

Jerusalem in the Context of the Provisions of International Law

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Preamble

Researching the subject of Jerusalem is not an easy task, as it is the cornerstone of the Palestinian issue which is deemed an international issue that concerns all countries worldwide and the international community, equally as it concerns both the Arab and Islamic worlds. Since the establishment of the State of Israel-even prior to that date-Jerusalem had been exposed to serious violations demonstrated in its Judaization and effacement of its historical and demographic identity. Other threats included altering Jerusalem physical components, and complete isolation from its Arab and Muslim environment in preparation to eliminating the Islamic and Christian sanctity, demolishing *Al-Aqsa Masjed* and replacing it with the Jewish Temple. Thus, Jerusalem is deemed the springboard that triggers acquisition of complete Palestinian territories and establishing the grand Zionist State extending, according to its plans, from the Euphrates to the Nile. Simultaneously, Jerusalem is part of the Palestinian issue which had been on the mind of the international community since almost a century.

We believe that it is useful to say that covering full aspects of this topic by research and studies in this crucial conference gives important indicators that might help Arab, Islamic States as well as the part of the international community which supports right, just and seeks to establish peace in the world, in finding resolutions which would restore the right. Therefore, I would like, very humbly, to applaud and commend the efforts of the League of Arab States and Qatar for holding this important conference, hoping that it would serve as catalyst in saving the Holy City of Jerusalem with Allah's Will.

Historical review of Jerusalem City: complete isolation from its Arab and Muslim Jerusalem, *Al Qods*, no doubt, enjoys an extreme significance to the Muslim world that every Muslim holds it dear. Jerusalem stands as the first of the two *Qiblah* (direction to which Muslims should face when performing prayer) and the third sacred city after *Macca Al Mokarrama* (honored) and *Madina Monwarah* (illuminated). In addition, it hosts a number of significant religious sites such as *Al-Aqsa Masjed*, Church of the Resurrection and Wailing Wall.

According to historical sources, Jerusalem City had been built by the Canaanite in the 18th century B.C. In this regard, people who were called Palestinians came from the islands of Aegean Sea in 1300 B.C and settled south of Al Sham country which consequently became Palestine, attributed to them, instead of Canaan Land. Several nations and states successively ruled this city since its establishment. In the 10th century B.C. Jews occupied the city, destructed by the Babylonians in 587 B.C who expelled the Jews. Later on, several nations including Persians, Greeks and Romans invaded the city,

Jerusalem is a city of peace and justice. It is a city of tolerance and understanding. It is a city of freedom and democracy. It is a city of hope and optimism. It is a city of love and compassion. It is a city of faith and belief. It is a city of justice and equity. It is a city of peace and harmony. It is a city of unity and solidarity. It is a city of progress and development. It is a city of innovation and creativity. It is a city of knowledge and wisdom. It is a city of culture and art. It is a city of science and technology. It is a city of industry and commerce. It is a city of industry and commerce. It is a city of industry and commerce.

in 632 G. Arab Muslims opened Jerusalem and Palestine turning Palestine as part of the Arab Muslim world. They continued ruling until 1517 when it had been incorporated under the Ottoman rule. During the Ottoman era, Jerusalem occupied a special position whereby it had been granted self ruling for a long period, yet, still connected to Astanah (AKA Constantinople). In this sense, Muslims had ruled this holy city around twelve centuries, in other words, as of 632 until the termination of the Ottoman rule by the end of World War I. However, we should deduct the period when the Crusaders controlled Jerusalem and this phase came to an end at the hand of the Muslim leader Salahudeen Al Ayoubi¹.

History records that the Jewish Zionist Movement, as of 1897, systematically attempted contacting the Ottoman Sultan Abdul Hamid II in order to persuade him for opening the door to Jewish immigration to Palestine and permitting them to establish residence settlements. Nevertheless, the Sultan rejected all forms of proposals submitted to him on grounds that Palestine is an Islamic land, towards which, he can not fall short in his responsibility no matter how high the price is². In response, in 1908³ a conspiracy had

¹ Professor Mohammad Said Kettanah, Ph.D, Turks and Arabs, a brief study on the history on Turkish-Arabs relations starting from the ancient eras till end of the twentieth century, Ankara, 2001, P.300.

² Sultan Abdul Hamid refused the attempts of Herzl and all other Jewish politicians aiming at granting the Jews a national homeland in Palestine. In this context, he replied to the mediators sent by Herzl saying: "I am unable to give up one inch of the land, which I do not own, but rather it is my people's property. Jews may keep their millions. In the case of tearing my Empire apart, they might at that time take over Palestine for free", refer to: Rafiq Shaker Al Netcha, Sultan Abdul Hamid II and Palestine-The Sultan Who Lost His Throne for the Sake of Palestine" Riyadh-1985, P.177 and refer to Hassan Sabry Al Kholy Ph.D, Colony and Zionism Policy towards Palestine in the First Half of the Twentieth Century, Cairo, 1973, P. 101

³ Sultan Abdul Hamid explained the reason of overthrowing him in a letter to his mentor Sheikh Mahmoud Abi Ashamat. Said Al Afghanny published this letter in the Kuwaiti magazine Al A'raby published in December 1972. Mr. Rafiq Al Netcha re published its meaning in his book Sultan Abdul Hamid II and Palestine, and Mowafaq Beni Al Morja, Ph.D in his book The Revival of Ill Man, the researcher Mohammad A'li Shaheen in his book, Issues of the Twentieth Century, and we copy it from the archived Al A'rabi Volumes from the reference library of Grand Amman Secretariat, it briefly contained: (I hereby submit my petition to Sheikh of the *A'lyah Shadhleya Tareeqa* (Sufi school) Sheikh Mahmoud Efendi Abi Ashamaat:

Dear sir, after this introduction, I would like to present you, you and similar people who are prudent and of sound thinking, the following crucial matter for a complete honest historical recording. I did not give up the Islamic *Khilafat* for any reason except due to the harassment and threats against me from the heads of the Committee of Union and Progress known as (Young Turks). As such, I was compelled and forced to step down from *Khilafat*. Those Unionists persisted for me to ratify the constitution of a national homeland for the Jews in the holy land of Palestine. Although they had persisted, I did not accept this mandate definitely. Finally, they promised offering 150 one hundred and fifty million gold English Lirah. Again I refused this mandate definitely. I gave them this definitive response saying: "If you pay me gold equal to the volume of the globe-in addition to 150 one hundred and fifty million gold English Lirah, I shall definitely never accept your mandate. I served the Muslim Mohammady faith for over thirty years, and I did not black mark the pages of my predecessors Muslims of Ottoman Sultans and Khalifats. Therefore, I shall also not accept your mandate in a definitive manner". In response to my definite response, they agreed on overthrowing me. They notified me that they shall exile me to "Salonica" and I had accepted this last mandate. I praised Allah and still praising Allah that I did not accept contaminating the Ottoman State and Islamic world with this eternal shame resulting from their mandate of constituting a Jewish State in the scared territories of Palestine.

been plotted to overthrow Sultan Abdul Hamid leading to escalating development which ended to the usurpation of Palestine and establishing the Jewish State therein.

Jerusalem, in particular, remained opened to everyone throughout its different historical phases because of its special religious nature. Places of worship and religious sanctities remained also opened to followers of the three monotheistic religions. To this effect, several international treaties documented this situation including the 1856 Paris Treaty, and 1878 Berlin Treaty concluded between the Ottoman Empire and European States. Those two treaties underscored the content of the Ottoman Decree issued in 1852 stipulating "to respect each religious sect in regard to overseeing its places of worship in Jerusalem"⁴.

After the victory of the Allied in World War I, Jerusalem had been subjected to the 1922-1948 British Mandate. This is the year that marked the Zionist Jews declaring the establishment of a state in the territories of Arab Muslim Palestine. At that time, Britain had adopted the Zionist Project targeting to abolish the rights of Arab Palestinians to their land and replace them. For this purpose, in November 1917, Britain issued the Balfour Declaration stipulating the establishment for the Jewish people a home in Palestine. It incorporated the Balfour Declaration in the Mandate instrument for Palestine passed by the League of Nations in July 1922. In return, Britain permitted the Jewish immigration to Palestine in 1918-1948 multiplying the number of Jews from 55 thousand in 1918 to 646 thousand in 1948 (an increase from 8% of total population to 31%). Further, it supported land ownership activities increasing the Jewish proprietorship from about half million Donum (2% of the land) to million and 800 thousand Donum (6.7% of Palestinian land). The people of Palestine, in spite of the hardships and sever circumstances, continued steadfastness in their land for thirty years. Therefore, they maintain the majority of population and land retention forming 69% and 93.3% respectively. The Jews, under the British protectorate had been able to build their own economic, political, educational, military and social institutions. In 1948, they had already constructed 292 colonies, constituted military forces comprising Haghana, Arghon and Stern whose number exceeded seventy thousand militants. They prepared to declare their State. This situation sustained until 1948 when the Jewish Zionists declared establishing their state on the Arab Muslim Palestinian territories. The General Assembly of the United Nations, prior to that date and particularly in November, 29th 1947 had decided dividing Palestine into two Arab and Jewish States. It also decided deeming Al Qods an international zone. However, both parties, i.e. the Arab and Israeli rejected the internationalization of Jerusalem. Therefore, the new Jerusalem fell under the Jewish occupation whereas the old part remained under Arab control until June 1967 when it had been captured and occupied by the Jews, raising the Jewish proprietorship from about 6.7% to 31%.

The aforementioned resolution passed by the UN General Assembly dated November 1947 which is the infamous resolution known as "Division of Palestine" served as the legal international umbrella for the future of Palestine after the British Mandate came to an end in March 1948. The division of Palestine comprised three parts: one allocated for the establishment of a Palestinian State; another for the Jewish State and a third was

⁴ Refer to: Hussain Ma'aloum, What Does the International Law State about Jerusalem, An article published in the Qattari Al Watan newspaper on October 30th 2003.

supposedly allocated for establishing a separate entity subjected to a special international system whereby the UN assumes its administration. This assumed entity was constituted according to the resolution from Al Qods with its borders covering Jerusalem Municipality in addition to the adjacent villages⁵. In addition, the situation had been further confirmed by virtue of the UN General Assembly's Resolution 194 dated December 11th, 1948 stating that due to the association of Jerusalem with three global religions, this area should receive special treatment different from that applicable to other parts of Palestine. In addition, it should be placed under the physical UN monitoring. This resolution had been passed with a majority of 25 votes versus 13 in favor of dividing Palestine between the Jews and Arab⁶. In this respect, the Arab's share would be 42.88% of the area of Palestine while the share of the colonizer Jews is 56.47%, and Jerusalem of an area forming 65% shall turn into an international zone. Originally, these percentages had been proposed by the Jewish Agency. The USA strongly pressured some of the small countries, it even paid for their votes, for the success of the draft resolution. Nevertheless, in the beginning of 1948, the USA withdrew its support to the division project shifting towards an inclination to trusteeship for Palestine. France and China adopted the same attitude realizing that implementing the division shall compel the Arab States to declare war on Israeli. Most of the Security Council member states followed suit except for the Soviet Union. Alas, under Zionist lobbying, the USA abandoned its previous position and expressed re supporting the division resolution. At that time, Israel claimed that submitting to the threat of Arabs is undermining to the UN's dignity and veneration which consequently will extend the struggle in Palestine⁷.

The division resolution decided for Jerusalem to fall under the UN collective sovereignty and a Trusteeship Council will be mandated with its administration. It further stipulated that the Security Council would appoint a city ruler whom to be assisted by a legislative council. Jerusalem, according to the resolution, shall be in a permanent neutral status, however, its population will be granted special position. The Trusteeship Council was mandated to set a draft system in preparation to concluding an international agreement thereof. Nevertheless, the UN General Assembly was unable to endorse the draft system due to the objection of Arab States as well as Israel for this internationalization project⁸.

Arab states and Israel objected to the division resolution, thus, only the part related to establishing the Jewish State had been implemented. In this respect, the State consumed a larger space compared to less than 55% area allocated by the resolution. Zionists took over around 77% of the Palestinian territories, and forced the displacement of 800

⁵ The said resolution explained that this area comprises the current Jerusalem Municipality in addition to the adjacent villages and Marakez extending east as far as to Abu Dees, south to Bethlehem, west to A'yn Karem and north Shfa A'mr road. Those areas had been assigned on a map that was included as an annex to the aforementioned division resolution.

⁶ Egypt, Saudi Arabia, Yemen, Syria, Lebanon, Iran, Afghanistan, Pakistan, Iraq, Turkey, India, Greece and Cuba objected to the resolution of division.

⁷ Refer to: A'raf Al A'raf, *The Palestinian Catastrophe (al-Nakba) and Lost Paradise*, published by Dar Al Hady, Volume I, P. 136.

⁸ Refer to: Professor Mufeed Shihab Ph.D, *A Study on International Law and the Issue of Jerusalem*, an article published on the website of: WATA - World Association of Arab Translators & Linguists, October, 27th 2010.

thousand out of 925 thousand Palestinians who are the indigenous population of the area where they created their entity. They also destroyed 478 out of 585 Palestinian villages which existed in the occupied area. West Jerusalem, the larger part of the city, fell under the occupation of the established Jewish State. At the same time, the Palestinian State did not see the light, but the remaining Palestinian territories were distributed between Jordan where the West Bank and East Jerusalem had been annexed, Egypt assuming the administration of Gaza Strip, and Syria assuming the responsibility of Al Hamma region. Under such scheme, sovereignty over Jerusalem was shared between Israel and Jordan. This legal status quo sustained until Israel occupied the complete City of Jerusalem as consequent to the June 5th 1967 aggression. In this respect, we are keen on indicating that the UN approval of Israel's membership was conditioned upon permitting the return of Palestinian refugees to their land. Alas, this condition was never realized raising questions about the validity of Israel's membership in this international organization.

Israeli violations to the sanctity of the holy sites in Jerusalem:

Since the twenties of the 20th century, Jews focused on Al Aqsa Masjed, they emphasized on demanding the western wall "Al Buraq Wall" which is part of Al Aqsa, and an endowed Muslim land according to documentations and certificates. International Investigation Committee recognized this position of the Wall. However, Israeli Authorities continued its anti human rights arbitrary practices in Palestine in general and against the sanctity of the holy sites in Jerusalem in particular. In this context, after the complete occupation of Jerusalem, it launched excavation around the honored courtyard in Jerusalem, usurped and destroyed buildings and institutes targeting to demolish the *Al-Haram al-Sharif* (Noble Sanctuary), Dome of the Rock, and Al Aqsa as well as eliminating all the surrounding Islamic and Christian heritage. They also sought to replace the whole area with a new temple. To this end, Israel continued carrying out the excavations until it reached the fences of the *Al-Haram al-Sharif* from both the southern and western sides. In August 1969, nothing made Israel abstain from setting Al Aqsa on fire, neither peaceful settlement and Oslo agreements were fruitful in suspending aggressions against Al Aqsa. More than 100 aggressions had been recorded during 1993-2005 indicating an increasing vicious campaign against Al-Aqsa. In 1996, the Jewish Authorities opened a tunnel underneath Al-Aqsa triggering rage that swept cities and villages of Palestine for three days.

Will the Israeli occupation of Jerusalem and the annexation decision bear legal consequences

Indeed, military occupation is a temporary status which does not bear any legal consequences, give the occupation authority any rights over the occupied territories or consequences that eliminate the principle right to sovereignty for the occupied regions and people. Rules of international law grants occupation authorities only limited powers enabling the administration of the region or territory in question. In addition, rules of international law stresses the protection of sacred and monumental sites as they are deemed valuable humanitarian and civilization heritage. Many international treaties placed emphasis on this principle including, inter alia, 1907 fourth Hague Convention, and 1949 Geneva Convention, of which, Article 27 stipulates the obligation to respect the

right of people living in occupied regions and their freedom for practicing religious rituals⁹. This means the annulment of any legislative or administrative measures carried out by the occupation authorities in an effort to changing the status quo in this region. Certainly, this applies on the situation of Jerusalem City. International Law expert, Hanna East Ph.D affirms, in this context that East Jerusalem, particularly, is an occupied territory according to the international legal resolutions, primarily, Resolutions 242/1967, 338/1973 and 478/1980. Consequently, all the Israeli measures thereof are null and illegitimate and Israel should withdraw from this part without any restrictions or conditions¹⁰.

Nevertheless, Israel had and still practicing arbitrary measures against the Palestinian people including expulsion, displacement, seizure, murder, demolition of their houses, dredging agriculture land, and establishing settlements and colonies in the surrounding areas. In this context, Israel is striving for the Judaization demonstrated in transforming the physical and demographic landscape of Jerusalem, and forcing the immigration of people. For this purpose, Israel applied inhumane and illegal means.

Alas, Israel did not stop at this point, but it went on to annex East Jerusalem, and declare Jerusalem as its unified eternal capital. The Israeli Knesset passed a legislation on July, 30th 1980 serving as grounds for the annexation. In its first article, it stated that "The complete and unified Jerusalem is Israel's capital". Accordingly, Israel gradually expanded the scope of Jerusalem Municipality in order to be able to terminally annex additional parts of the West Bank and achieve a systematic extended Judaization of Jerusalem. For this purpose, Israel implemented the plan known as Grand Jerusalem encompassing 840 Km² forming 15% of the West Bank's total area. Within the Municipality of East Jerusalem, Zionists constructed a belt comprising 11 Jewish residential neighborhoods surrounding the old city where Al-Aqsa is located. 190 thousand Jews resided in those neighborhoods. Another larger belt had been constructed around Jerusalem combining 17 Jewish colonies aiming to isolate Jerusalem from its Arab and Islamic surrounding. To this effect, Israel had practically confiscated around 85% of East Jerusalem area.

Israel is constantly attempting to persuade the international community that such measures are in agreement with the provisions of International Law. Nevertheless, Israeli relevant efforts geared towards convincing the international community to accept Israeli sovereignty over Jerusalem came to a failure. Most of the states did not recognize such sovereignty despite the long period of time but they rather decided that annexation of Jerusalem by Israel is illegal.

For this measure, Israel failed to identify support from the international community, and the UN denied the recognition of Jerusalem as a capital to Israel. On the contrary, it considers East Jerusalem part and parcel of the Palestinian territories and does not recognize its annexation to the Hebrew State. The Security Council, in response to the Israeli measure, passed in the same year two Resolutions 476 and 478 criticizing Israel for endorsing the aforementioned Law. The resolutions affirmed that this law is in

⁹ For further details, please refer to: Mufeed Shihab, Ibid.

¹⁰ Hanna Eassa, Israeli Measures in Jerusalem are Illegitimate, Al-Qods website, October, 25th 2010

contradiction to the International Law and it may not obstruct the enforcement of 1949 Fourth Geneva Convention on the eastern part of this City. Most of the countries worldwide adopted a similar stance in the sense of not recognizing Jerusalem as the Israeli Capital.

Al-Qods International Forum held in Istanbul, Turkey and hosted more than five thousand figures representing scholars, Muslim and Christian religious clergy, political, thought and cultural leaderships, syndicates, civil society organizations, authors, artists and media professionals. The Forum reiterated that the serious Zionist aggressions against Islamic and Christian sanctities, particularly, Al-Aqsa which is undergoing excavations that risk its existence with the aim of establishing the Jewish temple, are undermining peace and stability in the region and world at large. These assaults further constitute an attack on the historical heritage of the human civilization in addition to a threat to Al-Qods and Palestine. This obliges the nations of the world to take the immediate responsibility of confronting and putting an end to these assaults. The "Istanbul Declaration" issued at the end of the Forum stressed that settlement practices are seeking to wipe out the character of Al-Qods, and encroach upon the national and religious rights of its citizens. This is primarily done through besieging it with settlement blocs in order to displace its people and isolate it from its Palestinian context and these are all rejected and condemned measures¹¹.

The UN position on Al-Qods

In the aforementioned part, we introduced the UN infamous Resolution 181/1947 stipulating to accept the existence of a Zionist entity on the Arab Muslim land of Palestine. The Resolution further divides the territory among the Jews and its legitimate Arab Palestinian owners. Nevertheless, the UN perceived this stance as some type of a resolution to the Arab-Israeli conflict: Whereas, it failed practically in enforcing this resolution in addition to submitting to the Israeli will. As a result to the pressure of the international community-including Arab and Muslim states-the UN General Assembly as well as the Security Council issued a series of resolutions which all boil down in favor of enforcing rulings of the International Law and international legitimacy, particularly, in relation to the situation in Jerusalem and the unveiled Israeli violations therein.

In 1967, the Security Council adopted its Resolution 242¹² stipulating the withdrawal of Israeli forces "from the territories it occupied" during June 1967 War and the need to establish a just and lasting peace in the Middle East. Resolutions 250 and 253 of 1968 succeeded calling all the administrative and legislative measures taken by Israel-including the confiscation of land and properties-seeking to change the legal situation of Jerusalem as null and void. The Security Council passed also Resolution 250 dated April, 27th 1968 warning Israel against holding an Independent Day Parade in Jerusalem,

¹¹ Refer to the "Istanbul Declaration" issued by Al-Qods International Forum held in Istanbul in November 2007, published on the website of "Al-Zaytouna Center for Studies & Consultations in Beirut".

¹² The draft resolution stipulated "withdrawing Israeli forces from the territories which it had occupied, however, the United Kingdom succeeded in changing the text to be "withdrawing Israeli forces from territories it occupied". Thus, the text came in a passive voice in order to avoid identifying certain land rather than generalizing it to cover all the occupied territories.

Resolution 251 dated May, 2nd 1968 which is deeply deploring Israel for holding a military parade in Jerusalem, Resolution 252 of May, 21st 1968 urgently calling upon Israel to rescind all such measures already taken which tend to change the status of Jerusalem. In addition, it also adopted Resolution 267 of July, 3rd 1969, recalling on Israel to rescind measures of changing the status of Jerusalem, Resolution 271 of September 15th 1969 condemning Israel for desecration of ¹³Al-Aqsa and calling upon it to rescind measures seeking to change the status of Jerusalem, Resolution 298 of September, 25th 1971 deploring Israel's failure to respect the previous resolutions concerning measures and actions by Israel to affect the status of Jerusalem, as well as Resolution 465 of March, 1st 1980 calling upon Israel to dismantle the settlements and refrain from planning and constructing settlements in the Arab occupied territories including Jerusalem. Other relevant resolutions included Resolution 476 of June, 30th 1980 declaring all legislative and administrative measures and actions taken by Israel, the occupying Power, which purport to alter the character and status of the Holy City of Jerusalem have no legal validity, Resolution 478 of August, 20th 1981 declaring Israel's 1980 Jerusalem Law a violation of international law, and states that the Council will not recognize this law, and calls on member states to accept the decision of the Council. This resolution also calls upon member states to withdraw their diplomatic missions from the city. In turn, the UN General Assembly passed a set of resolutions in this respect, including, for example:

Resolution 2253 of July, 4th 1967 calling upon Israel to rescind all measures taken to alter the status of the City of Jerusalem and refrain from future similar actions. The Resolution stated:

The General Assembly ...
The General Assembly ...
remain from planning and constructing settlements in the Arab occupied territories.
Deeply concerned at the situation prevailing in Jerusalem as a result of the measures taken by Israel to change the status of the City, Considers that these measures are invalid; Calls upon Israel to rescind all measures already taken and to desist forthwith from taking action which would alter the status of Jerusalem;

The General Assembly adopted this resolution in its public session number 1584 by a vote of 99 in favor, none against, and 20 abstentions.

Resolution 2254 of July, 14th 1967 stating, The General Assembly recalling its resolution 2253 of 4 July 1967, Taking note with the deepest regret and concern of the non-compliance by Israel with resolution 2253 (ES-V),

¹³ Translator's remark states as follows: the resolution 271, a resolution adopted on September 15, 1969, in response to an arson attack on the Al-Aqsa Mosque in Jerusalem by Denis Michael Rohan, the Council grieved at the extensive damage caused by the arson. The Council determined that execrable act only highlighted Israel's need to respect previous UN Resolutions and condemned Israel for failing to do so.

1. *Deplores* the failure of Israel to implement General Assembly resolution 2253 (ES-V);
2. *Reiterates* its call to Israel in that resolution to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem;

The General Assembly adopted this resolution by a majority vote of 100 in favor, none against, and 18 abstentions.

Resolution 2851 of December, 20th 1971 *Strongly calls upon* Israel to rescind forthwith all measures and to desist from all policies and practices such as seeking the annexation or establishing of Israeli settlements of any part of the occupied Arab territories; Resolution 2949 of December, 8th 1972 *Reiterating its grave concern* at the continuation of the Israeli occupation of Arab territories *Calls upon* all States not to recognize any such changes and measures carried out by Israel in the occupied Arab territories and invites them to avoid actions, including actions in the field of aid, that could constitute recognition of that occupation; and Resolution 35/207 of December, 16th 1980 strongly condemns the Israeli aggression on Lebanon and the Palestinian people and reiterates strong rejection to the Israeli decision of annexing Jerusalem.¹⁴

Conclusion:

The international community is quite aware that Israel is a usurper State which expropriated the territories restored to the Palestinians thousand years ago and established a state supported by force and terrorism. This makes it a racist state founded on racial discrimination. Matter of fact, this is even demonstrated in the name taken by the Zionists for their state as much as it is demonstrated by its practices based on racial discrimination between Jews and Arabs or Christians. Such practices are contradictory to rulings of international law, and nation's right to self determination. They are also in conflict with the rulings and principles of the Universal Declaration of Human Rights which do not recognize any discrimination in terms of the right to safe life, employment, residence, maintenance of sanctities and religious faith. The Jewish historian Ilan Pappé in his book "The Ethnic Cleansing of Palestine" admits that Israel, since its inception, is practicing ethnic cleansing against the indigenous Palestinian population. He further affirms that actions of the Zionist movement seeking ethnic cleansing of Palestine had not been triggered due to the Palestinian resistance and rejection of the division resolution, but it is an output of the Zionist thought. Relevant plans had been put in place since the beginning seeking to create an ethnic pure Jewish fortitude¹⁵. Expulsion and replacement of the indigenous population with Jewish settlers is, no doubt, in violation to the provisions of international law as well as Article 49 of 1949 Geneva Convention which prohibits any occupation state from mass or individual displacement of protected persons or exiling them from the occupied territories.

It is proved that Israel is not really wishing to establish peace in the region, neither to reach a permanent resolution for the Palestinian issue. The reason behind this is that

¹⁴ Please refer to the original texts of those resolutions on the website : "Palestine's Legal Portal"

¹⁵ Ilan Pappé, The Ethnic Cleansing of Palestine, First edition, London, 2006.

establishing peace in the Middle East is against the interests and ambitions of Israel. If the Zionist Movement only wished to create an abode for the Jews of the world in order to redeem them from unjust as it claims, it would have accepted the resolution on dividing Palestine. It would have also been satisfied with the area it captured which much exceeds that allocated in the division resolution. In the meantime, the main goal of Israel is to establish the Great State of Israel extending from the Euphrates to the Nile. In addition, endorsing reconciliation and lasting peace and even recognition of Israel by the Arab States are all in contradiction with Israel's expansion ambitions, seeking to devour more and more parts from the Middle East region.

Proceedings and UN and Security Council resolutions all show that the overall international community recognizes that the Palestinian territories are usurped, and recognizes the Palestinian people's right to respected life. This is clearly reflected in the vast majority voting by the UN member states in favor to the Palestinian right in tens of resolutions related to Palestine in general and Jerusalem in particular. Furthermore, the international community, despite the occupation of Jerusalem that lasted over forty years, still does not recognize an Israeli sovereignty over Jerusalem, but it rather deems the Israeli annexation thereof as illegitimate and illegal. If we refer back to history in the beginning of the twentieth century, we will find on which scholars and historians are consensus that regional sovereignty over Jerusalem prior to the enforcement of the Treaty of Lausanne concluded between Turkey and Great Britain had been entrusted to the Ottoman State regardless of the British military occupation of the City. Texts of the Treaty of Lausanne did not contain and interpret the transformation of this sovereignty to the Allied states or even to the League of Nations, of which, Charter Article 22 governed the Palestine Mandate which covered Jerusalem. If we also refer to Article 5 of the Mandate Resolution, we will see that it stipulates that the mandated state is responsible to ensure not surrendering any Palestinian territories-including Jerusalem-in any manner or fashion or placing it under the control of any foreign country¹⁶.

Nevertheless, the international community coupled with states supportive of the Palestinian right stood helpless in this regard for many reasons. The resolutions passed by the UN General Assembly are not binding even in the context of the UN charters per se. In other words, resolutions passed by the General Assembly do not involve a forceful element, thus, it constitutes nothing but merely hopes, recommendations, or expressing the viewpoint of the international community. In the overall, Israel does neither recognize nor consider any of the aforementioned principles although being a member state in the UN, as clearly demonstrated in its hypercritical positions towards all the resolutions. As for the Security Council emanating from the General Assembly in accordance with the establishment charter, although it is empowered for making binding resolutions which may be imposed by virtue of setting political boycott against the State in question, economic boycott or blockade or even resort to using military power, however, it is defected by the veto right granted by the establishment document of the UN to the five major states which came out of the World War I victorious. As a result, the "League of Nations" had been replaced by the "United Nations". The five countries, as known to all, are the United States of American, Great Britain, France, former Soviet Union (currently

¹⁶ Please refer, for this point, to Al Hassan Bin Talal book, Al Qods-Legal Study, Amman, Jordan, 1980, PP. 17.

Federal Russia) and China. Therefore, we observe that the draft of any resolution containing a boycott imposition on Israel, or demonstrating an intention to do so, faces severe objection from the majority of veto owner states, and primarily the USA. The latter, by means of using veto, succeeded in aborting an attempt to issue a resolution obliging Israel to implement the international legitimacy resolutions regarding Palestine and Jerusalem, particularly, when Israel assumes a pivotal role, after the 1967 war, in the context of US interests in the Middle East. It also revealed the political dialogues taking place behind the scene seeking to mitigate and dilute the draft resolution of any text aimed at imposing, by force, sanctions against Israel in response to its practices explicitly contradicting the principle of the UN per se. Therefore, we observe that all the Security Council resolutions on Palestine and Jerusalem, in particular, are paradoxical in the sense of recognizing the Israeli violation to the UN clauses on one hand, but missing any decision that obliges Israel to implement the resolution by means of sanctions which the Security Council owns the right to impose on the other hand. For instance, the resolution on dividing Palestine and establishing two Jewish and Arab States and identifying Jerusalem as an international zone, had not even been implemented. The same situation applies on the resolution calling for the withdrawal of Israeli forces from the occupied territories as a result to June 1967 War, for which Israel turned a deaf ear. Tens of other resolutions passed by the Security Council, in this context, met the same fate. Therefore, it could be stated that none of the UN member states had been subject to such huge number of resolutions. Israel, thus, is a flagrant example of violating the UN, Security Council resolutions as well as rules of the international law.

As long as our research is focused on Jerusalem in the international law, and in light that the UN General Assembly and Security Council are tools endorsed by the international law for imposing provisions and principles thereto. We would regretfully say that resolutions of the aforementioned Council fail to incorporate a binding sense to Israel for implementing them under the power of international sanctions. They are limited to "calling" upon Israel to carry out or abstain from a certain measure, express "regret" for measures taken by Israel that are violating to the international law and UN Charter, "demanding" for Israel to take certain action in the subject in question. For instance, the Security Council Resolution considering the administrative and legislative measures taken by Israel seeking to alter Jerusalem legal status as null and void. Or express deep regret for holding a military parade in Jerusalem, or calling upon Israel to rescind actions seeking to alter the status of Jerusalem, demanding to dismantle the settlements, endorsing the annulment of Israeli measures seeking to alter the status of Jerusalem, not recognizing the Israeli main law identifying Jerusalem as the capital of the unified Jewish State, or calling upon States to withdraw their diplomatic missions from Jerusalem. As evident, these are all sound and ambitious resolutions in terms of content, but none had been implemented as they all lack the deterring force in other words "international sanctions" which should be imposed in case of non compliance. The Security Council, certainly, owns the power for passing such resolutions, deriving its right and even duty from the establishment instrument thereto as well as provisions of the international law. The Council practiced its right in imposing various sanctions in Iraq, Libya, or intended to impose on Sudan and Iran. Alas, when it comes to the Palestinian issue and Jerusalem, the said resolutions turn to become merely a way for containing and ending the

devastation of nations, and people and demonstrating the Council as being concerned with establishing right and just in the whole world. All of these points are clear and explicit facts. But right shall not be established by wishful thinking or by saying that this right is truly a right. This is a common sense encompassed even in internal laws of different countries seeking to establish the right, just and protection of citizen's rights. It is insufficient for laws to incorporate provisions describing actions such as murder, stealing, bribery or misusing public money as prohibited and therefore, individuals should abstain from such actions. Nay, laws should also provide for-and they do provide for-provisions imposing punishments on perpetrators of such acts, i.e financial penalties, imprisonments, confiscation of money, or even death penalty. Furthermore, such provisions are insufficient by themselves, as there should be a power represented in courts, police, military army and execution agencies-which assume implementing the deterring punishments in order to establish security and public order, and secure the protection of the rights of citizens and society. We may, therefore, raise a question in this regard, will the nations that are treated unjustly have to wait for the eruption of a 3rd World War-may Allah Forbid-that would change the balance of power in favor of peace and just loving countries and nations? We would answer, certainly not. Thus, Arab and Muslim people and governments, in addition to communities which support the right of the Palestinian people should work together towards creating pressuring force on Israel and its constituencies in order to oblige its compliance to the provisions of the international law. In this context, we will incorporate the Jews who do not recognize the Zionist Movement as part of the communities which reject the existence of a racist and chauvinist state. There is a reasonable Jewish lobby, in Palestine and worldwide, who object to the global Zionist projects and support the right of the Palestinian people. In addition, the policy of saving what could be rescued from the Arab right proved to be "a failure model" with zero achievements in practice especially with the very modest potentials to be saved from Al-Qods¹⁷.

Among the seriously threatening matters for the future of Jerusalem, is Israel's persistence on the Palestinian recognition to Israel as a Jewish State before entering into any dispute settlement. Additionally, the Israeli strategy seeks the eviction of the Arabs of occupied Palestine in 1948 to the West Bank or Jordan, replacing the Arabic names of villages and towns with Hebrew. The said strategy had moved from the preparation to pre implementation phase. Concurrently, Israel stands as an obstacle for establishing a Palestinian State on the territory of Palestine. In this context, it sets conditions for approving, that the infant state would be disarmed with no sovereignty over the land and air. It also requires to continue with Jewish settlement in the occupied areas and for Jerusalem to remain united in the hands of Israel.

Thus, the resolution to the issue of Al-Qods and Palestine, in general, might be lying in the possibility for the international community to dedicate its political will to resolve this matter and identify a just and acceptable settlement based on the Palestinian people's will who actually own the right to this land. Concurrently, the solution should ensure

¹⁷ Please refer to a study by Jihad Abu Taweelah, Ph.D titled as "A Study on the Regional Conflict and Settlement Proposals", Website of: The Islamic Christian Commission on the Support of Jerusalem and Holy Sites, January, 6th 2011.

preservation of the holy sites and maintaining the Palestinian and Islamic right thereof, in addition to ensuring that the Islamic and Arab identity would not be wiped out in the occupied Jerusalem. In fact, it is completely insufficient for the international community to reject the recognition of illegal actions if this rejection is not coupled with taking effective and tangible measures which would compel Israel to abandon its rigid stance and submit to the resolutions of international legitimacy. Concurrently, just settlement of the issue of Palestine serves as ground to solving the Jerusalem problem. Both issues are inter linked. Actually, this is the opinion of many political writers, and researchers since Israel took over complete territory of Jerusalem. Michael Bricher wrote in the Middle East Journal in 1978 saying "All Jerusalem related plans shall remain constant until reaching a settlement between the Arabs and Israel, because the conflict on Jerusalem is closely associated with a comprehensive resolution"¹⁸

Facing Israeli plans in Jerusalem requires from the Palestinians to develop a Palestinian strategy supported by the Arab States and League of Arab States, friendly countries to the Palestinian people seeking to preserve the holy sites and maintain the right of Palestinians who are the original owners to the city. Finally, taking every possible action that would compel Israel to withdraw from Al-Qods. Arab identity would not be wiped out.

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¹⁸ Al Hassan Bin Talal, Ibid.