Jerusalem and the Jerusalemites under International Law

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1- Introduction

By more than 80 years, i.e. in August 1929, the Jerusalemites rose and the rest of the Palestinian territories responded to this Intifada, and what became known as "the Buraq Revolution" spread nationwide. The reason for this intifada goes back to when the Jewish worshippers put a curtain separating males from females while praying in front of the Buraq wall, or what is known to the Jews as "the wailing wall", or the western wall of the Haram Al-Sharif.

In 14/1/1930, the council of the League of Nations adopted a resolution to form a tripartite committee to investigate into the reasons for this Intifada. The committee was composed of the former foreign minister of Sweden as the chairman, and the membership of the Vice-President of the Supreme Court of Justice in Geneva, and a member of the Dutch People's Council. The committee arrived in Palestine in 19/3/1930 and stayed there for one month, during which it listened to 21 Jewish witnesses, 30 Arabs, and one from the mandate government.

The committee submitted its report in December 1930. It confirmed that the Buraq wall, as admitted by the Jewish witnesses, is an Islamic property. The committee said:

Further to the investigations conducted by the committee, the committee declares that the ownership and possession of the wall and those parts surrounding it, which is the theme here, goes to the Muslims. The wall itself, as a part of Al-Haram Al-Sharif is an Islamic property. According to the investigations conducted by the committee in the courts, and the evidence of the witnesses, it appears that the sidewalk in front of the wall, where the Jews practice their faith, is also an Islamic property. 1

Then came the defeat of June 1967, and Israel quickly took the initiative to declare the master plan for Jerusalem, showing that it intends to "show the Israeli, religious and national emotions, and that the privileges of the Jewish people abrogate the rights of

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1. See the official report issued by the office of publications of the British government in 1931, and reprinted in the Palestine Yearbook of International Law, 375 (1996/1997), and the paragraph appeared in is contained in p. 395 under item (3) entitled "Ownership of the wall and its surroundings".

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Muslims...". This becomes clear as Israel deported immediately 650 Palestinian families from the Moroccan neighborhood, controlled Al-Buraq wall, dissolved the Jerusalem city council, and linked East Jerusalem to the water, electricity and telephone network of West Jerusalem. It issued three codes at once expanding the municipal boundaries to about ten times its borders under the Jordanian rule, and expanded the Israeli judicial and legal mandate over East Jerusalem.

In 23/2/2009, The Israeli authorities ordered the evacuation of 1500 Palestinians from East Jerusalem, and the demolition of 80 houses, claiming that these houses were established without a license. Many houses of the Jerusalemites are still threatened with demolition under various pretexts. This rapid demolition of the Jerusalemites' houses explains the Israeli government approval in October 2010 of a draft law that encourages the settlers to emigrate to Jerusalem, considering it "a priority and a development area (A)". It is clear that this is an encouragement to settle in Jerusalem.

Between the years 1930 and 2010, there is a steady development concerning the qualities, practices and policies; represented in the diminishing Palestinian, Arab, and Islamic stance towards the Jerusalem Cause. At the same time, the developing and growing stance of the Jewish agency ended with the creation of their state in Palestine. However, this state has nothing to do with law, either it is above the law or ignoring it intentionally and arrogantly. Practically, concerning the legal trial for its practices, Israel is still a "rogue state". To demonstrate this, and how Israel rebels against the nations' laws and civilized people's customs, we have to study the Israeli practices in Jerusalem, in which and around which there are the fiercest racist battles either related to Jerusalem as a city or the population.

This is what we shall be exposed to in this study, as the second section addresses the evolution of the legal definition of Jerusalem since the partition resolution till now.

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4. In June 1967, Israel issued three laws related to Jerusalem:
   A. Administrative and Judiciary law (Eleventh amendment) 21 Laws of the State of Israel, 75 (1967).
   B. The Municipalities Act (Sixth amendment), Op.
   c. Protection of Holy Places Law, the same source, 76.

5. The British newspaper "Guardian" issued on 7/3/2009 a report entitled "The European Community says: Israel includes East Jerusalem, which is a confidential report prepared by the European Community on the Israeli practices in the entrance of Jerusalem, including the plans for the demolition of houses in Jerusalem, and the acceleration in building settlements since the conference of Annapolis in November 2007, and the plans for building the area known as E1, which will be annexed to the colony of Maale Adumim in east Jerusalem.

6. Israel has used the apartheid wall to change the demographic composition of Jerusalem, as it was able to isolate (125) thousand of Jerusalemites, which makes them lose their right of residence in their own city. On the other hand, the Israeli government offers all incentives to the settlers reaching at the end of 2009 (200) thousand.

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The third section deals with the legal situation of the Jerusalem Palestinian residents, and the racist practices against them. The fourth section includes the research summary and the recommendations.

II- The evolution of the legal definition of Jerusalem:

A. The legal definition under the UN recommendation of partitioning Palestine

It is known that the UN recommendation of partitioning Palestine issued in 1947 into a Jewish state and an Arab state, while putting Jerusalem under a special international regime, administered by the UN, ended up with partitioning the city. The area of Jerusalem was wider than the city, as the space of this area was about 3% of Palestine's area. When the first Arab Israeli war broke out after the release of the recommendation, the Israeli forces managed to occupy the western part of Jerusalem (about 38 square kilometers), while the Arabs kept the Eastern part (about 6.4 square kilometers). Since 1948, the situation remained as it is until June 1967, when the Israeli forces occupied the West Bank including East Jerusalem.

In the period between 1948 and 1967, the world did recognize neither the Israeli presence in West Jerusalem, nor the Jordanian presence in East Jerusalem. Although Israel declared Jerusalem its capital in 1950, many foreign countries remained to accredit diplomatic representatives in Tel Aviv, and at the same time, in East Jerusalem. As they were presenting their credentials to the Secretary of Jerusalem; neither to the Jordanian foreign minister, nor to the Israeli foreign minister. These diplomatic missions were affiliated directly to the ministries of foreign affairs in their countries of origin, and not to the accredited embassies in Tel Aviv and Amman. This diplomatic practice has been frequent, emphasizing that the international community did not recognize Jerusalem except under the situation mentioned in the recommendation of division.

B. The legal definition during the Israeli occupation period:

When East Jerusalem, like the west bank and Gaza strip fell under the Israeli military occupation, following the Israeli aggression in 1967, Israel immediately took actions to change the legal situation of Jerusalem. It passed a law which lead when applied to the addition of 64 square kilometers of the west bank territories to the municipal boundaries of East Jerusalem. The Jerusalem area, both East and West, reached 108.5 square kilometers, i.e. two times and half its area before the 1967 war. At the same date it issued the law of administration and jurisdiction (the eleventh amendment), under which Israel extends its administrative and judicial

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8 - Ibid.
9 - See the law referred to in note 4/B above.
10 See the law referred to in note 4/B above.
mandate to "any part of the Israeli territories determined by a governmental resolution". This tool is a gadget used by Israel in order to avoid being accused of the annexation of occupied lands in contravention to international humanitarian laws. It does not declare the annexation, however, it extends its administrative and judicial mandate to the occupied territories.

The Israeli foreign minister at that time Mr. Abba Eban, tried to mitigate this Israeli action with a letter sent to the Secretary General in which he said: "The measures took regarding the annexation of (East) Jerusalem in the administrative and municipal fields, was intended to be the legal basis to protect the holy places in Jerusalem". Abba Eban said that the term "annexation" used in the circles of the international organization in order to criticize Israel is "out of context". He asserted that Israel did not make an "annexation" process, and therefore, did not violate any of the military occupation laws.\textsuperscript{11}

This Israeli defense is weak; as there is no relationship between extending the jurisdiction and protecting the holy places. There are laws, customs, and long and stable practices for respecting the holy places especially since the mid nineteenth century at least.\textsuperscript{12} Also, the International humanitarian law – or what was formerly known as the laws of war- imposes on the occupying power the duty of protecting the holy places and the houses of worship, and ensuring the right of people living under occupation in the exercise of their religious rites.\textsuperscript{13}

Israel began to behave in Jerusalem more clearly and less coverly, trying to assert its sovereignty. In 30/7/1980, it passed a law describing it as "Basic law" and naming it "Jerusalem – Israel's Capital". In the first article, it was stated that "Jerusalem – complete and united, is the capital of Israel."\textsuperscript{14} The international community soon opposed this Israeli move, as the Security Council adopted

\textsuperscript{11} - 6 Intl. Leg. Mat., 846 at 848 (1967)

\textsuperscript{12}The Ottoman Sultan issued a farman in 1852, stressing what was known as the "Status Quo" issued starting from 1757. This farman was stressed at the end of the Russo-Turkish war in 1878. All of these farmans emphasize the protection and respect of the holy places, and religious practice in Jerusalem. See the report referred to in note 1, page 391-393. In this context, reference is made to the publication entitled "Jerusalem – Aspects of Law" (published in 1983), which is a collection of legal documents and studies prepared by Israeli lawyers who almost all agreed on the end of the "Status Quo". This publication carries a note written by David Ben-Gurion in his handwriting saying: "The stance of Israel concerning Jerusalem was clear and comprehensive as the government and all parties expressed in the Knesset on Monday 5/12/1949, as Jerusalem is part and parcel of Israel and will be its eternal capital. No vote in the UN can change this historical truth".

\textsuperscript{13} See, for example, articles 43, 46, 52 of the fourth Hague convention in 1907, and articles 47, 49, 25, 53, 59 of the fourth Geneva convention in 1949.

\textsuperscript{14} Israel has passed a law before which West Jerusalem was made its capital. See 4 Laws of the State of Israel (1950), and the law which declared Jerusalem (both Eastern and Western) Israel's capital, published in 34 Laws of the State of Israel 209 (1980).
resolution no. 478 of 20/8/1980 declaring that the Israeli law is invalid and does not produce its effects.\(^{15}\)

Persisting in challenging the international stance, and after the failure of the Camp David talks between the late Yasser Arafat, Chairman of the Palestinian Authority, and Ehud Barak, Israeli Prime Minister at that time, The Knesset passed in the late 2000 an amended law of the basic law: Jerusalem: Capital of Israel.\(^{16}\) The amendment included three articles; the first one expanded the municipal boundaries of Jerusalem. The second article prevented the transfer of any powers granted by law to the Israeli government or the municipality of Jerusalem "to any political or authoritarian foreign element or to any similar foreign element either permanently or for a specific period". As for the third article, it stipulated additional restrictions as "the instructions of (the two articles referred to above) cannot be changed except by a basic law enacted by the majority of the Knesset members".

A reading of these texts shows that the intention is to prevent any Israeli authority, either governmental or municipal, from waiving any sovereignty on Jerusalem to the Palestinian Authority or any other authority. This is in further frustrates any attempt for political settlements between Israel and the Palestinian Liberation Organization. The last article of this amendment considered that any change in these texts is an amendment to the "basic law", i.e. a constitutional law which needs measures and voting percentage in the Knesset which is more complicated than voting on the ordinary law.

When Al-Aqssa massacre happened in October 1990, in which the Israeli soldiers killed seventeen Palestinians, the Security Council condemned this massacre and asked the Secretary General of the UN to submit a report on the best means to be taken. The council confirmed in its resolution its previous stances that Jerusalem is a part of the Palestinian occupied territories.\(^{17}\) Israel has objected to this resolution claiming that Jerusalem is a part of the Israeli sovereignty, and hence, the rules of the international humanitarian law do not apply to it, it also opposed sending a delegation to investigate the massacre.\(^{18}\)

In a striking development, the decisions of the international organizations, either issued by the General Assembly or the Security Council, started since the year 1967 and till now to describe East Jerusalem as "Occupied Territory", and no longer

\(^{15}\) The General Assembly has also adopted the UN resolution no. (E) 169/35.

\(^{16}\) Citing attorney Osama Halabi. Limits of place and Human Existence - the Geographic and Demographic dimensions in the Israeli policy towards "Eastern Jerusalem" in the period 1967-2000. P. 59 (Jerusalem Center for Legal Aid and Human Rights - 2001) (hereinafter referred to as "Halabi-the limits of the place").

\(^{17}\) UN Security Council resolution (1990) 672, see the report of the foundation of the "right/law for humans" entitled "Al-Aqssa massacre" in the journal of Palestine studies, 288 (No. 4, Fall 1990).

\(^{18}\) Jerusalem Post (International) 20/10/1990, P.1.
describe Jerusalem as "under the international guardianship". As per the Palestine partition recommendation. This is an important development in the legal status of Jerusalem, as if the UN abandoned its previous description contained in the partition resolution. Despite the issuance of a series of resolutions of the UN Security Council and the UN General Assembly concerning East Jerusalem an occupied territory, like the West Bank and Gaza Strip, in addition to the western Territories occupied after the 1967 war, Israel remained committed to its stance stubbornly. Some professors of international law belonging to the Zionist camp made up theories justifying the Israeli stance. One of these theories what Dr. Yehuda Blum from the Hebrew University said that the Israeli position in the West Bank is better legally than that of Jordan; this is because only two countries recognized the annexation of Jordan to the West Bank, and so considered Jordan – as Israel – an occupying state. However, Israeli's occupation is stronger and better than that of Jordan. As he claims, the Israeli occupation came after a defensive war fought by Israel against the Arab states, while Jordan has "annexed" the West Bank, and therefore, has no sovereignty over it. There is no country in a proper legal status for Israel to return it.  

Professor Eliyahu Lauterpacht, professor of international law at the University of Cambridge, suggested another statement saying that the abused state has the right to keep the province of the aggressor state if the first was able to occupy it as it was in a defensive war. Hence, Lauterpacht concludes that Israel has the right to keep the occupied territories including Jerusalem.

These sayings are not supported by the international law; what was said by Bloom that Jordan annexed the West Bank can be replied; as in 1950, the Jordanian Chamber of Deputies composed of an equal number of Palestinians and Jordanians democratically elected, adopted a resolution to merge the two banks. This means that the Palestinians and Jordanians have exercised the right of self-determination which took the form of unity between the two peoples on both sides of the Jordan River. When Jordan joined the UN, there was no reservation to its accession under the pretext of its annexation of the West Bank. It should be noted that Bloom criticizes the annexation of the West Bank to the East Bank under the pretext that only two states recognized this annexation, with the knowledge that no country yet recognized the claims of Israel in either the West Bank or Jerusalem.

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20 - For example, but not limited, see the resolutions of the General Assembly (ES-V) 2253 dated 4/7/1967; (ES-V0 2254 dated 14/7/1967. These are two resolutions related to the Israeli measures to change the situation in Jerusalem; and see, for example, the UN Security Council resolution no. 252 dated b21/5/1968; and the resolution 267 dated 3/7/1969; and resolution no. 298 dated 25/9/1971; and resolution no. 446 dated 22/3/1979.


What is repeated by Lauterpacht is not supported neither by the scholars of the international law nor by the international legal principles. It is well known legally that the state exercising the right of self-defense is obliged to withdraw from the territories of the aggressor state as soon as the first state is to defeat aggression.24 There is no doubt that international law, especially that mentioned in the UN Charter, denied the acquisition of territories by force, even by the states exercising the right of self-defense.25 The stance of the vast majority of member states in the UN confirms that there is no basis in the international law to Lauterpacht claims; as the frequent voting on the resolutions of the international organization confirms every time that the occupied Palestinian territories including East Jerusalem, is considered – according to the international law – occupied territories, and subject to the principles of the international humanitarian law.

C- Jerusalem in Oslo Agreements

With the commitment of Israel to respect Jordan's role in the Muslim holy shrines in Jerusalem, either in the Treaty of Wady Araba or in any agreements related to the final status, 26 however, the legal implications of this obligation do not exceed the holy sites and the religious considerations and has no political label. What was included in the Declaration of Principles and other agreements signed between the PLO and the Israeli Government remains with a more significant legal impact than what was included in Wady Araba Agreement. It has been agreed between the parties in the General declaration of Principles in 199327 and in Taba Agreement of 199528 to begin to discuss the key issues postponed to the final phase. The first of these topics is "Jerusalem".29

Article 3 of the Declaration of principles included that the Palestinians have the right to hold elections for the establishment of Self-government authority. Article 1 of the protocol annexed to the declaration determined the right of the Jerusalemites of Palestinian Arabs to participate in the elections either in voting or nomination. The Jerusalemites have practiced this right in the elections of 1996 and 2006. Despite the

25 - This principle was confirmed in the famous international decision no. 242 issued by the Security Council, which has become a part of the customary international law as the cornerstone of the international community intervene to resolve the Arab-Israeli struggle since 1967.
26 - For the English text of the treaty of Wady Araba, see 8 The Palestine yearbook of International Law, 281 (1994/95).
27 - For the English text of the Declaration of Principles, see 7 The Palestine yearbook of International Law, 232 (1992/94).
28 - For the English text of Taba Convention, see 8 The Palestine yearbook of International Law, 353 (1994/95).

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burdensome restrictions imposed by Israel on the candidates and voters alike (restriction of the right of election campaigning, counting the votes outside the boundaries of Jerusalem, determining the number of the ballot boxes and their locations ... etc). However, the question remains concerning the legal consequences of Israel's acceptance to include the issue of Jerusalem in the schedule in the final status negotiations. Certainly, Israel was and still accelerating change in the demographic situation in Jerusalem. It is still engaged in establishing facts on the ground to foil any future settlement that can change the status of Jerusalem.30 However, this does not change the fact that Israel agreed to put Jerusalem on the table of discussion in the final negotiations. What is the significance of that? And why not Haifa or Tel Aviv instead? If the Palestinian negotiator managed to arrange his cards properly, he may be able at least to shake this stick to the Israeli Jerusalem, which is only based on bare power contradicted with any political settlement.

D- The Opinion of the International Court of Justice

The International Court of Justice issued on 9 July 2004 its advisory opinion in the case of the wall31 where Israel establishes most of it in the Palestinian occupied territories. It resolved unambiguously the legal status of East Jerusalem as it said:

Israel occupied in 1967 the territories lying between the Green Line and the former eastern boundaries of Palestine under the mandate during the armed conflict between Israel and Jordan. Under the customary international law, these lands where therefore occupied territories, and Israel had the status of the occupying power. All of these territories (including East Jerusalem) are still occupied territories, where Israel still have the status of the occupying power (emphasis added).32

The importance of this advisory opinion is that it is issued – First – from the highest judicial body in the world, and the more objective one. Second, it is issued with the majority of fourteen votes against one vote giving it wider credibility. Although it is issued as an advisory opinion which means it is non-binding, however, it would be the same if it involves a legal dispute between two parties. Finally, The UN General Assembly issued its resolution no. ES 10/15 dated 20/7/2004 with the majority of one

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30. See the report of the "Arab Jerusalem" dated 29/5/20069 quoted from a report prepared by the Association of Civil Rights, An Israeli NGO, on the status of the Jerusalemites in East Jerusalem and the conditions that lead to the deportation of those people out of the city. See also the "Arab Jerusalem" dated 10/4/2009 about plans to migrate 20000 Palestinians married to Jerusalemite women. See also the "Arab Jerusalem "dated 26/10/2010 on the effects of the apartheid wall on the demographic composition of Jerusalem. See also the leaflet of "Jerusalem" issued by the Palestinian Academic Society for International Affairs, the issue of June 2009, it covers widely the evolution of the internal situation of the city.

31. - ICC Advisory Opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (9 July 2004).

32. - See the second part of paragraph 78 of the advisory opinion

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hundred and fifty against six votes to ratify this advisory opinion, and requesting from Israel to comply with its contents.

The most important result of this advisory opinion in determining the legal status of Jerusalem, and considering it an occupied territory, is that it undermines all the Israeli legislations on considering Jerusalem the capital of Israel issued in 1980 and amended in 2000. Moreover, this advisory opinion will undermine the legal basis of the congressional legislation announced in 1995 that Jerusalem should be the capital of Israel; as this opinion announces the stance of the international law in this regard, and the international law is a part and parcel of the American national law.\textsuperscript{33}

The UN still maintains its consistent stance before and after the issuance of the advisory opinion that East Jerusalem is a part and parcel of the Palestinian occupied territories. This is considered a frank determination of the legal status of Jerusalem, which contradicts completely and consistently the Israeli stance and legislations, and the Zionist scholars of law.

This Israeli insistence on not considering Jerusalem an occupied territory is a trial to occupy it and create settlements inside and around it without violating – as conceived – its obligations under the international humanitarian law that prevents the occupying power from changing the legal status of the occupied territory, tampering with the laws, or changing the status of population, or their properties, and not to prejudice their families and their honor, and granting them the right of development and growth.\textsuperscript{34} Obviously, the Israeli policies in this regard is completely contradicted with these principles. It can be said that Israel committed all sins of law in East Jerusalem, in addition to the occupied Arab territories. This justifies describing it as a "rogue" state behaving as if it is above the international law and norms settled by civilized nations.

III – Changing the legal status of the Jerusalemites

The legal status of the Jerusalemites is supposed to be similar to that of the rest of the occupied territories population. They were all having the Jordanian nationality, and this situation did not change with the arrival of the Israeli occupation authority. According to the fourth Geneva Convention of 1949, the Palestinian residents are considered civilians under the umbrella of international protection. However, what happened on the ground concerning the Jerusalemites in particular was otherwise; as Israel has imposed a series of measures and changes on the East Jerusalem population, all aiming at decreasing the Palestinian presence and increasing the Jewish presence. Menahem Klein, one of the most important Israeli experts in the subject of Jerusalem summarized the Israeli policy as follows: "The main principle that dominated the concern of the annexation architects in 1967 is to add as much territories as possible to

\textsuperscript{33} Kassim, A., \textit{The Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied territories: Significance and Implications}, Vol. 10, Yearbook of Islamic and Middle Eastern Law, 457 (2006).

\textsuperscript{34} See note 12 above. See the file: Judaizing Jerusalem – the legal status and settlement and migration in the Journal of Palestinian Studies – p. 96 (No. 31, Summer 1997).
(Jerusalem), and at the same time, decreasing the number of Arabs to the minimum extent possible.  

A- The Jerusalemite is a permanent resident

The Jerusalemites’ journey of suffering started when the Occupation authorities conducted a census of the inhabitants of Jerusalem immediately after the occupation; granting them special IDs to prove they are "residents" in Jerusalem. Thus, Israel has turned them to people who neither hold the Jordanian nationality and therefore are subject to the fourth Geneva Convention, nor the Israeli nationality and therefore are entitled to the rights enjoyed by the Israeli citizens. But they are "residents" in Israel – just residents. Hence, their status is like that of a foreigner who entered a foreign country and earned the right to reside there.

Article II of the law of entry to Israel in 1952 stipulates that the Minister of Interior is to grant the foreigner (non-Jewish) (1) a transit visa for up to five days (2) and a visit visa for three months, and (3) a temporary residence visa for three years, (4) and permanent residency. The people of Jerusalem received permanent residence, as if they are the ones who entered Israel, and not vice versa. The Article 11/A of the Act grants the Minister of Interior the right to cancel any visa granted under the mentioned Act, including the right to cancel any visa of permanent residence. The powers of the minister in this regard have no standards or reasons, as the law granted him the right to act as long as this has nothing to do with the Jewish law of return.

In practice, the permanent residence is the major concern of the Palestinian population of Jerusalemites, as it is related to what is called the "reunion" of families; the Jerusalemite applies for his non-Jerusalemite wife to be granted permanent residence or vice versa. These procedures of the reunion are not codified in a law or system, and are not declared in an official document. All people know about these procedures is what is declared by the state security prosecution in front of the Israeli Supreme Court of Justice. It was found that the conditions include that there must be an official marriage contract, the married couple are Jerusalem residents, and there must not be any security objection in the person to be reunited. The last two conditions are extremely difficult; for there is usually a "security" objection, as the Israeli intelligence has the right to present security information on any Palestinian, and the court cannot discuss this issue. As for the other condition, the problem does not lie in reuniting a Jerusalemite husband and wife as this is foregranted. The problem lies in reuniting a Jerusalemite husband who wants to get married to a non-Jerusalemite woman, e.g. from Nablus, it becomes more difficult if the wife is Jerusalemite and the husband from Nablus. The series of problems does not stop here; there is a further difficulty in the

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36. 6 Laws of the State of Israel, 159 (1952)
37. The English text of this law in 4 Laws of the State of Israel, 114 (1950) and the official Arabic text in the book of laws, No. 51, 6/7/1950.

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reunion if it is related to children registration. If the father carries the Jerusalem ID, children are registered as per their father. But if the mother only is the one who carries the Jerusalem ID, she has to prove that the child is living with her and that Jerusalem is "the center of her life" and "the center of the child's life".  

The network of complexities woven by the Israeli authorities before the Jerusalemites is expanding and diverging by time. As the Israeli authorities discovered that the conditions for obtaining permanent residence as mentioned in the law of entry to Israel are neither defined nor known. It created conditions in 1974 regulating the way of obtaining permanent residence, and others regulating the cases of expired residence. Article 11/C of the regulations stipulates that the permanent residence visa expires if the Minister of Interior put certain conditions for its validity which are unavailable or if the visa holder left Israel and settled in another country. Paragraph 11/A defined "settling in another country" as staying outside Israel for at least seven years, or obtaining permanent residence in another country, or obtaining the nationality of another country. As these conditions were mentioned in regulations issued by the Minister of Interior, and are open to amendment and change, they became a threatening gadget used by the executive and the legislative authorities in Israel when it comes to a Palestinian Jerusalemite.

B- The Jerusalemite and the "center of his life"

The Israeli Supreme Court of Justice and the Ministry of Interior set a new criterion in order to determine the Jerusalemite's legal status. As the condition of the permanent residence for the Jerusalemite is not enough anymore for the Ministry of Interior. As it added to it another principle which is the "center of life" of the Jerusalemite; which means that the Jerusalemite has to prove that his center of life is not the occupied Palestinian territories, but Jerusalem exclusively. The Jurisprudence of the Israeli Supreme Court of Justice developed accordingly. In the case of Dr. Mubarak Awad, the Israeli Supreme Court of Justice said: "The State's justice, authority and management apply to East Jerusalem, and based on this, the law of entry to Israel also applies to East Jerusalem, under which the Jerusalemites who do not have the nationality have to obtain a residence visa to stay in Israel. All of those included in the census conducted in 1967 have a permanent residence visa". This argument raised by the court means that it rejects the claim that the law of entry to Israel does not apply to East Jerusalemites as it is a law related to a person who came to Israel by choice, while the Jerusalemites did not enter Israel by choice, on the contrary, it is Israel who entered on them by force as an occupying authority. The court concluded by saying that Mubarak Awad lost the right to stay in Israel after he left Jerusalem to the USA, settled there, and obtained its Nationality. His center of life became outside Jerusalem. Thus,

39. Halabi, the Limits of the Place, 36.
40. The same source, see Halabi – Legal Status, 12.
41. In one estimation, more than fifty thousands of Jerusalemites lost "residency" in addition to many Jerusalemites who moved to live outside the borders of Jerusalem. Eyal Wiseman, Demographic Architecture in Jerusalem, Journal of Palestinian Studies, P. 55-57 (No. 79, Summer 2009).
42. Quoted Halabi, The limits of the place, 37-38.
the conditions of Article 11/A of the regulations referred to applied to him, and thus the Minister of Interior is entitled to exclude him.

The Israeli Supreme Court of Justice adhered to its stance expressed in the case of Mubarak Awad when dealt with the case of Fathia Al-Shikaki in 1994. The judge Goldberg said: "I counted (the plaintiff) as a resident in East Jerusalem in the census conducted in 1967, she obtained an Israeli ID but she did not obtain the (Israeli Nationality). Hence, the same applies to her like the one who holds a permanent residence visa under the law of entry to Israel for the year 1952". The court noted that the plaintiff was married in 1985 to the leader of Islamic Jihad Movement, Fathi Shikaki, who is a resident of Gaza Strip, and she moved to live with him after his exclusion in 1988. She gave birth to her three children in Syria, and only returned to Jerusalem after six years. Accordingly, the court decided that her visa is not valid anymore, and thus she lost the right of permanent residence in Israel, and forced to leave Jerusalem. It is noted from the court decision that it expanded the cases mentioned in Article 11/A of the referred to regulations, if considered that these cases were for example but not limited. The incidents and circumstances of one's settling in another country can be deduced though not mentioned in Article 11/A. In short, the "center of her life" became not only outside Jerusalem, but also outside the whole country, and thus, she loses the right of residence.

In the case of Fares Bostany, The Supreme Court of Justice supported the decision of the Israeli Ministry of Interior of withdrawing the ID and cancelling his right of permanent stay in Jerusalem, after the court was convinced that Al-Bostany transferred the "center of his life" to Jordan where he lives with his wife and children. The court did not put into consideration that the applicant was going to Jordan and returning to Jerusalem with an "exit card" valid for three years, and that he did not violate the conditions mentioned therein. The court replied that having a valid exit card does not mean that the visa of permanent residence in Jerusalem remains valid as well.

C- Jerusalemites and the restrictions on the "reunion"

In line with its policy in the process of ethnic cleansing in Jerusalem, the Israeli Knesset passed in 2003 "a temporary law for citizenship and entry to Israel". The law intended to limit the possibility of reunion between Palestinian couples of Jerusalemites and their spouses from the residents of the occupied Palestinian territories, i.e. the West Bank and Gaza Strip, even if this led to the dispersal of the same family. Thus, the Palestinians outside Jerusalem were prevented from entering the city through the process of "reunion" and marriage relationship. The statement of the Minister of Interior explains the new Israeli policy by saying that the Palestinians consider the reunion "achieving the right of return through the back door". He added an amendment to the

43 - The same source, 38-39.
44 - The same source, 39-40.
45 - Translation from Hebrew to English is found with the writer, which is an unofficial translation.
46 - Halabi, Law and Justice, 18.

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amendment in 2007\textsuperscript{47} where it expands the circle of those deprived of reunion, instead of those of the occupied territories, it includes couples from "hostile" countries like Iran, Syria, Lebanon and Iraq. This amendment is still subject to the extension of its validity each period ranging from three months and one year. The last extension was signed in 31/8/2008 and lasted for one year ending in 31/8/2009.

Justifying the measures of the occupying authorities as usual, the Israeli Supreme Court of Justice approved the constitutionality of the amendment included in the temporary law\textsuperscript{48}. Its justification was based, as the security authorities, on the "security threat" that may be caused by the entry of Palestinians from the occupied territories to Jerusalem. The court dismissed all petitions presented by human rights organizations and Knesset members to challenge the constitutionality of this amendment. The vice-president of the court justified the court's decision regarding the couples who want to live together in Israel, he was reported to say: "no one deprived them from making a family, but let them stay in Jenin instead of Om Al-Fahm".\textsuperscript{49}

**D- Jerusalemites and the wall**

The ministerial committee for national security responsible for building the apartheid wall approved building about 88 km of it to wrap around Jerusalem, it is now called "Jerusalem Envelope"\textsuperscript{50}, as it does not only aim at embracing Jerusalem and isolating it from its Palestinian surroundings, but also using it as a barrier cutting the West Bank, and isolating the south from the north. It should be also noted that the wall is designed to isolate parts of the city containing high percentage of Arabs and keeping them out of the wall as is happening now in the camp of Shafat located within the municipal boundaries as established by Israel after occupying the West Bank in 1967.\textsuperscript{51}

The route of the wall as determined to wrap around Jerusalem, will exclude about (125) thousands of Jerusalemites holding Israeli IDs, according to the report of the Jerusalem Center for Social and Economic Rights. If these figures are true,\textsuperscript{52} this means that the wall will be another gadget to deprive the Jerusalemites from their rights to enjoy permanent residence, if the wall leads them to live outside it for seven years, this case falls under the text of Article 11/A referred to above.

**E- Jerusalemites and the excavations**

\textsuperscript{47} Translation from Hebrew into English is done by the "Justice" Foundation – The legal center for defending the Arab minority in Israel, AlNasre. See Halabi – legal status, 23, Halabi – Law and justice, 17-19.

\textsuperscript{48} See the summary of the translation of resolution no. 03/7052 in English carried out by the "Justice" Foundation, and review the site http://www.adalah.org, and see Halabi – Law and Justice, 19-20.

\textsuperscript{49} Taken from Halabi, the same source, 20.

\textsuperscript{50} Halabi, the same source, 21.

\textsuperscript{51} Same source.

\textsuperscript{52} See the report of the Jerusalem Center for Economic and Social Rights issued on 13/12/2010.
It is no secret that the excavations started by Israel since the occupation of the West Bank including East Jerusalem, was aimed – as announced then – to prove an alleged historical relationship between the Jews and Palestine, and what is called "the third temple" is located under Al-Aqsa Mosque. It is no secret that the excavations during the four decades did not result in one single scientific result proving this alleged historical relationship.53

In order to enable Israeli settlers to benefit from this great effort of excavations, they developed another aim which is the completion of the ethnic cleansing process in Jerusalem and its surroundings. The so called "archaeological exploration that is going on now is just part and parcel of a wide political campaign sweeping the Jerusalem area within a pre-determined outline on the highest levels..."and this campaign is associated with "a wide campaign of Zionist settlement in Jerusalem on one hand, and the expulsion of the Palestinian population on the other".54 It should be noted that the settlement operations in areas like Selwan, Al-Bostan Neighborhood, and Bab Al-Khalil are behind the excavations.55

It is Noteworthy that the movement of settlers and the Antiquities Authority had developed close cooperative relations to the extent that some institutions like "Elaad" and "Ateret Cohanim" – two of the most active settlement organizations – in Jerusalem are funding the works on excavations. The best evidence on this cooperation is that the Israeli Antiquities Authority authorized "Elaad" foundation to manage the archaeological park located in Tallat Al-Dohor, while "Elaad" foundation is funding the excavations in Selwan neighborhood.56

The mating of exploration and settlement has certainly lead to expel the indigenous population from their homes, farms, and lands to make way for settlers who use the slogan "excavations" as a means of ethnic cleansing. Thus, we began to see recently Jerusalemites families who are evacuated from their homes and live in tents near the evacuated houses.

IV- Results and Recommendations

A- Results

If the law is an expression of the state's policy, this statement is best applicable to the Israeli legislations which are formulated highly intelligently, and are very smooth in

55 - The same source, P. 40.
56 -The same source, P. 40. See Klugman report, a report issued by the Israeli Ministry of Justice, documenting the cooperation between the settlement associations and the Israeli government, which are cooperation processes very similar to money laundering. Ariel Sharon was the main tool in this operation – The text in English is published in 9 The Palestinian Yearbook of International Law, 417 (1996/97).
wording and using expressions. However, it grants the administrative body a wide authority after being constrained with restrictions excluding the Jews, without mentioning this explicitly, but by using expressions like "this law (or system) does not apply to all "returners" under the law of return". It is well known that the "returner" under the law of return is the Jew exclusively, and thus the administrative body becomes free to deal with the non-Jews' affairs with no supervision. Even the Israeli Supreme Court of Justice that appears to the outside world as a court for justice, but in fact it turned out to be a gadget of military rule, according to the Professor of international law in the Hebrew university.

This practice is best expressed in dealing with Jerusalem as a place and population. As Jerusalem has to be converted into a Jewish city in order to be worthy of a "Jewish State". Its borders are being expanded and re-demarcated in order to exclude the largest possible number of its indigenous population of Palestinian Arabs, and include the largest number of Jewish settlers. Laws and regulations are being formulated to enable the Israeli management systems to do an ethnic cleansing operation by depriving the Arab Jerusalemites of returning to their hometown or even to continue to live there normally. The Israeli administration finds the biggest aid in the decisions of the Supreme Court of Justice that does not only provides it with verdicts supporting the occupying authorities, but also provides legal opinions showing the occupation authorities the best way to exercise.

The conduct of the Occupation Authority and the Israeli Supreme Court of Justice in dealing with the Jerusalem issue, and the occupied Arab territories, confirm every time that they are behaving with complete disregard of the international law. In the decisions of the Supreme Court of Justice, there is not a single sign or discussion of the international humanitarian law stance dominating Israel's behavior as the occupying power. And if there is, this would be to dodge and misinterpret it. There is no effect to the legal opinion issued by the International Court of Justice considering Jerusalem "an occupied territory", and that the wall, including the part wrapping around Jerusalem, is an illegal construction and has to be removed. Israel acts, administration and justice, as if the UN with its two main parts: the General Assembly and the Security Council, never issued a series of resolutions condemning Israel's practices in Jerusalem, and considering its procedures totally null and void.

57 - See – for example – the second article of the law of entry to Israel 1952.
58 - Some confuse between "the right of return" for Jews, and the acquisition of the Israeli citizenship under the Jewish right of return. The first is organized by an immigration law called the Law of Return, passed in 1950, while the second is organized by the Citizenship Act of 1952.
59 - David Kretzmer, the Occupation of Justice, the Supreme Court of Israel and the Occupied Territories, S(2002)
60 - In October 2010, the Israeli government proposed a draft law to the Knesset banning the Jerusalemites from working as tour guides in Jerusalem. This means that if approved by the Knesset, hundreds of Jerusalemites will be deprived of their livelihoods, "The Arab Jerusalem", dated 20/10/2010, Page 6.
61 - See paragraph 151 of the advisory opinion.
62 - See resolutions mentioned in note 20 above.
On the Palestinian side and the Arab World, the issue of Jerusalem highlights a pattern in their political behavior; that they are not able to maintain their rights, as their stances are diminishing by time. What is highlighted now by the Jerusalem issue is represented in the inability to maintain the right of refugees to return according to resolution 194, or to interpret resolution 242, or—before that—to support the US proposal suggested to the UN to retreat from the partition resolution, and putting Palestine under the international trusteeship system in 1948. It is a prominent feature of the Arab-diplomatic behavior in general, and the Palestinian in particular. These diminishing attitudes and behavior affect the maintenance of rights, and further lead to their disappearance by time. Obviously, the Arab and Palestinian authorities do not know how to establish systems and institutions capable of defending and maintaining these rights, and developing the supporting situations. The biggest and the latest evidence of the failure of the Arab and Palestinian practice in this context is the inability to benefit from the advisory opinion of the International Court of Justice on the issue of the wall.

B- Recommendations

This Israeli arrogance expressed daily by ignoring all the international conventions, whether related to the humanitarian international law or the human rights laws, has to be faced by taking collective Arab measures starting by a comprehensive and effective boycott, and followed by an international campaign to impose a boycott as the international campaign launched by the international community states against the apartheid system in South Africa. However, this international campaign should be led by a collective Arab campaign, and the Arab campaign should be led by the PLO, and without this sequence, measures remain intact and far from the logical sequence in managing the conflict and reaching a resolution.

The international boycott campaign finds a legal basis in the advisory opinion of the International Court of Justice, which demanded the world community not to recognize the Israeli measures, and not to render aid to Israel if this would support its construction of the wall. The Israeli actions are just to proceed in establishing the wall and fulfilling the political objectives of its construction.