

Fact Sheet: Positions on the Legal Status of Jerusalem

The legal status of Jerusalem is highly disputed between scholars and politicians. There are no legal documents that clearly settle the status of Jerusalem. In Israeli-Palestinian negotiations the discussion about the status of Jerusalem has always been postponed, like i.e. in the Oslo Accords, 1993. Therefore it does not exist any legally binding bilateral or international treaty that would clarify the legal status of Jerusalem.

In 1980 the Knesset declared Jerusalem to be Israel's "eternal and indivisible capital", including the territory of the 1967 occupied East Jerusalem. No other country, however, has recognized Jerusalem as the capital of Israel.

Palestinians, on the other hand, declare East Jerusalem (the territory east of the 1948 armistice line, also known as the green line) as the capital of a future Palestinian State.

Within the International Community it is argued, that the whole city of Jerusalem (East and West) is still under international control according to General Assembly Resolution 181 (1947). This resolution envisaged the separation of the historic Palestine in a Jewish and an Arabic part and saw Jerusalem as a separate entity under international trusteeship.¹ Subsequent UN resolutions, it is argued, refer to resolution 181², bilateral negotiations excluded the topic of Jerusalem. Also, the EU repeatedly declared their adherence to the Corpus Separatum plan.³ According to this point of view, all administrative and legislative action taken by Israel in Jerusalem – East and West, would be invalid.

By following this opinion, the question would remain, if the international status applies to Jerusalem as a whole, or only to those parts, that formed the city of Jerusalem at the time the Partition Plan has been introduced and before Israel annexed large parts of the West Bank in the six-day-war 1967 and included them into the city borders.

Between 1948 and 1967 Jerusalem was separated in two parts: West Jerusalem was under the control of Israel, East Jerusalem was under Jordanian control. In the course of the six-day-war (1967) Israel annexed East Jerusalem as well as another 64 qm2 of the West bank into the city borders.

¹ John Quigley, „The Legal Status of Jerusalem Under International Law“; The Turkish Year Book vol. 24; S.11 – 23.

² z.B. Resolution 252 (1968).

³ http://news.bbc.co.uk/2/hi/middle_east/295001.stm.

Others argue that neither the Arab -, nor the Jewish side has recognized the 1947 partition plan. At the same time, the de facto division of Jerusalem in East and West that was in place between 1948 and 1967 has been accepted by the international community through various referrals in UN resolutions as well as through customary law and state practice.⁴

Both the EU and the UN, even though they still refer to the Corpus Separatum Plan, speak about an Occupied East Jerusalem and envision a two-state-solution with East Jerusalem as the capital of a future Palestinian State and West Jerusalem as the capital of Israel. Since the early 50ies onwards the international community of states therefore accepted the de facto application of Israeli Law in West Jerusalem while the claim to internationalize Jerusalem has not been raised anymore. At the same time merely actions (factual, legal or administrative) that Israel undertakes in East Jerusalem are declared illegal by the United Nations. Both, the Security Council and the General Assembly in recent resolutions when tackling the issue of Jerusalem, referred to violations of Humanitarian Law (especially the Fourth Geneva Convention) in Occupied East Jerusalem, rather than to violations of the internalization of Jerusalem or the partition plan.

Also the International Court of Justice (ICJ) in his advisory opinion on the "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory" included East Jerusalem in its findings and referred to both, the IV Hague Convention (1907) and the Fourth Geneva Convention (1949) which are applicable in occupied territories.⁵

According to the Israeli position, General Assembly Resolution 181 was a nonbinding proposal, which never materialized. Also, so Israel, there has never been any agreement, treaty, or international understanding which applies the 'Corpus Separatum' concept to Jerusalem.⁶ At the same time Israel is not considering East Jerusalem as occupied territory and derives its right regarding the unified Jerusalem from 3000 years of history, as well as from the assumption, Jerusalem had always been without sovereign. This position, however, is not been shared by the International Community.

Summarizing it can be said that the International Community unanimously agrees about the illegality of factual, administrative and legal actions taken by Israel at least in East Jerusalem. Either because they happen on occupied Palestinian territory and violate international

⁴ Raoul Jacobs, „Mandat und Treuhand im Völkerrecht“, Universitätsverlag Göttingen 2004; S. 181 ff.

⁵International Court of Justice „Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory“, Advisory Opinion, 2004.

⁶<http://www.mfa.gov.il/MFA/Foreign%20Relations/Israels%20Foreign%20Relations%20since%201947/1998-1999/151%20Foreign%20Ministry%20statement%20on%20Israel-s%20positio>

humanitarian law, or because they violate the internalization of Jerusalem, declared in resolution 181 and 194 by the UN General Assembly. In the latter case, it has to be differentiated: if resolution 181 is applied to the greater Jerusalem, Israeli actions in both, west and east Jerusalem are illegal as they violate the partition plan. If resolution 181 is applied to the territory of Jerusalem of 1947, actions in this part of the city violate the partition plan, while actions in the 1967 annexed territory stands in violation of humanitarian law, in particular the Fourth Geneva Convention.

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Appendix

Summary of important decisions and resolutions regarding the legal status of Jerusalem

- General Assembly resolution 181 (II) of 29 November 1947 on partition envisaged a demilitarized Jerusalem as a separate entity under the aegis of the United Nations Trusteeship Council, which would draft a statute for Jerusalem and appoint a Governor. This statute would remain in force for 10 years and would then be duly examined by the Trusteeship Council, with citizens' participation through a referendum.
- With the declaration of the establishment of the State of Israel in May 1948 and the subsequent invasion by surrounding Arab states the resolution has never been implemented. The 1949 Armistice Agreement left Israel in control over the western sector of the Jerusalem area, while Jordan was holding the eastern sector, including the walled Old City. Thus, a de facto division of Jerusalem came into existence. The Armistice Agreement, however, was considered internationally as having no legal effect on the continued validity of the provisions of the partition resolution for the internationalization of Jerusalem. (see. John Quigley, "The Legal Status Of Jerusalem Under International Law, The Turkish Yearbook Of International Relations, [VOL. XXIV, 1994] pp 11–25)
- In resolution 194 (III) of 11 December 1948, the General Assembly reaffirmed resolution 181, including the internationalization of Jerusalem and existing rights.
- The Arab states did not accept Resolution 194 and also Israel ignored it and extended its jurisdiction to the western part of Jerusalem, which it had occupied. On 23 January 1950, Israel declared West Jerusalem its capital and established government agencies in the western part of the city. Jordan, on the other hand, controlled the eastern part, including the old city, but Jordanian legislation always indicated that this action did not prejudice the final settlement of the Palestinian issue. The city remained divided until 1967.

- As a result of the six day war in 1967, Israel occupied East Jerusalem and the West Bank. Since then, a number of resolution, both by the Security Council and the General Assembly have been introduced, that declared invalid the measures taken by Israel that change the status of Jerusalem (whole Jerusalem). Explicitly resolution 252 (1968) states “that all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status”. This position has been reaffirmed by the Security Council in various following resolutions.

- In 1980 Israel took steps to make a united Jerusalem its capital. The Security Council therefore adopted resolution 476 (1980) urgently calling on Israel, the occupying Power, to abide by this and previous Security Council resolutions and to desist forthwith from persisting in the policy and measures affecting the character and status of the Holy City of Jerusalem. After Israel’s non-compliance with the resolution, the Council adopted resolution 478 (1980), reiterating its position that all actions altering the status of the city were null and void, and called upon states that had established diplomatic missions in Jerusalem to withdraw them. All states followed this call, including the USA.

The General Assembly also considered Israel’s actions to be a violation of international law that did not affect the continued applicability of the Fourth Geneva Convention. This understanding has been affirmed by the Assembly in December 1980 and in various following resolutions during the 1980s. East Jerusalem has been considered, by both the General Assembly and the Security Council, as part of the occupied Palestinian territory.

- Following the violence that took place in Jerusalem at Haram Al-Sharif, where the Al-Aqsa mosque is situated, the Council adopted resolution 672 on 12 October 1990. After condemning “especially the acts of violence committed by the Israeli security forces resulting in injuries and loss of human life”, the Council called upon Israel “to abide scrupulously by its legal obligations and responsibilities under the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable to all the territories occupied by Israel since 1967”.

- When in May 1999 Israel approved a plan to enlarge the area of the settlement of “Maaleh Adumim”, east of Jerusalem by over 1,300 hectares, The General Assembly,

in a resolution adopted on 9 February 1999, reiterated that all legislative and administrative measures and actions taken by Israel, the occupying power, which had altered or purported to alter the character, legal status and demographic composition of occupied East Jerusalem and the rest of the Occupied Palestinian Territory, were null and void and had no validity whatsoever.