Countering the Annexation of Jerusalem

By Marya Farah

Israel's continued attempts to forcibly transfer Palestinians from Jerusalem – most flagrantly in Sheikh Jarrah and Silwan today – have not come without warning, nor are they isolated incidents. Israel has been clear in its intent towards the city and has established its proverbial "facts on the ground" premised on the continued dispossession and fragmentation of Palestinians, under the gaze of the United Nations (UN) and the international community at-large without consequence for over seven decades.

As part of this strategy, Israel has driven a narrative on possession and exclusivity, as the "undivided capital," that has obscured the history of Jerusalem, its Palestinian-Arab identity and residents, and the city's legal status. The international community's reaction to Israel's one-sided colonial discourse so far has only served to entrench the fragmentation of the city into east and west, as a posited "shared" capital.

The recent wave of Palestinian protests and acts of solidarity in Jerusalem, throughout Palestine, and globally have, however, not only challenged these prevailing refrains, but also opened the door for deeper conversations on Israel as a settler-colonial state. Edward Said's call for a "well-planned information campaign stating the facts, bringing it to the attention of Jerusalem's enormous worldwide constituency" thus not only resonates but is well overdue.[i]

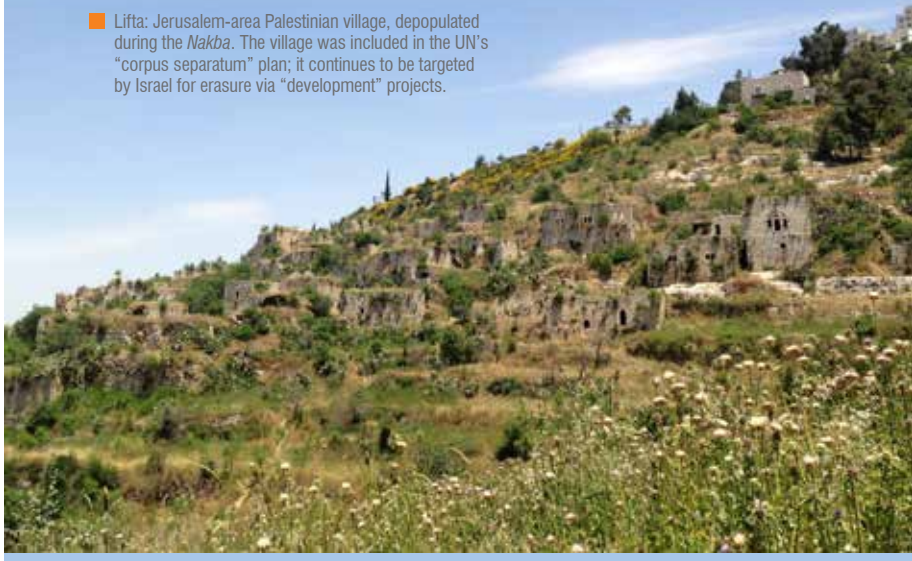
This article considers how Israel's annexation of West Jerusalem and noncompliance with UN resolutions, mirrored in and in regard to East Jerusalem after 1967, have not changed the city's legal status under international law. Despite a clear failure by the international community to take concrete action and protect the rights of Palestinians, it is still widely accepted State practice, and indeed in line with international law, to not recognize Israel as sovereign in Jerusalem. Accordingly, relevant UN resolutions, even with shortcomings in language and lack of implementation, and the broader history of Jerusalem should be a component of advocacy and challenging current Israeli policies in the city.

Leading up to 181

While it is impossible to adequately summarize the events that took place prior to 1947 that deeply impacted and facilitated Israel's colonization of Palestine, two facts can cursorily provide the context in which UN General Assembly (UNGA) Resolution 181 (discussed below) was passed.

First is the impact of the British Mandate's dismissal of the native population in favor of Zionist aspirations, including via the incorporation of principles from the 1917 Balfour Declaration into the Palestine Mandate. Most importantly, this included support for "the establishment in Palestine of a national home for the Jewish people," with Article 6 of the Mandate going on to ensure facilitation of Jewish immigration. As noted in Henry Cattan's *Jerusalem*, this significantly altered the demography of Palestine, where the Jewish population "increased more than tenfold. From 56,000 in 1918 … to 608,230 in 1946."[ii] This translated into an increase in Jerusalem's Jewish population from 33,971 to 99,400 during this period.[iii]

The second is that while the Balfour Declaration and Mandate gave lip service to not prejudicing "the civil and religious rights of existing non-Jewish communities in Palestine," with approximately 94 percent of the population at the time of the declaration being Arab,[iv] actions taken by the British contravened the right of Palestinians to self-determination, and the aim of the Covenant of the League of Nations.[v]



Lifta: Jerusalem-area Palestinian village, depopulated during the *Nakba*. The village was included in the UN's "corpus separatum" plan; it continues to be targeted by Israel for erasure via "development" projects.

Throughout this period, Palestinians expressed their opposition to Zionist immigration, British rule, and the impact of both on their rights and on Palestine more generally.[vi]

UN (in)action

Following British withdrawal, the UN followed a similar path in terms of dismissing the rights, concerns, and legal claims of Palestinians. In its report on November 11, 1947, UN Sub-Committee 2 of the Ad Hoc Committee on the Palestinian Question, noted that certain States raised legal questions, particularly regarding the competency of the UN to recommend solutions "without the consent of the people of Palestine," and called for an advisory opinion from the International Court of Justice.[vii]

Instead, on November 29, 1947, the UNGA passed Resolution 181 which infamously called for the partition of Palestine, and the establishment of Jerusalem as "a corpus separatum under a special international regime…administered by the United Nations."

The proposal was reaffirmed in December 1948 via UNGA Resolution 194 (III), which underscored the "permanent international regime" for the city and called on the Security Council to "ensure the demilitarization of Jerusalem."

Importantly, the *Nakba* began to unfold between the two resolutions. In the western part of Jerusalem and its environs, tens of thousands of Palestinians were driven out of their homes, which, along with their property, were subsequently looted and taken over, including via the Absentee Property Regulations of 1948, and Jews (including immigrants, evacuees, and Israeli officials) were transferred into their homes.[viii] In acknowledging these changes – as had occurred throughout Palestine – Resolution 194 also called for the right of refugees to return to their homes, as well as compensation for lost and damaged property.

While Israel took further actions indicating its intentions towards Jerusalem, including abolishing military rule and instituting civil administration,[ix] as well as convening the Knesset there in February 1949,[x] the UN continued to consider Israel a good-faith actor. In May 1949, the UNGA granted Israel admission to the United Nations. The resolution for admission recalled Resolutions 181 and 194 and their practical implementation, and further noted "declarations and explanations" made by Israel in regard to implementing these resolutions, as well as its acceptance of its obligations under the UN Charter.[xi]

Indeed, in discussing its application during the days leading up to admission to the UN, Israel's representative, Abba Eban, asserted that "no juridical facts" were created by Israel's integration of Jerusalem into the state, but that such steps were taken to "assist Jerusalem and to add economic recovery to the other aspects of its splendid recuperation."[xii] He went on to deny "false and malicious" claims that Israel proclaimed the city as part of the State.

Any remaining pretenses were fully abandoned when on December 5, 1949, Israel's prime minister declared Jerusalem as the capital.[xiii] Days later, the UNGA, via Resolution 303 (IV), restated its plan for the internationalization of Jerusalem, and called on concerned States to

Israel's annexation of the western part of Jerusalem after the *Nakba* has served as a blueprint for its policies towards the eastern part of the city. Population transfer, property appropriation, and physical and legal transformations have been consistently met with international condemnation – from 1948 until today. However, without any substantive measures of accountability, Israel continues to violate international law while imposing its own narrative of Jerusalem.

Musrara: Palestinian neighborhood of Jerusalem, depopulated during the *Nakba*, and renamed by Israel (along with other neighborhoods, streets, etc.) as part of Israel's campaign to erase the Palestinian identity of the city.

Jewish soldiers and civilians looted Arab neighbors' property en masse in 1948.

"approach these matters with good will and be guided by the terms of the present resolution." In response, Israeli Prime Minister Ben-Gurion was obdurate, stating that the resolution was "utterly incapable of implementation."[xiv]

Expanding annexation

With no substantive international action taken in the two decades that followed, Israel pursued a similar path in East Jerusalem and quickly announced the city's "reunification"[xv] following the start of the occupation in 1967. Echoing the aforementioned statements made in 1949 on integrating West Jerusalem to help its "economic recovery," in 1967, Israeli diplomats were urged to discuss actions in the eastern part of the city as one of "municipal fusion" aimed to provide "proper services to residents of Jerusalem and its vicinity."[xvi] As in West Jerusalem, Israel again expanded the municipal boundaries of the city,[xvii] obstructed the right of return of Palestinians who had left during the war (along with instituting other measures to ensure the continued transfer of Palestinians – exemplified today in Sheikh Jarrah and Silwan), and implemented various policies and practices to either appropriate property or limit its use.[xviii]

These and other Israeli measures to annex and unlawfully extend Israel's sovereignty over East Jerusalem – both after 1967 and following Israel's issuance of the 1980 Basic Law, which named "complete and united" Jerusalem as the capital – were again met with Palestinian and international condemnation.[xix] Subsequent UN Security Council resolutions underscored that actions taken to change the status of Jerusalem were invalid, called on Israel to rescind such measures, and recognized Israel's failure to comply with previous resolutions.[xx]

The decades-long pattern of Israel's disregard of international law, alongside these and other condemnations continued, however, as did its impunity. This status quo was only disrupted – for the worse – when the Trump administration recognized Jerusalem as the capital in December 2017. The General Assembly immediately held an emergency session that resulted in the adoption of the resolution "Status of Jerusalem," which again reaffirmed "that any decisions and actions which purport to have altered the character, status or demographic composition of the Holy City of Jerusalem have no legal effect, are null and void and must be rescinded in compliance with relevant resolutions of the Security Council […]."xxi The resolution also echoed previous calls for States to not establish diplomatic missions in the city. Before the General Assembly vote, the Security Council failed to adopt a similar resolution due to a veto by the United States; importantly, all other Security Council members voted in favor.[xxii] Months later, Israel again declared Jerusalem as its capital via the Jewish Nation-State Law.

Moving forward

Prior to its announcement of Jerusalem as its capital, the delegation of Israel submitted a memorandum in November 1949 where it justified its presence and underscored international inaction on the city. It noted in part, "The authority of Israel in Jerusalem has not arisen as an act of rebellion. It has advanced steadily along channels of consent, at no single moment conflicting with any effective authority or competing with any international body able to offer service and protection to Jerusalem."[xxiii]

Since the beginning, Israel has been cognizant of the lack of political will to uphold international law and implement UN resolution after resolution. Even in this vacuum, and the continued entrenchment of annexation, Israel's actions towards the city remain unlawful.

While it may be unrealistic to expect that the UN and member states will soon begin to rectify the 70+ years of impunity, reasserting the aforementioned resolutions and facts of Israeli colonization, including in Jerusalem specifically, remains important. States and the UN should continue to be reminded of their obligations and responsibilities and encouraged to take concrete steps, including by examining "practical ways and means" to ensure Israeli compliance.[xxiv]

As activists and civil society take the lead in changing the discourse on Israel's colonization and apartheid regime, the current moment should be viewed as an opportunity for Palestinian leadership to take a stronger, and expanded, stance towards Jerusalem, i.e., one that encompasses the entire city – east and west – in line with international law, which must be followed by palpable action rather than the usual lip service.

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[i] "Edward Said's Lost Essay on Jerusalem: The Current Status of Jerusalem," Edward Said, *Jerusalem Quarterly* 45, Spring 2011.

[ii] *Jerusalem*, Henry Cattan, St. Martin's Press, New York, 1981, p. 35.

[iii] Id.

[iv] *The Hundred Years War on Palestine*, Rashid Khalidi, Metropolitan Books, 2020, p.24.

[v] For further analysis, see the Al-Haq Briefing Paper, "70 Years On: Palestinians Retain Sovereignty over East and West Jerusalem," October 23, 2018, https://www.alhaq.org/advocacy/6145.html.

[vi] See generally, Chapter 1, Khalidi.

[vii] Ad Hoc Committee on the Palestinian Question, "Report of Sub-Committee 2," November 11, 1947, A/AC.14/32, paras. 37–38, https://unispal.un.org/pdfs/AAC1432.pdf.

[viii] "The Fall of the New City 1947–1950," Nathan Krystall, *Jerusalem 1948*, ed. Salim Tamari, 2002, p.102–111.

[ix] 4 Jerusalem-s Military Government Abolished – Government Proclamation, February 4, 1949, https://mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook1/pages/4%20jerusalem-s%20military%20government%20abolished-%20gover.aspx.

[x] "Dispossession and Restitution," Terry Rempel, *Jerusalem 1948*, ed. Salim Tamari, 2002, p. 210.

[xi] Resolution 273 (III), Admission of Israel to membership in the United Nations, UN General Assembly, May 11, 1949, A/RES/273. un.org/doc/RESOLUTION/GEN/NR0/044/44/IMG/NR004444.pdf?OpenElement.

[xii] 54. Application of Israel for admission to membership in the United Nations (A/818) (continued) Forty-fifth meeting, A/AC.24/SR.45.

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

[xiv] Prime Minister's Statement on December 13, 1949, Knesset, https://www.knesset.gov.il/docs/eng/bengurion-jer.htm#:~:text=On%20December%2013%201949%20Ben,renew%20its%20sessions%20in%20Jerusalem.

[xv] "Statement to the Knesset by Prime Minister Eshkol- June 12, 1967," Israel Ministry of Foreign Affairs, https://mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook1/pages/23%20statement%20to%20the%20knesset%20by%20prime%20minister%20eshk.aspx.

[xvi] "It should be described as an act of Municipal Fusion, rather than annexation," Akevot, https://www.akevot.org.il/en/article/municipal-fusion/#/.

[xvii] Israel first expanded the boundaries of Jerusalem on August 30, 1949. The initial boundaries covered 16.26 km^2, and were extended "westward, incorporating most of the developing Jewish suburbs and many of the depopulated Palestinian villages in the surrounding hills, to a total area of 38 km^2." Jerusalem & Its Changing Boundaries, Passia, January 2018, https://www.fes-palestine.org/fileadmin/user_upload/Publication_1/PASSIA/Bulletin_Jerusalem_Boundaries_English.pdf.

[xviii] See, for example: "The Planning Crisis in East Jerusalem: Understanding the Phenomenon of 'Illegal' Construction," UN OCHA, April 2009, https://www.ochaopt.org/sites/default/files/ocha_opt_planning_crisis_east_jerusalem_april_2009_english.pdf.

[xix] Basic Law: Jerusalem, Capital of Israel, Adalah, https://www.adalah.org/en/law/view/520#:~:text=In%201980%2C%20the%20Knesset%20passed,Jerusalem%20and%20to%20also%20limit.

[xx] See, for example: UN Security Council Resolution 252 (1968) of May 21, 1968; UNSC resolution 267 (1969) of July 3, 1969; UN Security Council resolution 478 (1980) of August 20, 1980.

[xxi] ES-10/19. Status of Jerusalem, Resolution adopted by the General Assembly on December 21, 2017, A/RES/ES-10/19.

[xxii] General Assembly Overwhelmingly Adopts Resolution Asking Nations Not to Locate Diplomatic Missions in Jerusalem, December 21, 2017, https://www.un.org/press/en/2017/ga11995.doc.htm.

[xxiii] Memorandum on the Future of Jerusalem- an Analysis of the Palestinian Conciliation Commissions (Draft Instrument) Submitted to the UN General Assembly by the Delegation of Israel to the UN, November 15, 1949, Para. 24.

[xxiv] UN Security Council Resolution 476 (1980) of June 30, 1980.

Muslim Aukaf building, Mamilla Road. Eric and Edith Matson Photograph Collection; Library of Congress, Prints & Photographs Division, LC-DIG-matpc-02568.