the Israeli occupying authorities have continued to act in total disregard of the international community’s calls to preserve the character, legal status, and demographic composition of Jerusalem, having instead worked towards increasing the number of Israeli-Jews residing in Jerusalem with the stated goal of achieving a 70 to 30 ratio of Israeli-Jews to Palestinians in the city.⁸² Critically, the construction and expansion of illegal Israeli settlements in and around occupied East Jerusalem and the forcible transfer of Palestinians from the city, served as the two major drivers of Israel’s master plan.

More recently, on 6 December 2017, the United States President, Donald Trump, declared Jerusalem as Israel’s capital, in violation of the city’s status under international law and in breaking with seven decades of United States policy towards the city. In response to this declaration, and shortly thereafter, on 21 December 2017, the United Nations General Assembly overwhelmingly adopted Resolution A/ES-10/L.22 on the status of Jerusalem with 128 votes in favour and nine against. The resolution reaffirmed once more that all “decisions and actions which purport to have altered the character, status or demographic composition of the Holy City of Jerusalem have no legal effect, are null and void and must be rescinded,” thereby echoing United Nations Security Council Resolution 478 (1980) and calling on all States to refrain from establishing diplomatic missions in Jerusalem.⁸³ The resolution further demanded “that all States comply with Security Council resolutions regarding the Holy City of Jerusalem,” and not recognise “any actions or measures contrary to those resolutions.”⁸⁴ A draft United Nations Security Council resolution calling for the withdrawal of United States’ recognition failed to be adopted on 18 December 2017, following a veto by the United States, while all other 14 members of the Council voted in favour.⁸⁵

⁸⁰ Id. at para. 5(a).

⁸¹ Id. at para. 5(b).

⁸² Bimkom, “Trapped by Planning” (2014) 20, available at: <http://bimkom.org/eng/wp-content/uploads/TrappedbyPlanning.pdf>

⁸³ UN General Assembly Resolution ES-10/19. Status of Jerusalem, para. 1, available at <http://ask.un.org/faq/214435>

⁸⁴ Id. at Para. 2

⁸⁵ United Nations News, “Middle East: Security Council fails to adopt resolution on Jerusalem” (18 December 2017), available at: <https://news.un.org/en/story/2017/12/639772-middle-east-security-council-fails-adopt-resolution-jerusalem>.

2.3 LAYING THE FRAMEWORK TO EXTEND THE COLONISATION INTO EAST JERUSALEM

As highlighted in this report, the status of Jerusalem is protected for the benefit of its Palestinian population. However, in 1948, Israel embarked almost immediately on a permanent colonisation project, through the systematic displacement and dispossession of indigenous Palestinians, which continues until this day. Since 1967, the Israeli occupying authorities’ policies and practices in Jerusalem have aimed to achieve two main objectives: entrenching exclusive Israeli-Jewish control over the city and forcing the alteration of Jerusalem’s demographic composition at the expense of its indigenous Palestinian population. In East Jerusalem, since 1967, Israel has effectively controlled the territory as a belligerent occupant, maintaining control through military force and substitution of its administrative authority.⁸⁶ However, despite East Jerusalem forming part of the OPT, thereby falling under the temporary administration of the Israeli military, Israel, as Occupying Power, has unlawfully extended its sovereignty to occupied and annexed East Jerusalem, directly applying domestic Israeli law in the eastern part of the city since 1967.

2.3.1 Israeli Policies to Force the Transfer of Palestinians from East Jerusalem

For the past seven decades, Israel has used a web of domestic laws implemented through its formal institutions to erase Palestinian presence from Jerusalem. In 1948, Palestinians in West Jerusalem were granted Israeli citizenship, while those who fled the western part of Jerusalem and its surrounding villages during the Nakba have been denied return to their homes and property, ever since. Following Israel’s occupation of East Jerusalem in 1967, Israel granted Palestinians in East Jerusalem a precarious and revocable ‘permanent residency status’ in the city, which remains a major driver of Palestinian displacement from the city.

2.3.1.1 The Revocable Residency Status of Palestinians in Occupied East Jerusalem

In the aftermath of the 1967 War, Israel conducted a general population census in Jerusalem. Only those Palestinians who were physically present in East Jerusalem at the time the census was carried out were registered as residents within the

⁸⁶ Article 43, Hague Regulations (1907).

newly delineated municipal boundaries of the city, and thereby conferred the status of 'permanent residents'. Those counted within other cities of the OPT or those who were absent during the census – including Palestinian refugees unable to return following the 1967 War and Palestinians who were otherwise abroad whether for work, studies, or other grounds – were stripped of their right to return to and to reside in Jerusalem. This arbitrary policy was applied to all Palestinians, irrespective of the fact that for centuries and generations, they had been the original inhabitants of the city, and irrespective of family ties, origins, or connection to the city.

Since 1967, Israel's permanent residency status for Palestinians in East Jerusalem has treated indigenous Palestinians as "mere" residents in their own city, according them lesser rights than Israeli-Jews unlawfully transferred into illegal settlements in the occupied territory. Israel's permanent residency status for Palestinians is regulated under the Entry into Israel Law, 5712-1952, whereby residents are required to continuously prove that their so-called 'centre of life' is Jerusalem.⁸⁷ The onerous 'centre of life' policy, which Israel imposes on Palestinians in East Jerusalem, requires permanent residents to prove that they hold continuous residence in East Jerusalem by providing extensive documentary evidence, including rental agreements, home ownership documents, tax receipts, school registration, and receipts of medical treatment, amongst further documentation requested by the Israeli occupying authorities from Palestinians in Jerusalem. Should Palestinians in Jerusalem not be capable of providing sufficient proof of their residence to the Israeli authorities, they risk losing their permanent residency status and their right to remain in the city.⁸⁸ Palestinians with permanent residency cannot automatically pass their residency status to their children or a non-resident spouse, while their status can arbitrarily be revoked, subject to the discretion of the Israeli Minister of Interior.⁸⁹ Since 1967, Israel has revoked the permanent residency rights of at least 14,550 Palestinians in occupied East

Jerusalem,⁹⁰ of these, 4,577 were revoked between 2006 and 2008.⁹¹

Once Palestinians' permanent residencies are revoked or denied by Israel, the Occupying Power, Palestinians and their families can no longer live in Jerusalem, nor benefit from social security and health insurance, thereby compounding their already vulnerable status as stateless persons. Meanwhile, under the Oslo Accords, Israel maintains control over the population registry throughout the OPT, including East Jerusalem, while the Palestinian Authority (PA) can only register persons "who were born abroad or in the Gaza Strip and West Bank [excluding East Jerusalem], if under the age of sixteen years and either of their parents is a resident of the Gaza Strip and West Bank [excluding East Jerusalem]".⁹² This means that the PA is unable to register Palestinians whose East Jerusalem residency has been revoked, and who do not enjoy the nationality of any State.

2.3.1.2 Denying Palestinian Family Unification and Child Registration

Israel prevents family unification for Palestinians in Jerusalem, based on its discriminatory Nationality and Entry into Israel Law (Temporary Order), 2003. The Temporary Order, despite international calls for its repeal, has been renewed annually since 2003. For example, in 2003, the UN Human Rights Committee in its Concluding Observations to the State of Israel, noted that the Temporary Order "has already adversely affected thousands of families and marriages" and recommended that the order "which raises serious issues" be revoked.⁹³ In 2007, the Israeli Parliament added provisions to deny family unification where one spouse is a resident or citizen of Lebanon, Syria, Iran, or Iraq, States defined under Israeli law as 'enemy States', and/or is an individual defined by the Israeli occupying forces as residing in an area where current activity is supposedly liable to endanger Israel's security.⁹⁴ Under Israel's increasingly restrictive family unification

90 Negotiations Affairs Department of the State of Palestine, "50 Years of Israel's military occupation of East Jerusalem" (25 September 2017), available at: <https://www.nad.ps/en/publication-resources/infographics/50-years-israels-military-occupation-east-jerusalem>.

91 Available at: <https://www.nad.ps/en/our-position/jerusalem>.

92 Article 28, Israel Palestinian Interim Agreement, Annex III (28 September 1995).

93 Office of the High Commissioner on Human Rights, "Concluding observations of the Human Rights Committee: Israel" (5 August 2003) para. 21, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/5ba47a5c6cef541b802563e000493b8c/2e5a21a17aeb0c0285256d7f004f4d61?OpenDocument>

94 Official Text of the Amendment in Hebrew available at: <https://www.adalah.org/uploads/oldfiles/features/famuni/famuni-mar07-law.pdf>

87 Entry into Israel Law, 5712-1952, available in English at: http://www.hamoked.org/files/2011/2240_eng.pdf.

88 For more information on the "Centre of Life" policy see, Al-Haq, "The Jerusalem Trap" (2019) 14, available at: <http://www.alhaq.org/publications/publications-index/item/the-jerusalem-trap>

89 Entry into Israel Law, 5712 (1952).

process, the Israeli authorities prohibit family unification for Palestinian men aged between 18 and 35 and for Palestinian women aged between 18 and 25 who are residents of the OPT.⁹⁵ Palestinians not excluded by the above age requirement are subject to extensive background checks and may be denied family unification permits if the Israeli occupying authorities deem that the individual is suspected of involvement in activities hostile to Israel, which are very broadly defined, and could include freedom of expression, participating in demonstrations, and any criminal offenses under Israeli law, including stone-throwing and other political activity. As a result, between 2000 and 2013, over one third of family unification applications were denied throughout the OPT and, since 2006, no Jerusalemite-Gazan couples can apply for family unification.⁹⁶

While Israel's Ministry of Interior registers as Jerusalem residents Palestinian children born in Israel or East Jerusalem to parents who both hold a Jerusalem residency,⁹⁷ children of 'mixed' families are treated differently and inherit the chronic uncertainty with regard to their status by birth. Many Palestinian parents of so-called 'mixed' families, where only one of the parent is a Jerusalem residency holder, have been unable to secure permanent Jerusalem residency status for their children because of the Ministry of Interior's multiple and frequently-changing requirements for child registration, in situations where the child is not born in an Israeli or East Jerusalem hospital and/or one of the parents does not hold a Jerusalem residency permit.⁹⁸ Children born to parents from East Jerusalem, do not receive an identity number at the hospital, instead the parents must apply to register the birth at the Ministry of Interior, with proof that their 'center of life' is Jerusalem.⁹⁹

95 See generally, Al-Haq, "Engineering Community: Family Unification, Entry Restrictions and other Israeli Policies of Fragmenting Palestinians" (2019), available at: <http://www.alhaq.org/publications/publications-index/item/engineering-community-family-unification-entry-restrictions-and-other-israeli-policies-of-fragmenting-palestinians>

96 Visualizing Palestine, "Living under Policies of Colonisation in Jerusalem" (October 2016).

97 CCPRJ, "Israel's Occupation, 50 Years and Continuing" (2018) 18, available at: https://www.civicoalition-jerusalem.org/uploads/9/3/6/8/93682182/50_years_final_with_footnotes__I_.pdf

98 See, A/HRC/27/NGO/44, General Assembly, "Written statement submitted by the BADIL Resource center for Palestinian Residency and Refugee rights, a non-governmental organization in special consultative status" (27 August 2014), available at: <http://www.badil.org/phocadownloadpap/legal-advocacy/un-human-rights-council/2014/Written%20statement%20submitted%20by%20the%20BADIL%20Resource%20center%20for%20Palestinian%20Residency%20and%20Refugee%20rights-%20End%20Israels%20policy%20of%20discriminatory%20child%20registration%20in%20Jerusalem.pdf>

99 Id.

2.3.2 Israel's Policies for Land Appropriation in Jerusalem

Since 1948, the main tool for Israel's colonisation of Palestine has been the introduction of laws to facilitate the transfer of lands from Palestinian to Israeli control, while working to dispossess Palestinian land owners. In 1948, Palestinians owned 48 percent of the lands in what is now present day Israel, excluding the OPT. Following the Nakba, the Government of Israel and the Jewish National Fund confiscated 93 percent of Palestinian lands, including 372 Palestinian towns and villages, many of which had been depopulated and razed by Zionist forces.¹⁰⁰ Today, only some three percent of the land in Israel is owned by indigenous Palestinians.¹⁰¹ This massive transfer of land was made possible through two landmark Israeli laws, including the Absentees' Property Law of 1950 and the Land Acquisition Law of 1953 (Actions and Compensation). The first, determined that the property of Palestinian refugees and internally displaced persons who were expelled, fled, or had left the country after 29 November 1947, mainly due to the war, would be confiscated and placed under the authority of the Custodian for Absentees' Property, an Israeli State agency. The second law determined that property that was illegally taken from Palestinians for "purposes of essential development, settlement or security," between 1948 and 1953, were acquired by the Development Authority and considered free from any charge, except for financial compensation to the owners of the acquired property.

Towards the same end, the Israel Land Administration Law of 1960 established the Israel Land Administration, and determined which land policy should be adopted in Israel. The members of the Israel Land Administration Council were nominated by the Israeli Government, with half of the Council's seats reserved for the Government and the other half for members of the Jewish National Fund, giving the body a public-private character, while allowing the Jewish National Fund to play a substantial role in formulating Israel's land policies. More recently, the Land (Acquisition for Public Purposes) Ordinance – Amendment No. 10 of 2010 has allowed the Israeli Finance Minister to confiscate land for "public purposes". The amendment expands the Israeli Finance Minister's authority to confiscate land for "public purposes," which under the law includes the establishment and development of towns, while it allows the Minister to declare new purposes. The

100 Jewish Affairs, (1950) Volume 511.

101 Adalah, "The Inequality Report: The Palestinian Arab Minority in Israel" (March 2011) 31, available at: https://www.adalah.org/uploads/oldfiles/upfiles/2011/Adalah_The_Inequality_Report_March_2011.pdf

amendment was designed to prevent Palestinian citizens of Israel from submitting lawsuits to reclaim land confiscated by the State.¹⁰²

In occupied East Jerusalem, since 1967, the Israeli occupying authorities began constructing a ring of strategically-situated settlements encircling Jerusalem's northern, eastern, and southern outskirts, earmarked for Israeli-Jews only. Israel has constructed 11 illegal settlements under the administration of Israel's Jerusalem municipality, and has transferred 209,270¹⁰³ Israeli settlers to colonise the eastern side of the city, some 2,800 of whom reside illegally in the Old City of Jerusalem.¹⁰⁴ Moreover, Israel's Annexation Wall,¹⁰⁵ in construction since 2002, runs in and around occupied East Jerusalem in a way that isolates and removes densely-populated Palestinian neighbourhoods from the city.¹⁰⁶ Through ongoing settlement expansion and the construction of the Annexation Wall, in violation of the right of Palestinians to self-determination, Israel has aimed to increase the Israeli-Jewish demographic balance in Jerusalem, while removing entire Palestinian neighbourhoods and preventing the growth of the Palestinian population throughout the city.

Meanwhile, Israel's expanding settlement enterprise has also played a key role in the physical isolation of Jerusalem and its Palestinian residents from the rest of the OPT. One example is Israel's plans in the so-called "E1" area, located at Jerusalem's eastern periphery in Area C of the occupied West Bank, and which is geographically strategic for Israeli settlement construction and expansion. While the "E1" area is home to Palestinian Bedouin and herding communities, Israel has sought to forcibly transfer Palestinians from the area to expand its illegal settlement enterprise and to ensure strategic control over the main road

102 Adalah, "New Discriminatory Laws and Bills in Israel" (29 November 2010), available at: http://www.europarl.europa.eu/meetdocs/2009_2014/documents/dplc/dv/adallah_discriminatory_isra/adallah_discriminatory_israel.pdf.

103 B'Tselem, "Settlements" (16 January 2019), available at: <https://www.btselem.org/settlements>

104 Betty Herschman, "How Jewish Settlers Are Cementing Their Rule Over Palestinians in Jerusalem" (Haaretz, 15 November 2018), available at: <https://www.haaretz.com/israel-news/.premium-how-jewish-settlers-are-cementing-their-rule-over-palestinians-in-jerusalem-1.6655809>

105 See section 3.2.1 "Jerusalem Closure Policy and Annexation Wall" in this report.

106 See, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Reports 136 <www.icj-cij.org/en/case/131>

connecting Jerusalem and the Jordan Valley, an area rich in natural resources.¹⁰⁷ The UN Office of Coordination for Humanitarian Affairs, reports that 46 Bedouin and herder communities, comprising approximately 7,000 Palestinians are at risk of forcible transfer.¹⁰⁸ As such, Israeli bills have been introduced to the effect of annexing the "E1" settlements to Jerusalem to realise Israel's "Greater Jerusalem" plan for an Israeli-Jewish demographic majority in the city, while impeding on the territorial contiguity of the occupied West Bank,¹⁰⁹ and completely cutting off Jerusalem from the rest of the West Bank.¹¹⁰

As such, Palestinian Bedouin and herding communities residing in the "E1" area have been the target of harsh Israeli practices and the creation of a coercive environment aimed at driving their forcible transfer and displacement to allow for illegal Israeli settlement expansion. For example, on 24 May 2018, the Israeli High Court of Justice ruled in favour of the demolition of the entire Palestinian Bedouin community of Khan Al-Ahmar in the "E1" area. The High Court of Justice ruling effectively gives authority to the Israeli Government to carry out the forcible transfer of 173 Palestinians in what would amount to a war crime subject to the jurisdiction of the International Criminal Court.¹¹¹ By demolishing Khan Al-Ahmar, Israel would complete the bisection of the occupied West Bank, linking Israeli settlements to Jerusalem, while disrupting the territorial contiguity of the West Bank. Khan Al-Ahmar remains at imminent risk of forcible transfer.

107 Jonathan Lis, "Israeli Bill to Annex Jerusalem-area Settlement Will Include Controversial E1 Area" (Haaretz, 19 January 2017), available at: <https://www.haaretz.com/israel-news/.premium-israeli-bill-to-annex-settlement-to-include-controversial-e1-area-1.5487449>.

108 OCHA, "Bedouin Communities at Risk of Forcible Transfer | September 2014" (23 September 2014), available at: <https://www.ochaopt.org/content/bedouin-communities-risk-forcible-transfer-september-2014>

109 Id.

110 B'Tselem, "The E1 Plan and Its Implications for Human Rights in the West Bank" (2 December 2012), available at: https://www.btselem.org/settlements/20121202_e1_human_rights_ramifications.

111 Al-Haq, "Al-Haq Submits Urgent Appeal to UN on Planned Destruction of Khan Al-Ahmar" (1 June 2018), available at: <http://www.alhaq.org/advocacy/6194.html>; Article Article 8(2)(a)(iv) Statute of the International Criminal Court (1998); B'Tselem, "Three Israeli Supreme Court justices greenlight state to commit war crime" (27 May 2018), available at: https://www.btselem.org/communities_facing_expulsion/20180527_supreme_court_greenlights_war_crime_in_khan_al_ahmar

2.3.2.1 Jerusalem Closure Policy and the Annexation Wall

Israel's policy of maintaining a permanent Jerusalem closure was initially enforced as a sweeping "security" measure, in the aftermath of the first Intifada. What this policy means in essence, is the physical, legal, and administrative isolation of Jerusalem from the rest of the OPT through the construction of the Annexation Wall, the establishment of military checkpoints, and the introduction of a "permit regime" for Palestinians in the West Bank and Gaza Strip to access Jerusalem. Before Israel's occupation, Jerusalem was once the centre of Palestinian political, social, and cultural life and the heart of the Palestinian economy. Today, millions of Palestinians in the OPT are completely cut off from Jerusalem, and are only able to access Jerusalem under rigid conditions. As a result, Palestinians in the West Bank must acquire a valid military permit from the Israeli occupying authorities to access Jerusalem. Such permits are restricted in terms of duration, and entry is only possible through designated checkpoints, after an often humiliating and, at times dangerous, process of crossing the checkpoints. Such arbitrary measures and freedom of movement restrictions apply exclusively to Palestinians but not to Israeli settlers, who reside illegally throughout the occupied West Bank and enjoy full and unimpeded access to Jerusalem.

One of the main measures through which Israel has consolidated the isolation of Jerusalem is the Annexation Wall and its associated closure and permit regime. In its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the International Court of Justice proposed that the construction of the Annexation Wall could amount to *de facto* annexation of occupied territory, in that it "create[s] a '*fait accompli*' on the ground that could well become permanent."¹¹² As an indication of Israel's objectives in constructing the Annexation Wall, the route of the Annexation Wall substantially deviates from the 1949 Armistice Lines, with the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) estimating that upon completion, only 15 percent of the Annexation Wall will run along the Green Line, while 85 percent will run through occupied West Bank territory, detaching approximately 9.5 percent of Palestinian land from the West Bank.¹¹³ With Israel's

¹¹² Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Reports 136 <www.icj-cij.org/en/case/131> [121].

¹¹³ UN OCHA, "Special Focus: Barrier Update" (July 2011) 3, available at: www.ochaopt.org/documents/ocha_opt_barrier_update_july_2011_english.pdf.

demographic goals in mind, the Annexation Wall has also served to redraw the municipal boundaries of the city of Jerusalem, with Israel threatening to remove densely-populated Palestinian neighbourhoods, including Shu'fat refugee camp, 'Anata, and Kufr 'Aqab, by routing the Annexation Wall in manner that separates these neighbourhoods from the centre of Jerusalem.

Palestinian neighbourhoods behind the Annexation Wall receive very minimal municipal services from Israel's Jerusalem municipality, with little Israeli oversight over residency and construction. In these areas, living expenses are cheaper, house demolitions for building without a permit are rarely carried out by the Israeli occupying authorities, and 'mixed' Jerusalem and West Bank families can live together without the need for a family unification permit from the Israeli authorities. As such, despite being largely overcrowded, the Palestinian population growth in areas behind the Annexation Wall remains on the rise with more and more Palestinian families being pushed to move there by the Israel-induced housing crisis, with housing cheaper and more available behind the Annexation Wall.¹¹⁴ At the same time, encouraging the move to Jerusalem neighbourhoods behind the Annexation Wall may be designed as a 'trap', given that the Israeli occupying authorities may at any moment redraw the municipal boundaries of Jerusalem in a way that excludes entire Palestinian neighbourhoods from the city.¹¹⁵ According to current estimates, approximately 130,000 Palestinians reside in Jerusalem neighbourhoods behind the Annexation Wall, including in Shu'fat refugee camp, 'Anata, and Kufr 'Aqab, constituting about a third of Jerusalem's Palestinian residents.¹¹⁶ Should these neighbourhoods be removed from Jerusalem's municipal boundaries, this would drastically alter the demographic composition of Jerusalem in favour of an Israeli-Jewish majority.

¹¹⁴ Jonathan Cook, "How Israel is 'cleansing' Palestinians from Greater Jerusalem" (Middle East Eye, 23 November 2017), available at: <https://www.middleeasteye.net/news/how-israel-cleansing-palestinians-greater-jerusalem>

¹¹⁵ For more information on the "Centre of Life" policy see, Al-Haq, "The Jerusalem Trap" (2019) 14, available at: <http://www.alhaq.org/publications/publications-index/item/the-jerusalem-trap>

¹¹⁶ OCHA, "East Jerusalem" (December 2018), available at: https://www.ochaopt.org/sites/default/files/wb_thematic_9_0.pdf

2.3.2.2 *Dividing Communities Through Discriminatory Planning and Zoning*

Israel's discriminatory planning and zoning regime has sought to ensure Israeli-exclusive control over occupied East Jerusalem. With its annexation of East Jerusalem in 1967, Israel nullified the Jordanian outline plans which had been in effect in East Jerusalem, while it did not do so for the Jordanian Planning Laws in the rest of the West Bank. It was not until the early 1980s that Israel's Jerusalem municipality introduced its own outline plan for Palestinian neighbourhoods in East Jerusalem.¹¹⁷ Israel's outline plan designates large parts of Palestinian lands as "green areas" and "national parks" where Palestinians are prohibited from building.¹¹⁸ To date, four national parks have been designated in East Jerusalem, within the city's municipal boundaries, including on privately-owned Palestinian land and on land that lies within, or adjacent to, the built-up areas of Palestinian neighbourhoods and villages.¹¹⁹

According to the Israeli planning laws in place, Palestinians in Jerusalem must obtain a building permit from Israel's Jerusalem municipality in order to build on their own lands. However, Palestinians are usually unable to obtain a building permit either due to the absence of an urban plan for their area, or because the land is designated for "public use" or zoned as "open landscape" areas.¹²⁰ The public purposes for which "green areas" were intended – parks, playgrounds, schools, community centres and the like – were never actualised as amenities and are instead lands held for settlement expansion.¹²¹ That being said, the confiscation of private Palestinian lands even for "green areas" and "natural parks" in occupied territory, is prohibited under the laws of occupation.¹²²

By 2017, 35 percent of Palestinian land in East Jerusalem had been expropriated

117 B'Tselem, "Israel's attempts to shape the demographic reality of East Jerusalem are concentrated in several spheres: Land Expropriation And Building Restrictions" (11 November 2017), Available at: <https://www.btselem.org/jerusalem>.

118 Id.

119 Id.

120 Jeff Halper, "The Three Jerusalems – Planning and Colonial Control" 8, available at: https://www.palestine-studies.org/sites/default/files/jq-articles/15_three_2.pdf

121 Id.

122 Article 46, Hague Regulations (1907).

for Israeli settlements and a further 22 percent of Palestinian land had been designated for green areas by the Israeli occupying authorities, where construction is prohibited.¹²³ Palestinians have been granted only seven percent of all building permits in Jerusalem,¹²⁴ compared to a 75-125 percent approval rate for construction for the benefit of Israeli Jews highlighting the discriminatory nature of the allocation of permits.¹²⁵ With such systematically discriminatory planning and zoning policies, only 13 percent of the land in East Jerusalem is zoned for Palestinian construction and this 13 percent is zoned in already densely built up areas.¹²⁶

Moreover, Palestinians in East Jerusalem cannot afford to go through the very lengthy, costly and complicated procedures to obtain such building permits.¹²⁷ Unlike West Jerusalem, much of the land in occupied East Jerusalem is unregistered and requires costly procedures for registration including the submission of analytical surveys.¹²⁸ Even when registered, many applications still result in rejection. In this context, and given natural population growth and the severe Israeli-induced housing shortage, Palestinians find themselves in a situation where they have to build without obtaining a building permit from Israel's Jerusalem municipality. Israel reacts to constructions without permits by applying Israeli building regulations, and targeting those housing units with demolition orders. However, Israel under international law is prohibited from applying its domestic laws to the occupied territory, as it is not sovereign there.¹²⁹ This overreaching into the occupied territory violates not only Article 43 of the Hague Regulations governing the Occupying Power's administration of the occupied territory, but also provisions of international humanitarian law prohibiting destruction of private

123 Evidence of this policy is that in 1974, Israel declared the Jerusalem Walls Park (1,100 dunums/ ~270 acres) nearby the Old City. In 2000, Tzurim Valley Park (165 dunums/~40 acres) was declared on an area in Mount Scopus.

124 Negotiations Affairs Department of the State of Palestine (n 90).

125 Haqocom, "Planning and Zoning Away Palestinian Space and Homes", available at: http://haqocom.ps/ar/node/423#_ftnref1

126 OCHA, "East Jerusalem: Key humanitarian concerns | August 2014" (18 August 2014), available at: <https://www.ochaopt.org/content/east-jerusalem-key-humanitarian-concerns-august-2014>

127 Haqocom, "Planning and Zoning Away Palestinian Space and Homes", available at: http://haqocom.ps/ar/node/423#_ftnref1

128 Norwegian Refugee Council, "Applying for a Building Permit in East Jerusalem" (February 2017) 2, available at: https://www.nrc.no/globalassets/pdf/legal-opinions/application_4_building_permit_memo.pdf

129 Article 43, Hague Regulations (1907); Article 64, Fourth Geneva Convention (1949).

property outside of military need and military operations.¹³⁰

Between January 2009 and November 2019, the Israeli occupying authorities demolished approximately 733 Palestinian houses and structures resulting in the forced displacement of 2,262 Palestinians, amongst them 1,196 children.¹³¹ In the first quarter of 2019, Al-Haq documented the demolition of 25 structures in the East Jerusalem village of Wadi Yasul alone.¹³²

In Jerusalem, urban planning and discriminatory administrative practices have been key tools in ensuring an Israeli-Jewish demographic majority, while pursuing the displacement and dispossession of Palestinians. Currently, the Israeli authorities have three master plans for the city of Jerusalem.¹³³ The first, known as the Jerusalem 2020 Master Plan, was first published in 2004 and is a city-wide urban planning and zoning scheme that allocates only 13 percent of the area of East Jerusalem for Palestinian development, thereby ensuring a “demographic balance”, as explicitly stated in the plan itself.¹³⁴ To evade public review required under Israeli law, the master plan remains unratified. However, it serves as a policy document or blueprint that seeks to alter the composition of Jerusalem.

The second, the Marom Plan, is a five-year Israeli Government plan for the development of Jerusalem “as an international city, a leader in commerce and the quality of life in the public domain”, to be implemented by the Jerusalem Development Authority. The plan earmarks tourism as the main economy to develop the city of Jerusalem, alongside high-tech industries including the biotechnology industry.¹³⁵ The third, the Jerusalem 5800 Master Plan, also known as the Jerusalem 2050 Plan, aims to turn Jerusalem into a high-tech tourist attraction by 2050. The Jerusalem 5800 plan is presented as an apolitical plan that promotes “peace through economic prosperity”, while its demographic

goals prove otherwise.¹³⁶ In fact, it proposes that an investment of 120 billion United States Dollars (USD) to incentivise the transfer in of Israelis to Jerusalem and further tilting the demographic balance in their favour, for the purposes of colonisation.¹³⁷

CONCLUSION

Part I of this report, established that Israel had an immediate intention to annex the city of Jerusalem, which started in 1948, a move which both Israel and the international community knew to be tainted with illegality. The annexation continued in 1967, with Israel extending its sovereignty and domestic laws to East Jerusalem and later in 1980, *de jure* annexing East Jerusalem with reference to the Basic Law. The following Part II, will focus on a chronological sequence of bills and legislations introduced in the Knesset in and around the year 2017, to radically extend the city of Jerusalem, to annex additional West Bank territory.

130 See Article 46, 52, 53 Hague Regulations, Article 53 Fourth Geneva Convention.

131 Al-Haq Monitoring and Documentation Department, Figures on File.

132 Al-Haq Monitoring and Documentation Department, Figures from 1 January to 30 March 2019.

133 Nur Arafah, “Which Jerusalem? Israel’s Little-Known Master Plans” (Al Shabaka, May 30 2016), available at: <https://al-shabaka.org/briefs/jerusalem-israels-little-known-master-plans/>

134 Id.

135 Jerusalem Institute for Policy Research, available at:

<http://jerusalemstitute.org.il/?cmd=publication.155&act=read&id=708>

136 Jerusalem 5800: Jerusalem Vision 2010 – 2050 (powerpoint), available at: <http://www.jerusalem5800.com/vision/vision-for-jerusalem>

137 Id. p. 22.



3 FINAL PLANS FOR ISRAELI COLONISATION OF OCCUPIED EAST JERUSALEM

The United States recognition of Jerusalem as the capital of Israel on 6 December 2017 and the relocation of the United States embassy from Tel Aviv to Jerusalem, resulted in the immediate convening of an emergency session of the General Assembly, followed by the adoption of UN General Assembly resolution A/RES/ES-10/L.22 restating the protection and non-alteration of the legal status of Jerusalem. This Chapter outlines that the shift in United States practice was underpinned by bolder Israeli domestic measures in the preceding year, demonstrating an intent to radically alter the status of Jerusalem and annex additional West Bank territory. The following part documents and analyses the series of bills and legislative measures before the Israeli Parliament (the Knesset), aimed at altering the legal status and demographic composition of the city of Jerusalem.

3.1 ISRAELI LEGISLATIVE MEASURES TO ALTER THE STATUS OF JERUSALEM

Throughout 2017, the Israeli Parliament initiated a number of bills intended to permanently alter the demographic character of Jerusalem, including plans to expand Jerusalem's municipal boundaries to facilitate the legal incorporation of Israeli settlements into the city borders.¹³⁸ The following subsections outline the bills, which are currently tabled for consideration before the Israeli Parliament (as of November 2019), and if passed, are intended to radically alter the legal status and demographic composition of Jerusalem. It should be noted that some bills included in this section have later been rejected. They are nonetheless highlighted to showcase Israel's widespread targeting of Jerusalem in proposed legislation before the Knesset.

¹³⁸ Available at: <http://www.haaretz.com/misc/haaretzcomsmartphoneapp/premium-bill-would-allow-parts-of-jerusalem-to-be-transferred-to-new-israeli-local-authority-1.5434517>.

PART II

Table of some Israeli legislative measures to alter the status of Jerusalem

Changing Municipal Boundaries	Name in English	Bill No.	Date Submitted	Status
1	Order of Government and Law Based on Article 11(b) of the Law and Administration Ordinance, the Israeli Government issued a decree to expand the applicability of Israeli law to 70 square kilometres of the occupied territory.		1967	Adopted in 1967
2	Basic Law: Jerusalem, Capital of Israel The Law on Jerusalem states that Jerusalem “complete and united” is the Capital of Israel, unlawfully annexing Jerusalem. The Basic Law: Jerusalem, Capital of Israel is therefore of declarative nature, as the annexation was orchestrated in 1967 through a decree issued under the Law and Administration Ordinance. This Law provides a constitutional value to the annexation.		1980	Adopted in 1980
3	Basic Law Bill: Jerusalem, Capital of Israel (Amendment No. 2) - Jurisdiction	P/20/4346	26 June 2017	Adopted 1 January 2018
4	Bill for the Basic Law: Jerusalem, Capital of Israel (Amendment No. 2- Clauses regarding the area of Jerusalem and the required majority for changing them) - Jurisdiction	P/20/4524	26 July 2017	Presented to the Parliament for preliminary discussion
5	Proposed Law for the Rescue of Jerusalem as a Jewish and Democratic Capital City, 2017	P/20/4546	26 July 2017	Removed from the agenda 15-11-2017
6	The Bill for the “Jerusalem and Its Daughters” Law	P/20/4386	10 July 2017	Presented to the Parliament for preliminary discussion
7	The Bill for the “Jerusalem and Its Daughters” Law 2017	P/20/4109	22 March 2017	Presented to the Parliament for preliminary discussion
8	Proposed Greater Jerusalem Law, 2017	P/20/4158	22 March 2017	Submitted to the Parliament’s table

3.1.1 Law for the Regularisation of Settlement in Judea and Samaria, 2017

In February 2017, the Law for the Regularisation of Settlement in Judea and Samaria, 2017 was adopted at the Israeli Parliament (the Knesset), which aimed to “regularize settlement in Judea and Samaria, and to enable it to continue to strengthen and develop”.¹³⁹ Where there is “doubt” over the ownership of land located in the West Bank and the settlement had been constructed in “good faith”, including settlements in the eastern Jerusalem periphery, the State will register the property as belonging to the Israeli Government. Where an owner to the land is identified, the State will appropriate the land and compensate the owner usage fees. The law provides that the appropriation will remain effective until a political solution to the status of the region is achieved.

In August 2018, the Jerusalem District Court considered whether the illegal outpost of Mitzpe Kramim, constructed on privately owned Palestinian land, one of the 16 settlements listed in the Regularisation of Settlement in Judea and Samaria Law, had been constructed illegally but in “good faith”.¹⁴⁰ The Law for the Regularisation of Settlement in Judea and Samaria, 2017 was then submitted to the Israeli High Court of Justice for a constitutional challenge.¹⁴¹ Prior to the ruling, the Israeli Government appointed the Zandberg Committee to make recommendations for alternative measures to provide for “regularisation”, in the event that the law be struck down. The report of the Committee proposed the application of *inter alia* a new civil law doctrine, such as the *market ouvert* doctrine to retroactively legalise a settlement on privately-owned Palestinian land, where a transaction between the Government and an Israeli settler was entered into in “good faith”.¹⁴² The application of the doctrine assumes that public Palestinian lands can be appropriated for settlement and that privately-owned lands mistakenly appropriated as public Palestinian lands, may be retroactively

¹³⁹ Law for the Regularisation of Settlement in Judea and Samaria, 5777-2017, Available at: https://www.adalah.org/uploads/uploads/Settlement_Regularization_Law_English_FINAL_05032017.pdf

¹⁴⁰ Jeffrey Heller, “Israeli court lines up behind unauthorized settlement” Reuters (29 August 2018), available at: <https://www.reuters.com/article/us-israel-palestinians-settlements/israeli-court-lines-up-behind-unauthorized-settlement-idUSKCN1LE0SX>

¹⁴¹ HCJ 1308/17 *Silwad Municipality v. The Knesset*; HCJ 2055/17 *Head of Yabrud Village Council v. The Knesset*

¹⁴² Yesh Din, “The Age of Regularization: The Zandberg Committee Expropriation Report for Retroactive Authorization of Israeli Outposts and Illegal Construction in the Settlements: Analysis, Ramifications and Implementation” (2019) 17.

legalised as acquired in “good faith”.¹⁴³ Irrespective of Israel’s designation of the lands and pretexts for confiscation, the appropriation of both private and public Palestinian lands for settlement violates international humanitarian law and may be prosecuted as war crimes and crimes against humanity at the Interantional Criminal Court.

In March 2019, the State of Israel submitted a request to the Israeli High Court of Justice for it to apply the Israeli Market Regulation Law to the West Bank and the *market ouvert* doctrine, in a case concerning a challenge by private Palestinian property owners over the appropriation of their lands for the construction of the Mitzpe Kramim outpost in 1999.¹⁴⁴ In May 2019, Likud Member of Knesset Miki Zohar tweeted in favour of an Israeli High Court of Justice override bill, stating “[t]he High Court intervenes in countless decisions, including on settlement in the Land of Israel; we want to put an end to that. We have the political opportunity to do so.”¹⁴⁵ In August 2019, the District Court upheld the application of the *market ouvert* doctrine, and in October 2019 held in favour of the settlers, ordering the Palestinian property owners to pay the settlers expenses of 15,000 NIS and the Civil Administration expenses of 25,000 NIS.¹⁴⁶

3.1.2 Bill for the Proposed Greater Jerusalem Law, 2017

On 22 March 2017, Member of Knesset Yehuda Glick placed the bill for the Proposed Greater Jerusalem Law, 2017 – 5777 on the Knesset table for preliminary discussion. Its objective is to extend the jurisdiction of the State of Israel to the “Greater Jerusalem” area to include Jerusalem “and its attached authorities”. The so-called “attached authorities”, as listed in the Bill, include the following Israeli settlements and local settlement councils across the West Bank:

1. The municipality of Beitar Illit settlement;
2. The municipality of Ma’ale Adumim settlement;

¹⁴³ B’Tselem, “Fake Justice: The Responsibility Israel’s High Court Justices Bear for the Demolition of Palestinian Homes and the Dispossession of Palestinians” (February 2019) 18.

¹⁴⁴ Tovah Lazaroff, “State To Court: Settler ‘Good Faith’ Palestinian Land Seizure Can Be Legal” (12 March 2019), available at: <https://www.jpost.com/Middle-East/State-to-court-Settler-good-faith-Palestinian-land-seizure-can-be-legal-583091>

¹⁴⁵ See twitter post, at https://twitter.com/Ron_Skolnik/status/1131183074933448704

¹⁴⁶ Arutz Sheva, “State: Reject Arabs’ claims in Mitzpeh Kramim” (3 October 2019), available at: <http://www.israelnationalnews.com/News/News.aspx/260153>

3. The Local Council of Giv’at Ze’ev settlement;
4. The Local Council of Mevaseret Zion settlement;
5. The Regional Council of Gush Etsion settlement;
6. The Local Council of Efrat settlement;
7. Kfar Adumim settlement;
8. Alon settlement;
9. Nofei Prat settlement;
10. Keda settlement;
11. Ma’ale Mikhmas settlement; and
12. Mitzpe Yeriho settlement.

The Bill intends to create a new “Council of Greater Jerusalem,” to be presided over by the Mayor of Jerusalem. Further, the Bill requires that the Israeli Government, in partnership with the “Council of Greater Jerusalem,” encourage so-called ‘residential and economic development’ in Israeli settlements in the Jerusalem periphery, “including the development of new industrial areas”, the expansion and creation of transportation routes, the promotion of educational, cultural and artistic institutions, improved welfare service and “significantly increase the land reserves which are available for residential buildings in the areas of Greater Jerusalem”.¹⁴⁷ In doing so, the Bill addresses a perceived problem in preserving an Israeli-Jewish demographic majority in the city. According to the Bill’s Explanatory Note:

“the position of Jerusalem as the leading and most vital city in Israel was undermined, and its strong and leading population has been moving to the Shfela (Lowland) cities. The proposed bill will enable the changing of this trend and will help Jerusalem reclaim its position as the symbol and heart of the Jewish people, and will gather up the finest forces of Israel and world Jewry for the purpose of strengthening the city of Jerusalem.”¹⁴⁸

¹⁴⁷ P/20/4158, Proposed Greater Jerusalem Law, 2017 – 5777. Submitted to the Knesset Chairman and deputies and presented to the Knesset’s table on the date of 22 March 2017 [24th of Adar, 5777].

¹⁴⁸ Explanatory Note, P/20/4158, Proposed Greater Jerusalem Law, 2017 – 5777. Submitted to the Knesset Chairman and deputies and presented to the Knesset’s table on the date of 22 March 2017 [24th of Adar, 5777].

As such, the Bill plans to absorb unlawful Israeli settlements and settler councils into Israel's Jerusalem municipality. In October 2017, the Bill for the Proposed Greater Jerusalem Law was stalled and removed from the Ministerial Committee for Legislative Affairs agenda, following United States opposition.¹⁴⁹ However, the removal of the Bill, which needed "diplomatic preparation" was considered as only "rejected for the moment".¹⁵⁰

3.1.3 The Bill for the "Jerusalem and Its Daughters" Law, 2017

Also on 22 March 2017, the Bill for the "Jerusalem and Its Daughters" Law, 2017 (also known as the 'Jerusalem Towns Law') was submitted to the Knesset Chairman and deputies. On 10 July 2017, the Bill was placed before the Knesset for preliminary discussion.¹⁵¹ The Bill seeks to radically expand the municipal boundaries of Jerusalem by annexing unlawful West Bank settlements into the Jerusalem municipality, although the Bill cites less settlements for inclusion than the Bill for the Proposed Greater Jerusalem Law, 2017. The settlements cited in the Bill include:

1. The municipality of Beitar Illit settlement;
2. The municipality of Ma'ale Adumim settlement;
3. The Local Council of Giv'at Ze'ev settlement;
4. The Regional Council of Gush Etsion settlement; and
5. The Local Council of Efrat settlement.

The Bill further considers that the Palestinian neighbourhoods of Kufr 'Aqab, 'Anata, and Shu'fat refugee camp, which are part of the Jerusalem municipality but separated by the Annexation Wall, will be considered so-called 'daughter municipalities' of Jerusalem, with the intention of eventually detaching them

from the city.¹⁵²

Again underpinning the Bill is Israel's plan to alter the demographic composition of Jerusalem. By annexing the settlements around Jerusalem and incorporating them as 'sub-municipalities' of the city, these will maintain a degree of municipal authority while also being considered part of the Jerusalem municipality.¹⁵³ For example, settlers residing in the annexed settlements may have the right to participate in Jerusalem municipality elections, while maintaining their local autonomy. According to the Bill, the Israeli Minister of Interior is to decide on the division of powers between the Jerusalem municipality and the five settlement blocs to be incorporated.¹⁵⁴ The Bill appears to have little effect on the current status of the three listed Palestinian neighbourhoods behind the Annexation Wall, which are listed separately, but will remain in the Jerusalem municipality.

Should this Bill be adopted and the plan carried out, this will completely transform the current demographic composition of the city of Jerusalem in favour of an Israeli-Jewish majority, since the Bill would transfer in some 120,000 Israeli-Jewish settlers to Jerusalem, in violation of international law.¹⁵⁵

This Knesset Bill, and others, follow the policy of the Likud party to annex illegal West Bank settlements and to extend Israeli laws and jurisdiction thereto. On 31 December 2017, the Likud Central Committee, the party of current Israeli Prime Minister Benjamin Netanyahu decided in a non-binding resolution to annex settlements located in the West Bank to Israel. Israel's Labour and Welfare Minister Haim Katz, stated at the time: "Judea and Samaria and Greater Jerusalem... are an inseparable part of the land of Israel and will remain so forever."¹⁵⁶ As of November 2019, the Bill remained on the Knesset's table for preliminary discussion.

¹⁵² Proposed Jerusalem Law and its Towns, 5767 – 2017, Bill for Preliminary Discussion, available at: <http://main.knesset.gov.il/Activity/Legislation/Laws/Pages/LawBill.aspx?t=lawsuggestionssearch&lawitemid=2019455>.

¹⁵³ Id.

¹⁵⁴ Id.

¹⁵⁵ Naomi Chazan, "Don't mess with Jerusalem" (Times of Israel, 6 November 2017), available at: <http://blogs.timesofisrael.com/dont-mess-with-jerusalem/>.

¹⁵⁶ Moran Azulay, Elior Levy, "Likud party calls for de-facto annexation of Israeli settlements: Likud's Central Committee votes to adopt non-binding resolution to apply Israeli sovereignty to the West Bank; 'We have the moral right and obligation towards our settler brothers,' says Public Security Minister Erdan" (Ynet News, 1 January 2018), available at: <https://www.ynetnews.com/articles/0,7340,L-5064594,00.html>.

¹⁴⁹ Ramzy Baroud, "Creeping Annexation: Why Israel Shelved the 'Greater Jerusalem Law'" Foreign Policy Journal (9 November 2017), available at: <https://www.foreignpolicyjournal.com/2017/11/09/creeping-annexation-why-israel-shelved-the-greater-jerusalem-law/>

¹⁵⁰ Tovah Lazaroff, "PM Delays Vote on Bill Annexing Greater Jerusalem After US Frowns on It", The Jerusalem Post (29 October 2017), available at: <https://www.jpost.com/Israel-News/Politics-And-Diplomacy/PM-delays-vote-on-bill-annexing-Greater-Jerusalem-after-US-frowns-on-it-508689>

¹⁵¹ Knesset, National Legislation Database, available at: <http://main.knesset.gov.il/Activity/Legislation/Laws/Pages/LawBill.aspx?t=lawsuggestionssearch&lawitemid=2019455>.

3.1.4 Basic Law Bill: Jerusalem, Capital of Israel (Amendment – Supermajority [i.e. Qualified Majority]), 2017

The 1980 Basic Law on Jerusalem provides that “Jerusalem, complete and united, is the capital of Israel” and is the seat of the “President of the State, the Knesset, the Government and the Supreme Court”. The Basic Law further prohibits the transfer of authority over Jerusalem “to a foreign body, whether political, governmental or to any other similar type of foreign body”. Only a “majority of the members of the Knesset” could modify the existing law on Jerusalem.¹⁵⁷

On 26 June 2017, a Bill was initiated to amend Article 7 of the Basic Law: Jerusalem Capital of Israel. The Amendment provides:

“In Article 7 of the Basic Law: Jerusalem, Capital of Israel, before the words ‘Clauses 5 and 6 shall not be modified’ will come the words ‘Despite what was mentioned in any other law’. Also, ‘Clauses 5 and 6’ will be replaced with ‘Clauses 5, 6 and 7’, and ‘by a majority of the members of the Knesset’ will be replaced with ‘by a majority of 80 Knesset members’”.¹⁵⁸

The Bill is intended to place additional impediments on the transfer of “the Jerusalem-related authority” to a “foreign body”.¹⁵⁹ In this respect, the insertion of a “defensive clause” will require a supermajority of 80 Knesset members, as opposed to the current majority required.¹⁶⁰ The objective is to make it more difficult to secure a Knesset vote to alter the status of the annexed and “unified” Jerusalem in Israel’s Basic Law. It also attempts to prevent the transfer of authority over the current appropriated area of Jerusalem in a future peace deal. The amendment distinguishes between territorial-political concessions that are prohibited, and hampered by the amendment, with respect to the entire area of Jerusalem at present and what are implied to be permitted “municipal changes” to the city’s boundaries – whether expanding or minimising them, without transferring them to a foreign body. On 1 January 2018, the Bill was adopted into

¹⁵⁷ Basic Law: Jerusalem Capital of Israel (30 July 1980), available at: https://www.knesset.gov.il/laws/special/eng/basic10_eng.htm.

¹⁵⁸ Basic Law Bill: Jerusalem, Capital of Israel (Amendment – Supermajority [i.e. Qualified Majority], Submitted to the Knesset Chairman and deputies and presented to the Knesset’s table on the date of 26 June 2017 [Hebrew Calendar: 2 Tamuz 5777]).

¹⁵⁹ Explanatory Note, P/20/4346, Basic Law Bill: Jerusalem, Capital of Israel (Amendment – Supermajority [i.e. Qualified Majority]).

¹⁶⁰ Id.

law on the third reading of the Knesset Plenum.¹⁶¹

3.1.5 Proposed Basic Law: Jerusalem Capital of Israel Amendment – Referendum, 2017

The Jerusalem Capital of Israel Amendment – Referendum was tabled for preliminary discussion at the Knesset on 26 July 2017.¹⁶² The Bill aims to amend Article 71 of the Basic Law, on the voting required to alter the status of Jerusalem in the Knesset. The Bill proposes that in addition to a Knesset vote, it will also be required to put the amendment to a public referendum, subject to the Referendum Law. This will require that a majority vote is secured in the Knesset and also that a majority of Israeli citizens approve the amendment in a referendum before the status of Jerusalem is altered in Israel’s domestic law.¹⁶³ In November 2019, the Bill still remained in the preliminary discussion stage in the Knesset.¹⁶⁴

3.1.6 Proposed Law for the Rescue of Jerusalem as a Jewish and Democratic Capital City, 2017

On 26 July 2017, Knesset Member, Yoel Hasson initiated a Bill to cut a number of strategic Palestinian neighbourhoods of Jerusalem from the city, to alter the demography of Jerusalem by placing them “outside the jurisdiction of the State of Israel and the Municipality of Jerusalem in order to preserve the full Israeli sovereignty over Historical Jerusalem which includes the Jewish holy sites”.¹⁶⁵ According to the Bill, “Historic Jerusalem” is designated as the geographic space that includes “the Old City and the Jewish holy areas, including the Holy Basin, Mount Scopus, Mount of Olives, Silwan and other areas specified by the Israeli Government. Notably all these areas are located in the OPT. The Bill proposes that the Government draft an outline plan to establish:

“(1) A detail of the Palestinian villages which will be excluded from the jurisdiction of the Municipality of Jerusalem and the State of Israel, as well as the necessary arrangements for moving them to areas “B” and “C” under

¹⁶¹ Basic Law: Jerusalem Capital of Israel (Amendment No. 2), available at: <https://main.knesset.gov.il/Activity/Legislation/Laws/Pages/LawBill.aspx?t=lawsuggestionssearch&lawitemid=2018487>

¹⁶² P/4524/20, Proposed Basic Law: Jerusalem Capital of Israel Amendment – Referendum.

¹⁶³ Id.

¹⁶⁴ Id.

¹⁶⁵ P/20/4546, Proposed Law for the Rescue of Jerusalem as a Jewish and Democratic Capital City, 2017 – 5777.

the civil responsibility of the Palestinian Authority;

(2) Guaranteeing the security interests of the State of Israel; and in particular the maintenance of a maximum freedom of action by the Israeli Defense Forces in the Palestinian villages and minimizing the friction between Israeli and Palestinian populations as much as possible.

(3) The revocation of the permanent residency status of Palestinian village residents who will be outside the jurisdiction of the State of Israel and the Municipality of Jerusalem;

(4) The required changes in legislation in order to implement the outline".¹⁶⁶

The Explanatory Note to the Bill presents Jerusalem as a city which is "impossible to govern" due to the "hundreds of thousands of Palestinians who live in the city of Jerusalem and have a permanent residency status".¹⁶⁷ Estimating the Palestinian presence in neighbourhoods such as Shu'fat, Al-'Eisawiyya, Jabal Al-Mukabir, Beit Hanina, Sur Bahir, and others at "more than 200,000 Palestinians but not a single Jew" – the Note portrays the alleged problem of an increasing Palestinian population who "see themselves as part of the Palestinian nation." Meanwhile Article 4 of the Bill ensures that the removed Palestinian population will not be able to apply for Israeli citizenship:

"Furthermore, in Article 4 of the bill, we propose to adopt a temporary order which authorizes the Minister of the Interior to freeze the procedures related to citizenship requests and address changes of Palestinian residents until the approval of the outline. The purpose of this arrangement is to prevent a situation in which, after the approval of the proposed law, the residents of the Palestinian villages would start applying for Israeli citizenship in great numbers and changing their addresses in a manner which would cause a failure to the main purpose of this bill".¹⁶⁸

Although rejected, at the core of the Bill was the plan to force the displacement of hundreds of thousands of Palestinians from Jerusalem to manipulate the boundaries and demographic character of the city in order to engineer an increase in the Israeli-Jewish population, which would "guarantee a substantial Jewish

¹⁶⁶ Id.

¹⁶⁷ Id.

¹⁶⁸ Explanatory Note, P/20/4546, Proposed Law for the Rescue of Jerusalem as a Jewish and Democratic Capital City, 2017 – 5777.

majority for the coming generations".¹⁶⁹ As of November 2019, the Bill remained removed from the Knesset's agenda.

3.2 LEGISLATION AND BILLS BEFORE THE KNESSET TO ALTER THE DEMOGRAPHIC COMPOSITION OF JERUSALEM

Since January 2016, a number of bills have been initiated before the Knesset with the targeted objective of revoking the residencies of Palestinians from occupied East Jerusalem, to force their transfer from the city. These bills and laws target Palestinians in Jerusalem for residency revocation and are coupled with the aforementioned bills and laws in the previous section, which target the city of Jerusalem. Residency revocation has long been used by Israel as a tool to forcibly transfer Palestinians from East Jerusalem, an occupied territory under international law, to reduce and eliminate Palestinian presence therein and to alter demographic facts on the ground. Since 1967, Israel created and consistently expanded the criteria for revoking the residency status of Palestinians from Jerusalem, of whom at least 14,500 had their residency revoked to date.¹⁷⁰

In 1967 when Israel illegally annexed East Jerusalem, it did not confer nationality to Palestinians in the city. Instead, it gave them the status of permanent residency which can be revoked at any time using different means, including the 'centre of life' requirement, and now for 'breach of allegiance'. In accordance with Article 45 of the Hague Regulations and Article 68(3) of the Fourth Geneva Convention, the protected population in occupied territory does not have a duty of allegiance to the Occupying Power. Residency revocations, including punitive revocations, flagrantly violate numerous other provisions of international humanitarian law and international human rights law. Revocation of residency leads to forcible transfer, a war crime under the Rome Statute of the International Criminal Court and a grave breach of the Fourth Geneva Convention. As residency revocations form part of a widespread and systematic policy to transfer the protected Palestinian population, it may also amount to a crime against humanity.

¹⁶⁹ Id.

¹⁷⁰ Refer to infographic available at: http://www.alhaq.org//cached_uploads/download/alhaq_files/publications/papers/VP-ResidencyRevocation-FINAL-20170612.pdf

Table of Israeli Laws to alter the Demographic Composition of Jerusalem

<i>Name in English</i>	<i>Year</i>	<i>Description</i>
The Nationality and Entry into Israel Law	1952	Under Article 11 of this Law, the Minister of Interior can revoke the residency status of Palestinians from Jerusalem. Article 11: Cancellation of visas etc. "(a) The Minister of the Interior may at his discretion (1)cancel any visa granted under this Law, either before or on the arrival of the visa holder in Israel; (2)cancel any permit of residence granted under this Law."
The Citizenship and Entry into Israel Law (Temporary Order)	2003	The Law (still active) prohibits the Israeli Minister of Interior from granting Palestinian citizens of the West Bank and the Gaza Strip who are married to citizens of Israel a "license" or "permit" to reside or stay in Jerusalem or Israel.

Table of Legislation and Bills before the Knesset to alter the Demographic Composition of Jerusalem

	<i>Name</i>	<i>Bill No.</i>	<i>Date Submitted</i>	<i>Status</i>
1	Bill for the Entry into Israel Law (Amendment – Applicability to East Jerusalem’s residents and resorting to the Interior Minister’s judgment) 2017	P/20/4744	13 November 2017	Presented to the Parliament’s table for an early discussion
2	Bill for the Entry into Israel Law (Amendment- Revocation of Visa and Permanent Residence Permits of Terrorists and their Families) 2017	P/20/4479	24 July 2017	Presented to the Parliament’s table for an early discussion
3	Bill Entry into Israel Law (amendment number 30), 2018	P/10/2002	26 February 2018	Accepted 7 March 2018
4	Proposed Entry into Israel Law (Amendment- Revocation of Residency of a Person Who Breached allegiance to the State of Israel), 2016	P/20/2463	4 January 2016	Presented to the Parliament for preliminary discussion
5	The Entry into Israel Law (Amendment No. 28), 2017	P/20/1906	27 July 2015	Accepted 14 March 2017
6	Bill for the Entry into Israel Law (Amendment- Cancellation of Visa and Permanent Residence Permits of Terrorists and their Families after their Participation in Terrorist Activities)- 2017	P/20/3994	14 March 2017	Presented to the Parliament for an early discussion

3.2.1 Entry into Israel Law (Amendment – Applicability to East Jerusalem’s Residents and Resorting to the Interior Minister’s Judgment), 2017

3.2.1.1 Allegiance of Political Representatives

In 2006, Israel sought to revoke the residencies of Palestinian residents of Jerusalem, who are elected members of the Palestinian Legislative Council through the Israeli High Court of Justice, on grounds of breach of allegiance to the State of Israel.¹⁷¹ On 13 September 2017, some 11 years later, the High Court of Justice found in favour of retaining the residency rights of the politicians, on the grounds that there was no specific legislative basis providing for the revocations.¹⁷² However, the Court granted Israel a six-month leeway to adopt legislation to provide for the residency revocations premised on breach of allegiance grounds, while suspending temporarily the decision of the Minister of the Interior.¹⁷³

On 13 November 2017, two months after the ruling of the High Court of Justice, a bill was introduced to the Knesset to grant the Israeli Minister of Interior powers to revoke the permanent residency status of Palestinians in East Jerusalem and Syrians in the occupied Syrian Golan for “breach of loyalty to the State of Israel.”¹⁷⁴ An amendment to Article 11 of the Entry into Israel Law provides for revocations of permanent residency rights on grounds of breach of allegiance in the following cases:

- (1) “An act of terror as defined in the Israeli Counter-Terrorism Law of 2016 [5776], or the assistance or attempt or incitement to commit such an act, or to actively participate inside a [known] terrorist organization or any organization which meets the aforementioned law’s definition of a terrorist organization; including political parties or organizations which are affiliated with them.

¹⁷¹ See, Al-Haq, “Urgent Appeal: Israel Must Suspend and Repeal Recent Legislation Allowing for the Revocation of Permanent Residency Status from Palestinians in Jerusalem for ‘Breach of Allegiance’” (8 March 2018), available at: <http://www.alhaq.org/advocacy/6262.html>

¹⁷² HCJ 7803/06, *Abu Arafat et al. v. The Minister of Interior and Others*.

¹⁷³ See generally, Hamoked, “The HCJ ruled that the Minister of Interior is not authorized to revoke permanent status due to breach of allegiance to the state: however, the decision to revoke the status of four East Jerusalem youths on this ground will not be cancelled for now, to allow the Knesset to make it legal” (6 November 2017), available at: <http://www.hamoked.org/Document.aspx?dID=Updates1932>

¹⁷⁴ Proposed Article 11(1)(1).

- (2) Any act which is considered an act of treason according to articles (97) until (99) of the Israeli Penal Code of 1977 [5737], or an aggravated espionage as mentioned in Article (113) (B) of the aforementioned law.

- (3) The acquisition of citizenship or a right to permanent residency in a country or territory mentioned in the Annex of the Israeli Nationality Law of 1952 [5712].¹⁷⁵

The Explanatory Notes to the bill outline that the authority of the Minister of Interior includes the competence to revoke permanent residencies as well as benefits such as National Insurance Payments and allowances owed to politicians.¹⁷⁶

The revocation of permanent residency status on the above grounds, amounts to a formal punitive revocation of residency status in contravention of international human rights law and international humanitarian law. To date, there have been 14 documented cases of punitive residency revocations in Jerusalem.¹⁷⁷ In particular, Article 45 of the Hague Regulations states that it is “forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power”. In addition, Article 68(3) of the Fourth Geneva Convention provides that accused persons are not bound by any duty of allegiance. More notably, the Bill is an attempt to unlawfully force the transfer of Palestinians from Jerusalem, and remove all opposing Palestinian political representation from Jerusalem, to prevent civic engagement.

3.2.1.2 Convictions for Breach of Allegiance

In 2016, the Proposed Entry into Israel Law (Amendment – Revocation of Residency of a Person or his/her Relative who Breached Allegiance to the State of Israel) – 2016 (5776) was tabled as a draconian measure to quash Palestinian resistance in Jerusalem in the aftermath of Israeli attacks on Al-Aqsa mosque in

¹⁷⁵ Bill submitted to the Knesset Chairman and deputies and presented to the Knesset’s table on the date of 13 November 2017 [Hebrew Calendar: 24 Cheshvan 5778] (unofficial translation from Hebrew), available at: <http://m.knesset.gov.il/Activity/Legislation/Laws/Pages/LawBill.aspx?t=lawsuggestionssearch&lawitemid=2021253>; See also, Entry into Israel Law (Amendment No. 30), 5768 – 2018, available at: <http://m.knesset.gov.il/Activity/Legislation/Laws/Pages/LawBill.aspx?t=lawsuggestionssearch&lawitemid=2066200>

¹⁷⁶ Explanatory Note, Proposed Entry into Israel Law (Amendment – Revocation of a Permit for Permanent Residency of Terrorists and Their Families, 5777 – 2017).

¹⁷⁷ See, CAC, Punitive Residency Revocation: The Most Recent Tool of Forcible Transfer.

September 2015.¹⁷⁸ In January 2016, the breach of allegiance bill was submitted to the Knesset to revoke the residencies of holders of blue identity card, who may have engaged in “terrorist activities” such as “the pelting/throwing of stones on the residents and citizens of the state for the sole purpose of harming the State of Israel and its sovereignty”.¹⁷⁹ The Law accords broad powers to revoke the residencies of “a person – or his/her relative – who is convicted of a breach of allegiance to the State of Israel”.¹⁸⁰ According to the Law, a person’s “relative” in this respect refers to a “spouse, parent or child”.¹⁸¹ In addition to revoking the Jerusalem residencies of stone throwers and their relatives, the Explanatory Note to the Bill strongly recommends removing “all their rights related to the National Insurance Law and other laws because there is no logic behind granting equal rights to residents who act against the State and giving them the ability to enjoy the social benefits which accompany one’s being a permanent resident in the State of Israel”.¹⁸²

The measures represent an attempted collective penalty against stone throwers and their families for rising up against Israel’s attacks on the Al-Aqsa Mosque compound. As such, the overall objective is to silence dissent and inflict excessive legal penalties for minor law enforcement infringements arising from protests against Israel’s annexationist measures.¹⁸³ The parameters of the Law are also unclear as to how the so-called “breach of allegiance” is determined. The Law represents a measure to facilitate Israel’s alteration of the status of Jerusalem, by silencing resistance to the occupation while forcing “loyalty” to the State of Israel.

On 7 March 2018, the Israeli Parliament passed an amendment to the Entry into Israel Law which allows the Israeli Minister of Interior to revoke the permanent residency status from Palestinian residents of Jerusalem, who the Minister deems

178 Times of Israel Staff, “Abbas Decries Israel’s Attack on Al-Aqsa Mosque” (Times of Israel, 14 September 2015), available at: <https://www.timesofisrael.com/abbas-decries-israels-attack-on-al-aqsa-mosque/>; Middle East Monitor, “Timeline: Israel’s Attacks on Al-Aqsa Mosque” (1 August 2017), available at:

<https://www.middleeastmonitor.com/20170801-israeli-attacks-on-al-aqsa-mosque/>.

179 Explanatory Notes, Proposed Entry into Israel Law (Amendment – Revocation of Residency of a Person or his/her Relative who Breached Allegiance to the State of Israel) – 2016 (5776).

180 Proposed Article 11(1)(c)(1).

181 Proposed Article 11(1)(4).

182 Explanatory Notes (n 179).

183 Al-Haq, “East Jerusalem, Exploiting Instability to Deepen the Occupation” (2015) 13.

have “breached allegiance” to Israel.¹⁸⁴ The Bill was adopted into Law and published officially on 11 March 2018.¹⁸⁵ That being said, on 3 January 2019, the Jerusalem Court for Administrative Affairs held that the application of the law, to revoke the “permanent residency” of a mother, whose son had allegedly attempted to stab a police officer and who was subsequently killed, “contained a punitive element, for things she did not do and is not responsible for”.¹⁸⁶ While the Court’s have quite rightly been hesitant to apply the law, in knowledge that the law as it stands violates the most basic mens rea requirement of criminal law, and the general prohibition on collective punishment in international humanitarian law, the State is still applying the law to Palestinians as a form of harassment and social control.

3.2.2 Entry into Israel Law (Amendment – Revocation of a Permit for Permanent Residency of Terrorists and Their Families), 2016 and 2017

Prior to the passing of the Amendment, seven bills were placed on the Knesset table for preliminary discussion to revoke permanent residencies of persons and relatives of persons considered a “terrorist” threat. The Amendment to the Entry into Israel Law provides for the punitive revocation of Jerusalem residencies of so-called “terrorists” and their families. The law is intended to legalise an existing practice whereby Israel’s Ministry of the Interior has revoked permanent residencies of the alleged perpetrators of attacks and their family members. For example, on 21 January 2016, the Israeli Ministry of Interior punitively revoked the residencies of four Palestinians from East Jerusalem on the grounds of their alleged involvement in attacks.¹⁸⁷ Two months later on 21 March 2016, a Bill was tabled to revoke the permanent residencies of so-called terrorists. A “terrorist act” is loosely defined according to the Bill, which states:

184 Knesset, “Knesset Passes Legislation Authorizing Interior Minister to Revoke Permanent Residency Status over Involvement in Terrorism” (7 March 2018), available at: http://knesset.gov.il/spokesman/eng/PR_eng.asp?PRID=13803

185 Entry into Israel Law (Amendment No. 30), 5768 – 2018, available at: <https://main.knesset.gov.il/Activity/Legislation/Laws/Pages/LawBill.aspx?t=lawsuggestionssearch&lawitemid=2066200>

186 Hamoked, “The Court for Administrative Affairs Rejects State’s Appeal: The Mother of a Teenage Assailant, Who is Suspected of Nothing Herself, Cannot Be Deported as a “Deterrent”, or “Punishment” or Due to “Parental Responsibility”. The Minister of Interior must base his decision “on pertinent considerations” (7 January 2019), available at: <http://www.hamoked.org/Document.aspx?dID=Updates2052>

187 Prime Minister’s Office, “Security Cabinet Approves Series of Additional Measures to Deal with the Wave of Terrorism” (14 October 2015), available at: http://www.hamoked.org/files/2015/1159861_eng.pdf. See also, HCJ 1635/16, *Abu Kaf et al. v. Government of Israel et al. Petition for Order Nisi*.

““A terrorist act” is an act which was committed or was planned to be committed in order to influence a political, ideological or religious matter and in which the following elements exist:

(1) The act was implemented or planned for in order to cause public fear or panic or to force a government or another authority – including the government or authority of a foreign country – to do a certain act or refrain from doing something. In this context, it is very likely that such acts or threats which cause public fear and panic will also cause fear and panic in similar societies as well.

(2) That the implemented or planned act was characterized as such:

- (a) Physically injuring a person or restricting his/her freedom, or to threaten a person’s life or seriously traumatizing him/her;
- (b) To pose a serious threat to the health and safety of the public.

“Relative” means any of the following: [the offender’s] spouse, parents and all children (minors) who are looked after by their parents.”¹⁸⁸

The Explanatory Notes provide for the extension of the penalty to family members of “a person who commits a terrorist act or has contributed to committing that act through knowledge, help, encouragement and support before, during or after committing the terrorist act.” The Explanatory Note warns that once a residency is revoked, the person becomes an illegal resident “and Article 13 of the law will apply to him/her and will require his/her deportation as soon as possible”.¹⁸⁹

In January 2017, the Israeli Minister of Interior punitively revoked the residency of Manwa Qunbar, the mother of Fadi Qunbar, who allegedly carried out and was killed in an attack that resulted in the deaths of four Israeli soldiers. In the aftermath of the alleged attack, the State of Israel filed a USD 2.25 million lawsuit against the wife of Fadi Qunbar, and his four children, one of a number of punitive measures against the family. At the time, the Jerusalem District Prosecutors Office stated:

188 Proposed Article 11(1)(e), Bill for the Entry into Israel Law (Amendment – Cancellation of Visa and Permanent Residence Permits of Terrorists and their Families after their Participation in Terrorist Activities) – 2016 [5776]. Submitted to the Knesset Chairman and deputies and presented to the Knesset table on the date of 21 March 2016 [11 Adar II, 5776].

189 Bill for the Entry into Israel Law (Amendment – Cancellation of Visa and Permanent Residence Permits of Terrorists and their Families after their Participation in Terrorist Activities) – 2016 [5776]. Submitted to the Knesset Chairman and deputies and presented to the Knesset table on the date of 21 March 2016 [11 Adar II, 5776].

“This lawsuit, which stems from a terrorist incident in which soldiers were murdered, is designed to recover the expenses incurred in events of this kind to the state’s coffers, as well as sending a clear message that the state will also settle accounts on a civil level with the perpetrators of hostile acts... In light of the fact that the [terrorist] caused the damage, his legal heirs are the ones who need to bear it and indemnify the state for it.”¹⁹⁰

In addition, ten members of Fadi’s extended family living in Jerusalem had their family unification permits revoked, resulting in their direct forcible transfer from Jerusalem.¹⁹¹

Two months after the incident, on 14 March 2017, another similar bill was tabled in the Knesset, to target and revoke the residencies of so-called “terrorists” and their family members. Bill No. P/20/3994 will amend Article 11 of the Entry into Israel Law, 5712-1952 creating a new subsection 1(d) in section 11 (1). It will allow the Minister of Interior:

“(d) Without undermining what was mentioned in sub-section (a), the Minister of Interior is entitled to cancel the visa or permanent residence permit of the relatives of a person who commits a terrorist act or contributes to it (whether through an act or by knowledge) before, during or after the undertaking of that act, provided that the Minister would not cancel the aforementioned visa or permanent residence permit before giving the terrorist’s relative the chance to plead and state his/her claims before him...

(e) In this article... ‘Relative’ means any of the following: [the offender’s] spouse, parents and all children (minors) who are looked after by their parents”.¹⁹²

On 24 July 2017, a further Bill on the subject, the Bill for the Entry into Israel Law (Amendment – Revocation of Visa and Permanent Residence Permits of Terrorists and their Families), 2017 outlined in its Explanatory Notes, that “terrorists” are able to move freely throughout Israel on blue identity cards, allocated to those

190 “In First, ‘Israel Files \$2.3 Million Lawsuit Against Palestinian Terrorist’s Widow and Children” (Haaretz, 2 July 2017), available at: <https://www.haaretz.com/israel-news/premium-1>.

191 Al-Haq, “Collective Punishment in Jabal Al-Mukabir”, (25 January 2017), available at: <http://www.alhaq.org/documentation/weekly-focuses/1097-field-report-collective-punishment-in-jabal-al-mukabir>.

192 Bill Number: P/20/3994, Bill for the Entry into Israel Law (Amendment – Cancellation of Visa and Permanent Residence Permits of Terrorists and their Families after their Participation in Terrorist Activities) – 2017 [5777]. Submitted to the Knesset Chairman and deputies and presented to the Knesset table on the date of 14 March 2017 [16 Adar 5777]. Translation on File with Al-Haq.

with permanent residencies. Underscoring the Bill is the intended deterrent effect of the practice, where the Note explains that the State should no longer, after an attack, be obliged to support the family members of the accused. The Bill is intended to plug a “gap” in the Entry into Israel law, whereby the accused and family members of the accused, continue to “enjoy” social and other benefits, gifted by the State of Israel.¹⁹³ In doing so, the Explanatory Note purports that:

“the revocation of one’s permit will also lead to the cancellation of their legal rights stated in the National Insurance Law (Consolidated version), 1995 [5755], such as the dependents pension and burial fees, because there is no logic behind providing any state support to them and their relatives”.¹⁹⁴

Accordingly, relatives of the accused, including spouses, parents, and children may have their residencies revoked, forcing their transfer from Jerusalem. In May 2019, the Bill was still reported to be on the table in Plenum for discussion.¹⁹⁵

In their prescriptive forms, the bills as they stand, provide for collective punishment. Under the laws of occupation, collective penalties are prohibited. Article 33 of the Fourth Geneva Convention codifies the general principles of domestic law on collective penalties and provides that “[n]o protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited”. The prohibition is echoed in Article 50 of the Hague Regulations, which is also declaratory of customary international law.¹⁹⁶ The commentary to the 1949 Fourth Geneva Convention outlines that the prohibition ensures that “[r]esponsibility is personal and it will no longer be possible to inflict penalties on persons who have themselves not committed the acts complained of”.¹⁹⁷

¹⁹³ See Text of Bill for Preliminary Discussion, Proposed Entry into Israel Law (Amendment – Revocation of a Permit for Permanent Residency of Terrorists and Their Families, 5767 – 2017, available at: <http://main.knesset.gov.il/Activity/Legislation/Laws/Pages/LawBill.aspx?t=lawsuggestionssearch&lawitemid=2018572>.

¹⁹⁴ P/20/4479, Bill for the Entry into Israel Law (Amendment – Revocation of Visa and Permanent Residence Permits of Terrorists and their Families) – 2017 [5777], Submitted to the Knesset Chairman and deputies and presented to the Knesset table on the date of 24 July 2017 [1 Av 5777].

¹⁹⁵ Id.

¹⁹⁶ Article 50, Hague Regulations of 1907 (“No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.”)

¹⁹⁷ Convention Relative to the Protection of Civilians in Time of War (Geneva, 12 August 1949). Commentary of 1958, Article 33 – individual responsibility – collective penalties – pillage – reprisals, available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwtreatiesbytopics.xsp>.

3.2.3 The Entry into Israel Law (Amendment No. 28) (Boycott Law), 2017

On 6 March 2017, the Knesset adopted an amendment to revoke the permanent residencies or visas of persons with permanent residency permits and prohibits the grant of permanent residencies or visas to those who call for or have an affiliation with an organisation that has called for the boycott of Israel. The law is broadly articulated to include revocations of residencies of those whose employers have called for a boycott of Israel establishing, “if s/he; or his/her organization; or the body in which s/he works for has knowingly published a public call to boycott the State of Israel as defined in the Law for Prevention of Damage to the State of Israel through Boycott – 2011 (5771)”.¹⁹⁸ The amendment further allows for the revocation of residencies and prohibits the grant of residencies and visa of persons who have individually committed to participate in a boycott, amounting to measures which would also affect family unification.

The law represents a direct breach of the right to freedom of expression, as articulated in Article 19 of the International Covenant on Civil and Political Rights (ICCPR)¹⁹⁹ and Article 19 of the Universal Declaration of Human Rights.²⁰⁰ In addition, the law infringes the right to work as protected in Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).²⁰¹

¹⁹⁸ Received at the Knesset on the date of 6 March 2017 (8th of Adar, 5777); the bill and its explanations were published in the Knesset proposed laws (bills) – 664 on the date of 9 November 2016 (8th of Cheshvan, 5777), 8.

¹⁹⁹ Article, 19, UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html> [accessed 26 November 2019]

²⁰⁰ Article 19, UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 26 November 2019]

²⁰¹ Article 6, UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <https://www.refworld.org/docid/3ae6b36c0.html> [accessed 26 November 2019]

3.3 LEGISLATIVE MEASURES AFTER THE UNITED STATES DECLARATION ON JERUSALEM

Israeli measures aiming to annex the OPT are by no means exclusive to the recent United States administration and its declaration on Jerusalem as Israel's capital. Annexation has been a long-standing Israeli policy, and successive Israeli Governments have taken various legislative, administrative, and policy measures to achieve this objective. However, the United States declaration on Jerusalem on 6 December 2017 can be considered a turning point, in the sense that it effectively granted Israel the green light to herald in a host of Knesset bills to alter the status of Jerusalem, which previously faced United States objection, and had been delayed by Israel on this basis.

3.3.1 Basic Law: Israel as the Nation-State of the Jewish People

On 18 July 2018, the Israeli Knesset passed the "Jewish Nation-State Law." The Law obstructs the rights of the indigenous Palestinian people, including of Palestinian citizens of Israel, and cements their status as second-class citizens. Equally important is the extension of the policies and objectives found in the Law to Israel's administration of the OPT. This contradicts Israel's obligations as Occupying Power not to extend its own domestic legislation to the OPT, and imperils the most basic rights of Palestinians. The Jewish Nation-State Law, which was adopted with 62 votes in favour to 55 against, and two abstentions, has effectively enshrined Israel's Jewish national and religious character as superior, and made it a constitutional status, according to which Governmental bodies must abide, as the 'basic law' holds a *quasi*-constitutional status.

The novelty of this law is not the codification of the discrimination against Palestinians, as Jewish supremacy has always been a central tenet upon which the State of Israel was founded. Rather, this law makes it a constitutional obligation to implement the past discriminatory practices. For example, Article 1 of the Nation-State Law provides that "Israel is the historic homeland of the Jewish people in which the State of Israel was established," and that the right to national self-determination in the State of Israel is "unique to the Jewish People".²⁰² However, Israel has not declared its borders since its establishment. Instead, it has

²⁰² Article 1(c), Basic Law: Israel – The Nation State of the Jewish People, available at: <https://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf>

unlawfully annexed Jerusalem and the occupied Syrian Golan. Israeli officials have repeatedly insisted that the State will not relinquish control over these areas, as well as other parts of the West Bank, in violation of international law and the prohibition against the threat or use of force to acquire territory.

Article 3 of the Basic Law provides that, "Jerusalem, complete and united, is the capital of Israel", in disregard of UN General Assembly and Security Council resolutions that have repeatedly affirmed that "any decisions and actions which purport to have altered the character, status or demographic composition of the Holy City of Jerusalem have no legal effect, are null and void."²⁰³ Irrespective of the position of Israel and the United States, Israel does not hold sovereign rights over Jerusalem under international law.²⁰⁴

Article 5 outlines that, "the State shall be open for Jewish immigration, and for the Ingathering of the Exiles."²⁰⁵ The latter referring to "exiled" Jews, does not include indigenous Palestinian refugees and their descendants. Meanwhile Article 7 establishes that "the State views the development of Jewish settlement as a national value, and shall act to encourage and promote its establishment and strengthening."²⁰⁶ This includes support for "Jewish settlement" in the OPT, where at least 600,000 Israeli settlers live in the West Bank, including East Jerusalem. Moreover, the Law downgrades the status of the Arabic language, giving it a "special status" rather than maintaining it as an official language, and promotes Hebrew as the official language.²⁰⁷

3.3.2 Amendment to the Administrative Affairs Courts Law (5760-2000)

Adopted on 17 July 2018 with a 56-48 vote, this amendment broadens in essence the jurisdiction of the Israeli Administrative Affairs Court in Jerusalem to include the exclusive adjudication of petitions presented by Palestinians against Israeli authorities in the occupied West Bank. The law transferring the exclusive

²⁰³ UN General Assembly Resolution ES-10/19

²⁰⁴ See, Part I of this report.

²⁰⁵ Article 5, Basic Law: Israel - The Nation State of the Jewish People, available at: <https://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf>

²⁰⁶ Id. Article 7.

²⁰⁷ Id. Article 4.

jurisdiction over such matters from the Israeli Supreme Court, sitting as the High Court of Justice, to the Israeli Administrative Affairs Court in Jerusalem, in a number of domains, including: planning and construction in Area C of the West Bank, requests submitted in accordance with the Freedom of Information Law, freedom of movement, and restraining and supervision orders.²⁰⁸ Initially, the proposal for amendment came under technical legal masking, highlighting considerations for reducing case-load burdens on the High Court of Justice, while at the same time opting to increase the efficiency of the judicial system by referring cases to the Administrative High Court of Justice Court in Jerusalem.

However, and irrespective of the attempts to cloak it with technical legal justifications, the law constitutes a flagrant violation of international law, as in essence, the Knesset has effectively legislated inside occupied territory, extended its jurisdiction to include it, and aims to apply Israeli domestic law to it. As such, the adoption of the law eliminates the status of the OPT under international law as occupied territory on the one hand, and blocks any guarantees of access to justice for Palestinians on the other hand. Whereas the West Bank, including East Jerusalem, is recognised as occupied territory, resulting in responsibilities for Israel to abide by its obligations as Occupying Power, this law effectively treats Area C of the West Bank as part of Israel “proper”, and allows the Israeli legal and judicial systems to adjudicate over internal matter under the jurisdiction of the occupied territory. Moreover, the law normalises Israel’s settlement enterprise and the presence of Israeli settlers inside occupied territory, seeking to apply Israeli law in an “equal” manner, both on Israeli settlers who reside illegally in the occupied West Bank, and on Israeli citizens. By extending the application of Israeli law and judicial mandate into settlements, Israel is effectively annexing occupied territory and eliminating the Green Line.

In addition, the Administrative Affairs Court applies Israeli domestic law, in the sense that it excludes international law arguments from being brought up during the course of litigation, and limits its interpretation and adjudication of the cases to Israeli law. The court follows a conservative approach, exclusively relying on Israeli administrative and constitutional law. As such, the law adds a significant barrier to Palestinians’ procedural access to justice: cases under the

208 Jerusalem Legal Aid Center, “Legal Analysis: Shaked’s Proposal to amend the Administrative Affairs Courts Law: Impact on Palestinians’ Litigation” (2018) available at: http://www.jlac.ps/userfiles/Administrative_Affairs_Courts_Law_Amendment.pdf

Administrative Affairs Court in Jerusalem would become more complicated and prolonged as it would add a new instance of litigation, and while appealing to the High Court of Justice would still be available, it would be more limited and expensive. Petitioners before the Administrative Affairs Court are charged with court fees that exceed those required by the High Court of Justice.²⁰⁹ Court fees may represent a significant hurdle before the very possibility of filing a petition.²¹⁰

With this law, Israel, as Occupying Power, is violating the conservationist principles underpinning international humanitarian law, by creating a new court system outside the occupied territory, to hear challenges to what it deliberately miscategorises as administrative and therefore civil law decisions, but which in fact, should explicitly be dealt with as military decisions regulated by international humanitarian law.

CONCLUSION

In concluding Part II, the section presented a sequence of bills and legislation tabled before the Knesset in and around 2017, which together reaches the threshold of an animus to annex Jerusalem and the surrounding Palestinian lands into the Jerusalem municipality. Emboldened by the US embassy relocation, legislation introduced in the aftermath, centered on demographic manipulation, including a myriad of legislation to provide for residency revocations. The next section provides an umbrella legal analysis of Jerusalem under general international law and the laws governing occupation.

209 Id.

210 Id.



4

LEGAL ANALYSIS

4.1 ISRAEL'S ILLEGAL ANNEXATION OF EAST AND WEST JERUSALEM

Israel's occupation of the Palestinian territory is governed by international human rights law and international humanitarian law with the latter operating as the *lex specialis*. In addition, general principles of international law apply underpinning the occupation, including the prohibition contained in Article 2(4) of the Charter of the United Nations, that "all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations". In this regard, Israel as a member of the United Nations, is obliged to respect the territorial integrity of Palestine's capital city, including the occupied Eastern part and illegally settled Western part of the city.

In this respect, the Palestinian people continue to have inalienable rights to self-determination. The right to self-determination has been affirmed and reaffirmed by the international community²¹¹ as "one of the essential principles of contemporary international law",²¹² and constitutive of a jus cogens norm giving rise to obligations erga omnes.²¹³ As such the annexation of Jerusalem since 1948, is a manifest violation of international law prohibiting annexation. Accordingly, the international community have further duties to not recognise the illegal

211 Common Article 1, International Covenant on Civil and Political Rights (adopted 16 December 1966, entry into force 23 March 1976) 999 UNTS 171 and International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 23 January 1976) 993 UNTS 3; UN General Assembly, Declaration on the Rights of Indigenous Peoples (2 October 2007) UN Doc. A/RES/61/295; UN General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations (24 October 1970) UN Doc. A/RES/2625(XXV).

212 ICJ, Case Concerning East Timor (Portugal v Australia) (Merits) (Judgement), 22 February 1991, at para 29.

213 ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion), 9 July 2004, at paras 88, 156.

PART III

annexation of Jerusalem, to not render aid or assistance to maintain the unlawful situation, and cooperate together to bring the unlawful situation to an end.²¹⁴ It is time for the international community to apply economic sanctions, including ending the import of arms and cyber security technologies from Israel and illegal settlement goods and services, and begin to enforce travel bans as measures provided for under the United Nations Charter.

While Israel has unlawfully appropriated Palestinian lands in East and West Jerusalem, it is critical that this unlawful acquisition of territory is not recognised by States including the State of Palestine. The rights of the Palestinian population are inviolable. Accordingly the Palestinian leadership must affirm Palestinian rights to Jerusalem. Palestinian negotiators, placing questions regarding the legitimacy of their authority aside, cannot lawfully deprive the Palestinian people of protections provided for under international law. As such, any agreement concluded while the OPT remains occupied, including one that provides for the transfer of occupied territory to the occupier, will be without any legal effect.

Israeli annexationist measures discussed in this report are unlawful under international human rights law, international humanitarian law and international criminal law. The annexation of Jerusalem has never been recognised as lawful by the international community. Therefore, Israel's unlawful exercise of sovereignty must not be recognised throughout the city, whether East or West. As previously noted, the British Mandate, unlike other Class A mandates, failed to establish a State for the inhabitants of Palestine, and willfully disregarded the right of Palestinians to self-determination. Irrespective of this, Palestinians retained sovereignty over Jerusalem, and more broadly, their right to self-determination. It is clear that Israel's policies and practices in the entirety of Jerusalem violate the full spectrum of cultural, political, civil, economic, and social rights accorded to Palestinians under international human rights law. Israel has, in particular, violated Palestinians' property rights, freedom of movement, and denied Palestinians the right to exercise control over the planning of the city and to participate in the decision-making process.

Moreover, under customary international humanitarian law, the transfer of civilians that "aims to change the demographic composition of a territory," is

²¹⁴ Article 42, Draft Articles on State Responsibility.

prohibited, including for example, transfers through coercive environments.²¹⁵ Accordingly, neither Israel's annexation of Jerusalem through use of force nor its unlawful transfer of its citizens into West and later East Jerusalem have conferred it sovereign rights over the city. This is reflected in countless United Nations resolutions, which have affirmed that all decisions and actions taken to alter the "character, status or demographic composition" of Jerusalem have no legal effect and are null and void.

4.2 ISRAEL'S OBLIGATIONS AS OCCUPYING POWER

Contrary to international law, Israel denies the applicability of the Fourth Geneva Convention to the OPT, which applies to cases of declared war, armed conflict or occupation of territory, despite having ratified the Convention.²¹⁶ Nonetheless, according to international law, Israel as belligerent occupant is regulated by applicable international humanitarian law, international human rights and customary law in the occupied territory.²¹⁷ In particular, Articles 4 and 47 of the Fourth Geneva Convention prohibit the occupant from annexing occupied territory, imposing its sovereignty over it, or applying any measures of a sovereign nature.²¹⁸

Such determinations are congruent with the basic principle that occupation is a temporary state, since the authority of the Occupying Power over the occupied territories is a *de facto* power and not a matter of right *de jure*.²¹⁹ International law prohibits an occupant from taking any measures which may change the status quo of the occupied territory.²²⁰ Accordingly, the annexation of Jerusalem during a belligerent occupation is illegal. According to Pictet's Commentary to Article 47 of the Fourth Geneva Convention, a fundamental principle emerges from the

²¹⁵ Rule 129. Act of Displacement and Rule 130. Transfer of Own Civilian Population into Occupied Territory. IHL Database Customary IHL, ICRC.

²¹⁶ Israel Ministry of Foreign Affairs, "Israeli Settlements and International Law" (30 November 2015), available at: <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israeli%20settlements%20and%20international%20law.aspx>.

²¹⁷ UN General Assembly, "Assembly calls for Parties to Fourth Geneva Convention to Meet on Measures to Enforce its Application in Occupied Palestinian Territory" (9 February 1999).

²¹⁸ Article 47, Fourth Geneva Convention.

²¹⁹ Article 42, Hague Regulations of 1907.

²²⁰ Andrea Carcano, *The Transformation of Occupied Territory in International Law* (Brill Nijhoff, 2015) 179.

prohibition of annexation, “an Occupying Power continues to be bound to apply the Convention as a whole even when, in disregard of the rules of international law, it claims during a conflict to have annexed all or part of an occupied territory”.²²¹ Therefore, Israel retains the status of belligerent occupant in occupied East Jerusalem, and has continued obligations to ensure the rights of the protected Palestinian population in the occupied territory.

4.3 ALTERATION OF LEGAL STATUS AND RESIDENCY REVOCATIONS AS FORCIBLE TRANSFER

The new bills and laws intend to force the displacement of indigenous Palestinians from Jerusalem and change the city’s boundaries to annex Israeli-Jewish settlements to the city, while excluding densely-populated Palestinian neighbourhoods. Such measures will further entrench Israel’s annexation of Jerusalem and judaisation, despite the non-recognition and condemnation of such measures by a majority of States in the international community.

As shown, Israel’s displacement and dispossession of Palestinians is a historic and ongoing process. The tactics of forcible displacement have changed in intensity, form, and geographical area of application. Some already discussed are: denial of residency, instalment of an ID system, confiscation and denial of use of property, discriminatory zoning and planning, racial segregation, denial of access to services, denial of reparations, including property restitution, compensation, and non-repetition.

The prohibition of forcible transfer in occupied territory established in Article 49(1) of the Fourth Geneva Convention is clear:

“[i]ndividual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive”.²²²

²²¹ Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949. Commentary of 1958, available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=C4712FE71392AFE1C12563CD0042C34A>.

²²² Article 49, Fourth Geneva Convention (1949).

The prohibition of individual or mass forcible transfer or deportation is further considered to be constitutive of customary international humanitarian law. According to the International Committee of the Red Cross, “parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in the whole or in part, unless the security of the civilians involved or imperative military reasons so demand”.²²³

It is important to establish that the destination of the transfer and deportation²²⁴ is irrelevant and includes forcible displacement of civilians within the occupied territory, an interpretation that has been confirmed by the Rome Statute of the International Criminal Court.²²⁵ Similarly, the motive of the forcible displacement is considered irrelevant. As such, the transfer can be direct, such as the displacement of persons from revocation of their residency rights, or indirect from coercive measures such as the implementation of Israel’s policy in Palestinian neighbourhoods behind the Annexation Wall.²²⁶

Although the displacement of civilians can be justified by humanitarian or military reasons, it is prohibited for an Occupying Power to move its civilian population into the occupied territory and remove the protected population.²²⁷ In this vein, the tabled Jerusalem bills further impose clear limitations to the rights of freedom of movement and choice of residency for Palestinians in Jerusalem. Even though they can continue to reside physically in the same place, it will no longer

²²³ ICRC, IHL Database, Rule 129, The Act of Displacement, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule129.

²²⁴ Transfers take place within the territory of a State, whereas deportations presuppose the crossing of an international border from one state to another. Transfer and deportation can be understood as modalities of the same reality: forcible displacement.

²²⁵ Art 8 (2)(b)(viii), Rome Statute of the International Criminal Court.

²²⁶ See section 3.2.1, Jerusalem Closure Policy and Annexation Wall, this report.

²²⁷ Article 49(2), Fourth Geneva Convention (1949): “Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased”; The central aspect of forcible displacement is its forcible character, as well as the rights protected by its prohibition: the right to freedom of movement and choice of residency. Article 8(2)(a)(vii) Element 1 of the Elements of Crimes to the Rome Statute outlines that “the perpetrator deported or transferred one or more persons to another State or to another location”. Convention Relative to the Protection of Civilians in Time of War (Geneva, 12 August 1949). Commentary of 1958, Article 45, available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=23363510D674996DC12563CD0042C251>.

be located within the borders of the city to which they are culturally, historically, and socially related.

Nonetheless, should the new bills be voted into law, this may result in the forcible transfer of Palestinians by the Israeli Government. As illustrated above, Israel has continually eroded the permanency of the Palestinian residents of Jerusalem in the city. Nevertheless, the adopted policies so far have been unable to achieve Israel's goal of a demographic balance of 30 percent Palestinians and 70 percent Israeli-Jews in the city. More aggressive policies towards this question were previously blocked by the United States Government. United States President Trump's declaration offered a green light for more discriminatory and segregationist legislation, such as the Bill for the Basic Law: Jerusalem, Capital of Israel – Amendment No. 2 and the Jerusalem and its Daughters Bill.



5

CONCLUSIONS AND RECOMMENDATIONS

In light of the failure of the international community to hold Israel to account for its annexation of West and East Jerusalem, Israel has continued with its annexationist intentions to appropriate and extend its sovereignty deeper into the Palestinian territory. In November 2019, Likud MK Sharren Haskel tabled a bill to annex the entire Jordan Valley in Area C.²²⁸ Three weeks later, the Secretary of State of the United States of America, Mike Pompeo, announced that Israeli settlements in the Occupied Palestinian Territory (OPT) are “not per se inconsistent with international law.”²²⁹ The statement was an attempt to rubber-stamp Israel's unlawful acquisition of territory in the West Bank through use of force and prolonged military occupation, in flagrant disregard of international law principles.

In 2004, Judge Elaraby of the International Court of Justice recounted how far-reaching decisions had been historically arrived at, on the issue of Palestine:

“Decisions with far-reaching consequences were taken on the basis of political expediency, without due regard for the legal requirements. Even when decisions were adopted, the will to follow through to implementation soon evaporated.”²³⁰

Indeed, as highlighted by concerns raised by the UN Sub-Committee and others in 1947, and as countless UN resolutions have been issued and ignored, Jerusalem has become a model for effective annexation and occupation. Israel has proceeded in establishing Jerusalem as its so-called “united capital,” while erasing the presence of the indigenous Palestinian people and its ties to the city.

²²⁸ Jerusalem Post, ‘Netanyahu approves Jordan Valley annexation bill after U.S. changes policy’ (19 November 2019), available at: <https://www.jpost.com/Israel-News/Netanyahu-approves-Jordan-Valley-annexation-bill-after-US-changes-policy-608333>.

²²⁹ Times of Israel, ‘Full text of Pompeo's statement on settlements’ (19 November 2019), available at: [https://www.timesofisrael.com/full-text-of-pompeos-statement-on-settlements\(6\)ts/](https://www.timesofisrael.com/full-text-of-pompeos-statement-on-settlements(6)ts/).

²³⁰ Supra (n 25) p.247.

Seventy-one years on, it is time for the international community to recognise the role it has played in these continued violations of international law, and begin to take effective action to counter them. In light of this context, Al-Haq calls on the international community to:

- i. Reject unequivocally the notion of Jerusalem as a *corpus separatum* to be placed under an international regime and ensure the reassertion of Palestinian's right to self-determination over their capital city Jerusalem.
- ii. Ensure the realisation of the right to self-determination, including permanent sovereignty, of the Palestinian people in the city of Jerusalem, recalling the basic legal principle *nemo dat quod non habet*.²³¹
- iii. Ensure the implementation of international law and the protection of the Palestinian people, including through the implementation of economic sanctions and other coercive measures, until Israel adheres to its obligations as a Member State of the UN and as Occupying Power;
- iv. High Contracting Parties to the Geneva Conventions must abide by their obligations to respect and ensure respect for the Geneva Conventions, and intervene with countermeasures to prevent the unlawful use by Israel of the land and resources belonging to the occupied Palestinian territory, for private commercial gain.
- v. Third States should introduce legislation to prohibit the import of illegal settlement goods and services into their territories.
- vi. The Office of the High Commissioner on Human Rights must release the Database on businesses operating in the illegal settlements and annually update it, as mandated under Human Rights Council resolution 31/36.
- vii. Refrain from recognising Israeli sovereignty over the city of Jerusalem, including by refraining from establishing embassies in the city, and abstaining from participating in meetings or events at the United States embassy or the Guatamala embassy in Jerusalem;
- viii. Abandon the Clinton parameters, which encourage forcible displacement and the radical alteration of the demography of Palestine;
- ix. Call on the General Assembly to petition the International Court of Justice, for an Advisory Opinion on the Legal Status of Jerusalem and the illegal nature of the occupation, and;

Fully cooperate with the preliminary examination of the International Criminal Court and call for the opening of an investigation, without any further undue delay.

It is evident that the Palestinian leadership has not taken adequate measures to ensure the rightful Palestinian claim to the city, including by supporting the viability of Palestinians living there.²³²

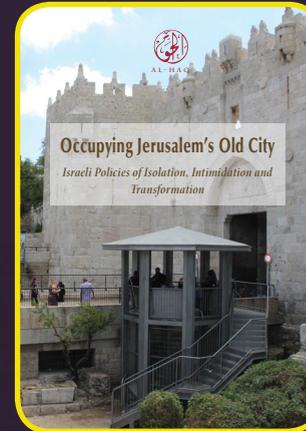
Accordingly, Al-Haq calls on Palestinian leadership to:

- i. Provide support to strengthen Palestinian resilience in Jerusalem;
- ii. Continue to assert the Palestinian people's inalienable right to self-determination, including in the city of Jerusalem; and
- iii. Ensure that any future agreements do not contravene international law, including by not recognising Israel's illegal settlement enterprise through land swaps, and fulfilling the right of return for all Palestinians.

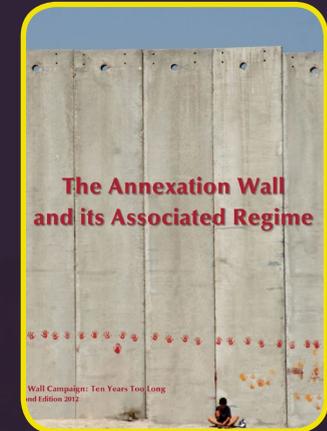
²³² It was estimated that in 2015, the Palestinian Authority "planned to allocate only 0.44 [percent] of its budget to the Ministry of Jerusalem Affairs and to the Jerusalem governorate." The Jerusalem Fund, "Against Israel's Colonial Tide: Palestinian Initiatives to Shape Their Future", (11 October 2016), available at <http://www.thejerusalemfund.org/13722/israels-colonial-tide-palestinian-initiatives-shape-future>

²³¹ *Nemo dat quod non habet* (You cannot give what you do not have).

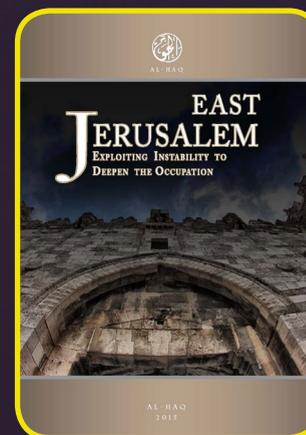
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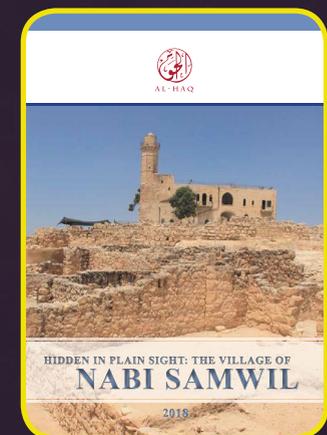
Occupying Jerusalem's Old City
Israeli Policies of Isolation, Intimidation and Transformation



The Annexation Wall and its Associated Regime



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Exploiting Instability to Deepen the Occupation



The Village Of Nabi Samwil
Hidden In Plain Sight

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SMART PHONES



 AL-Haq - 54 Main Street 1st & 2nd Fl. - Opp. Latin Patriarchate

 Saint Andrew's Evangelical Church - (Protestant Hall)

 P.O.Box: 1413 - Ramallah - West Bank - Palestine

 Tel: +972 (0) 2 2954646/7/9

 Fax: +972 (0) 2 2954903

 www.alhaq.org



AL - HAQ

About AL-HAQ

Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah in the Occupied Palestinian Territory (OPT). Established in 1979 to protect and promote human rights and the rule of law in the OPT, the organisation has special consultative status with the United Nations Economic and Social Council.

Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, irrespective of the identity of the perpetrator, and seeks to end such breaches by way of advocacy before national and international mechanisms and by holding the violators accountable. Al-Haq conducts research; prepares reports, studies and interventions on the breaches of international human rights and humanitarian law in the OPT; and undertakes advocacy before local, regional and international bodies. Al-Haq also cooperates with Palestinian civil society organisations and governmental institutions in order to ensure that international human rights standards are reflected in Palestinian law and policies. Al-Haq has a specialised international law library for the use of its staff and the local community.

Al-Haq is the West Bank affiliate of the International Commission of Jurists - Geneva, and is a member of the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), ESCR-Net – The International Network for Economic, Social and Cultural Rights, the Palestinian Human Rights Organizations Council (PHROC), and the Palestinian NGO Network (PNGO). In 2018, Al-Haq was a co-recipient of the French Republic Human Rights Award, whereas in 2019, Al-Haq was the recipient of the Human Rights and Business Award.

