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**THE EVOLUTION OF THE PALESTINE PROBLEM
AND THE STATUS OF JERUSALEM:
FORCE OF LAW OR LAW OF FORCE?**

Summary

- The Jerusalem question cannot be dealt with in isolation from the larger problem of Palestine; it is an integral part of the struggle for independence of the peoples on the territory of the former Ottoman Empire. In view of the imperialist policies pursued upon the end of World War I, the Jerusalem issue is also the legacy of *de facto* colonial rule since the era of the British Mandate.
- It is an often overlooked, but legally important, fact that the Ottoman Empire, in the Treaty of Lausanne (1923), did not renounce its sovereign rights “in favour of the Principal Allied Powers” (as would have been the case under the stillborn Treaty of Sèvres). Consequently, those powers, including Britain, could not claim any right to dispose of former Ottoman territories as part of the exercise of their responsibilities.
- The status of Jerusalem is, first and foremost, an issue of *self-determination* of the Arab people of Palestine. International rights and privileges in regard to the places of worship of the three monotheistic religions (“The Holy City of Jerusalem”) are to be dealt with in the context of Palestinian sovereignty.
- The *status quo* in Jerusalem is the result of a series of injustices and violations of basic norms of international law since the end of Ottoman rule in Palestine.
- However: *ex injuria jus non oritur*; an accumulation of breaches of legal norms, even over an extended period of time, will not, consequently, lead to a situation of legality – as long as those breaches have been identified and rejected as such in a consistent and persistent manner.
- The specific provisions of the British Mandate for Palestine (1923-1948), insofar as they incorporated, as political commitments, the promises of the Balfour Declaration (1917), were technically illegal; they directly violated Article 22 of the Covenant of the League of Nations.
- United Nations General Assembly resolution 181 (II) of 29 November 1947 was *ultra vires* in terms of the UN Charter itself, and it violated the even then generally recognized right of self-determination of peoples.

- The respective provisions for an international status of Jerusalem (as part of the partition plan) were, by implication, also legally invalid.
- The further seizure of the eastern part of Jerusalem in 1967 and its subsequent annexation by Israel in 1980 (“Basic Law: Jerusalem, Capital of Israel”) are null and void since these unilateral measures violate the generally recognized principle of contemporary international law of the “inadmissibility of the acquisition of territory by war” (as affirmed by Security Council resolution 242 [1967]).
- The resolutions adopted by the UN Security Council concerning the occupation of Arab territories and, in particular, the annexation of Jerusalem, are not based on Chapter VII of the UN Charter and, thus, lack any enforcement mechanisms.
- Repeated resolutions of the United Nations General Assembly under the provisions of the so-called “Uniting for Peace” resolution of 1950 have *political* significance (in terms of the mobilization of international public opinion), but no legal effect.
- The recent Israeli legislation (“referendum law” of 22 November 2010), making the restitution of annexed Arab territories (in particular Jerusalem) conditional on a domestic political act (either a referendum or a decision by a two-thirds majority of the Knesset), constitutes an outright violation of international law since it interferes into the sovereign domain of another people or country. Israel possesses no right whatsoever over the annexed territory of Jerusalem; the referendum law is, thus, without object.
- As occupying power, Israel is bound, *inter alia*, by the provisions of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949, but possesses no rights of sovereignty which would entitle it to decide about the future status of occupied territories, including Jerusalem.
- Ever since the time of the British Mandate, the Arab people of Palestine have been prevented from exercising their *inalienable right* to self-determination, one of the fundamental norms of modern international law. Accordingly, under contemporary international law, they have the right to resist foreign occupation and annexation of their land.
- Since 1947, the United Nations Organization has repeatedly and continuously failed to *properly* acknowledge Palestinian rights (beyond the level of mere proclamations) and to exercise its responsibility, affirmed in its own resolutions, for the enforcement of international law in Palestine.

- Because of the non-enforcement of international law in Jerusalem (and Palestine in general), the Palestinian people is entitled to seek the support of concerned regional states (and the international community at large) for the restoration of its legitimate rights.
- The Arab State of Palestine, with Jerusalem as its capital, will be *legitimately* established not by diktat of outside powers (or by fiat of the world organization), but by the free decision of the Palestinian people whose collective will alone is the basis of sovereignty in Palestine – in terms of general international law as well as of the United Nations Charter.
