



NORWEGIAN  
REFUGEE COUNCIL

## Legal Memo

### ***FAQs on Main Legal Issues in East Jerusalem***

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#### What is East Jerusalem?

Following the end of the 1967 War, the State of Israel occupied the West Bank, the Golan Heights, the Sinai Peninsula and the Gaza Strip. The territory of the West Bank, which had been controlled by Jordan since 1948, included the eastern part of Jerusalem.

Immediately after the occupation of these areas, the Government of Israel unilaterally annexed approx. 70.5 square kilometres of West Bank land, which were until the 1967 War under the effective control of Jordan, into the municipal boundaries of West Jerusalem (the western part of the Jerusalem had been part of Israel since 1948). Israel annexed additional 64 square kilometres of land outside of Jerusalem, most of which belonged to 28 Palestinian villages in the West Bank. These annexed lands were previously within the municipal boundaries of Bethlehem and Beit Jala. Together, all of this annexed territory is known today as 'East Jerusalem'.

#### Timeline of Control over East Jerusalem

In the past 3,500 years, authority over the city of Jerusalem has changed hands more than 25 times. In modern times, prior to 1917, Jerusalem (as part of the land of Palestine) was under the rule of the Ottoman Empire for four centuries. During World War I, the Ottomans were defeated by the British Army. The British forces entered Jerusalem in 1917 and seized control of the city. In 1922, the Council of the League of Nations assigned the Palestine Mandate, which included Jerusalem, to Great Britain.

On 29 November 1947, in the wake of World War II, the General Assembly of the United Nations adopted *Resolution 181 (II) Future Government of Palestine*, known as *the Partition Plan*. This Resolution recommended the termination of the British Mandate in Palestine and the establishment of independent Arab and Jewish states in Mandatory Palestine. In respect to Jerusalem, the General Assembly recommended the creation of a separate entity (*corpus separatum*), which would be demilitarised and neutral, and the establishment of a special international regime in the city administered by an UN-affiliated Trusteeship Council.

Following the UN adoption of the Resolution, which was rejected by the Palestinian Arab leadership, a civil war erupted between Jewish and Arab communities throughout Palestine. On 14 May 1948, the British Mandate over Palestine was terminated, and Israel proclaimed its independence and the formal establishment of the State of Israel. After this proclamation, the armed conflict spread, culminating in the 1948 War between Palestinians, a number of Arab States and the new State of Israel. During the 1948 War, Israel captured the western area of Jerusalem. At the same time, the eastern part of Jerusalem, including the Old City, and the remainder of the West Bank came under

Jordanian control. This remained the status quo until June 1967 when, as a result of the 1967 War, Israel occupied the West Bank, including the eastern part of Jerusalem.

### What law does Israel apply to East Jerusalem?

After Israel occupied and unilaterally annexed East Jerusalem in June 1967, Israel applied its own law, jurisdiction and administration to the area. In addition, in 1980, the Knesset (the Israeli parliament) enacted the *Basic Law: Jerusalem, Capital of Israel*. This law stipulates, in Article 1, that “Jerusalem, complete and united, is the capital of Israel.” The Basic Law is a clear expression of Israel’s political position regarding Jerusalem, whereby Israel claims the right to apply its sovereignty and law over the whole city, including what is now known as East Jerusalem.

### What does International Law say about East Jerusalem?

Israel’s annexation of East Jerusalem and its application of Israeli law to the area are both unlawful under international law and, as such, are not recognised as legitimate by the international community. International institutions, including the UN Security Council and General Assembly, have repeatedly stressed that the steps adopted by Israel in its annexation of East Jerusalem are in contravention of the rules of international law, and that East Jerusalem remains an occupied territory and is not part of Israel.<sup>1</sup> This position is one shared by the world’s states. All countries that have diplomatic relations with Israel do not recognise the annexation of East Jerusalem and therefore no states currently house their embassies in Jerusalem, despite Israel’s contention that it is the legitimate capital of the State of Israel.

The law of occupation rests on the basic tenet that the use of force cannot lead to or cause any transfer or change of sovereignty.<sup>2</sup> The notion that sovereignty cannot be acquired through military conquest arises from the general prohibition on the use of force,<sup>3</sup> and it applies even where the conquest of land by force is allegedly done in self-defence pursuant to Article 51 of the UN Charter.

Consequently, the Palestinians of East Jerusalem are considered ‘protected persons’ in an occupied territory and thus must enjoy the protection of international humanitarian law. Accordingly, Israel, as the occupying power, has certain obligations to protected persons, which are clearly set out under international law. This was also the view held by the International Court of Justice (ICJ) in its *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* from 9 July 2004, which confirmed that both international humanitarian law and international human rights law are applicable to the occupied Palestinian territory, including East Jerusalem.

### How did the Oslo Accords effect East Jerusalem?

‘The Oslo Accords’ are a set of bilateral agreements between the Palestinian Liberation Organisation (PLO) and the Israeli government. The first of these agreements was signed on 13 September 1993 (officially known as the *Declaration of Principles on Interim Self-Government Arrangements*, or unofficially as “Oslo I”). The *Interim Agreement on the West Bank and the Gaza Strip* was signed on 28

<sup>1</sup> There have been numerous UN Security Council and General Assembly Resolutions rejecting Israel’s unilateral annexation of East Jerusalem and recognising its status as occupied. These include SCR 242 of 1967 which demanded Israel withdraw from territories it occupied in 1967; and SCR 478 of 1980 which set out that annexation by force is forbidden under international law and confirmed the application of international occupation law to East Jerusalem. This position was recently confirmed by the ICJ Advisory Opinion on the Wall on 9 July 2004.

<sup>2</sup> Eyal Benvenisti, *The International Law of Occupation*, Princeton University Press (1993), pp. 5-6.

<sup>3</sup> The Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, entered into force 24 October 1945 (UN Charter), Article 2(4).

September 1995 (known as “Oslo II”). The Oslo Accords deal with a number of issues regarding interim Palestinian self-governance, the establishment of the Palestinian Authority, and the division of the West Bank into Areas A, B and C. Jerusalem was not dealt with under these two agreements as it was considered to be one of a number of final status issues to be further negotiated and agreed by both parties. Subsequently, the parties agreed that the Palestinian Authority would have no official representation in Jerusalem. Therefore, the Palestinian Jerusalem Governorate is staffed by PLO (and not PA) representatives who are tasked with providing Palestinian representation for Palestinians in Jerusalem. The Oslo Accords did not, eventually, lead to a final agreement between the Palestinians and the Israelis for various reasons, some of them are still disputed until today.

### What is the Status of East Jerusalem’s Palestinian Residents?

Immediately after the 1967 War, Israel conducted a census in the Palestinian areas annexed into Jerusalem and granted identity cards to the Palestinians who were physically present at that time. According to Israeli law, the Palestinians of East Jerusalem are considered ‘permanent residents’ of Israel, and not citizens. They are under the legal jurisdiction of the Israeli courts and formally enjoy quite similar rights to those enjoyed by Israeli citizens. Thus, Palestinian residents of East Jerusalem are eligible to work in Israel and to receive emergency services and social rights (national insurance pensions and health insurance). However, under Israeli domestic law, there are still significant differences between the status of permanent residents and the status of Israeli citizens, for example: a permanent resident may vote in local elections, but is not entitled to vote in the Knesset elections; a permanent resident is entitled to a *laissez passer* travel document, but not to an Israeli passport; a permanent resident who settles in another country loses permanent residency status in Israel, whereas a citizen retains citizenship.

Granting the status of ‘permanent residents’ to the Palestinians of East Jerusalem is very problematic, since it places – in certain respects – East Jerusalem Palestinians on the same plane with immigrants. The application of identical rules with regard to the expiry of residency to immigrants, who voluntarily acquired their status, and to East Jerusalem residents, who received their status in the wake of the annexation of East Jerusalem, unlawfully ignores the special situation of East Jerusalem residents. It imposes upon East Jerusalem residents – whose mothers and fathers lived in Jerusalem before its annexation to Israel – impediments on their freedom of movement, which they must conform to in order to ensure that their residency is not revoked due to their physical absence from East Jerusalem.

Indeed, Israeli authorities have used a broad range of legal tools to revoke the status of East Jerusalem Palestinians. From the mid-1990s, Israel initiated a policy of revocation of residency status of many Palestinians of East Jerusalem, who failed to meet the criteria for keeping their residency. A permanent resident will be considered to have settled abroad if he or she 1) lived for more than seven years in a foreign country; 2) received the status of permanent resident in a foreign country; or 3) became a citizen of a foreign country.<sup>4</sup> This policy became known as the ‘quiet deportation’. Despite a temporary relaxation in the implementation of this policy in the beginning 2000s, data received from the Israeli Ministry of the Interior for the mid-2000s shows that this policy has never been brought to a complete halt. On the contrary, during the years of 2006-2008 it has been implemented on a much larger scale.<sup>5</sup> (For more on the issue, see: NRC Fact Sheet ‘Revocation of Residency in the Occupied Palestinian Territories’.)

<sup>4</sup> Article 11(C) and Article 11A of the Entry into Israel Regulations – 1974.

<sup>5</sup> HaMoked, “In 2008, the Ministry of the Interior revoked the Israeli residency status of 4,577 residents of East Jerusalem – including 99 minors”, 1 December 2009. See: [http://www.hamoked.org/Document.aspx?dID=868\\_update](http://www.hamoked.org/Document.aspx?dID=868_update). It should be noted that in recent years there has been a decline in revocation cases (see: <http://www.hamoked.org/Document.aspx?dID=Updates1717>)

It should be noted that Palestinian permanent residents are permitted, if they desire to do so and meet certain conditions, to receive Israeli citizenship. These conditions include swearing allegiance to the State of Israel, proving they are not citizens of any other country, and demonstrating some knowledge of the Hebrew language. In 1967, and until the present, most Palestinian residents of East Jerusalem have not requested Israeli citizenship due to political considerations. As protected persons under international humanitarian law, the State of Israel cannot force citizenship upon them, and cannot compel them to naturalise or to swear loyalty to the State.<sup>6</sup>

### East-Jerusalem-Palestinians' access to the Israeli Legal System

Palestinians in East Jerusalem have access to the Israeli legal system. This does not serve as a remedy for the fact that the application of Israeli domestic law to occupied East Jerusalem is contrary to international law and to the international community's position on the matter. However, in practice, the Israeli legal system is the most immediate and only domestic recourse to justice. Using this system is a way to exhaust domestic legal remedies, a prerequisite for utilizing international judicial forums. It is also a way to 'buy time' (such as in the case of forced displacement). Finally, it confronts Israeli courts with the need to consider issues related to Israel's breach of its obligations towards Palestinians in East Jerusalem.

However, there are some obstacles to accessing the Israeli legal system. These include the complex use of laws; cost; predominant use of Hebrew language/written material; and the lack of Israeli Bar-qualified Palestinian lawyers (particularly those who specialise in housing, land and property legal matters). Political or ideological considerations held by some Palestinians also come into play, i.e., that utilizing the Israeli legal system legitimizes the illegal annexation of East Jerusalem.

### What are the Main Legal Issues faced by Palestinians in East Jerusalem?

Key legal issues in East Jerusalem:

- Restrictive zoning and planning in Palestinian areas
- Demolition orders and demolitions (mainly due to lack of planning in Palestinian areas and the resulting impossibility of obtaining an Israeli license to build), including fines for 'illegal' building
- Forced evictions
- Settlement establishment and expansion
- Settler violence and harassment
- Land confiscation
- Construction and route of the Wall
- Restrictions on freedom of movement
- Revocation of residency and restrictions on family unification
- Lack of access to services

The result of all of these issues is the forced displacement of Palestinian residents of Jerusalem, which supports Israel's often-stated policy to maintain a Jewish majority demographic in the city.<sup>7</sup> The legal

<sup>6</sup> Article 45 of the Hague Regulations. In this regard, see also: Quigley, "Jerusalem: The Illegality of Israel's Encroachment", *The Palestine Yearbook of International Law* Vol. 9, 19, 1996/1997, p. 34.

<sup>7</sup> For instance, in late 1972, an interministerial commission ('The Gafni Commission') was convened to assess the pace of development in Jerusalem and present recommendations for the future. The commission determined that the government should strive to maintain the "ratio of Jews to Arabs that existed at the end of 1972" (The Inter-Ministerial Committee to

issues faced by the Palestinians in East Jerusalem are interconnected and residents often face them in combination. This makes remaining in East Jerusalem difficult and, in many cases, untenable for Palestinians, many of whom have lost property and residency rights as a consequence of Israeli law and policy.



*Photo: Karm Al-Mufti in Sheikh Jarrah, East Jerusalem. The land was confiscated by the State of Israel and subsequently leased to the Ateret Cohanim settler association, which intends to build 250 housing units for the settlement of Jews in the area. (Photo by: Mohammad Haddad).*

### Why are Demolitions occurring in East Jerusalem?

A demolition order may be issued by an Israeli municipal, governmental or judicial authority compelling the owner, occupant, builder or municipal or governmental authorities to demolish a particular structure or building. In practice, there are three main categories of demolitions carried out against a home or other structure:

(1) **Demolitions pursuant to domestic planning laws:** Under Israeli planning and building laws, particularly *the Planning and Building Law of 1965*, demolitions are carried out in cases where a home or other structure is built without the requisite permit(s), or in a manner that is deemed to violate the specifications of a permit.

(2) **Punitive demolitions:** Punitive demolitions are carried out pursuant to *Article 119 of the Emergency Defence Regulations 1945*, in situations where an occupant of the house has been found to be involved, or is suspected of being involved, in acts of violence committed against Israelis. Punitive demolitions are also carried out when the said occupant is no longer living in the house, either because he/she is detained or dead due to his/her involvement in acts of violence against Israelis.

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Examine the Rate of Development in Jerusalem, Recommendations for a Coordinated and Combined Rate of Development [in Hebrew] (Jerusalem, August 1973), p. 3). In addition, in 1996, the City Planning Division of the Jerusalem Municipality produced a document summarizing the first thirty years of Israeli rule in East Jerusalem and describing the planning processes that had taken place during that time. The document specifies the principles behind the planning, the first of which was: “maintaining the ratio of 70:30 [sic] that existed in 1967 between the Jewish and Arab population, in accordance with government policy.” (Ofer Aharon, *Planning in the Arab Sector in Jerusalem 1967–1996* [in Hebrew] (Jerusalem: Jerusalem Municipality, City Planning Division, Department of Planning Policy, 1996), p.19)). In this regard, see also: Bimkom, *Trapped by Planning: Israeli Policy, Planning and Development in the Palestinian Neighborhoods of East Jerusalem*, 2014, pp. 15-22.

(3) **Demolitions due to military necessity:** Military authorities can also order demolitions in relation to military operations, a measure that, in certain circumstances, is permitted under international humanitarian law, but is strictly limited to cases of absolute military necessity.

### Are Demolitions carried out in East Jerusalem legal according to International Humanitarian Law?

Under international humanitarian law, the destruction of property, private or public, (unless justified by military necessity) is explicitly prohibited — during the conduct of hostilities and in the course of the administration of territory during occupation. Extensive destruction of property in the absence of military necessity, or when carried out "unlawfully and wantonly," is a grave breach of the Geneva Conventions. Such extensive and/or wanton destruction may amount to a war crime.<sup>8</sup>

Israel applies domestic planning and building laws to East Jerusalem and does not accept that it is occupied territory and therefore justifies demolitions within that domestic legal framework, without acknowledgement of the international legal framework. In this regard Israeli authorities do not even attempt to justify demolitions in arguments pertaining to military necessity, but merely state that unlicensed buildings are illegal and therefore subject to demolition under Israeli law. Israeli authorities have enforced harsh administrative and punitive sanctions, as specified in the Israeli *Planning and Building Law* – including house demolitions, heavy fines and, in many cases, criminal proceedings against Palestinians who have built ‘illegally.’

International humanitarian law also requires the occupying power to ensure that the system of planning, zoning, and building licensing – which is essential for maintaining the safety and order of any society – is in place and functioning. This obligation requires the occupier to provide the protected persons with an adequate amount of available housing, as well as to allow the communities and the overall society to develop and progress, particularly in response to population growth. The phenomenon of construction without permits in East Jerusalem – that results in demolitions carried out by the Israeli authorities – is closely linked to Israeli practices which make it nearly impossible for Palestinians in East Jerusalem to obtain building permits. Following the Israeli annexation of East Jerusalem, Israel cancelled the applicable planning schemes for East Jerusalem. Subsequent alternative Israeli plans for the annexed area have served to constrain Palestinian building rather than enable it. Thus, contrary to Israel’s obligations according to international law, Israeli practices have failed to ensure functioning planning and building system for the Palestinians in East Jerusalem. Rather, these policies have laid the ground for the implementation of an extensive and harsh house demolition policy.

### What is the Legal Status of Settlements in East Jerusalem?

Under Israeli law, East Jerusalem is considered part of the State of Israel, and not occupied territory. Therefore, Israel recognises the legality of settlements in East Jerusalem as long as the land is “legally” owned by the settlers or by the state and any relevant building has obtained the required permits according to Israeli planning and building laws.

Under international law, as explained above, East Jerusalem is considered occupied territory. Consequently, the transfer of civilians from the occupying power into the territory it occupies is

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<sup>8</sup> Article 8(2)(a)(iv) of the Rome Statute of the International Criminal Court (ICC).

forbidden under international humanitarian law<sup>9</sup> and constitutes a war crime in international armed conflicts.<sup>10</sup>

The settlement enterprise violates additional international humanitarian law provisions. This has been repeatedly and explicitly confirmed by the UN Security Council, the General Assembly and the International Court of Justice, in its *Advisory Opinion on the Construction of a Wall in the Occupied Palestinian Territory*.<sup>11</sup> One example applies to expropriated land. Approximately one-third of the land annexed to Jerusalem following the 1967 War was expropriated by the Israeli authorities. According to international humanitarian law, in order for expropriation of land to be legal, the expropriated land should be designated for public use, for the benefit of the local population.<sup>12</sup> However, this has not been the case in East Jerusalem. The vast majority of expropriated land was previously privately owned by Palestinians, subsequently expropriated by the Israeli authorities for 'public use' and then used for settlements, largely benefitting Jewish Israelis, who – contrary to the Palestinian population – are not protected persons under international humanitarian law.

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<sup>9</sup> See Article 49(6) of the Fourth Geneva Convention. The transfer of civilians from the occupying power into the territory it occupies may also constitute a grave breach of the Convention according to Article 147 of the Convention and Article 85(4)(a) of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

<sup>10</sup> Article 8(2)(b)(viii) of the Statute of the International Criminal Court.

<sup>11</sup> In regard to the Israeli Settlements, see, e.g., the Security Council resolution 446 (1979) of 22 March 1979, which announced that the settlements "no legal validity" and the General Assembly resolution 50/129 of 21 December 1995, which reaffirmed that "Israeli settlements in the Palestinian territory, including Jerusalem, and other Arab territories occupied since 1967 are illegal and an obstacle to economic and social development". These assertions were reaffirmed by the ICJ Advisory Opinion on the Wall on 9 July 2004 (see para. 120 of the Advisory Opinion).

<sup>12</sup> Article 43 of the Hague Regulations, which obligates the occupying power to preserve and maintain public order and safety, has been interpreted by many experts to permit the expropriation of private property but only when it is carried out under certain conditions. One of these conditions is that expropriation of occupied land be conducted for the benefit of those who are protected persons according to international humanitarian law (in our context - the Palestinians) (see, e.g. Yutaka Arai-Takahashi, *The Law of Occupation: Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law*, Leiden, Boston (2009), p. 237.).