THE REPUBLIC OF TÜRKİYE
SOCIAL SCIENCES UNIVERSITY OF ANKARA
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THE STATUS OF BAYT AL-MAQDIS IN INTERNATIONAL LAW: A STUDY OF THE SELECTED UN RESOLUTIONS

Master's Thesis

İlayda Helvacı

Master of Arts in Quds Studies
The Department of International Relations

January 2023

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ABSTRACT

The Status Of Bayt Al-Maqdis In International Law: A Study Of The Selected Un Resolutions

This study has dealt with a distinguished territory, Bayt al-Maqdis, a place at the heart of the world, with the intersection of Africa, Asia, and Europe. It is a prophetic geography for Muslims, Christians, and Jews. Given the importance of the geo-strategic position of Bayt al-Maqdis, where it is at the centre of world power politics, there is no doubt that it would hold the key to war and peace today, tomorrow, and always. After 400 hundred years of relatively steady position during the Ottoman era, the Palestinians' tragedy commenced at the hands of colonial powers at the turn of the 20th Century. They had been 'out of place' in their land. The British pledge to turn Palestine into the homeland of the Jews created great tension in the region. Since the British handed over the question of Palestine to the United Nations in 1946, the issue of the status of Bayt al-Maqdis has been a matter of great controversy. From the very beginning, the United Nations General Assembly and Security Council have adopted numerous resolutions to establish the peace and security in the region. In this study, it has been examined the most significant resolutions and documents in a comprehensive way as part of a more legally informed approach in line with historical methodology.

Keywords: International Legal Status of Bayt al-Maqdis, Israel, Palestine, United Nations Resolutions, International Law.

ÖZET

Beytülmakdis'in Uluslararası Hukuk Açısından Statüsü: Seçilmiş Birleşmiş Milletler Kararları Üzerine Bir İnceleme

Bu çalışmada jeopolitik olarak Afrika, Asya ve Avrupa'nın kesiştiği noktada, dünyanın tam kalbinde yer alan son derece seçkin ve özel bir bölge olan Beytülmakdis ele alınmıştır. Müslümanlar, Hıristiyanlar ve Yahudiler için kutsal bir coğrafyadır. Dünya güç siyasetinin merkezinde yer alan Beytülmakdis'in jeo-stratejik konumu dikkate alındığında, savaş ve barışın anahtarını bugün, yarın ve daima elinde tutacağına hiç şüphe yoktur. Osmanlı dönemi boyunca 400 yıllık nispeten istikrarlı bir konum sonrası, Filistinlilerin büyük felaketi 20. yüzyılın başında sömürgeci güçlerin eliyle Siyonist devlet İsrail'in kurulmasıyla başladı. İşgal Filistinlileri kendi topraklarında yersiz yurtsuz bıraktı. İngilizlerin Filistin'i Yahudi yurdu haline getirme vaadi bölgede büyük bir gerilim yarattı. 1946'da Filistin'deki İngiliz manda yönetimi Filistin meselesini Birleşmiş Milletler'e havale etti. Böylece, Beytülmakdis'in statüsü meselesi büyük bir ihtilaf konusu haline geldi. İhtilafın başından itibaren, bölgede barış ve güvenliğin tesisi için Birleşmiş Milletler Genel Kurulu ve Güvenlik Konseyi kararları kabul edildi. İşbu çalışmada, önemli görülen Birleşmiş Milletler kararları ve belgeleri tarihsel bir metadoloji izlenerek hukuki bir yaklaşım çerçevesinde ayrıntılı bir şekilde incelenmiştir.

Anahtar Kelimeler: Beytülmakdis'in Uluslararası Legal Statüsü, Uluslararası Hukuk, Israil, Filistin, Birleşmiş Milletler Kararları.

ABBREVIATIONS

ICJ : International Court of Justice

GMR : Great March of Return

UN : United Nations

UNGA : United Nations General Assembly

UNSC : United Nations Security Council

UNESCO : United Nations Educational, Scientific and Cultural Organisation

OETA-S : Occupied Enemy Territory Administration – South

NGO : Non-Governmental Organisation

HAC : Higher Arab Committee

UNEF : United Nations Emergency Force

WHO : World Health Organisation

UNCCP : United Nations Conciliation Commission for Palestine

PLO : Palestine Liberation Organisation

HAMAS : Harakat al-Muqawama al-Islamiyya

UNLU : The Unified National Leadership of the Uprising

IDF : Israeli Defense Forces

IR : International Relations

PNC : Palestinian National Council

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CHAPTER 1

INTRODUCTION

> "When an apple has ripened and falls, why does it fall? Because of its attraction to the earth, because its stalk withers, because it is dried by the sun, because it grows heavier, because the wind shakes it, or because the boy standing below wants to eat it? Nothing is the cause. All this is only the coincidence of conditions in which all vital organic and elemental events occur. And the botanist who finds that the apple falls because the cellular tissue decays and so forth is equally right with the child who stands under the tree and says the apple fell because he wanted to eat it and prayed for it. Equally right or wrong is he who says that Napoleon went to Moscow because he wanted to, and perished because Alexander desired his destruction… In historic events the so-called great men are labels giving names to events, and like labels they have but the smallest connection with the event itself. Every act of theirs, which appears to them an act of their own will, is in an historical sense involuntary and is related to the whole course of history and predestined from eternity."
>
> (Lev Tolstoy, War and Peace, Vol. II, p.11)

This study took a journey to Bayt al-Maqdis which has been a destination of conquerors, as well as pilgrims throughout history. A. El-Awaisi defined it as "a unique region laden with a rich historical background, religious significances, cultural attachments, competing political and religious claims, international interests and various aspects that affect the rest of the world in historical, contemporary and future contexts" (El-Awaisi, 2018, p. 4). As for the geographical location of Bayt al-Maqdis, it has been defined as "a region that extended to cover much of modern Palestine and parts of Jordan today." (El-Awaisi K., 2007, p. 224). The status of such a special territory has been one of the long lasting conflict among the people living in Bayt al-Maqdis, particularly after the collapse of the Ottoman Empire. The expansion of the European state system and the collapse of the multi ethnic Empire affected the political boundaries of the modern West Asia (Saouli, 2012, p. 29). The neutralisation of the Ottoman Empire with European expansion enabled the emergence of a slew of nation-states in the region following a period of colonial authority (Khoury & Kostiner, 1990, p. 127). That environment was suitable, especially for those who were looking for a 'home' for themselves in Bayt al-Maqdis[1].

World War I was the most important political event that reshaped to the history of the modern West Asia. During the war, Bayt al-Maqdis took place in the secret treaties and the control of it had been promised to one or more allies more than once. As a result of the contacts

[1] In this thesis, the name of the region "Palestine" refers to that of Bayt al-Maqdis (Islamicjerusalem).

of the Zionist movement with Britain and the US, the British foreign secretary, Lord Balfour sent a letter to Lord Rothschild to convey the message that his government met with sympathy the Jewish Zionist aspirations, and would help to establish a homeland for the Jews in Bayt al-Maqdis. By making a promise to the Jews of the same land that had been promised to the Arabs in 1915, Britain was spiking the guns of the West Asia (Oran, 2010, p. 117). The war caused to collapse of the Ottoman Empire. Certain Arabic-speaking areas of the Empire would be administered by one of the Allies, under the supervision of the League of Nations (Malanczuk, 1997, p. 328). Accordingly, mandate for Bayt al-Maqdis was offered to Britain. This led to a serious trouble and conflict because of the incoherent policies of the British Government. The process which had been started by granting of a "home" to the Jews evolved to the idea of establishing a national state for the Jewish people. The policy of promoting Zionist immigration turned to a direct threat to native Palestinians' own existence by violating their national rights.

When the British Government was convinced of the reconciliation the native Palestinians' aspirations for self-determination with the political aims of the Zionists was impossible, the decision to bring the Mandate to an end was taken. Thus, the issue of Bayt al-Maqdis was brought before the UNGA by the United Kingdom immediately after the United Nations came into being. The Zionists, being aware of this "historic chance" claimed "historic rights" on Bayt al-Maqdis by having the wind of the Zionist interpretations of the Balfour Declaration at their back. On the other hand, the Palestinians argued that the purpose of the Mandate System was to bring self-determination and independence to the existing inhabitants of Palestine. A Special Committee on Bayt al-Maqdis was constituted at the first special session of the UNGA in April 1947. The majority of the committee recommended that Palestine needed to be partitioned into an Arab State and a Jewish State, and it would be granted a special status for the city of Jerusalem under the administrative authority of the United Nations (The United Nations, 2008, p. 4-5). This issue had been discussed in a detailed way in Chapter 3.

1.1. Problem Statement

The heart of the matter is the occupation of Palestinian lands by the European immigrant Zionists, who were brought to Palestine as from 1898, but particularly as a result of intense immigration activities with the assistance of the British throughout the Mandate period. Landownership claims of two peoples, Israelis and Palestinians, the legitimacy claims on their rights to the land and disputed boundaries in Palestine prior to 1948 are directly tied to all other unresolved issues in today's conflict which is directly linked to the property claims of

Palestinian refugees, boundary issues, and Israeli settlements (Essaid, 2014, p. 1). In the study, these issues also had been discussed. The problem is that neither Palestinians nor Israelis accept the validity of the current map in Bayt al-Maqdis. Many Israelis believe to be the West Bank and Gaza Strip are theirs as part of the Jewish return to the "Promised Land" (Promised Restitution of Israel) (Essaid, 2014, p. 1). Although Israelis say so, the reality is that the Zionists have come from Europe as immigrants to settle in Bayt al-Maqdis by force, particularly in a systematic and planned way with the help of European colonialists between 1917-1947. Since 1946, when the United Nations took over the question of Palesine from the United Kingdom, particularly, just for the status of the land "Bayt al-Maqdis," the United Nations has passed on numerous United Nations resolutions. Although all United Nations Security Council resolutions are binding, Israel as a Zionist state has refused to implement them up to now and continued to build on its state by ignoring international community, the decisions of United Nations and international law regarding the conflict. In this study, the reasons why Israel has refused to implement these resolutions will be discussed in a detailed way.

1.2. Research Questions

This thesis focused on finding answers to the following questions:

- What are the developmental milestones that pave the way of the formation of the State of Israel in the region during the Mandate Palestine, following the Ottoman rule in the West Asia?
- What is the nature of the conflict in Bayt al-Maqdis?
- What are the arguments of the Israeli and Palestinian sides which stake out claims for the Holy Land Bayt al-Maqdis?
- What is the importance of Bayt al-Maqdis in international politics?
- What is the international legal status of Bayt al-Maqdis?
- What is the normative implications of the selected UN resolutions?
- Why Israel has refused to implement the UN resolutions adopted regarding Bayt al-Maqdis?
- What is the Israeli reaction to the selected UN Resolutions?
- Do the occupation of Palestinian territory by Israel cause to status of Israel as an unlawful state due to its actions contrary to international law?

1.3. Research Aims

The main aim of the thesis is to examine the international legal status of this fragile region Bayt al-Maqdis. For this purpose, the thesis attempts to understand the importance of this holy region, and to reveal the position/status of it in accordance with international law by examining certain UN Resolutions. The thesis also examines the normative implications within the selected UN resolutions regading the subject matter. Another aim is to examine whether the occupation and annexation of Bayt al-Maqdis have changed its legal status.

1.4. The Significance and Purpose Of The Research

Palestinian-Israeli conflict is one of the longest-lasting in the history of armed warfare. This conflict is at the heart of all conflicts in the West Asia. One side argues that as the two social identity groups; Palestinians and Israelis could not come to the common grounds as the conflict turned to a chronic problem enduring for generations. Along with the author agrees on this idea in a sense, the arrival point of the other side with respect to inspire many authors makes more sense: this is a colonial conflict. Jews, when they were a minority group in the first place through systematic and planned immigration policy by taking the support of the Western colonial powers, expelled the indigenous Palestinian people from their own land Bayt al-Maqdis, and over time, they established a regime of occupation in defiance of international law. This thesis focused on the other side of the coin, dealing with a piece of such a complicated and multi-faceted conflict specifically; the status of Bayt al-Maqdis within the framework of certain UN resolutions, including its historical and political background. Moreover, the thesis is significant, because a more legally informed approach prevailed in this study. That is why the most significant resolutions 181, 242... had been examined by hoping that this research would contribute to the current knowledge with a legal point of view to the ongoing conflict.

1.5. Research Scope

This thesis is based on the legal implications of the selected United Nations resolutions, which are seen vital for the relations from each aspect of life in Bayt al-Maqdis. It covers around 94 the United Nations resolutions regarding Bayt al-Maqdis. It also reviews some of the key legal documents, reflecting the political and historical realites and truths of the region from the Balfour Declaration of 1917 to 2023.

1.6. Research Methodology

The existing national and international literature, such as books, articles, publications, documents etc. relating to the topic had been reviewed. The most significant resolutions and documents taken from the UN archives related to the status of Bayt al-Maqdis had been used. Moreover to this, the adoption of a more legally informed approach as part of historical methodology became the main focus of the research in this study. Primary and secondary data analysis had been carried out from the datas related to the topic. Qualitative research strategy was employed. In analyzing the legal status of Bayt al-Maqdis in international law, a number of issues and events related to the topic had been reviewed not only from an international legal framework, but also from the historical and political aspects as well. Finally, the thesis had been concluded following a part of analysis of the Israeli-Palestinian conflict as a single case within the selected resolutions of the United Nations.

Some of the important concepts, such as UN Resolution, Legally Informed Approach, Political Approach and Normative Implications had been discussed to be able to draw a framework for the thesis.

UN Resolution: **"**United Nations resolutions are formal expressions of the opinion or will of United Nations organs" (The United Nations, n.d. December 30, 2022).

"Security Council, General Assembly, Economic and Social Council and Human Rights Council resolutions are issued as individual documents. The resolutions of the principal organs are also issued in annual or sessional compilations. Resolutions of other UN bodies are usually published in the report of the body to its parent organ. Resolutions generally consist of two parts:

- Preamble
    - Presents the background or motive for the resolution.
    - Begin with an italicized verb ending in -ing (e.g. Recalling…).
- Operative part
    - States the opinion of the organ or the action to be taken.
    - Has numbered paragraphs.
    - Operative paragraphs begin with verbs in the present tense (e.g. Decides, Requests …).

In some cases, resolutions may have annexes with additional texts, such as the text of a convention. Resolutions are usually numbered, with the year or session and a number assigned in order of adoption. Resolutions of the principal organs are:

- Compiled at the end of the session or year.
- Published as part of the Official Records of the organ.

Resolutions of subsidiary bodies usually appear in the report of the body to its parent organ" (Research the UN, n.d. December 30, 2022).

Figure 1.1. Key Concepts

Legally Informed Approach vs Political Approach and Normative Implications: As it is known, "Conflict resolution and peacekeeping are political rather than legal exercises" (Scobbie & Hibbin, 2009, p.vii). However, legally informed approach provides our understanding of politics in the light of law. Although from the eyes of the political dynamics of the conflict, legally informed approach was seemed as vain attempts, there are fundamental norms which is very significant to establish fair and just final agreement to the problem in question. In this way, one can acquire normative implications to pave the way for bonitarian peace. In the context of the Israeli-Palestinian conflict, Aral states that "there are two concepts which are the keys to the solution: "decolonisation" and "liberation" (Aral, 2018, p. 61). Zionist Israelis who put themselves "a sort of privileged status as a victim of the Nazi Holocaust" act

with the same Nazi-esque mentalité towards Palestinians by exercising similar holo-caustic crimes and discrimination today. The author hopes that the wrong policies of the Zionist State in the Occupied Palestinian Land will be mentioned thanks to the new scholarship in Israel. Otherwise, the victimized Palestinians who are exposed to systematic violence, humiliation, and unfairness act for revanche that will end with sooner or later rekindles the conflict (Scobbie & Hibbin, 2009, p. vii).

1.7. Structure of The Thesis

In this study, the international legal status of Bayt al-Maqdis had been examined within the scope of the selected United Nations resolutions in a comprehensive way. In accordance with this aim, first of all, after a brief introduction, theoretical background had been built up. Following it, the historical background of Bayt al-Maqdis from 1917 until today had been discussed to understand the importance of the region, and then, the international legal status of this holy land was revealed to grasp the position of Bayt al-Maqdis in accordance with international law and under the UN Resolutions. Additionally, the normative implications of the selected UN resolutions and as an occupying state, Israel's reactions to these resolutions was revealed and discussed to examine whether the occupation and annexation of Bayt al-Maqdis have changed the legal status of Bayt al-Maqdis. Eventually, along with some concluding remarks, the study came to an end.

1.8. Literature Review

Three articles, one book and one book chapter had been reviewed.

The Status of Jerusalem, Henry Cattan, 1981, Journal of Palestine Studies.

Henry Cattan is a jurist and author of several books on the Palestine question, including Palestine, the Arabs and Israel; Palestine and International Law, and The Question of Jerusalem.

In the article, first of all historical outline of Quds/Jerusalem has been briefly mentioned. Then, to examine the legal status of Jerusalem under international law and under UN Resolutions, three facts which are the right of sovereignty of the people of Palestine over Jerusalem; the internationalization of Jerusalem by the General Assembly of the UN in 1947, and the occupation and annexation of the city since 1948 have been explained in a very comprehensive way. He adopts a historical methodology. The adoption of a more legally informed approach is the main focus of his article. Cattan's main points dealt with in his article

are legal status of Jerusalem under international law and under UN resolutions, the right of sovereignty of the people of Palestine, that is sovereignty over Jerusalem as an integral part of Palestine, the effect of resolution 181, the illegality of Israel's presence and actions in Quds/Jerusalem and Israel's violation of the legal status of it as an occupying power and the pretexts of Israel asserting a historic and biblical right.

Cattan's main argument is that Israel has at all times been a military occupier, it has acted in Quds/Jerusalem as if it was a sovereign power. It has annexed both the modern section and the Old City, transformed its demography, physical features and historical character and taken several other measures in violation of the city's legal status, of international law and UN resolutions. According to Cattan, the essence of the problem is that the Palestinians as legitimate owners of Palestine had been prevented from exercising their sovereignty, which they have at all times possessed. By the UN resolution 181 of November 29, 1947, the General Assembly recommended that the city of Quds/Jerusalem be established as a *corpus seperatum* under a special international regime and administered by the Trusteeship Council on behalf of the UN. Thus, in accordance with the UN Resolution 181 as well as the others which have adopted the internationalization of Jerusalem, the status of it is that of a city which possesses a special international regime.

In the light of international law, the status of Quds/Jerusalem is that of a city which is illegally occupied by Israel in violation of the inalienable right of sovereignty of the people of Palestine. Cattan also points out that the sovereignty of a state may coexist with the internationalization of a city or territory. Thus, there is no inconsistency in having recourse to both international law and UN resolutions in this matter. After this consideration, one may argue that Cattan tends to accept that Bayt al-Maqdis under the sovereignty of Palestinians can be maintained in line with its legal status as *corpus seperatum.*

This article was chosen thanks to the well-written and directly related to my research, but it must be said that this article does not cover the events after 1980.

The Legal Status of Jerusalem Under International Law, John Quigley, 1994, The Turkish Yearbook.

"Before joining the Ohio State faculty in 1969, Professor Quigley was a research scholar at Moscow State University, and a research associate in comparative law at Harward Law School. Professor Quigley teaches International Law and Comparative Law. Professor Quigley is active in international human rights works" (Moritzlaw, n.d. January 7, 2022). His books and

articles focused on human rights, the United Nations, war and peace, east European law, African law, and the Arab-Israeli conflict. “In 1995, he was recipient of The Ohio State University Distinguished Scholar Award. He formerly held the title of President’s Club Professor of Law” (Moritzlaw, n.d. January 7, 2022).

The article discusses the legal status of Quds/Jerusalem under international law. In a brief introduction part, the author argues that based on the 1993 agreement, Israel’s illegal constructions in East Jerusalem violating international law creates a series of *faits accomplis* to color 1996 negotiations regarding the permanent status of Quds/Jerusalem which was postponed in the 1993 agreements. The author assessed that the illegal construction activity of Israel was against the background of the overall legal situation of Quds/Jerusalem. The aim of the article is to determine where sovereignty over Quds/Jerusalem properly resides. To this end, the author examines the territorial rights of the Palestinians over Quds/Jerusalem, and the rights alleged by Israel. The article covers four titles, which are Israel’s acquisition of West Jerusalem, Israel’s acquisition of East Jerusalem, sovereignty in Jerusalem, and transitional arrangements. The historical methodology with a legalistic point of view has been used in the article.

The main argument of the author is that Palestine belongs to its inhabitants, on the basis of their long-time occupation because occupation is a key factor in any claim to territory, that it is exactly what Israel wants to do. According to the author, from the standpoint of territorial right, Palestine has a valid claim to Quds/Jerusalem. Accordingly, in the negotiations on Quds/Jerusalem as part of different solutions either the internationalization of the city as a *corpus seperatum* under international control, or the city controlled jointly by Israel and Palestine, Palestine’s valid claim on East Jerusalem means no territorial settlement can be imposed against the will of Palestine. The author clearly expresses his thought on the formula for joint control between Israel and Palestine over Quds/Jerusalem as a result at variance with the legal rights of the parties, in particular giving Israel a position of strenght which has no legal right in the governance of East Jerusalem. According to Quigley, if Jerusalem’s status was left in suspense, this means Palestinian Arab’s sovereignty right still remains, but in this circumstance, under Article 73 of the United Nations Charter, this territory must be regarded as one of the non-self-governing territories, because a party, namely Israel other than the legitimate sovereign, that is, exercised control of this territory, Palestine. Quigley also argues that on the basis of the Geneva Civilians Convention, the international community have a collective responsibility to stop Israel’s ongoing illegal actions in East Jerusalem.

What it is understood from the article is that the territorial rights which have already existed in the hands of the Palestinians can be under threat on the table due to the considerable pressures on the authorities of the state of Palestine to cede rights that they hold. Thus, the problem is that whether a would-be political leader from the Palestinian side having asymmetrical power relationships with the other one can uphold the rights of their publics without an effective internal and external support if the resolution of the conflict and peacemaking are regarded political rather than legal practices.

The Status of Jerusalem, March 1999,

https://www.gov.il/en/Departments/General/the-status-of-jerusalem

This article was released by Israel Ministry of Foreign Affairs in 14 March 1999 regarding the status of Quds/Jerusalem. It is important to understand the standpoint of the state of Israel. The article, having a historical methodology covers the Jewish claims to Quds/Jerusalem under various titles. Some of which are historical, political, cultural, and religious based. It claims that all Jewish regards Quds/Jerusalem as their united, unique capital, but not the basis of a '*Corpus Separatum*' status. The article also mentions Quds/Jerusalem's Arabs and the Israel-Palestinian negotiations. The motto of 'Culturally Diverse-Politically United' is the Israeli consensus on Quds/Jerusalem. Starting with the importance of Quds/Jerusalem in Jewish culture, history and religion, the article claims that "since the city was reunified under Israeli sovereignty in 1967, the state of Israel restored and rebuilt Christian, Muslim, and Jewish holy places" (Gov.il, 1999). It claims that at no other time in history worshippers of all faiths enjoyed such a degree of religious freedom. Historically, it explains that "Jerusalem has been at the center of Jewish consciousness for over three thousand years" (Gov.il, 1999). Jerusalem's religious importance is revealed as they turned to Zion three times a day. It claims that Jewish independence in the land which ended in 70 CE, and then was renewed in 1948, signified the longest of period of sovereignty over Jerusalem by any nation (Gov.il, 1999). It also claims that throughout the history of Jerusalem, "Jews were persecuted, massacred and subject to exile" (Gov.il, 1999).

The main argument of the article is that "the status of Jerusalem is unique, and politically and spiritually was, is and always will be the capital of the Jewish people," undivided under Israeli sovereignty (Gov.il, 1999). The article emphasizes that Israel's eternal capital is Jerusalem as one indivisible city since 1967. Then, it gave some details on the war of 1948 and 1967. Accordingly, it claims that Jerusalem became a divided city because of the Arabs' aggression starting from 1948 until 1967. It also emphasizes that throughout history, only the

Jewish people had made Jerusalem a capital city. It means that only the Jewish gave importance to the city. When it comes to the '*Corpus Separatum*,' status, it claims that this concept, which was originated in a proposal in the UN General Assembly Resolution 181 of November 1947 became invalid when the Arab states rejected the UN Resolution 181, by adding to this claim the resolution's non-binding characteristic.

These all claims asserted by Israel is to legitimate Jerusalem-related issues to be addressed permanent status peace negotiations, saying that according to the Israel-Palestinian Declaration of Principles of 1993, "political institutions of the Palestinian self-governing authority are not to operate in the city" (Gov.il, 1999). The problem of this article, most of the claims are baseless, and not historically proven. The aim is to give the city a Jewish character, and to convince Israel's illegal policies to have an exclusive control over the city asserting these rootless historical, political, and religious claims regarding Bayt al-Maqdis.

The Israeli-Palestine Conflict In International Law: Territorial Issues, Iain Scobbie with Sarah Hibbin, and an Introduction by Henry Siegman, 2009, School of Oriental and African Studies, University of London.

"Iain Scobbie is the Sir Joseph Hotung Research Professor in Law, Human Rights, and Peace Building in the Near East at the School of Oriental and African Studies, University of London. Professor Scobbie studied at the Universities of Edinburgh and Cambridge, and at the Australian National University" (Scobbie & Hibbin, 2009, p. 116). "His doctoral dissertation examined legal reasoning, and the judicial function in the International Court. Professor Scobbie maintains a special interest in international humanitarian law; international adjudication. He is on the International Advisory Council of Diakonia's International Humanitarian Law Programme, which is based in Quds/Jerusalem. He is also a member of the Scientific Advisory Board of the European Journal of International Law, and an editor of the EJIL: Talk! blog" (SOAS, 2022a). When it comes to the other author of the book, Sarah Hibbin, she received a MA degree in International and comparative Legal Studies from SOAS, University of London in 2004. Her research has focused on legal problems encountered by prolonged military occupations and their termination" (Scobbie & Hibbin, 2009, p. 116). Her research interests focused on public international law, human rights, international humanitarian law (SOAS, 2022b).

The main contents of this book are delineation of the area in issue, the inter-temporal rule and self-determination, core content of self determination, the role of the United Nations in relation to the Mandate for Palestine, United Nations partition plan for Palestine, normative

implications of General Assembly Resolution 181, the 1949 Armistice agreements, consequences of the Six-Day War, prohibition of the acquisition of territory through the use of force, acquisition of territory and self-defense, "disputed territories" and the "missing reversioner," Israeli settlements in occupied Palestinian territory, the future of the territory. In the book, "legalistic," namely a more legally informed approach has been used within a political context because conflict resolution and peacemaking are political rather than legal practices. This book addresses the question of what territory a future State of Palestine may put in a claim under contemporary international law. It also mentions the question of what is the legal basis for, and integrity of, Israel's territorial claims. Moreover, the question of whether Israel could lawfully maintain the occupied territories under its control if the Middle East Peace Process failed is searched for an answer.

The book argues that in the context of the Israeli-Palestine conflict, the most fundemental norms, known as "peremptory norms," reflecting fairness and justice must be taken into account by would-be peacemakers. There are two such peremptory norms, which are the democratic principle of the right to self-determination by a majority of the population in previously mandated territories, and the prohibition against the acquisition of territory by war, which applies to aggressors and victims alike. These two norms is indispensable the resolution of the conflict, and cannot be ignored by would be peacemakers. The aim of the book is to contribute to that outcome, which will lead to the end of the conflict and result in two states living alongside each other in peace and security. The book mentions that in 1988 and in 1993 Oslo Accords, the PLO formally recognised Israel within its enlarged borders, which was acquired during the 1948 War, namely beyond the borders of the Partition Plan of 1947. However, according to the book, the UN Partition Plan recognized that 43 per cent of Mandate Palestine can be claimed by the Arab population as its legitimate right, and this should bring into question of Israel's claim to the additional territory it acquired during the 1948 War. In the aftermath of the 1967 war, Israel left little territory to the Palestinians. What the Palestinians asked is that Israel return Palestinian territory on which Israel illegally established settlements in violation of treaty obligations and international law, that has been verified by the International Court of Justice (ICJ) in its 2004 ruling, legal consequences of the construction of a wall in the occupied Palestinian territory as its advisory opinion. This book advocates that Israel's opposition to this ruling, and arguments related to its "non-binding" character is a misrepresentation, and such rulings called as advisory opinions are authoritative statements of the law and not "one opinion among many". The 2004 ICJ decision upholds the right of the Palestinians to self-determination

in the West Bank and Gaza within the pre-1967 borders and the inadmissibility of the acquisition of territory by war. The book also states that the UN and individual states must do whatever they can do to secure and implement the peremptory norms aforementioned before, such as the right of self-determination and the impermissibility of acquiring territory by war. This is accepted in the UN General Assembly Resolution 2625. Thus, Israel's claim that if no peace agreement is reached with the Palestinians, which means Israel's indefinite occupation of Palestinian lands and people is not correct. The problem is Israel's avoidance from peace talks in order to preserve the *status quo*. The solution to this problem brought by the book is that if the Israel-Palestine conflict is not resolved within a timeframe to be set by the Security Council, the Security Council is obliged to invoke 1967 and 1973 resolutions. The Security Council have to arrange for an international force to take control of the occupied territories to establish the rule of law.

The gap of the book is that this conflict will continue to be intractable as long as the decision-making procedure in the UNSC is not altered.

From the book, The Question of Palestine and the United Nations, 2008, The United Nations, **Chapter 12: The Status of Jerusalem (Al Quds in Arabic).**

This chapter is on the status of Jerusalem. It adopts historical methodology within a legal approach.

In the introduction part, the text mentions that General Assembly resolution 181 (II) of 29 November 1947 on partition prescribes a demilitarized Jerusalem as a seperate entity under the UN Trusteeship Council (The United Nations, 2008, p. 111). This Council would draft a statute for Quds/Jerusalem and appoint a governor. Then, a legislative would be elected. It states that after this statute would remain in force for 10 years, first examined by the Trusteeship Council, then would be hold a referandum. It reveals that ensuing hostilities prevented implementation of this resolution, and the city was *de facto* divided by Israel and Jordan. It also referred the resolution 194 (III), which reaffirmed the principle of internationalization and existing rights, and says that Arab states refused, and Israel ignored it. In 1950, Israel declared Jerusalem its capital, while Jordon hold control of the Old City, mentioning that this action would not affect the final settlement of the Palestinian issue, namely Jordan says this was not an occupation. The aim of the text is to reveal the UN's concern to the developments from the side of Israel and let the international community know regarding the attempts taken by the UN with numerous resolutions condemning occupying power, Israel.

The main argument is that Israel is an occupying power and its actions are illegal, null and void. The text has two part; Israel's occupation of East Jerusalem in 1967, and new settlements in East Jerusalem, in 1999. In the first part, it states what happened after the war of June 1967 mentioning that Israel occupied East Jerusalem and the West Bank. It also explains a number of demographic and physical changes made by Israel since then. From the perspective of the UN, all measures taken by Israel to change the status of Jerusalem is invalid, and this was declared in several resolutions. It also argues that during the 1980's the Jerusalem issue had been dealt by UN resolutions in the wider context of the admissibility of the acquisition of territory by force and the applicability of the Fourth Geneva Convention to the Palestinian territory occupied by Israel since 1967. The resolutions (both the General Assembly and the Security Council) which was adopted during the 1980's considered East Quds/Jerusalem as part of the occupied Palestinian territory (The United Nations, 2008, p. 113). As for the second part of the text, it explains the plan of the Israeli Government to enlarge the area of the settlement of "Maaleh Adumim," east of Jerusalem. Accordingly, "General Assembly in a resolution adopted on 9 February 1999 reiterated that all legislative and administrative measures and actions taken by Israel, 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" (The United Nations, 2008, p. 108). In another resolution adopted on 1 December 2000, the Assembly stated full support to the peace process which would lead to the establishment of a comprehensive, just and lasting peace in West Asia (The United Nations, 2008, p. 36).

CHAPTER 2

THEORETICAL BACKGROUND

2.1. The Problem of Defining International Law

The idea of law has always been significant in the long march of mankind from the cave to the computer (Shaw, 2008, p. 1). As C. Jung said, 'The anima and life are meaningless in so far as they offer no interpretation. Yet they have a nature that can be interpreted for in all chaos there is a cosmos, in all disorder a secret order…'(Jung, 1968). Thus, order is inevitable and indispensable in every society that creates for itself a framework of principles within which to develop, whether it be large or small, strong or weak (Shaw, 2008, p. 1). Law is not just permissive, as it is seen in creation of contracts, but also coercive in the meaning of punishing those who infringe its regulations and rules (Shaw, 2008, p. 1). What is right, what is wrong, permissible or forbidden acts have all been explained elaborately within the conscious of the community (Shaw, 2008, p. 1). People do not realise the value of what they have, and they take them for granted. However, our daily life is full of rules and regulations that facilitate things we do not see the backstage. For instance, while buying a product from abroad, getting on an airplane abroad, sending a postcard or letter abroad or even watching a foreign television channel, we need to rules that make it possible doing so (Klabbers, 2013, p. 3). Thus, from a wide perspective, as well as the matters related to war and peace, genocide or human rights, international law embraces a broader network of rules; such as trade, protection of environment, shipping, protection of refugees (Klabbers, 2013, p. 3). In this sense, law acts as a binding cement to build a strong community based on recognised values and standards, reflecting a society's cultural traditions and conditions. Each community flourishes like a green bay tree via specific set of values – social, economic and political – and this environment within which it operates paves the way for a legal framework which orders life. In a similar way, international law is a top fruit of the tree in this environment.

International law, as we know it today, commenced with the Dutch jurist and diplomat, Grotius (Hugo de Groot) and flourished in Europe in the period after the Peace of Westphalia (1648), which concluded the Thirty Years War. (Shaw, 2008, p. 43). Western culture and political organisation underlied international law (or older terminology, 'the law of nations') firmly. In this commonly accepted point of view, the notions of sovereignty and nation-state required an acceptable method to conduct inter-state relations in line with commonly accepted

standards of behaviour, and international law filled the gap (Shaw, 2008, pp. 13–14). As it is well known by British or British-inspired writers for whom international society is the major aim of analysis that international law is the law of international society, formed by sovereign states. The concept of international society (a society of states) brings into existence 'when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions' (Bull, 2012, p. 13). However, here, the main problem is that the international society in question be handled under which level of units. In other words, does the concept of international society refers to an upper society formed by societies organized as a state and having a high level of social solidarity, or can be seen as all humanity beyond boundaries of states and political organizations? Or, what about the rules of international organizations, which are significant for international society increasingly? (Pazarcı, 2004, p. 1).

The questions above can be answered from different windows on the world, namely the point of view from which international law was seen, such as positivist, naturalist, feminist, sociological, or ethical (Kaczorowska, 2010, p. 2). Thus, it is commonly accepted that definitions of international law are various as the content of them is based on the time and context in which they were originated (Kaczorowska, 2010, p. 2). From traditional perspective relying on the idea that international society consists of states, international law is the law that regulates relations between states. (Pazarcı, 2004, p. 1). As L. Oppenheim's description, "Law of nations or international law (Droit des gens, Völkerrecht) is the name for the body of customary and conventional rules which are considered legally binding by civilised States in their intercourse with each other." (Oppenheim, 1905, p. 3). Accordingly, Oppenheim states that international law is not a law for individuals. (Oppenheim, 1905, p. 4). Contrary to this, Scelle mentions the world/global community (société internationale globale ou oecuménique) consisting of a plurality of communities that starts with the family moving on to local or provincial communities, regions, nation-wide associations and groupings ("communautés internationales particuliéres") and, at the very top, the civitas maxima, i.e. the world community (Cassese, 1990, p. 211). In this understanding, international law regulates the relations of individuals and groups affiliated to various political communities. According to Scelle, the real subjects of international law are not states, but individuals acting before states as rulers, gouvernants, or state officials (agents) (Cassese, 1990, p. 211). Another view which can be

described as “via media” is that international law is a set of rules regulating relations between units with international personality, being in the first place, States (Pazarcı, 2004, p. 2).

2.1.1. Jeremy Bentham’s Definition of International Law

Jeremy Bentham, the English philosopher, jurist and political reformer, who was born in 1748 into the first generation of Europeans who possessed a global vision of their place in the world was the first one who first used the term “international law” in 1780 in his “Introduction to the Principles of Morals and Legislation”. (Malanczuk, 1997, p. 1). Bentham lived in a world full of revolutions and world crisis including the Seven Years’ War, which is an enormous conflict among the Great Powers of Europe that was widely recognised as a world war. Under these conditions, his attempt was to create a ‘Universal Jurisprudence’ (Armitage, 2011). To do so, he developed universalist ambitions in the context of international conflict across his lifetime (Armitage, 2011). In accordance with this purpose, he fashioned the new term “international law” instead of using the old term “law of nations”. Bentham suggests that the term “law of nations” is much more relevant to domestic, municipal law of diverse nations. That is why, he proposed to replace the concept of ‘law of nations’ with that of international law (law between nations) (Bentham, 2000, p. 3). “Since about 1840, in the English and Romance languages it has replaced the older terminology ‘law of nations’ or ‘droit de gens’ or ‘ius intergentes’ which can be traced back to the Roman concept of ius gentium. In the German, Dutch, Scandinavian and Slavic languages the older terminology is still in use (‘Völkerrecht’, ‘Volkenrecht’, etc.).” (Malanczuk, 1997, p. 1). When it comes to the problem of defining “international law”, Jeremy Bentham defined it, as such: “International Law is the body of legal rules, norms, and standards that apply between sovereign states and other entities that are legally recognized as international actors.” Bentham’s attitute to international law relied on his utilitarian understanding. “He thought that national sovereigns, just as they could proclaim laws for the benefit of their own communities, could also together promulgate international law: they were not disabled from collective action. Bentham also believed that a real law might be enforced by a religious or moral sanction: when a foreign states stands engaged by an express covenant to take such a part in the enforcement of such a law as that in question, this is one of the cases in which a foreign state is said to stand with reference to such law in the capacity of a guarantee. Of a covenant of this sort many examples are to be met with in the history of international jurisprudence.” (Crawford, 2012, p. 10).

2.1.2. Alternative Definitions of International Law (Traditional and Modern)

Under the traditional definition of international law, a state has to be a sovereign state, including a defined territory, a permanent population, a government, and the ability to engage in diplomatic and foreign relations. In this case, it must be thought that what "other entities" of Bentham's definition might be. In the age of colonialism, "other entities" were perhaps the territories with native populations that have no ability to engage in diplomatic and foreign relations and no legal government as a sovereign state, but just having ability to make trade agreements with colonial powers. Here, modern international law fills the gap of Bentham's definition and it defines "other entities" consisting of new concepts and terminologies in a comprehensive way.

In the light of these information above, Pazarcı presents an alternative definition of modern international law. Accordingly, "international law covers rules in cases involving states, international organisations, organised communities that have not acquired the status of state, and directly individuals that concern the general interests or shared values of international community as a whole" (Pazarcı, 2004, p. 2). On the other hand, Starke adopts the definition of modern international law by the American authority as below:

> "Body of law which is composed for its greater part of the principles and rules of conduct which states feel themselves bound to observe, and therefore, do commonly observe in their relations with each other, and which includes also:
>
> (a) the rules of law relating to the functioning of international institutions or organisations, their relations with each other, and their relations with states and individuals; and
> (b) certain rules of law relating to individuals and non-states so far as the rights or duties of such individuals and non-state entities are the concern of the international community." (Starke, 1972, p. 1).

Kaczorowska evaluates that the actual practice of States are mentioned in this definition, but also criticises it for the lack of flexibility, because international law is on the move (Kaczorowska, 2010, p. 7). In the modern international system, states are still significant, but non-State actors also take place in the scope of today's international legal order just because States have given them parts to play. These non-State actors encompass international organisations, legal persons (i.e. corporations), natural persons (i.e. individuals) and non-governmental organisations (NGO's) collectively. However, along with non-State actors, Aust particularly puts emphasis on the central role of States in international arena, stating that only states and international organisations have an international legal personality (Aust, 2010, p. 15).

2.2. Traditional and Modern International Law

The prevailing positivist doctrine of the nineteenth century and first half of the twentieth century asserted that only states could be subjects of international law, and enjoy international legal personality as well as being capable of possessing international rights and duties, including the right to bring international claims. (Malanczuk, 1997, p. 1). International law was defined as "the law that governs the relations between states amongst each other" (Crawford, 2012, p. 10). This definition was not problematic until the period between the two World Wars. Because, "the 'classical' system of international law (1648-1918) was based on the recognition of the modern sovereign state as the only subject of international law. In essence, it reflected the interaction among European Powers and the imposition of their international legal order upon the rest of the world in the three centuries following the Peace of Westphalia." (Crawford, 2012, p. 10). For instance, by the 1920's, it was mainly thought that only States were exclusive subjects of international law, and accordingly the common consent of individual states was a determinant factor in the relations between them (Crawford, 2012, p. 5).

After the establishment of the League of Nations in 1919, which was a forerunner of the UN, the vision of modern international law expanded. In this sense, as Kaczorowska stated, the creation of the League of Nations became a turning point in the shaping of modern international law (Kaczorowska, 2010, p. 7). During the inter-war period, the scope of international law extended, and new actors beside States emerged on the international arena, such as intergovernmental organisations established by states, non governmental organisations created by private individuals, transnational companies, individuals and groups, including minorities and indigenous peoples (Malanczuk, 1997, p. 1). Under the influence of the positivist theories, particularly in the nineteenth century, it was not given importance to individuals, but instead, it was emphasised the centrality of State (Shaw, 2008, pp. 257–258). However, with the rise in the international protection of human rights, modern practice has showed that individuals are active participants of modern international law (Shaw, 2008, pp. 257–258). It was accepted that individuals and companies had some rights in special treaties, but as Malanczuk mentioned, they cannot act as a State by acquiring territory, appointing ambassadors, or declaring war (Malanczuk, 1997, p. 100). Particularly, in the field of human rights, individuals can have access to international dispute settlement procedures under certain conditions to the extend permitted by treaties (Malanczuk, 1997, p. 101). Shaw states that establishing international courts and tribunals to exercise jurisdiction directly over individuals as to specified crimes is a very modern act in international law (Shaw, 2008, p. 398). It is related with direct criminal

responsibility of individuals under international law. Briefly, it can be said that the scope of international law is quite vivid. Its interest varied from "the preservation of peace to the regulation of space expeditions, and the question of the division of the ocean floor, and from the protection of human rights to the management of the international financial system in a way including contemporary international life" (Shaw, 2008, p. 44).

2.3. General and Regional International Law

General international law consists of rules and principles that are valid for a large number of states in terms of either customary international law or multilateral treaties. To become universal international law of these rules and principles, they must be binding for all states (Malanczuk, 1997, p. 2). As for regional international law, it is only for certain groups of states; such as the law of the European Union (Malanczuk, 1997, p. 2). Thus, this kind of rules and principles are applied specific group of states. According to Forteau's definition of regional international law, 'In the first sense, it designates any set of rules with which a region endows itself because of the distinctive values shared by its members. In the second sense, it encompasses any rule having a regional scope of application.' (Andrade, 2021, p. 25). As it was raised in the debates of the International Law Commission's 2021 meeting, the regional principles can play a gap-filling role in disputes that are, for instance, regional treaties (Andrade, 2021, p. 24). "Said principles can be developed in the practice related to a given regional treaty or regional organization, and can be of procedural or substantive nature (Andrade, 2021, p. 24). Those who support regionalism tend to undermine acknowledging the existence of universality of international law, which is an important feature of international system (Malanczuk, 1997, p. 2). However, Article 38(1)(c) of the International Court of Justice (IJC) also applies the general principles of law to all states, "recognised by civilized nations" as a source of international law (Andrade, 2021, p. 36). In the narrow reading of this provision, one may argue that general principles can be regional, but this become a *contra legem* interpretation (Andrade, 2021, p. 35). Because the phrase 'recognised by civilized nations' has long been considered to have fallen out of use (Andrade, 2021, p. 36). In addition, "the travaux préparatoires of Article 38 indicate the notion of general principles as having a universal scope of application" (Andrade, 2021, pp. 35–36).

2.4. Characteristics of International Law

International law has a number of special characteristics which are highly different from national legal systems centralising the use of force as a state monopoly, establishing bureaucracy and a standing army as it was seen in the modern states that were established in Europe after the fourteenth century (Malanczuk, 1997, p. 3). A sophisticated system of legal institutions, principles and rules regulated society in time (Malanczuk, 1997, p. 3). There is a distinction between the three functions in the state; law making (legislature), law determination (courts and tribunals), and law enforcement (administration, police, army) (Malanczuk, 1997, p. 3). Like municipal (domestic) law, international law also constitutes a set of rules that must be complied with (Pazarcı, 2004, p. 6). In this sense, international law is addressed to the legal regulation of the international intercourse of States which were regarded themselves 'sovereign' and 'equal' as territorial entities (Malanczuk, 1997, p. 3). To do this, there must be also a social authority equipped with a necessary powers to establish the well-settled rules, and then a belief that these rules must be obeyed to form a legal order (Pazarcı, 2004, p. 6). Although in international law, it has been a lack of a supreme authority over States, there are binding international rules to be applied to the particular facts accepted by the States (Pazarcı, 2004, p. 6). Unlike the domestic law, Aust argues that binding force of international law does not stem from the existence of police, courts, or prisons. It comes from consent (express or implied) of States, and national self-interest (Aust, 2010, p. 3). Basicly, in case a State ignored international law, other States would do the same thing, creating chaos and disorder which would not be the interest of any State (Aust, 2010, p. 3). Therefore, international law or with an old usage as "Law of Nations" cannot be an outcome of one legal system, but of States (Aust, 2010, p. 2). Those states have to live with each other, so there has to be common rules governing their external conduct (Aust, 2010, p. 3). While saying so is still acceptable, it should be added that other entities like companies, individuals or minority groups were affected by the rules of international law (Klabbers, 2013, p. 3). In this sense, many of the rules are shaped by the representatives of international organisations (such as the UN) or civil society organisations (such as Greenpeace) (Klabbers, 2013, p. 3). Today, the United Nations, as one of the international organisation with 193 member States, has a set of rules which must be obeyed by these States. Nevertheless, as Malanczuk explained that the United Nations General Assembly cannot be accepted as a world legislature, or the law enforcement capacity of the United Nations Security Council is limited politically and legally (Malanczuk, 1997, p. 3). As part of jurisdiction, the International Court of Justice also acts based on the consent of States to its

jurisdiction (Malanczuk, 1997, p. 3). On the other hand, this does not mean that a State which are far away from international affiliations can do whatever it wants without responsibility. If a State violates an international obligation, it is responsible for the injured State, in certain circumstances, for the international community (Malanczuk, 1997, p. 3). In addition, the injured State had an international claims, such as a demand for special remedies, resorting to third-party mediation or conciliation, arbitration or judicial proceedings (Malanczuk, 1997, p. 3). In addition, the injured States can appeal to self-help which is still predominant in international law by taking countermeasures, such as retorsion (e.g. cutting off economic aid) and reprisals (provided that being proportionate) even if it becomes the exception in modern societies (Malanczuk, 1997, pp. 3–4).

The main criticism is on the enforcement mechanisms of international law which has no legislature, judiciary or executive as in municipal law. However, according to Henkin, rather than the problem as to whether "there is a single legislature in charge of creating international law, judiciary to enforce it and executive to carry it out," the fact that "international law is reflected in national policies and in relations between states" is matter (Kaczorowska, 2010, p. 15). At the end of the day, it is a reality that international law relies on national legal systems (municipal law) for its implementation (Malanczuk, 1997, p. 5). Another reality is that States which are unequel in strenght and under the heavy impact of power and politics in international law could not unite to impose sanctions as to those breaching the rules (Malanczuk, 1997, p. 5). Due to international society having a lack of organisational capacity which reflected it globally, sanctions to be imposed by large group of states through international organizations cannot always work in a perfect way. Nevertheless, it does not mean that international law works ineffectively. Because, there is a collective responsibility of the whole community of a wrongdoing State in international law. If international community cannot take a collective action against those making unrightful acts, each State become volunteer and co-operativist on imposing sanctions envisioned in international law.

2.5. Sources of International Law

As it is mentioned before, there is neither a body making internationally binding laws for eveyone, nor a compulsory jurisdiction to interpret and extend these laws because of the anarchic nature of world order and competing sovereignties (Shaw, 2008, p. 70). Nevertheless, in spite of all hardships, international law is still standing. There are sources of international law whose binding force is based on the express or implied consent of states and national self

interest (Aust, 2010, p. 3). Because if a state refuses to obey international law, others may follow the path, and this creates unwanted chaos which would not serve the interest of any state (Aust, 2010, p. 3). Article 38(1) of the Statute of the International Court of Justice is widely recognised as the most authoritative and complete statement as to the sources of international law.

> "1.The court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
>
> (a) international conventions, whether general or particular, establishing rules expressly recognised by the contesting states;
>
> (b) international custom, as evidence of a general practice accepted as law;
>
> (c) the general principles of law recognised by civilised nations;
>
> (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law." (IJC, n.d. October 2, 2022).

Bilateral or multilateral treaties namely international conventions play a crucial role in international law. Treaties are made in nearly every conceivable topic (Malanczuk, 1997, p. 130). In this sense, every state can be bound to hundreds of treaties. Another legal obligation which put a state in a position of legally binding is a unilateral promise unless unilaterally waived (Malanczuk, 1997, p. 130). According to Article 2(1)(a) of the 1969 Vienna Convention "treaty" means an international agreement concluded between States in written form and governed by interntional law, whether embodied in a single instrument or in two or more related instruments, and whatever its particular designation" (UN-OLA, 2005). Although the definition of a treaty given in the 1969 Vienna Convention on the Law of Treaties excluded oral agreements and agreements between international organizations or between states and international organizations, it is helpful to provide an insight. It should be mentioned that "important areas of customary law have now been codified in multilateral treaties which are widely accepted even by States which are not parties to such treaties." (Aust, 2010, p. 6). In the Article 38(1) of the Statute of the International Court of Justice, the essence of custom is accepted as evidence of a general practice accepted as law. Custom comes into existence with "the actual behaviour of States and psychological or subjective belief that such behaviour is 'law'" (Shaw, 2008, p. 74). Custom derives from the practice of States, which can be expressed in several ways, such as governmental actions in relation to other States, legislation, diplomatic

notes, resolutions of the UN General Assembly, government manuals, ministrial or other official statements (Aust, 2010, p. 6). The general principles of law, such as good faith, estoppel and norms are recognised by civilised nations. (Aust, 2010, p. 8). In addition, judgments of courts and tribunals as a subsidiary source of international law are very influential and authoritative as they are based on 'careful consideration of particular facts and legal arguments' (Aust, 2010, p. 9). The teachings of the most highly qualified publicits of the various nations take place in Article 38 as a subsidiary means. In addition to this, books and academic writings serve as a subsidiary means and had a very important impact on the values and aims of international law (Shaw, 2008, p. 113).

2.6. Theoretical Approaches To International Law

Our understanding of the nature of international law is based on theoretical assumptions, and all theoretical models are shaped with a specific world views (Evans, 2003, p. 59). Some writers tend to support of the view that doctrine had much less influence on the actual development of international law (Malanczuk, 1997, p. 15). However, according to Scobbie, theory cannot be ignored or left behind in the academy (Evans, 2003, p. 60). Although theoretical schools or trends, accepted officially by the states can sometimes impose an intellectual hegemony, making analysis and critical evaluation of the content of international law without discrimination are worthy (Evans, 2003, p. 60). It is inevitable that law and legal theory are engaged in political concerns and conditions (Evans, 2003, p. 66). For the starting point, it is suitable to explain naturalists and positivists which are still the mainstreams of Western concept of international law. After explaining them briefly, the other legal tendances also will be mentioned.

2.6.1. The Doctrine of Natural Law

It is based on the assumption that nature has an order, and this inevitably requires some kind of rules out of the will of individuals and states (Pazarcı, 2004, p. 11). These unwritten rules consisting of custom was taken priority by naturalists to explain how the relations of state to be governed (Yavaş, 2016, p. 1134). Some writers, such as Francisco Vitoria, Vasquez de Menchaca, Francisco Suarez argues that this order stems from religious and metaphysic basis whilst others bring human mind and conscience into prominence in forming rules of natural law (Pazarcı, 2004, p. 11). Louis le Fur, Samuel Puffendorf and the Dutchman Hugo Grotius, the founder of modern international law were also naturalist writers who supported an

understanding of natural law based on human mind and conscious (Pazarcı, 2004, p. 12). He also highlights that jus gentium (law of nations) is the result of volitional acts, originated by independent operation of the human will (Koh, 1997, p. 2606). Namely, according to this theory, international law consists of divined and moral dictates independently of the consent of state (Yavaş, 2016, p. 1135). The basis of natural law is the principles of justice which had a universal and eternal validity (Malanczuk, 1997, p. 15). For instance, "Thou shalt not kill." (The prohibition of murder) can be accepted as a rule of natural law, but the number of exceptions to such rules caused the writers not to always agree on it (Malanczuk, 1997, p. 16). Having inherited from the sixteenth and seventeenth centuries, now, except the Roman Catholic Church, the theory does not reflect today's scientific and secular age (Malanczuk, 1997, p. 16).

2.6.2 The Doctrine of Positive Law

A new theory "positivism" was emerged in the eighteenth century, and fully accepted in the nineteenth century when international lawyers wanted to make their discipline more scientific in character (Yavaş, 2016, p. 1135). From early positivists, Thomas Hobbes, Richard Zouche, and Samuel Rachel defined "Law of nations as a law among nations, which consists of customs and treaties" (Koh, 1997, p. 2608). Jeremy Bentham, John Austin, and Hans Kelsen were developed positivism by studying the practice of states scientifically. They were neutral to the question of whether, outside the law, there were any moral standards which could not be explained by any social fact (Finnis, 2000, p. 1598). Namely, the questions related to the morality, ethics and metaphysics were excluded. Legal positivism was defined as a set of standards arised from conventions, commands, or other social facts (Finnis, 2000, p. 1598). From this understanding, international law is a construct of man-made law, treaties, and custom (Koh, 1997, p. 2608). Unlike the ethical tradition, asking whether nations should obey international law, the positivists focused on the questions of why nations obey international law (Koh, 1997, p. 2608). Austin, coming from positivistic, realist strand, asserts that unlike domestic law, international law is not really law as it is not enforced by sovereign coercion, and so nations do not obey international law (Koh, 1997, p. 2609). Oppenheim also states that "Law of Nations (international law) is a law for the intercourse of states with one another, not a law for individuals. As, however, there cannot be a sovereign authority above the single sovereign states, the Law of Nations is a law between, not above, the single states, and is, therefore, since Bentham, also called International Law" (Oppenheim, 1912, p. 4). Oppenheim also mentions that the condition of being a state: recognition. In addition, Bentham (who coins the phrase "inter-national law") adopted a process which shows the broken normative link between

international and domestic legal systems (Koh, 1997, p. 2608). However, counter-arguments to positivists came at a time when domestic and international systems were deeply interwoven. William Blackstone stated that law of nations was "adopted in its full extent by the common law, and is held to be a part of the law of the land" (Koh, 1997, p. 2609). In practice, when England was a global power, the law of nations had been internalized in English common law, and then was applied to American colonies. Eventually, these rules were incorporated into the US law (Koh, 1997, p. 2609).

2.6.3 International Legal Liberalism

The emergence of conceptual pragmatism, arised from the battle between naturalism and positivism paved the way the development of different strands of scholarship (Bianchi, 2016, p. 142). The principle response to positivists came from Immanuel Kant. His understanding was far from Benthamite utilitarian concerns, including selfishness, gain and private interests. Kant saw international law "as a route toward perpetual peace" (Koh, 1997, p. 2610). In his vision of international law, the main purpose of the system is to secure peace. To do so, justice, democracy, and liberalism at the heart of human rights are very important cornerstones (Koh, 1997, p. 2610). He emphasized the law governed international society among sovereign states which would create transnational ties on the mutual interests (Koh, 1997, p. 2610). With the revival of Kantian liberalism, these assumptions have been reexamined by scholars, Fernando Teson, Thomas Franck and etc. (Slaughter, 2000, p. 240). According to Simpson, liberalism takes place in two conflicting ways today. The first one is classical liberalism that tolerance, diversity and openness became prominent (Simpson, 2001, p. 539). In this inclusive understanding, "one liberal strand of international law to make judgments about the politics of a state" is not welcomed (Simpson, 2001, p. 539). The UN approach to membership is an example of this kind of liberalism (Charter Liberalism). In this international system, states which are all equal are just as equal rights of citizens / individuals, living in a domestic political order (Simpson, 2001, p. 540). Undemocratic or illiberal states are included to the international society to be able to universalize and domesticate them in an inclusive international system (Simpson, 2001, p. 541). Today's contemporary international law is characterized with this, namely the integration of all states without caring their political or social ideology. Simpson states that this form of liberalism gives priority to states and labelled as pluralistic Project of the Charter (Simpson, 2001, p. 541). On the other hand, the second kind of liberalism is liberal anti pluralism, including Neo Kantianism, liberal internationalism, and democratic governance theory (Simpson, 2001, p. 541). The rights of individuals, the norm of democracy, and

democratic standards within states are very significant in this strand of liberalism. Today's inclusive international order characterized with tolerance and diversity does not reflect to this understanding (Simpson, 2001, p. 543). It advocates that certain states which have a moral and political incapacity should not attend fully in international legal life (Simpson, 2001, p. 543). Frank, Teson, Anne-Marie Slaughter challenged Charter liberalism. This two opposite arguments had been raised on whether international community should be inclusive or not, and eventually charter-based liberal international law prevailed, and the UN became flexible in the standards during the admission of states to the family of the UN (Simpson, 2001, p. 543).

2.6.4 International Legal Realism

A legal realist approach to law which differs from natural and positive law theory questions how law operates, works and changes in terms of practice (Shaffer, 2015, p. 2). Although legal realists differed in their orientation, and could not form a 'school', many legal realists deal with purposes of practice and pragmatic decision making with regards to functioning of law (Shaffer, 2015, p. 3). Today, legal realism is largely known at American terms, but its roots can be found in European jurisprudence in terms of social understanding of law (Shaffer, 2015, p. 3). The theorists, such as Frederick von Savigny, Henry Maine, Eugen Ehrlich, Rudolph von Jhering represent a different understanding about culture, power and the fuction of law, but what they are common is that their theoretical approaches based on the relation of law to society by standing against natural law and legal positivism (Shaffer, 2015, p. 3). When it was taken into consideration American legal realism, John Dewey, Charles Sanders Pierce, William James came from philosophical pragmatist tendance, giving importance to empirical work and experimental practice in the United States (Shaffer, 2015, p. 4). Shaffer argues that today's wide scope in international law provides new opportunities for "transnational problem oriented, pragmatist thinking" (Shaffer, 2015, p. 5). In this sense, legal realism does not seem to reject legal positivism. For instance, the sources of law in legal positivism was seem important for judges and lawyers, but was not enough for a world full of varying factual contexts (Shaffer, 2015, p. 5) Rather, international legal realism focuses on two different approaches of international law. First of these approaches is known as "international legal process". In this process, "legal norms are defined through practice, through claims and counterclaims, resulting in the settlement and unsettlement of the meaning of legal norms in changing social context over time" (Shaffer, 2015, p. 5). Decision-makers are under the influence of their own policy references, and inquires of how these preferences can be used in the development and application of international law (Murphy, 2006, p. 73). The allocation of

decision-making powers in inter-state relations and exercise of these powers are examined during international legal process (Murphy, 2006, p. 73). The second one is "policy oriented approach," developed by Harold Lasswell and Myres McDougal (Murphy, 2006, p. 74). The most important thing in this approach is to decide one of the best criteria and procedure that would be established for the future of the society (Murphy, 2006, p. 74). Accordingly, a set of values are decided so as to be advanced by policy makers by examining the context that decisions are made (Murphy, 2006, p. 75). This value based policy oriented approach was criticised because of paving the way for "undesirable indeterminancy in the law" (Murphy, 2006, p. 75).

2.6.5 The Theory of Sovereignty

One of the most influential writer who influenced many writers and states during the eighteenth, nineteenth and early twentieth centuries was Emerich von Vattel (1714-67). His book "Law of Nations," which is written for statesmen addressed internal and international affairs of state, and mentions that "The law of nations is the law of sovereigns" (Kenny, 2015). Having attempted to combine naturalism and positivism, Vattel argues that there was "the inherent rights which states derived from natural law" (Malanczuk, 1997, p. 17). At the same time, he said that there was also duties imposed by natural law. Those duties had to be treated as part of positive law. Otherwise, states were only accountable to their own consciences without any obligation to observe their duties (Malanczuk, 1997, p. 17). Vattel's followers handled the issue of 'sovereignty,' and accordingly, the theory of sovereignty was born from the idea that within each state there must be a supreme legislative power and/or supreme political power (Malanczuk, 1997, p. 17). It is quite clear that different meanings can be attached to the concept of sovereignty changing to time and place. Even if the word evoked that a ruler or sovereign can do whatever s/he likes because s/he is 'sovereign,' as a matter of course, s/he cannot always use unlimited power to other states (Malanczuk, 1997, p. 17). Malanczuk asserts that the word 'sovereignty' should be replaced by 'independence' (Malanczuk, 1997, p. 17). According to Cox, sovereignty is understood as 'a final authority within a given territory' (Cox, 2002, p. 243). Since the nineteenth century, theory of sovereignty has been evolved into collective sovereignty via parliamentary institutions. For instance, the focus of political power is Parliament, rather than the Crown in the United Kingdom. From this point, another writer P. Joseph assumed that the sovereign is the people, rather than Parliament in the UK (Cox, 2002, p. 244). States's increasing interdependence to each other required to join supranational organisations, such as the European Union. Some argues that such collaborations made by

taking into consideration of the economic advantages and disadvantages commenced to erode state's independence (Malanczuk, 1997, p. 18). In some cases, states restricts their own independence in the framework of specific treaties like protectorate treaty which envisioned to defend a smaller state from any acts of aggression (Malanczuk, 1997, p. 18). Nowadays, the doctrine of sovereignty and the sovereignty of states today is losing ground in the West because of the the globalization of the economy and increasing interdependence of states (Malanczuk, 1997, p. 7). However, the sovereignty is still seemed an important component of state in the developing countries as they have recently gained their political independence (Malanczuk, 1997, p. 18).

2.6.6 New Stream

The "new stream" approach is against the positivists who suggest that there are neutral rules, waiting to be discovered in international law (Murphy, 2006, p. 76). This approach focuses on the hidden ideologies, attitudes, and structures of international law (Murphy, 2006, p. 76). The contemporary legal system which is composed of sovereign states are expected to bind and contraints the same 'sovereign' states (Murphy, 2006, p. 76). According to the new stream school, the rules of international law builts on the concepts of sovereign independence and sovereign constraint (common rules vs exceptions to those rules, general rules vs specific rules, treaty or customary rule vs peremptory norm of jus cogens) can lead to contradictory results (Murphy, 2006, p. 77). They follow a value-free methodology to understand the structure of international legal rules. They point out that "international law is not determinate and neutral in nature, but instead a vehicle for ideology" (Murphy, 2006, p. 78). According to Murphy, this view provided to be heard new voices in debates of international law; such as "Third World" theory (Murphy, 2006, p. 78).

2.6.7 "Third World" Theory

When the United Nations was founded, the composition of international community, the West having a majority in the General Assembly had a steady hand on the tiller (Malanczuk, 1997, p. 28). Apart from the socialist bloc, created by the Soviet Union, international scene and the international legal system experienced a tremendous increase in the number of states in Asia, Africa and Latin America in the wake of the process of decolonization by the end of 1960's (Malanczuk, 1997, p. 28). These non-aligned states were called as 'Third World' states. Most of these states, which are located in the South are poor. That is why the assemblies of

international organisations, such as the UN General Assembly are the main forum to their demands for a new world order on which would build a new international law in a way to wash away any remnants of colonialism and apartheid (Malanczuk, 1997, pp. 29–30). Western states are still dominant in the Security Council, but winds of change started to blow in favor of the interests of Third World states and developing countries thanks to the dynamic nature of modern international law (Malanczuk, 1997, p. 30). What happened on the ground from 1960's led scholars to critically examine the relationship between international law and Third World / Global South, to steer their energy into a shared political commitment and support them (University of Windsor, n.d. October 10, 2022). Third World theorists searches on the role of European, colonizing, and powerful states in the development of international law (Murphy, 2006, p. 79). As the developing countries felt that their interests have been underestimated by the Western states, changes in international law towards distributing justice, poverty, and development as well as the principles of sovereignty and nonintervention are of vital importance than ever before (Murphy, 2006, p. 79). In this sense, Third World theorists proposed a solution. Accordingly, the United Nations General Assembly whose the majority within it are developing states can be seen as a legislature (Malanczuk, 1997, p. 30), and so its resolutions can have a binding effect (Murphy, 2006, p. 79).

2.7. States And Governments / Status Of Being State

When the 'world' is mentioned, states on coloured areas well seperated from each other by lines on a world globe come to our minds (Lowe, 2007, p. 136). Just as we concentrate on any state on the globe and position it in the middle of the others, in today's world, states also at the heart of international legal system, not at the periphery. In the past, the system was loose. There were many Kingdom or other polities from centre outwards, and beyond one or two central cities, the Kingdom was often lying on the ill-defined area (Lowe, 2007, p. 136). The lands or frontiers had been defined to locations, not to lines. Lowe states that "These Kingdoms had spheres of influence than that they had frontiers" except for precise linear boundaries such as the shores of island kingdoms, the Graet Wall of China, man-made roads (Lowe, 2007, p. 136). It sounds quite interesting, but for many centuries, people travelled to any country without passport or other formality. It was the World War One that made passports and visas mandatory due to security fears. Thus, our perception of the colorful areas on the globe became much more clear (Lowe, 2007, p. 137).

The notion of state which has its origins in ancient times is still very important actor in the field of international law. As Murphy mentioned, "most international law is created, interpreted, complied with, or enforced by the governments of states" (Murphy, 2006, p. 116). So what is state? The definition of state is not as easy as it seems because its the emergence of a new state or the rise to power of a new government is directly related with the occurence of an extraordinary political event (Murphy, 2006, pp. 116–117). Then, other states in the world community explicitly or implicitly recognize this new entity as a new state or government (Murphy, 2006, p. 117). Accordingly, the new state arises from various ways; an existing state might be divided into several new states[2], or a new entity might secede to form a new state[3], or two and more states merge together to form a new state[4] (Murphy, 2006, p. 117). In the wake of the emancipation of colonies from the major European powers, the twentieth century witnessed a great number of states to be formed succesfully as well as failed attempts[5] of many entities to form a seperate state (Murphy, 2006, p. 118).

2.7.1 Criterias for Statehood

There are certain legal criterias for an entity to be recognised as a state in conformity with traditional international legal theory and international practice. According to Article 1 of the 1933 Montevideo Convention on Rights and Duties of States, which codified the same criterias with the Declarative Theory of Statehood;

> "The State as a person of international law should possess the following qualifications:
> (a) a permanent population,
> (b) a defined territory,
> (c) government; and
> (d) capacity to enter into relations with other States" (Malanczuk, 1997, p. 75).

2.7.1.1. Population

The first requirement stated in the Montevideo Convention is to have a permanent population[6] of state. Because, population is an integral of a state. When it is considered a wide

[2] For instance, after 1990, The Socialist Federal Republic of Yugoslavia was divided into seven countries; including Bosnia Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, Serbia, and Slovenia (Murphy, 2006, p. 117).
[3] For instance, in 2011, South Sudan seceded from Sudan (Murphy, 2006, p. 117).
[4] For instance, in 1958, the United Arab Republic was founded as a result of merging with Egypt and Syria, but this union was ended in 1961 (Murphy, 2006, p. 117-118).
[5] For instance, the Basque region in Spain, Chechnya in Russia, Tibet in China, the Kurdish peoples in Iran, Iraq and Türkiye. (Murphy, 2006, p. 118).
[6] For this reason, Antarctica is not regarded as a state (Malanczuk, 1997, p. 76).

scales of the population of states from China to mini state Nuaru all around the world, one can inferred that the size of population is not a criteria for statehood as they are considered as a fully fledged states (Klabbers, 2013, p. 70). Thanks to being sovereign States, their vote numbers before the UN is equal (Lowe, 2007, p. 154). In this sense, it can be explained that although The Vatican City State (metonymically refered to as Holy See) which has a very small population and whose many state functions performed by Italy is not a member of the UN, certain state activities, such as joining international organizations, making agreements, establishing diplomatic relations have been performed frequently (Malanczuk, 1997, p. 76). In some cases, the States can have some parts of nomadic population. For instance, the nomadic tribes can be observed in Kenya-Ethiopia borders, but this cannot change the status of statehood of Kenya and Ethiopia (Kaczorowska, 2010, p. 187). Another point to be clarified is that homogenous population in terms of ethnic, historical, cultural, religious etc. cannot be a pre-requisite for the criteria of being state (Malanczuk, 1997, p. 77). The population can make up from multinational and different components, including its nationals, its citizens, dual citizens, foreigners (nationals of other States), even heimatlos people who have no nationality (Lowe, 2007, p. 154). As a result, what matters is that stable population which is required to make a social cohesion in society.

2.7.1.2. Defined Territory

How can be a piece of territory which belongs to a state easily distinguished from another? Lowe states that the answer is lying on the control of territory (Lowe, 2007, p. 138). Geographical areas seperated by borderlines to distinguish from another areas under a common legal system is defined as territory (Malanczuk, 1997, p. 76). What matters for a state is the control over its own territory based on territorial sovereignty (Malanczuk, 1997, p. 75). In this way, states have a full competence to take legal and factual measures within its own territory to protect its land from foreign interference (Malanczuk, 1997, p. 75). According to Crawford, "territorial sovereignty extends principally over land territory and the territorial sea, its seabed and subsoil" (Crawford, 2012, p. 203). Air space and the territorial sea (up to twelve miles adjacent to the coast) were included to territorial sovereignty (Malanczuk, 1997, p. 76). In the Island of Palmas case,[7] related to the territorial sovereignty, Judge Huber underlined the importance of the "exclusive right to display the activities of a State" (UN-OLA, 2006). Huber

[7] The case was erupted a dispute on sovereignty over an island between the Netherlands and the United States. The issue was refered to the Permenant Court of Arbitration in the Hague by the parties. (Malanczuk, 1997, p. 75).

defined the sovereignty in the relations between States as independence, and this means that the state has the right to exercise the fuctions of its own territory, excluding other States (UN-OLA, 2006). Professor Huber also presented us a different and positive reason (corollary) about why the States should have a territorial sovereignty.

> "The obligation to protect within the territory the rights of other States, in particular their right to integrity and inviolability in peace and in war, together with the rights which each State may claim for its nationals in foreign territory" (UN-OLA, 2006).

When it comes to the size issue about whether mini-micro States are eligible for UN membership, since 1990, mini countries, such as Monaco, Liechtenstein, Andora etc. attended to the UN (Aust, 2010, p. 16). As many states have trouble over boundaries with their neighbours, consistently control over specific territory, instead of the certainty in land or maritime boundaries is essential for recognizing a territory as a state (Aust, 2010, p. 16). That is why, according to Malanczuk, Israel was recognised as a state although there were long standing conflict over the status of borders (Malanczuk, 1997, p. 76).

2.7.1.3. Effective Control by A Government

Aside from the normal process of establishing a new government which leaves no questions to the problem of recognition of newly founded government, if the new entity comes to power via non-constitutional means, the critical issue ralated to the state is that whether the new government had an effective control in its state (Murphy, 2006, p. 127). Murphy also mentions that the degree of effectiveness of the new government can be measured with "effective/*de facto* control" test (Murphy, 2006, p. 127). The test shows the degree of obedience of the people to the government commands effectively or not (Murphy, 2006, p. 127). For instance, Palestinian organisations declared the State of Palestine in 1988, but this declaration was not accepted by global community because of the lack of effective control over the related territory (Malanczuk, 1997, p. 77). In some cases, it is not always easy to match the test result with the acceptance of the international community. For instance, from 1949 to 1970's, the Beijing-based communist government in China was not recognised by international community except for the communist bloc although it was gained control over the land, and so the government based in Taiwan represented China during those years. After changing the winds of politics, the Beijing-based communist government was recognised as the government of

China (Murphy, 2006, p. 128). Thus, effective control by a government over territory and population is significant for a state. A central government which is a political body of state operates within the law of the land (Aust, 2010, p. 16). These functions were carried out in two ways, internally and externally. First, a new founded government establishes and maintains a legal order internally, and then within international legal order, the state was represented in an autonomous way externally (Malanczuk, 1997, p. 77). In other cases, the existing governments loses controls in parts or all of their countries as a result of civil war or upheavals. The state continues to exist as long as it can be able to continue the struggle against the enemy (Malanczuk, 1997, p. 78). The occupation of Russia to Ukraine at the beginning of 2022 does not bring the statehood of Ukraine into question before international community. Because, temporary ineffectiveness of a state's government cannot cease the legal existence of that state, changing the stability of international system and accordingly, the status quo (Malanczuk, 1997, p. 78). Another important thing which should be mentioned here, in this montevideo criterion, there is no requirement of which kind of government should be in order to represent the state. According to Lowe, this demonstrates that the criterion is not discriminating and demanding (Lowe, 2007, p. 156). When it is considered all types of internal political structure of states coming from various and different history, society and culture, international law is closely related with the success of the new government beyond its legality or legitimacy (Malanczuk, 1997, p. 79). Klabbers states that treating dictatorships and democracies in the same way creates a controversial situation, but also inquires into the question that by whom the so called liberal democracies are recognized as proper states based on Western conceptions of democracy and rule of law, and which standards are applied for this recognition (Klabbers, 2013, p. 71). Finally, he adopts a softer stance, recommending that these non-democratic regimes even if the law does not force on liberal democracy, 'emerging right to democratic governance' is recognized (Klabbers, 2013, p. 71).

2.7.1.4. Independence: The Capacity To Enter Into Relations With The Other States

The last criterion is the capacity to enter into relations with other states. According to Lowe, it is proper to regard it as a consequence of Statehood rather than a condition (Lowe, 2007, p. 157). The problem starts when other States do not treat the entity as a State. Well, is it enough to meet the first three conditions, mentioned in the Montevideo Convention, except this one to persuade other States about the new entity is a State? Lowe underlines the word 'capacity'. Article 2 of the Convention states that 'The Federal State shall constitute a sole person in the eyes of international law' (ILSA, n.d., September 23, 2022). In this sense, the

units of Federal States cannot act on the international arena due to the lack of capacity even if they have permanent populations, defined territory, and effective governments (Lowe, 2007, p. 157). Because, they are not sovereign States even though these units have a close relations with foreign governments. Thus, the fifty states of the United States of America are the integral components under the roof of federal state (Aust, 2010, p. 16). On the other hand, according to Art. 3 of the Convention is as such,

> 'The political existence of the State is independent of recognition by the other States. Even before recognition, the State has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organise itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts. The exercise of these rights has no other limitation than the exercise of the rights of other States according to international law' (ILSA, n.d., September 23, 2022).

Professor Malanczuk states that this can be interpreted in a way that the existence of a State, even before the issues of recognition and foreign policy capacity, rests on the other important matters; such as the right to defend its integrity and independence, to organise as it sees fit, to define the jurisdiction etc. (Malanczuk, 1997, p. 80). However, Aust clearly indicates that to be regarded as State, an entity should have a full capacity to enter into relations with other states, without being a subject to the authority of them (Aust, 2010, p. 16). In practice, there are dependent states which were seen as a special category. In this sense, in the past, colonies and protectorates in the trusteeships and associated territories had a limited capacity to enter into foreign relations (Malanczuk, 1997, p. 80).

2.7.1.5. Self Determination In International Law (Additional Criteria)

Before 1945, self-determination was a political concept. It was a justification of the American War of Independence, the French Revolution, and the nationalist movements in the nineteenth century (Kaczorowska, 2010, p. 575). Following World War I, during the 1919 Peace Treaties, many independent States were established from defeated States in accordance with the principle of self-determination in the European territories (Kaczorowska, 2010, p. 575). When the colonies of the defeated States were put under the mandate of the Allied Powers, this principle was given a particular importance in categorising the relevant territories as A, B, C[8] in a way to reflect their degree of self-government (Kaczorowska, 2010, p. 575). After World

[8] Three categories were as such;
"A – nearly ready for self-governance,
B – further away from attainment of self governance,
C – incapable of self-governance in the then foreseeable future" (Kaczorowska, 2010, p. 575).

War II, Kaczorowska stated that the meaning of self-determination was not clear in the United Nations Charter. In Chapter I, titled "Purposes And Principles," Article 1, para. 2, one of the purposes of the UN was "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples …" (The UN, n.d., September 28, 2022). Articles 55, 73 of the Charter, and Chapter XII, titled "International Trusteeship System," also referred the principle of self-determination (self-governance) in the context of trust territories' being protected from other States' interference (Kaczorowska, 2010, p. 575). Self-determination was evolved as a right in international law when the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples (UNGA Resolution 1514) was accepted in the UN (Kaczorowska, 2010, p. 576). It meant literally emancipation and 'freedom from subjugation'. In 1966, two inspiring Covenants as to international human rights law, which are "International Covenant On Civil and Political Rights" and "International Covenant On Economic, Social And Cultural Rights" were signed. Their first Article provides,

> "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." (The UN Treaties, n.d., September 28, 2022).

In this way, self-determination was recognised as a fundamental human right by international law, and granted to all people (Kaczorowska, 2010, p. 577). In the 1960's, self-determination was only thought in the context of decolonization. Çalı states that during the era of decolonization, the sentence "All peoples have the right of self-determination" were directly understood as "All colonies have the right to be independent" (Çalı, 2010, p. 199).

In a broad sense, self-determination was accepted as 'the right of a people to determine its own political destiny' (Kaczorowska, 2010, p. 574). There are internal and external self-determination. In internal self determination, people of a State have the right to have a government to represent themselves politically as well as their active participation to economic and cultural life whilst external self-determination entitles peoples to secede from the existing State, or to establish a new State, or to be incorporated into another State etc. (Kaczorowska, 2010, p. 574). Thus, in a sense, external self-determination can be a threat to the national unity and territorial integrity of a State. That is why the concept self-determination is not always welcomed in the state-centric Westphalian system. The arguments related to self-determination, which were seen as the 'gold standard' of the international sytem have been made to form new states (Çalı, 2010, p. 197). However, the problem starts when a state lost sovereignty over its part of territory by virtue of the seperatist groups, claiming the right of self-determination over an existing state (the problem of secession) (Çalı, 2010, p. 197). Thus, self-determination and

recognition were regarded as an additional criterias for statehood by some writers. Shaw clearly mentions that self-determination criteria for a state should be valid in the cases of self-determination situations, but invalid that of secessions from existing state if the internal requirements of the related principle have not been met by the entity seeking to become a state (Shaw, 2008, pp. 206–207).

2.7.1.6. Recognition of States In International Law (Additional Criteria)

The recognition of an entity by other States means the related entity fulfils the criteria of statehood (Malanczuk, 1997, p. 82). What if that entity is not recognised by any States? Is it affect the status of being a State of that entity? Related to this issue, there is a discussion between the constitutive theory and declaratory theory. According to the constitutive theory, state survival is impossible without recognition, so it is vital (Klabbers, 2013, p. 73). Even today, the membership of the UN which were regarded as an an exclusive world club, consisting of all equal states can only be possible with mutual recognition (Klabbers, 2013, p. 73). Thus, in a sense, recognition is regarded as constitutive. However, the general view that recognition is declaratory, and it is still initiative of other States to decide whether an entity meets the criteria of statehood (Malanczuk, 1997, p. 84). Because, in state practice, the existence of legal rights and duties, and accordingly the very personality of a state cannot be left to the political act of the recognition by other states (Crawford, 2012, p. 145). If so, a state which refuses to treat recognition of an entity as a state can act violating the rights of it, for instance, by intervening in its internal affairs or annexing its territory (Crawford, 2012, p. 146). Article 3 of the Montevideo Convention clearly mentiones the place of recognition in international law:

> "The political existence of the state is independent of recognition by the other states. Even before recognition, the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts. The exercise of these rights has no other limitation than the exercise of the rights of other states according to international law" (ILSA, n.d., September 28, 2022).

Article 6 of the aforementioned Convention states,

> "The recognition of a state merely signifies that the state which recognizes it accepts the personality of the other with all the rights and duties determined by international law. Recognition is unconditional and irrevocable" (ILSA, n.d., September 28, 2022).

Çalı points out that entities demand 'formal recognition' from other states, and find it important although recognition is not a requirement or pre-condition of being a State

(Statehood) under declaratory view (Çalı, 2010, p. 196). There is also a middle way, presented as an alternative, which can be called as 'collectivization,' based on which a new state is being recognised by the UN (Crawford, 2012, p. 146). However, this is criticised as under Article 4 of the UN Charter, the UN, whose membership is dependent to the criterion of being statehood, cannot be a pre-condition for an entity to be able to recognised as a State (Crawford, 2012, p. 146).

Another issue which should be emphasized here is that the distinction between *de jure* and *de facto* recognition. Malanczuk explains that "The words *de jure* and *de facto* describe the government, not the act of recognition" (Malanczuk, 1997, p. 88). It is also possible to recognise a state *de jure* or *de facto* in different cases. But, in most cases, when the recognition is granted by an express statement, it is generally considered that it is "*de jure*" recognition (Malanczuk, 1997, p. 88). *De jure* recognition can help to reverse the illegality created when a state or government was established by violating international law (Malanczuk, 1997, p. 88). On the other hand, non-recognition does not imply *de facto* regime is out of international law as many rules are valid for these regimes (Malanczuk, 1997, p. 85). Recognition *de jure* means that an entity, claiming to be whether a state or a government, meets the legal criteria whilst recognition *de facto* demonstrates current situation or position of the entity (Aust, 2010, p. 26).

The issue of recognition became much important due to the developments in Eastern Europe, the Soviet Union and in former Yugoslavia in the 1990's. The European Community adopted guidelines based on some principles of the Helsinki Act of 1975 and of the Charter of Paris of 1990, and the principle of self-detemination for the formal recognition of the new states in the region in 1991 (Malanczuk, 1997, p. 89). Nowadays, recognition is on the international agenda with the Russia-Ukraine War again. In September 2022, as the war continuing with Ukraine, Russia proclaimed the annexation of Kherson, Zaporizhzhia, Donetsk, and Luhanks, exactly in the same way as Russia did in Crimea in 2014. The UN Secretary General A. Guterres, being in the first place, the international community widely condemned this annexation, and refused to attribute a legal value (Kirby, 2022). As this *de facto* regime cannot be outside the realm of international law, the related state exercising illegal, *de facto* control in these regions will be responsible all acts of violence, such as human rights violations, persecution of minorities, repression of dissident voices etc. in spite of non-recognition.

2.8. Internatıonal Organısatıons and The Unıted Natıons

The first examples of international organisations in multilateral forms of co-operation was seen in the late eighteenth and nineteenth century (Crawford, 2012, p. 166). Particularly, after 1920, universal peacekeeping arrangements were made with League of Nations, and then the United Nations (Crawford, 2012, p. 166). The term 'international organisations' usually describes "an organisation set up by agreement between two or more states" (Malanczuk, 1997, p. 92). It differs from 'non-governmental organisations' (NGO) as it is set up by individuals, such as Amnesty International or Greenpeace (Malanczuk, 1997, p. 92). States set up an international organisation in accordance with specific aims, giving the organisation limited powers (Malanczuk, 1997, p. 92). In principle, it is accepted that international organisations may possess international legal personality (Shaw, 2008, pp. 259-260). They can enter into treaties with other subjects of international law, such as other international organisations, member States or non-member States (Aust, 2010, p. 180). There are great numbers of international organisations. This increase demonstrates the need for cooperation between states to solve various problems, arised from transnational nature of the world order (Malanczuk, 1997, p. 94).

The United Nations is the most important globally known organisation, created in 1945 as a second attempt after the League of Nations (Malanczuk, 1997, p. 364). The United Nations is interested in nearly all aspects of international life, and numerious topics can be discussed in the 'UN family' (Klabbers, 2013, p. 87). Today, 193 sovereign states are represented as members of the UN family. (except some very small states and entities whose statehood is not precisely defined) (Klabbers, 2013, p. 87). The UN was set up with a treaty: the United Nations Charter. With reference to Article 103 of the UN Charter, in case the obligations arise from the UN are in conflict with that of other international organisations, the obligations under the present Charter shall prevail (The UN, n.d., October 12, 2022). From this aspect, Klabbers also agrees in a sense to the ideas that thanks to the superior position of the UN, the Charter is alike to the constitution of the community of states (Klabbers, 2013, p. 87). The purposes of the UN was determined in the Charter. Accordingly, one of the main aims of the UN is to maintain peace along with a system of collective security (Malanczuk, 1997, p. 364). According to Article 1/1-4, the purposes of the United Nations are:

1. "To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of

justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends" (The UN, n.d., October 12, 2022).

According to Article 2/1-4, the principles of the United Nations are as such:

1. "The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations" (The UN, n.d., October 12, 2022).

There are six principal organs of the United Nations: the General Assembly, consisting of all the member states; the three Councils which compose of a limited number of member states – the Security Council, the Economic and Social Council, and the Trusteeship Council – and two organs, whose members are not member states, but individuals, including the Secretariat and the International Court of Justice (Malanczuk, 1997, p. 373). There are also a wide variety of subsidiary organs of these principal organs.

The Security Council, as the most important executive organ of the UN, consists of fifteen member states, and five of them are permanent members: China, Russia[9], France, the United Kingdom, and the United States (Malanczuk, 1997, p. 373). As it is stated in Article 25 of the Charter, "The members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter" (The UN, n.d., October 12, 2022). This demonstrates that the decisions of the Security Council are formally binding, but in practice, the Council often prefers to make recommendations (Dixon et al., 2016, p. 47). It means that all member states must obey these decisions which were regarded as legal

[9] The nullified names, such as the Union of Soviet Socialist Republics, the Republic of China are still stated in the Charter. An amendment in the Charter for this matter is required.

obligations (Malanczuk, 1997, p. 374). The binding decisions by international organizations, such as the Security Council Resolutions were accepted as an international legislation or legislative acts in the literature (Dixon et al., 2016, p. 46). The examples of international legislation are as such: the Security Council decisions which declared the applicability of the Fourth Geneva Convention to the occupied Palestinian territories, imposed disarmament obligations on Iraq, imposed any economic sanctions, determined the Kuwait-Iraq border (Dixon et al., 2016, p. 46).

Each permanent member of the Security Council has a 'veto' on non-procedural questions, such as, recommendations for the peaceful settlement of disputes, and decisions to take enforcement action (Malanczuk, 1997, p. 374). There is no 'veto' right to procedural questions (such as, questions about the agenda) (Malanczuk, 1997, p. 374). The decisions are made with the consent of these permanent members. The other elected ten member states remain in office for two years, and represent the world's geographical regions (Klabbers, 2013, p. 87). This is higly prestigious mission for member states. As today's international plane was formed after World War II, the five permanent members have been granted a speacial status at the Security Council (Klabbers, 2013, p. 87). However, since 1945, a lot of water has flowed beneath the bridge. Now, the composition of the Security Council does not reflect the changes in the international system, and it can easily said that the Security Council is under the effective control of the Western states, especially of the US. The discussions on turning the Security Council to a much more representative nature is continuing (Klabbers, 2013, p. 87).

The role of the Security Council, together with the General Assembly on the peaceful settlement of disputes is very important. The UN Secretary-General, often performing missions in secrecy, also has a profound effect in mediating between the conflicting parties (Malanczuk, 1997, p. 385).

"A dispute may be brought before the Security Council:

1. by a member of the United Nations, whether or not it is a party to the dispute[10];
2. by a state which is not a member of the United Nations, provided that it is a party to the dispute and 'accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter';

[10] Art.35(1) of the UN Charter states that "Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly".

3. by the General Assembly, which ‘may call the attention of the Security Council to situtions which are likely to endanger international peace and security’;
4. by the Secretary-General, ‘who may bring to the attention of the Security Council any matter which in his/her opinion may threaten the maintenance of international peace and security’ ” (Malanczuk, 1997, pp. 385–386) .

The Security Council makes a final decision whether the dispute can be placed its own agenda, or not (Malanczuk, 1997, p. 386). As it is mentioned before, the decisions that are procedural related to the agenda cannot be vetoed (Malanczuk, 1997, p. 386).

The UN Charter gave a particular importance to the creation of a more advanced system of collective security for the maintenance of international peace and security (Malanczuk, 1997, p. 387). Article 2(4) clearly states that “All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state…” (The UN, n.d., October 12, 2022). When the Security Council determines any threat to the peace, any breach of the peace, it makes recommendations, or decides what measures can be taken in accordance with Article 41 and 42, to maintain international peace and security (The UN, n.d., October 12, 2022). In this sense, the Security Council can make various recommendations which had a tremendous political influence for the peaceful settlement of disputes, which do not impose legal obligations (Malanczuk, 1997, p. 386). “The Council has authority to pass binding decisions under Chapter VII” (entitled as ‘Action With Respect To Threats To the Peace, Breaches of the Peace, and Acts of Aggression’) (Malanczuk, 1997, p. 386). The UN’s monopoly in enforcement power for action under an elaborate system of economic, political and military measures against aggression mentioned in Chapter VII of the Charter has two exceptions; the right of individual (unilateral) or collective self-defence in Article 51, and enforcement measures applied by regional organisations, authorized by the Security Council under Article 53 (Malanczuk, 1997, pp. 387–388).

The other important organ of the United Nations is the General Assembly. It consists of all the member states of the UN. It is a place where global justice matters to be discussed (Klabbers, 2013, p. 87). Resolutions of the General Assembly are generally non-binding, but resolutions regulating the internal affairs of the UN, such as the election to various committees and finance issues are important, and thus, cannot be disregarded by the members of the UN (Dixon et al., 2016, p. 47). On these questions, the General Assembly may take decisions which are binding on member states, for instance, as it was the case in budgetary resolutions (Malanczuk, 1997, p. 378). However, when it comes to other questions, the General Assembly

cannot take a binding decisions or enforcement action, but instead, the Assembly can make recommendations on the disputes between member states (Malanczuk, 1997, p. 378).

When a resolution condemns a state for breaking international law, this leads to a considerable pressure on that state by alerting it to reconsider its position (Malanczuk, 1997, p. 379). Malanczuk gives an example to make the situation more clear: "A resolution condemning state A for committing aggression against state B implies that it is lawful for other states to go to state B's defence, and may therefore encourage them to do so" (Malanczuk, 1997, p. 379). Beyond political effects, the General Assembly resolutions also do have legal effects. These resolutions shed light on the current state of law, and interprets the legal texts by contributing to the development of customary international law (Dixon et al., 2016, pp. 47–48). Moreover, International Court of Justice (ICJ) took note of General Assembly resolutions, if necessary (Dixon et al., 2016, p. 48). For instance, ICJ presented the Advisory Opinion concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory referring to the resolutions of the General Assembly concerning illegal acquisition of territory by force and the principle of self determination (Dixon et al., 2016, p. 48). In addition, the ICJ determined to support the application of the Fourth Geneva Convention to the Occupied Territories with reference to the several resolutions of the General Assembly and the Security Council (Dixon et al., 2016, p. 48). Meanwhile, Article 18 of the Charter states that decisions of the General Assembly on important questions, such as recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council… etc. are made by two-thirds majority of the members present and voting (The UN, n.d., October 12, 2022).

The UN Secretariat employs tens of thousands of UN staff members working at duty stations all over the world (The United Nations, n.d.). The Secretary-General (currently a Portuguese politician and diplomat António Guterres) is the head of the Secretariat (The UN, n.d., October 12, 2022). Although the secretariat is impartial, the Secretary-General is very important, not only in terms of administration, but also politically. For instance, in an interview to UN News, Mr. Guterres shares his own political stance sincerely:

> "My objective is to make it clear that the geopolitical divisions we are witnessing today are terrible. When the world is facing climate change, when the world is facing the possibility of other pandemics and COVID-19 has not yet been resolved, when the world is facing high levels of inequality between developed and developing countries, and huge inequality within countries. The world needs to really turn around on all these aspects. We need unity, we need cooperation, we need dialogue, and the present geopolitical divides are not allowing it to happen. We need to change course." (The UN News, 2022).

The Economic and Social Council (ECOSOC) is another main organ of the UN. The Council aims to advance three dimensions of sustainable development – economic, social and environmental – so that this purpose puts it at the heart of the United Nations system (The United Nations, n.d.). Coordination within the UN family is under the responsibility of the Council, amongs other things (Klabbers, 2013, p. 88).

The Trusteeship Council, taking place in Chapter XIII (Articles 86-91), of the UN Charter was created as another organ of the UN. It was responsible for the administration of Trust Territories (Klabbers, 2013, p. 88). The International Trusteeship system takes place in Chapter XII of the UN Charter (Articles 75-85), and is similar to the League's mandate system, but with a difference. While Mandates were part of the League of Nations legal system, the transfer of the mandated territories to the International Trusteeship system was discretionary according to the UN Charter (Scobbie & Hibbin, 2009, p. 25). There was an expectation that this would happen sooner or later, but in fact, it was the initiative of States, which held territories under Mandate (Scobbie & Hibbin, 2009, p. 25).

Article 75 of the UN Charter provides:

> "The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories" (The United Nations, n.d.).

According to the Article 77 of the UN Charter, territories held under mandate could be transfered to the Trusteeship system via trusteeship agreements to be made as to which territories will be brought under the trusteeship system and upon what terms (The UN, n.d., October 12, 2022). Further, Article 83 states that the agreements relating to the strategic areas were to be approved, altered, or amended by the Security Council (The UN, n.d., October 12, 2022). The Trusteeship System had accomplished its mission when the final UN Trust Territory, the Republic of Palau, gained its independence in 1994, and now they have little to do as there is no territories left (Malanczuk, 1997, p. 328).

Finally, the International Court of Justice is the principal judicial organ of the UN. The Court, whose seat is the Peace Palace in The Hague (Netherlands), settles, in accordance with international law, legal disputes submitted to it by States and gives advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies (ICJ, n.d., October 17, 2022). In other words, as Klabbers states that there is a strong connection between the United Nations and International Court of Justice (Klabbers, 2013, p. 88).

2.9. A General Evaluation: Critics Of International Law and The United Nations

International law which is a system of law has been traditionally deals with the relations between states, and following the increase of international organisations, it regulates the relations with international organisations (Suter, 2004, p. 344). International law has been criticised by the policy and academic circles in terms of its link with global justice and equality. According to a broadly accepted view, justice can be obtained by developing a strong political relationship of individuals, such as citizens of the same state. (Dunoff, et al., 2015, p. 3.260). Under this understanding, global justice cannot be possible without setting up a world government (Dunoff, et al., 2015, 3.261). In this sense, Thomas Nagel argues that there is a link between justice and sovereignty (Dunoff, et al., 2015, 3.261). Conceptions of justice is based on the coordinated conduct of people which can be possible through law backed by a monopoly force (Dunoff, et al., 2015, 3.261). The principles of justice can be defined as "a set of rules and practices that would serve everyone's interest if everyone conformed to them" (Dunoff, et al., 2015, 3.261). Justice can be achievable when self-interested individuals conform rules and practices under the assurances that others also will do the same if one does (Dunoff, et al., 2015, 3.261). Thus, a collective self-interest is observed. On a global context, it was sovereign state that puts its citizens into an institutional relation which can be evaluated by the special standards of fairness and equality (Dunoff, et al., 2015, 3.262). However, this claim has been subject to critiques as to how to be known that transnational relations had become sufficiently dense to support claims of global justice (Dunoff, et al., 2015, 3.263). When it comes to the equality in international law, the notion of sovereign equality is one of the most important principles. All States enjoy sovereign equality just by their status as states in international law whatever the factual inequalities occured from one another in spite of the asymmetries in military power, economic development, size, population, wealth etc. (Ansong, 2016, p. 13). On the other hand, states' equal status is not absolute, but relative (Zewei, 2003). As it was stated by Zewei, "the equality of state sovereignty is only illusion" because of the real differences in terms of population, natural resources, economic level etc. between states, and this makes "true national sovereign equality" impossible to be reached (Zewei, 2003). Thus, instead of the *de facto* equality, it must be highlighted "legal equality", which means that all States have full equality in having equal rights and obligations under international law (Zewei, 2003).

Another critique comes from the very nature of the proceedings in international law which is highly different from traditional state law. These critiques go so far as to that international law should not be called as "law" (AbuAlghanam, 2021, p. 1). This pessimistic view is stemmed from a neutral observation of the violations of international law by "those who are the 'so called' enforcers of the law in which they pridely call themselves as the Security Council of the United Nations" (Mohd Radzi, 2020, p. 2). There are ongoing discussions on the problems of enforcing in international law with regards to the fundamental principles of international law both within individual states and within the United Nations, as the world's universal global organization. There is no international sovereign, international government, or central authority to ensure international law when it was compared with municipal law which was created by a parliament or congress (Suter, 2004, p. 344). While police forces, courts, prisons complied with municipal rules in accordance with municipal/domestic law, in international system, the rules are weaker (Suter, 2004, p. 344). The lacuna of any system to enforce compliance to judicial decisions is a big trouble in international law. From the very beginning, the founders of the United Nations intended to establish a collective security system based on the assumption of sovereign nation-states and the sanctity of borders in accordance with the UN Charter (Keskin, 2002, p. 272). However, in an increasingly interdependent, integrated and globalised world, the United Nations whose the first purpose is expected to maintain international peace and security could not be sufficiently effective and consistent due to the existing problems in itself, and this led to a decrease in its credibility and prestige in the eyes of international community (Aral, 2016, 28). In this sense, Aral states that the reason behind the lost of prestige is lying in the primary responsibility of the Security Council, known as "a privileged club" (Aral, 2016, 28). Particularly, Cold War era witnessed a rivalry in this privileged club between the United States and the Soviet Union, and this controversy paralyzed the Security Council (Keskin, 2002, p. 272). For instance, despite the USA's occupation or interferences to Dominik (1965), Grenada (1983) and Panama (1989) or directly or indirectly attacks of various Central or Latin America countries, the United Nations had not been imposed any sanctions due to the UNSC veto mechanism (Aral, 2016, 22). Another instance can be given on the decisions of the UNSC regarding Israel's illegal acts in Palestine. Resolution 242 was adopted by the UNSC in order to withdrawal of Israel from territories under its occupation as a result of the Six-Day War (Aral, 2016, 22). Although Israel had not fulfilled its obligations concerning this resolution, the UNSC did not take any sanction decision beyond condemnation of Israeli illegal actions (Aral, 2016, 22). Thus, it can be argued that in accordance with a well-known motto "world is bigger than five" which reflects unfairness in the world order, "Five permanent members and their

right of veto in the Security Council are compatible with neither the principle of sovereign equality of states nor the world-wide accepted ethical principles" (Aral, 2016, 28). After 1990, some issues, particularly related to trans-boundary refugee flows, human rights, sustainable development could not be solved by member states alone, and so were directed to the UN. Because, it was the UN which was expected to play the role of world policeman to solve many problems, such as Iran-Iraq war, occupation of Afghanistan, problems in Cyprus etc. (Keskin, 2002, p. 274).

Nowadays, the UN was appreciated thanks to its pacific attempts to the ongoing war erupted between Russia and Ukraine, but on the other hand, it is still criticised so as not to adapt the changes *a fait accompli* in international law sufficiently. Russia's military offense to Ukraine that was launched on the night of 23 to 24 February 2022 turned to an extensive war between Ukraine and Russia (UNRIC, 2022). According to the information given by the UN Regional Information Centre For Western Europe, Europe faced its biggest refugee crisis since the Second World War (UNRIC, 2022). More than a third of the population had fled the country since the war commenced (UNRIC, 2022). As of 12 December, 715 attacks on health care centres were recorded by the World Health Organisation (WHO), and "As of 5 December, 17,181 civilian casualties were recorded, including 6702 deaths" (UNRIC, 2022). This tragic and dire situation raised the question of protection of civilians as a first priority. Moreover, the threat of a collapse of the global food system urged Ukraine and Russia to make the UN-brokered negotiations in Türkiye. The UN Secretary-General A. Guterres deemed the talks as "a ray of hope to ease human suffering and alleviate hunger around the world" (UNRIC, 2022). With collective effort and hard work, representatives from Ukraine, Russia, Türkiye and the UN signed the landmark Black Sea deal (UNRIC, 2022). This tragic case has proven and demonstrated the world how important the negotiations of peace under a comprehensive mediation attempts of the United Nations hosted by Türkiye are to be able to reach a sustainable peace both in Ukraine and in the world once again. It can clearly be said that the United Nations is still very crucial global organisation to turn a little ray of hope into the peace torch in the world. On the other hand, the continuation of the war also demonstrated the need of an urgent reform initiatives in the UN should be taken forthwith. In the new world order, any disfunctions and ineffectiveness during the process of the decision-making of the UN should be reversed. In this sense, a panel in Rome on April 26, 2022, organised by the Directorate of Communication of the Presidency of the Republic of Türkiye, titled "The United Nations Security Council Reform: A New Approach to Reconstructing the International Order" is valuable as it has

contributed to the discussions, such as the UN reform, the permanent membership system in the UNSC, the right of veto, and the issue of representation as well as adressing the challenges and problems in recent years (Presidency's DOC, 2022). As V. Giannotta stated, although the road ahead to the world peace is rough, international community together with international organisations, and in particular the United Nations have a strenght of will and power to cope with significant challenges and problems (AA, 2022).

CHAPTER 3

THE LEGAL STATUS OF BAYT AL-MAQDIS IN INTERNATIONAL LAW UNDER THE SELECTED UNITED NATIONS RESOLUTIONS

3.1. Stakes In The Holy Land Bayt Al-Maqdıs

There is no any other place intertwined with past and present so much as it was the case in Bayt al-Maqdis. As Armstrong states, history is dimension of present in Quds. (Armstrong, 1997, p. 17). The city is very important for Muslims, Christians and Jews although the connotation of it is entirely different from one another (Armstrong, 1997, p. 18). Whilst religious pluralism of the Holy City is painting a rosey picture on the imaginative minds of hundreds of millions, the real tableau in the twenty-first century is unfortunately so sombre as it is laden with religious and political tumult. Christians, Muslims and Jews are competing to cover up the troubled present inflamed by the alleged heroic narrative of their own holy city. There are many questions reflecting to this vivid competition, but those noted by Armstrong are quite striking; "Who had been the first to resort to violence, the Zionists or the Arabs? Who had first noticed the potential of Palestine and developed the country? Who had lived in Jerusalem first, the Jews or the Palestinians?" (Armstrong, 1997, p. 16-17). Aside from the answers to these questions, the examination of the fact that who had done what first is clearly an indication of the attachment of all three faiths to this one and unique Holy City.

The ancient city, which is loved and adored by hundreds of millions throughout the world, Quds had been welcomed by the ancient societies, such as Canaanites, Amorites, Jebusites, Hittites, and other races (Asali, 1994, p. 38). The oldest recorded name of the city is Urusalem, whose origin is Amoritic. It can be translated as "founded by Salem/Shalem", the Canaanite-Amorite god (Asali, 1994, p. 38). The second name of the city is "Jebus" as Jebusites were the inhabitants of Qud in the second millennium (Asali, 1994, p. 38). In addition, those who built the fortress Zion[11] were the Jebusites (Asali, 1994, p. 38). It was David who occupied the city, and at his time, the fortress of Zion was turned to "The Citadel of David" in the year 1000 B.C., and the city fell into Israelite hands (Asali, 1999, p. 24). Then, Quds was destroyed by the Babylonians in 587 B.C. (Cattan, 1981, p. 3). After that, it was successively occupied and ruled by the Persians, the Greeks, the Romans, the Arabs and the Turks (Cattan, 1981, p. 3).

[11] Zion / Sion, which is a Canaanite word means "hill" or "height" (Asali, 1994, 38).

Whenever it was destroyed, it was destined to rise again. (Asali, 1999, p. 9). The holy city witnessed to the rule of all three faiths. Particularly, the rule of Muslims (Arabs and Turks) lasted for twelve centuries from 638 until 1917, except the Latin Kingdom of Jerusalem, prior to the current cycle of competition for posession (Cattan, 1981, p. 3). As Asali said that the history of the city was the mélange of glories and catastrophes (Asali, 1990, p. 9). In the minds of both Palestinian Muslims and Christian Arabs, Quds/Jerusalem in the twentieth and twenty-first century have been commemorated with dispossession images of the native inhabitants from their homes due to the Israeli state's cruel and injustice occupation (Aziz, 2003, p. 514).

3.2. Bayt Al-Maqdıs Under The Last Perıod Of The Ottoman Rule

The people in Bayt al-Maqdis enjoyed equal rights as Ottoman citizens under the Ottoman Empire during the four centuries from 1517 to 1917. The Ottoman Empire had an exclusive sovereignty not only over the City of Bayt al-Maqdis, but also over the whole region Bayt al-Maqdis. The Ottoman Sultans paid homage to there thanks to its special position in terms of being one of the holy city in Islam, Christendom and Judaism. Accordingly, under the provincial administration of the Empire, there were *vilayet*s (*province*s, *sanjak*s), and one of the unique *vilayet* was al-Quds al-Sharif. The holy city of Bayt al-Maqdis enjoyed a special administrative status. (Cattan, 1981, p. 3). In line with the administrative regulations of 1877-1888, the city and its environs was linked to Istanbul directly, instead of being under the jurisdiction of the governor of the province (Cattan, 1981, p. 3-4). During the rule of the Caliph Abdülhamid II, in 1887, the region Bayt al-Maqdis was known as "The Excellent Independent Province of Jerusalem, Liwa' al-Quds al-Mustaqil al-Mumtaz" (El-Awaisi A., 2007, p. 27). At that time, mutasarrifate al-Quds al-Sharif (not just the city of Quds, but also a region), covered these provinces; Quds, Hebron, Gaza, Haifa, Jaffa. In essence, these borders were not the exact borders of the time of the Prophet. Sultan Abdülhamid II extended administrative borders of "Bayt al-Maqdis", as he was aware of the Zionist's aim/plan for this region.

As from the nineteenth century, Bayt al-Maqdis became a place where religious and political claims were conflicting between Jews and Palestinian Arabs. Mutual desire of two emerging national communities; Zionists and Palestinians for the same piece of land, not much larger than Wales, had its origin in the late 19th century, when nationalist movements gained momentum in Europe (Bunton, 2013, p. 3). Europe and Russia also witnessed an increasingly widespread of anti-semitism. Therefore, zionism commenced as a reaction to European anti-Semitism, and various nationalist movements, excluding Jews from political communities in

the process of formation (Gelvin, 2014, p. 14). At the end of the 19th century, when the blustering winds of anti-Semitism blew in Europe, political zionism was bloomed with the efforts of Theodor Herzl. He was in tendency to modern nationalist ideologies in line with political zionism to establish a state of their own (Bunton, 2013, p. 3). It was that environment Herzl toyed with Bayt al-Maqdis as their ever-memorable historic home (Gelvin, 2014, p. 51). In 1897, under the leadership of Herzl, the First Zionist Congress was organised, and there, World Zionist Organisation was founded. The Basel program was approved. A few years after, the Jewish National Fund (JNF) was approved by the Fourth Zionist Congress, held in London in 1900. Land purchasings to establish a Jewish state was very important for the Zionists. Although these land purchasings were not broad in scope at the beginning, they shaped the future of the Zionist Project in the long term (Bunton, 2013, p. 5).

The final decades of the nineteenth century made a substantial change in the small Jewish Yishuv (Prestate community in Bayt al-Maqdis). The first Aliya (1882-1903) that has been the major waves of settlement would plant the first seeds of a modern Jewish nationalism in Bayt al-Maqdis' soil (Saposnik, 2008, p. 24). By the turn of the century, the Yishuv doubled in size (From approximately 26,000-30,000 Jews who resided in Palestine prior to the first Aliya, to 55,000 Jews) (Saposnik, 2008, p. 24). The Zionists aimed at the mélange of the Jewish Yishuv in Bayt al-Maqdis to become homogenous and unified as a nation of Jewish culture, establishing their own cultural practices, rituals, and modes of daily life that reflect the Hebrew culture of the Yishuv and, later, the state of Israel (Saposnik, 2008, p. 3). The more significant second Aliya (1904-1914), which approximately 35,000 Jews immigrated into Ottoman-ruled Bayt al-Maqdis, served a purpose to the creation of a seperate society in Bayt al-Maqdis (Bunton, 2013, p. 4). Some of them produced the *kibbutz* and *moshav* settlements (Schneer, 2010, p. 49). "By 1914, approximately 85,000 Jews resided in the holy land, and of whom about 35,000 Jews had arrived in recent decades." (Bunton, 2013, p. 4). By the outbreak of the First World War, after particularly intense activity, the foundations and infrastructure of unified and homogenous national culture that would effectively reshape Palestine's Jewish community had been created. (Saposnik, 2008, p. 23).

The situation was like a candle in the wind when it was thought the emigration to Bayt al-Maqdis as the only way for Jews who were in danger of a new wave of pogroms to be able to find a safe shelter in that conjucture. The Ottomans were already well awared of the situation, and let the Jews emigrate to the Empire with two conditions; renouncing their European citizenship by becoming Ottoman subjects and to be able to go everywhere in the Empire,

except Bayt al-Maqdis (Gelvin, 2014, p. 53). Ottoman's reluctance did not pave the way for immigration to the holy land although Herzl's diplomatic efforts with foreign leaders, including the Ottoman Sultan Abdülhamid II and the Russian Tsar. Along with the Young Turk revolution of 1908, which established a constitutional monarchy, an imperial style charter which was given by the Ottoman Sultanate was no longer needed (Halpern & Reinharz, 1998, p. 146). However, what happened on the ground disappointed the Jews. The numbers of those who migrated between 1882 and 1914 and their acquiring ownership of the land were unsatisfactory for them. On the eve of World War I, about 85,000 Jews were living in Palestine (Schneer, 2010, p. 49). The First World War would make available of the realization of the Zionist dream, 20 years later, in 1917.

Outbreak of the World War I, together with the Young Turk revolution of 1908, triggered demands of independence of the Arabs which formed greatest population in the Ottoman Empire (Armaoğlu, 1989, p. 28). When it was compared with Zionism having been a pioneer of the organised Jewish nationalism, Arab nationalism had a lack of comprehensive organisation, including whole Arab world (Armaoğlu, 1989, p. 28). As Armaoğlu mentioned that Zionism was born as a nationalism based on religion. What was binding Diaspora together scattered all over the world was not a national character, but religious tie (Armaoğlu, 1989, p. 28). This was different from the understanding of Ummah. When it comes to the 20th century, almost each Arab society had a kind of "national state," relying on their historical background. Given this realities, uniting all Arabs under an Arab Empire was unable to go beyond of being personal ambition (Armaoğlu, 1989, p. 28). On the other hand, the efforts of Sir Henry McMahon, Sykes and Balfour served the desire of Zionists to establish a state in Bayt al-Maqdis by planning the postwar future of the West Asia (Long, 2018, p. 25).

The Sharif Husayn, Amir of Mecca in the Ottoman Vilayet of the Hijaz commited to fight against the Ottoman Empire, and cement good relations with the British (Regan, 2017, p. 106). From July 1915 to March 1916, the Sharif Husayn corresponded with Sir Henry McMahon, the British High Commissioner in Egypt. In the correspondence, the Sharif of Mecca was encouraged to rebel against the Sultan-Caliph in Istanbul in return for taking the lead of the Caliphate with British assistance (Friedman, 1970, p. 83). What McMahon had in mind was liberation of the Arab peoples from the German and Turkish domination, but no more (Friedman, 1970, p. 86). They came to agree in the matter of recognition of the principle of Arab independence as an independent sovereign state in a generic sense (within the British sphere) (Friedman, 1970, p. 86). However, the idea of an Arabian unity under one ruler who

was recognized as supreme by other Arab chiefs was inconceivable to Arab mind (Friedman, 1970, pp. 86–87). The issue of boundaries in the Hussein-McMahon correspondence remained unsolved. In despite of ambiguity of boundaries, the Sharif Husayn had tried to revolutionise against the Turks on 6 June 1916 (Armaoğlu, 1989, p. 31). His revolt was seen as ingratitude towards the Turks by commanding little or no sympathy (Friedman, 1970, p. 98). Right through the war up to the end, Arab troops in the Ottoman army from Mesopotamia, Syria, and Bayt al-Maqdis was loyal. (Friedman, 1970, p. 102). As Friedman stated that throughout the war, "The Sherifian attempt remained an isolated phenomenon" (Friedman, 1970, p. 102).

The determination of Great Britain not to engage with the Sharif related to the boundaries was due to its willingness to reach an agreement with France in the region. (Armaoğlu, 1989, p. 31). That is why the British Government kept the French informed about its contacts with the Sharif in Makkah so as to gain France's support for the Sharif's planned attempt (Schneer, 2010, p. 165). The two powers felt an urgent need to come to an agreement to redrew the West Asian map by shaping the future of Ottoman territory. On one hand, McMahon and the Sharif were conducting the series of unsatisfactory correspondence, on the other hand, British and French representatives were discussing the future of the West Asia in London (Schneer, 2010, p. 161). France's position was to terminate the sick man of Europe, and to gain direct control of the Eastern Mediterranian coastline, including an enlarged Lebanon along with an indirect control through puppet rulers in Syria and in present-day Iraq (Schneer, 2010, p. 166). Eventually, Anglo-French discussions related to dividing the West Asian into spheres of influence resulted in the Sykes-Picot Agreement of 1916. The document was not implemented, but created a turmoil as in the case of McMahon-Husayn correspondence of 1914-15 (Schneer, 2010, p. 161). As for Bayt al-Maqdis, there was no clarity in the text, but it was mostly argued that the region was to be administered by international condominium/control. The efforts of the Zionists, who do not want the French or Russian to benefit from Bayt al-Maqdis enabled to be revised of that provision of the agreement. As Long stated, this decision was the death knell for an Arab Palestine, and its demise was completed with the Balfour Declaration.

3.3. The Balfour Declaration And The Defeat Of The Ottoman Empire In The WWI

The Balfour Declaration, an ex officio "declaration of sympathy," as a political document which is neither an agreement nor a treaty, but a proclamation was an extraordinary one written in a letter form from the Government of His Britannic Majesty King George the Fifth to

international financier of the banking house of Rothschild who had been made a peer of the realm (John, 1985). It was issued on November 2, 1917. The letter is as such:

> Foreign Office, November 2nd, 1917
> Dear Lord Rothschild,
>
> I have much pleasure in conveying to you on behalf of His Majesty's Government the following declaration of sympathy with Jewish Zionist aspirations, which has been submitted to and approved by the Cabinet:
>
> "His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine or the rights and political status enjoyed by Jews in any other country."
>
> I should be grateful if you would bring this Declaration to the knowledge of the Zionist Federation.
>
> Yours sincerely,
>
> Arthur James Balfour (Bunton, 2013, p. 19).

The Sharif Husayn who had proclaimed himself "King of the Arab Countries" in 1916, was disturbed when he heard the news of the Declaration and asked Britain to clarify its meaning (Shlaim, 2005). After the meetings in Jeddah, Husayn's silence showed that he trusted "Britain's assurance that the settlement of Jews in Bayt al-Maqdis would not conflict with Arab independence" (Shlaim, 2005). However, at the end of the day, Husayn understood to be betrayed when his demand for Arab independence in Bayt al-Maqdis was refused. In this sense, the Balfour Declaration was not only the document setting a stage for the eventual creation of the Israeli state, but also was a challenge to the definitions of nation and national identity. The recognition of the will of establishing a Jewish homeland in Bayt al-Maqdis by the Cabinet was a victory of the Zionist Movement even if the term 'national home' has not been seen as a 'state' in international law (Watson, 2018, p. 103). In fact, the vague term 'national home' was not more than a territorial enclave inside another state without the capacity to engage in foreign relations on its own (Watson, 2018, p. 103).

This exceedingly brief statement completely changed the position of the Zionist movement vis-à-vis the Arabs, providing a protective umbrella that enable the Zionists to achieve their ultimate goal of establishing an independent Jewish state in Bayt al-Maqdis (Shlaim, 2005). From Koestler's point of view, the Declaration was not only a statement of poetic inspiration, but also the concept of National Home was a "négre blanc," in terms of the ambiguous diplomatic phrase (Koestler, 1949, p. 7). In addition, Koestler saw it as the most improbable political documents of all time (Koestler, 1949, p. 4). Because, "In this document, one nation solemnly promised to a second nation the country of a third" (Koestler, 1949, p. 4). Shlaim also explained that the Declaration includes the opaquenes, ambiguity and the internal contradictions. (Shlaim, 2005). Another significant note from Shlaim was that the implication of the proviso "nothing shall be done which may prejudice the civil and religious rights of existing non Jewish communities in Palestine" meant that the Arab majority had no political rights (Shlaim, 2005). The 'Great Powers' underestimated the political rights of majority while the right of self determination of minority had been granted to the Jews although they constitues only 9 per cent of the whole population in Bayt al-Maqdis at that time. Because, the region was clearly inappropriate for a large-scale Jewish immigration from Europe.

According to Bunton, there were two reasons behing the intersection of British interests with Zionism. The first one is that British endeavor to set up a people which does not exist in reality was because of the radialized belief that "Jews constituted a nation" (Bunton, 2013, p. 19). The other one is related to the European idea of superiority that the only way of improvement could be made with European colonialism brought to backward areas. This meant that Bayt al-Maqdis's Arab inhabitants did not merit attention (Bunton, 2013, p. 19). In addition to these, there were also multiple reasons of Britain's joining forces with Zionists as well as Britain's wartime strategic and imperial interests; British officials' Biblical romanticism and their sympathy for the plight of Jews, Zionists' lobby activities; like Dr. Haim Weizmann, PM Lloyd George, British desire to keep the French out, particularly from Egypt and the Suez Canal by putting Zionists into the region as a British ally, Britain's wish not to appear anti Semitic in their decision-making process, supporting the idea of the existence of a homogenized Jewish 'nation,' and Britain's belief in the mystical power of "the Jews," that control the world (Bunton, 2013, pp. 20–21). When all these reasons combined with the right time to follow the pro-Zionist policy, namely in the month following Balfour Declaration, Quds was occupied by the British forces (Bunton, 2013, p. 21).

Istanbul had been supported by Britain as the chief guardian of its gateways to India, but soon after the First World War began, Istanbul's decision to side with Germany and against the UK enabled to start out the plan in the matter of the disposal of Istanbul's Arab possessions in the West Asia (Long, 2018, p. 25). A three-pronged mechanism was ready to rebuild the region; the Indian Army for Mesopotamia, the British-sponsored Arab Revolt, and the Egyptian Army for Syria and Palestine respectively (Long, 2018, p. 25). To that end, Husayn/McMahon Correspondence, Sykes-Picot Agreement and Balfour Declaration were justified by Britain even if completely inconsistent (Long, 2018, p. 25). The British were keen on considering multiple conflicting plans, all in the hope of securing a military victory (Bunton, 2013, p. 16). McMahon's correspondence had finalised before the Sykes-Picot agreement. From the British point of view, these two were very important to the whole process on the pathway to the victory. Having obtained the approval of the French with Sykes-Picot agreement and created an alliance with Arab forces, the British turned their attention to defeat the Ottoman Empire (Regan, 2017, p. 110). The Ottoman army had had some successes in defending the southern Bayt al-Maqdis, but with the arrival of Field Marshall Allenby, the Ottomans suffered a number of defeats there in October and early November before Allenby's entrance to Quds on 11 December 1917 (Regan, 2017, pp. 110–111). The Arab forces led by Emir Faisal (The third son of Sharif Husayn) and T. E. Lawrence (The British military liaison officer) attempted a series of actions capturing Aqaba and attacking the Hijaz rail services (Regan, 2017, p. 111). Ten months later, the Ottoman Empire had been defeated.

3.4. Bayt Al-Maqdis under Military Occupation of The United Kingdom

British troops stationed in Egypt occupied the southern part of Bayt al-Maqdis in 1917, and then, conquered the northern part of it one year later (Likhovski, 2006, p. 21). When the conquest extended to the North of Palestine and Syria, the Occupied Enemy Territory Administration – South (OETA S) was established on October 27, 1918, and 2 days later, the military government was authorized by armistice agreements signed in Mudros between the Ottoman Empire and the Entente Powers (Gavish, 2005, p. 18). Allenby ordered to be complied with Hague Convention IV(1907) – Laws and Customs of War on Land. With this international convention, the population in conquered areas was to be protected with laws that had been in force there before the conquest, unless absolutely prevented, so that the population runs its life as before (Gavish, 2005, p. 18). This was only an attempt to make a smooth transition without disturbing the Palestinians. However, the reality of Balfour Declaration and the challenge that Zionism posed created tension and led to questions to which lands the Jewish national home

was to be established. Arab population was cautious as the Balfour Declaration found its tongue so that one year later in November 1918, the anniversary of the Balfour Declaration which coincided with the final end to the war, Arab dignitaries and representatives opposed to the Balfour Day parade that was held in Quds (Bunton, 2013, p. 21). This became turning point that Zionism was articulated to the Palestinian Arab nationalist identity as a big threat. A temporary military government "OETA" which was set up by General Allenby was in power until July 1920 (Reynold, 2014, p. 7).

Civilian administration was established in 1920. After four hundred years of life under Ottoman Empire, the native people saw the British administration as an alien in Bayt al-Maqdis. The years of war and post-war created a collective trauma for Palestinians, who were ruled by Britain while their watan had been promised to others as a national home (Khalidi, 2020, p. 56). This social unrest led to local and dispersed conflicts in Bayt al-Maqdis during 1920's. Nevertheless, the Arabs in Palestine had neither an organised national movements nor a strong solidarity under a powerful recognized leader when compared with the Zionists (Armaoğlu, 1989, p. 39). On the other hand, there was another war between the OETA and the Yishuv. As Reynold stated that the OETA, which was seen as a stop-gap administration was very unpopular amongst the Zionists (Reynold, 2014). When the concept of mandatory rule was compared with colonial administration that was accustomed to the British over hundred of years, the new system was not known, and to solve the tensions between intercommunal relations by means of autocratic authority without caring the needs of the "native" population increased discord between Palestine administration and the Yishuv, which did need trust, cooperation and sympathy as they did not want to be treated as another British colony (Reynold, 2014). Thus, from the outset, to please both communities within the parameters of British government policy was much severe test than it was looked (Reynold, 2014).

The new era of post-WWI had been envisaged to be made the world safe for democracy without secret diplomacy, as President Wilson wished, but the Allies' desire for the spoils of war on the Arab lands of the former Ottoman Empire and the bitter realities on the ground made the League of Nations to accept the mandate system that ensured Britain and France to take responsibility for preparing these new units for self determination while trying to protect their own strategic interests for a limited period of time (Bunton, 2013, p. 22). Military achievements strenghtened Britain's hand at table after the war was over. In April 1920 San Remo conference, during an international meeting that was held after the conclusion of World War I, Britain was awarded the mandate for Palestine by the Supreme Allied Council (Bunton, 2013, p. 21).

Therefore, British mandate in Bayt al-Maqdis started from 1920, and lasted to 1948. In the meantime, British government maintained its support for Zionism. During the conference, when the Balfour Declaration which had no binding force was incorporated in Britain's mandate, it became binding as an actionable part of the mandate (Stanton, 2013, p. 2). Britain saw Bayt al-Maqdis as its 'Crown colony,' particularly in its first two decades. In fact, as Bunton stated, the mandate system was no more than "old-fashioned imperial acquisition as enlightened tutelage" (Bunton, 2013, p. 22). There were different classes of mandates; such as 'A','B','C' mandates. The territory of Bayt al-Maqdis, which formerly belonged to the Ottoman Empire under its exclusive sovereignty was defined as 'A' mandate. In the case of Quds, from 1917 to 1948, during thirty-one years, sovereign rights over the holy city of Bayt al-Maqdis did not belong to the United Kingdom, but instead to the League and administering authority, which had the power to dispose of any part of territory under Mandate (Cassese, 2008, p. 274).

3.5. The Mandate Period For Bayt Al-Maqdis (1922-1947)

According to the fourth paragraph of Article 22 of the League of Nations Covenant;

> "… Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory…" (The Avalon, n.d., December 21, 2022).

The Covenant implied that a right of self determination would be allowed to be exercised by the peoples in the mandated territories at some time in the future, but it was not appointed an exact day for the exercise of that right (Malanczuk, 1997, p. 328). As for the wishes of the communities in determining which mandatory power would have been supervised over them, the desire of the peoples of the West Asia had been overlooked (Gelvin, 2014, p. 87). For instance, the Syrian General Congress declared that Syria's intention was to be independent and united with today's Syria, Lebanon, Palestine, and Jordan (Gelvin, 2014, p. 87). If it had given a chance to select its mandatory power, Syria would have chosen either the United States or Great Britain (Gelvin, 2014, p. 87).

In accordance with Art. 22 of the Covenant, the mandate for Bayt al-Maqdis (Palestine) in favor of the establishment in Bayt al-Maqdis of a national home for the Jewish people was formally granted to Britain by the League of Nations in late 1922 (Likhovski, 2006, p. 21). In this way, it was given a basis in international law. The City of Quds had not been mentioned in

the League of Nations mandate for Bayt al-Maqdis (Baron, 1998, p. 5). But, sovereignty over the city was shared with the League of Nations and Great Britain between 1922-1946 (Baron, 1998, p.6). Under international law, the legal effect of the detachment of Bayt al-Maqdis from the Ottomans and the recognition of it by Article 22 of the League of Nations Covenant of the existence of its inhabitants as an "independent nation" was to make of Bayt al-Maqdis a state under the law of nations in which was vested sovereignty over the country. Because, according to Cattan, it is obvious that the Mandatory did not acquire any title or sovereignty over the mandated territory (Cattan, 1981, p. 5). It can be stated that "The people of mandated territory are not deprived of the right of sovereignty, but are temporarily deprived of its exercise" (Cattan, 1981, p. 6). "There can be no doubt that sovereignty over Quds as an integral part of Bayt al-Maqdis was at all times vested in the Maqdisian people (People in the Bayt al-Maqdis), even both during Turkish times when they were citizens of an independent and sovereign country, and also specifically after the detachment of Bayt al-Maqdis from the Ottomans" (Cattan, 1981: 6-7). As a result, one can argue that the Palestinians (The Maqdisians) had the right of sovereignty which they have all times possessed. However, the problem was how to restorate of the exercise of the right of sovereignty as the legitimate owners (Cattan, 1981, p. 7).

The Council of the League of Nations specified the obligations of Britain as mandatory power in twenty-eight articles by incorporating to the text of the Balfour Declaration to the document, which was turning wartime promises into a more binding contract (Bunton, 2013, p. 22-23). As Khalidi's quite right evaluation, in the third paragraph of the Mandate's preamble, the emphasizing of no other people's but only the Jewish people's historic connections to Bayt al-Maqdis meant to the eradication of the entire two-thousand year history of the people dating from the Ottoman, Mamluk, Ayyubid, Crusader, Abbasid, Umayyad, Byzantine, and earlier periods (Khalidi, 2020, p. 67). According to the Article 1 of the Mandate document, the Mandatory would have full powers of legislations and of administration (The UN, n.d., April 18, 2022). In line with this provision, the British enacted the Palestine Order-in-Council in 1922 regarding the structure of Palestine's government (Likhovski, 2006, p. 24). It had been envisaged to be established basic mechanisms of government; such as a legislative council, composed of British officials and elected local representatives (Bunton, 2013, p. 25). However, the proportion of Jewish and Arab representatives in this body caused problem in negotiations. Because, the Palestinian Arabs demand for power to control Zionist immigration and land purchase was totally againsts the terms of the mandate which required that the British had to

do the necessary to facilitate the establishment of a Jewish national home (Bunton, 2013, p. 25). Thus, legislative authority was vested in the British high commissioner in Palestine, and also it was established an advisory council to assist the high commissioner (Likhovski, 2006, pp. 24–25). Article 4 and 11 of the Charter of the British Mandate envisaged a Jewish agency for the purpose of developing administrative machinery and being able to arrange with the administration to construct and operate any public works, services, and utilities. The Zionist organisation would recognise such an agency as long as it was in line with the Mandatory. (The UN, n.d. April 18, 2022). The idea of establishing a Jewish agency to represent the Zionist interests in international platforms at the hands of diplomatic means enabled to act as a para-state (Khalidi, 2020, p. 70). According to Article 13 of the Charter, the Mandatory was allocated all responsibility related to the preserving existing rights and securing free access to the Holy Places, religious buildings and sites and the free exercise of worship (The UN, n.d. April 18, 2022). Namely, it had been explicitly referenced to the Holy Places in Palestine in the Charter (Baron, 1998, p. 6). As regards migration, the administration would facilitate and encourage Jewish immigration in co-operation with the Jewish agency (The UN, n.d., April 18, 2022). The words were as such;

> "The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage, in co-operation with the Jewish agency referred to in Article 4, close settlement by Jews on the land, including State lands and waste lands not required for public purposes." (The UN, n.d., April 18, 2022).

The three main issues in Mandate Palestine were immigration, the establishing of institutions of representative self government and the acquisition of land by Jews (Cohen, 2020, p. 172). That is why this provision above was crucially important due to giving rise to the demographic changes and facilitating land acquiring in favor of the Jews coming from all over the world (Khalidi, 2020, p. 70). The main aim of the Zionists between the two world wars was to increase Jewish immigraton, and thuswise the Jewish population in Palestine. Therefore, Khalidi stated that this provision provided both significant growth in population and the acquisition of strategically located lands along the coast; particularly in eastern Galilee, and in the great fertile Marj Ibn ʻAmer (Jezreel) valley (Khalidi, 2020, p. 70). There can be no doubt that the more land purchases via "national institutions," such as the Jewish National Fund (JNF) and the Jewish Colonization Association or "private initiatives," that the Zionists acquired, the more they achieved their ultimate goal of establishing a Jewish national home (Essaid, 2014, p. 107). The Table 3.2 below shows the figures of the population of Palestine by religion from

1922 to 1931. It is clear that the figure of the Jewish population was increasing consistently within the given time period.

Table 3.1. The Population of Palestine by Religion, 1922-1931, End of Year Estimates

Years	Muslims	Jewish	Christian	Total+Other
1922 Census	638,407	93,360	75,875	816,123
1922 Dec. 31	640,798	94,752	76,194	820,259
1923 Dec. 31	663,296	102,134	77,905	852,031
1924 Dec. 31	676,544	113,059	79,653	878,138
1925 Dec. 31	690,055	137,484	81,441	918,052
1926 Dec. 31	703,838	149,066	83,270	945,438
1927 Dec. 31	717,896	153,828	85,139	966,325
1928 Dec. 31	732,234	158,122	87,050	987,070
1929 Dec. 31	746,858	164,492	89,004	1,010,224
1930 Dec. 31	761,775	170,783	91,002	1,033,641
1931 Census	775,181	175,936	92,802	1,054,189

Arab opposition to Zionism and to British rule revealed itself in the April 1920, May 1921, and later August 1929 conflicts. The 1920 and 1921 conflicts were brief and in a small size in comparison that of 1929. These struggles for independence provided an opportunity to a more organised Palestinian delegation to be able to express their demands to the British government high ranks officials (Turnberg, 2021, p. 68). Their main demands were to reverse the principle of a home for the Jews in Palestine, to stop Jewish immigration, and to set up a

National government (Turnberg, 2021, p. 68). However, Winston Churchill, the Colonial Secretary whom they met in Jerusalem in March 1921, refered them to Weizmann. The meeting with Weizmann which was made with him later came to nothing. The Arabs' case were also presented to the UK government which resulted to offer them to set up a Legislative Council whose the Jews would form a minority. The Arabs refused to work with the Jews as they thought that the Jews were not a component of Palestine case (Armaoğlu, 1989, p. 39). Being ignored of the Jews whose ever mounting existence seemed as a threat from the very beginning by the Arabs became the main problem between the Mandate administration and the Arabs (Armaoğlu, 1989, p. 39). For Arabs, the Balfour Declaration and so the idea of a National Home for the Jewish People in Bayt al-Maqdis could not be acceptable as a basis for negotiation (Turnberg, 2021, p. 69). At that time, Britain found itself in a hard situation under continuing endeavor to make a compromise between the two communities (Turnberg, 2021, p. 69). The UK government and also the British press were discussing the unilateral evacuation of the Britain from Bayt al-Maqdis (Turnberg, 2021, p. 69). After the conflict of 1921, the Zionist Jew Herbert Samuel decided to stop the Jewish immigration by running the risk of getting a bad reaction from the Zionist Organisation, and one year later, on June 3, 1922, a White Paper[12], drafted by Colonial Secretary Winston Churchill and Herbert Samuel, mostly known as Churchill White Paper, which set out Palestine policy of the British Government was issued as a kind of response to the conflict in 1921 (Reynold, 2014). A call for a limitation of Jewish immigration to Palestine was made, but also emphasised the numbers of the Jewish community should be increased as of right not of sufferance (Nir, 2021, p. 34). The British policy clarified its two limitations in Palestine; one was that the immigration should be planned on the economic capacity of the country, and the other was the new settlements should not be opened to the places which Arab-Palestinians were dense, particularly in agriculture (Nir, 2021, p. 34). However, in reality, things got out of the control of the British. The solution was not about to issue of a white or black paper. In the eyes of the Arabs, the trust broken into the small pieces by the British as a result of issuing the Balfour Declaration was too great to be repaired with the White papers. Neither Zionist Samuel administration nor the later ones could achieve peace and harmony in the region because of the inconsistent British policies.

During the first years of the British rule, the Palestinian national movement took strenght from the leadership of traditional elites, the cooperation among those elites, and universal support/consensus on the need to oppose Zionism (Pearlman, 2011, p. 33). However, the

[12] It is a government document in white colour.

problem was that there was no organizational structure to arrange an alternative long-term non-violent protests to reach their aims beyond a handful of elites (Pearlman, 2011, p. 33). The years between 1924 and 1929, the Palestinian Arabs also tried to be able to find ways to minimalise the harmful effects of the Zionism. Nevertheless, clashes, stemming from any event, rumor, or misunderstanding were turning to a much larger uprisings between Jews and Arabs. One of them broke out in August 1929. It was the most violent and widespread one since the very beginning of Zionism in Bayt al-Maqdis (Cohen, 2020, p. 138). The suppression of it made by Britain was equally violent. The center of the conflict was the contestation on the wall which was called differently in the different religious communities in Bayt al-Maqdis as the Buraq Wall (The Wailing/Western Wall), situated in the complex of al-Aqsa Mosque (al-Haram al-Sharif) (As the Jews called it, the Temple Mount) (Pearlman, 2011, p. 37). The British maintained the status quo related to the holy site where it was under the Muslim control during the Ottoman period, and also eased restrictions against Jewish access (Pearlman, 2011, p. 37). When some Jews were encouraged from this, and started to place several objects by bringing screens and benches at the site, they met with the protests of Muslims in 1928 (Pearlman, 2011, p. 37). The British removed the objects. Then, newspaper denunciations, demonstrations, and a strike came from the Jewish (Pearlman, 2011, p. 37). In a meanwhile, a pro-Western Wall Committee was set up by Jabotinsky, the founder of the Revisionist Movement. The Mufti Haj Amin accelarated the yearlong dispute over the Jewish right of prayer at the Wall as part of the Palestine Question as a national Arab and Islamic concern, organising a counter protest with an international campaign to mobilise Muslim support (Cohen, 2020, p. 138). These efforts resulted in countrywide fights in August 1929. After these tragic events, His Majesty's Government appointed a Commission of Enquiry (known as the Shaw Commission) chaired by Sir Walter Shaw to investigate the causes of the violence of August 1929 and make recommendations to be able to prevent recurrences in the future (Zipperstein, 2020, p. 320). The report released on the 31th March of 1930. The Commission concluded that immediate cause of the violence occured on the 15th August of 1929 during Jewish procession to the Wall (Zipperstein, 2020, p. 411). It was also mentioned that the fundamental cause of the turmoil was racial animosity stemmed from disappointment of political and national aspirations of Arabs and fear for their economic future (Zipperstein, 2020, p. 411). The Commission mentioned that a landless and discontented class which had been created in the region would be a potential danger (Zipperstein, 2020, p. 413). After the report, new demands; such as to halt both Jewish immigration and sales of Arab land to Jews, and to establish a representative government had been introduced by an Arab delegation who traveled to London in March 1930

(Zipperstein, 2020, p. 415). However, the Arabs' courtroom victory did not make a difference in British policy for Bayt al-Maqdis. Another report was the one of the Lofgren Commission in June and July 1930. It was about the legal rights and claims of the Muslims and Jews to the Wall and the place in front of the Wall. The Wall was seen as an integral part of al-Haram al-Sharif area, which was a Waqf property (The UN, n.d., May 29, 2022). It had been concluded that the ownership of the Pavement in front of the Wall and the adjacent Moghrabi (Moroccan) Quarter opposite to the Wall also belonged to the Muslims. On the other hand, it was stated that the Jews had a right of devotional visit to the Wall (The UN, n.d., May 29, 2022). In essence, the outcome did not make happy to both sides, but they accepted it. Such outbreaks related to the Wall happening in the 1920's did not occured again in the rest of the British Mandate (Zipperstein, 2020, p. 458).

In consequence of summer events of 1929, instead of supporting Zionism, the Passfield White Paper emphasised that Arabs and Jews were to be treated equally under Mandate, and called for establishment of a Legislative Council, including representatives from all communities (CJPME, n.d.). Regarding land, it stated that the existing cultivable land was not enough for new immigrants as part of agricultural settlement. Thus, it was needed the approval of the Mandatory Government for Jewish purchases of land (Zipperstein, 2020, p. 582). The Jewish Agency and the General Federation of Jewish Labor (Histadrut) were accused of not helping the Mandatory government related to following and enforcing immigration policy (Zipperstein, 2020, p. 582). The reaction of the Zionist Weizmann and his colleagues to the White Paper was quite negative (Reynold, 2014). Leading political figures, such as Churchill, Austin Chamberlain, Lloyd-George, Samuel, and Weizmann were against to the White Paper. Thus, the Zionists tried to persuade to annul the White Paper, and six meetings were held up to February 1931 to negotiate with the problem (Reynold, 2014). Eventually, MacDonald sent Weizmann a letter which would have been presented before the House of Commons on February 13, 1931 to be read as the authoritative interpretation of the Passfield White Paper to meet certain criticisms put forward by the Jewish Agency (Reynold, 2014). By lifting the prohibition of acquisition of additional land by Jews, the MacDonald Letter dealt a blow to the Passfield policy (Beckerman-Boys, 2016, p. 7). The letter also signified that Jewish immigration and close settlement on the land would be facilitated as the Mandate's positive obligation (Reynold, 2014). The policy of the Jewish Agency regarding the employment of Jewish labor by Jewish organisations was acceptable unless it aggravated unemployment for Arab labor (JVL, n.d., June 6, 2022). As a result of lobbying activities, the situation went in

favor of Zionists once again. In the coming years, the figures of Jewish immigration reached an undreamed level when it was compared with the year of 1930 (Reynold, 2014).

MacDonald's letter was accepted as a triumph for the Yishuv to be won at least 5 years between 1931 and 1936 over initiatives for limitations of Jewish immigration by doubling in size from 164,000 to 370,000 (Cohen, 2014, p. 238). When examined more wide number of Jews living in Bayt al-Maqdis, it can be said that after the fifth Aliyah between the years 1929-1939, which was the largest one before the birth of state of Israel, the Yishuv reached a great number of immigrants to achive the Zionist dream (Bunton, 2013, p. 26). Thus, more than a quarter of a million immigrants arrived to Bayt al-Maqdis from Europe on the eve of the World War II. After their arrival, the Jews constituted one-third of the total population (Cohen, 2020, p. 172). The persecution of Jews, the tough economic situation, and the rise of Hitler in 1933 resulted in a large number of Jews to immigrate from Germany and Poland in order to fleed anti-semitism legally or clandestinely (Ministry of Aliyah and Integration, 2022). So long as the confidence of the Yishuv via large-scale immigration into Bayt al-Maqdis increased, the Arab community felt to the threat much more towards their existence in their own homeland (Cohen & Kolinsky, 1992, p. 147).

Table 3.2. Population of Palestine by Religion, 1931 to 1946, End of Year Estimates

Year	Total	Muslim	Jewish Jewish Immigration*		Christian
1931	1,057,214	777,403	176,468		93,029
1932	1,095,602	795,184	193,467 9,553	9,553	96,415
1933	1,163,616	815,787	236,297 30,327	30,327	100,686
1934	1,234,129	832,560	284,305 42,359	42,359	106,302
1935	1,332,587	855,769	356,487 61,854	61,854	109,131
1936	1,388,852	879,496	385,408 29,727	29,727	112,401
1937	1,427,441	903,699	397,166 10,536	10,536	114,764

1938	**1,462,249**	**921,820**	**412,552**		**115,869**
			12,868	12,868	
1939	1,540,727	949,612	457,943		120,853
			16,405	27,561	
1940	1,593,204	976,119	479,872		124,482
			4,547	8,398	
1941	1,639,757	1,004,989	492,458		129,260
			3,647	5,886	
1942	1,683,178	1,035,249	503,608		131,031
			2,194	3,038	
1943	1,739,695	1,068,623	522,112		135,128
			8,507	8,507	
1944	1,800,995	1,099,432	547,902		139,394
			14,464	14,464	
1945	1,868,597	1,136,851	573,578		143,132
			12,751	12,809	
1946	1,942,349	1,175,196	602,586		148,910
			7,851	n.a.	

*Jewish immigration figures was cut into halves; figures of the right sides were taken from the Jewish Agency, acted as 'government' of the Jews whilst the left side datas were taken the Mandatory Government. (MacCarty,1990, p. 35).

The situation in Europe was quite uneasy in the 1930's. Mussolini in Italy, General Franco in Spain made an alliance with Hitler. From this point on, war bells tolled for dictatorships were heard from the rest of Europe, particularly in Britain and France (Turnberg, 2021, p. 158). The threat coming from the rising Fascist powers also led the Foreign Office to follow *de facto* control of policy and closer intervention on Bayt al-Maqdis without isolating it from the influence of the Arab world (Cohen, 2014, p. 245). Britain was well aware of its attitude towards Arab-Zionist conflict as the only issue on which the Arabs were able to agree would designate its prestige and interest throughout the region. Arab fights for independence (The Great Revolutions) in Palestine stamped to the second decade of Mandate period whereas Iraq, Egypt and Syria were about to self rule and formal independence in 1930's (Bunton, 2013, p. 32). The Great Revolutions commenced in two phases by causing a series of events on the eve of the British withdrawal from Bayt al-Maqdis: the first, from April to October 1936; the second, from September 1937 to April 1939 (Cohen, 2014, p. 245). The Arabs' three demands which were the termination of Jewish immigration, a prohibition of land transfers to the Jews, and the grant of independence were not met by the British following the Zionist lobby campaign against them (Cohen, 2014, p. 249). This result consolidated the belief of the Arabs that the Zionists manipulated London. In response, a nationwide general strike of all Arab workers and business organised by a Higher Arab Committee (HAC) which was set up by major Arab parties was declared in May 1936 (Cohen, 2014, p. 249). The internal controversy and disunity as well

as a lack of a supreme authority to unite the Palestinian fighters during the conflict were of an important problem for the Palestinian forces (Cohen, 2014, p. 251). While the British prepared to send out their full force to stop the continuance of the fights, the Palestinian Arabs led by the HAC called off the events until October thanks to the calls of the Arab Kings for appeasement (Cohen, 2014, p. 251). In this way, the Arab states raised their voice for British policy in Bayt al-Maqdis by seeing it as a pan Arab issue (Cohen, 2014, p. 253). Even if the conflicting sides were controlled, they were not totally disbanded. When all hostile activities were suspended, the Palestine Royal Commission (The Peel Commission) started to function. One year later, on July 7, 1937, a 400-page report was published by the members of the Royal Commission. They tried to propose a solution to the probem which turned into a gordian knot that could only be cut by the sword. In the report, it was mentioned that the government needed to adopt a more consistent policy towards Palestine. It conluded that the underlying reason of the revolution of 1936 stemmed from the aspiration of the Arabs for national independence and their strong hostility to the establishment of the Jewish national home in Palestine (JVL, n.d., July 4, 2022). It recommended that the existing Mandate should have terminated. In this sense, the establishment of single self governing Bayt al-Maqdis was not seemed practicable for the Commission as 400,000 Jews were already living in their de facto National home, just like a small country in part of the region (Bartal, 2017, p. 56). According to the Royal Commission, the problem could be solved if the Arabs and the Jews rule certain parts of Palestine separately which means partition of the area into a Jewish and an Arab state (JVL, n.d., July 4, 2022). The Peel Report, which was the first official document turning the Jewish National Home into a Jewish State was sent to League of Nations, and approved (Bartal, 2017, p. 58). Thus, this partition plan became an example to other peace plans as a way for all future partition proposals (Bartal, 2017, p. 52). Not only among the Arabs, but also from Jewish side, the reaction towards the report was not pleasing. The second phase of the revolution commenced in September 1937 to make the British retreat from the Partition Plan. The assassination of a senior British official L.A. Andrews was seen as a declaration of war to the Empire (Cohen, 2014, p. 268). Conflict zones were mostly in the hill areas of Bayt al-Maqdis's central and northern regions (Bunton, 2013, p. 42). The response of the British was quite harsh so that the HAC (Higher Arab Committee for Palestine) was abolished, declared illegal, and the prominent Palestinian leaders were arrested, or expelled (Powers & Vogele, 1997, p. 394).

The revolution of 1936-1939 became a symbol of both a Palestinian national movement and a turning point of a modern Palestinian history (Gelvin, 2014, p. 113). It did not start in a day. Instead, it was a continuance of the three rounds of Arab protests against the Jews which took place in 1920, 1921, and 1929. Some elite Palestinian Arabs opposed to British rule and the Zionist movement by petitions (to the British, to the Paris Peace Conference, and to the League of Nations) and organised a series of seven Palestine Arab congresses between 1919 and 1928 (Khalidi, 2020, p. 61). According to Khalidi, these efforts were only "fruitless legalistic approach," which lasted over a decade and an half (Khalidi, 2020, p. 62). Each way of protest whether it be peaceful or violent repressed harshly by the British. The discontent young, educated, lower-middle, and middle class got rid of the using of the soft power by the elites, and commenced to radicalize, attaching militant groups (Khalidi, 2020, pp. 62–63). On the other hand, the mandate officials witnessed the largest segment of Palestinian society, namely rural Palestinians were in desperate situation, exploited by traditional elites, and clearly falled behind the Yishuv's modern agricultural settlements (Stanton, 2013, p. 83).

Under German and Italian propaganda, the British felt a rural threat bitterly. A deep crack had already formed in the structure of the society which resulted to some fellahins as Palestine's opressed underclass to mobilise to urban areas, and the Arab peasants turned into a major force (Stanton, 2013, p. 84). Because, the society was well aware of the threat posed by the Zionist movement could only be restrained by force and mass mobilization. The dramatic demographic increase of the Yishuv during the first half of the 1930's was of the main cause of the struggle that was maintained by the Palestinian Arabs against injustice and inconsistent British policy (El-Awaisi, 1998, p. 34). The British not just supported the Zionists to the detriment of the independence and freedom of the Palestinian Arabs, but also led to the things get out of the control and lost faith towards the British at the end of the day (El-Awaisi, 1998, p. 34). On the other hand, during the Arab Revolution, the difference between the Jewish and Palestinian communities were getting bigger. Before the fights, the Yishuv were relying on Arabs in some sectors, without being economically self sufficient. Arabs' attacks led them consolidate their own economic independence and military force under centralized control, and to develop their strategic, and ideological unity (Pearlman, 2011, p. 55). It was an asymmetric fight. One side had nearly everything they needed; such as "Zionist organization's massive capital investments, arduous labor, sophisticated legal maneuvers, intensive lobbying, effective propaganda, and covert and overt military means." (Khalidi, 2020, p. 102). In this military effort, rather than moderate elites, such as Haim Weizmann, much more tough characters such as David Ben-

Gurion came into prominence (Pappé, 2006, p. 108). At that time, along with the Histadrut, the Hagana and its military body the Palmach became the backbone of the Yishuv, and would join the more provocative military group, such as the Stern Gang and Menachem Begin's Irgun at the end of the Mandate (Pappé, 2006, p. 108). The Zionist community came out of the conflicts stronger than before (Pappé, 2006, p. 107). For instance, whereas, before the fight, the Stern Gang and the Palmach which were two different wings of Zionism were ignoring the local population, afterwards, they were higly willing to kick them off from the country (Pappé, 2006, p. 108).

During two decades from 1917 to 1937, Britain collaborated with the Zionists, supporting their ultimate goal to build a Jewish national home in Palestine. As it was mentioned before, this policy caused the two-phased Arab revolutions, which was suppressed by Britain very harshly. The consequence costed them dearly. 10 per cent of the Palestinian male population were killed, wounded, imprisoned, or exiled (Bunton, 2013, p. 42). In that atmosphere, social structures, economy and political vivacity drifted into a state of chaos. The turmoil showed that the 1937 Peel partition scheme was nonenforceable. Thus, the issue was internationalized. London held an international conference (St. James Conference), putting the conflict beyond an internal British affair, including representatives from Zionist movement, HAC members, and from Egypt, Iraq, Saudi Arabia, Trans-Jordan, and Yemen (Gelvin, 2014, p. 118). However, things did not go as planned of London. In March 1939, Nazi Germany occupied Czechoslovakia, and in May 1939, Hitler and Mussolini signed the Pact of Friendship and Alliance, known as the Pact of Steel (Gelvin, 2014, p. 119). Following the 1937 Peel partition plan and the peasant-led Arab revolutions, the colonial rule in Bayt al-Maqdis got a death blow with the eruption of the Second World War (Bunton, 2013, p. 36).

In May 1939, London issued a new White Paper to regulate British rule on Bayt al-Maqdis for the next eight or ten years. The May 1939 White Paper envisaged a united, unitary, binational state where its citizens would live in a peaceful coexistence instead of partition (Apter, 2008, p. 2). In a representative democracy where majority Arabs would rule the state, the Yishuv would always be as a minority, no more than thirty three per cent of total population (Apter, 2008, p. 2). Accordingly, it was decided to restrict Jewish immigration and land purchase by Zionists. It meant that the British went back on their promises made to Zionists two decades earlier although the situation in Europe for Jews went from bad to worse in the 1930's (Apter, 2008, p. vi). Particularly, with the rise of Hitler, European Jews had seen Bayt al-Maqdis as a port of refuge before World War II, and as a gate opening for a new life after

the Holocaust. However, Britain did not seem enthusiastic for welcoming millions of Jewish refugees to Bayt al-Maqdis. Thus, the White Paper was represented as a response for the Arab grievances. At the same time, this was a kind of appeasement policy after the suppression of the Great Revolutions, and then the exile of the Palestinian leaders. In principle, the new British policy was a triumph for Arabs as it was in line with their own goals, but the problem was that the Palestinians were lack of a strong leader and organizational structure that could turn the Palestinian grassroots movement into an enforcing power (Pearlman, 2011, p. 54). However, the Palestinian Arabs rejected the White Paper, asserting that "The last word does not rest with White or Black papers; it is the will of the nation itself that decides its future … Palestine shall be independent within an Arab federation, and shall forever remain Arab" (Gelvin, 2014, p. 119). This rejection did not stem from that they were backward minded, or "too Eastern to play at European politics" (Apter, 2008, p. 6). Instead, as Apter stated, the Palestinian Arabs intended for a response to the British's illegimate, waffling, and unreliable position (Apter, 2008, p. 6). On the other hand, the Jewish Agency also denounced the White Paper, declaring that "It is in the darkest hour of Jewish history that the British Government proposes to deprive the Jews of their last hope and to close the road back to their Homeland. It is a cruel blow … This blow will not subdue the Jewish people" (Gelvin, 2014, p. 119). As it was seen, the feeling of betrayel was dominant among the Jews (Reynold, 2014). After twenty years of British rule, the word of the British towards the Balfour Declaration, the Mandate and the League was no more than an outworn commitment (Reynold, 2014). In the eyes of the British, Bayt al-Maqdis was the right of conquest, and they could not camouflage it with "a legal fiction" anymore (Reynold, 2014). On the other hand, at that time, the tragic situation of the European refugees running from the Nazis forced them to find a shelter in Bayt al-Maqdis as a last hope, but the Jewish saw the "Anglo-American collective hypocrisy" when all doors were closed to them tightly (Reynold, 2014). After all, the initiative of the White Paper came to an end in this way.

As it was mentioned before, in May 1939, Britain's position, deciding to limit Jewish immigration into Palestine to a specific number per year, which were totally against the 1937 Peel Commission showed that the bloom on the relationship between the Zionists and the British faded (Quigley, 2016, p. 31). Thus, the international environment was very important for the Zionist Organisation during the war years. In this political atmosphere, the Soviet Union which was allied with the Western powers against Germany after 1941 had been a nova in industrialisation since 1930's, and might play an important role on war and peace issues in international arena after the war (Quigley, 2016, p. 31). Therefore, the Zionist movement saw

the Soviet administration as an alternative comrade against the British. Because, according to Weizmann, "Getting Britain out of the picture was essential to Zionist aims in Palestine" (Quigley, 2016, p. 33). After the war, the new conjuncture would be negotiated in a new world that the Soviet Union would be involved (Quigley, 2016, p. 34). Thus, the Jews of Palestine and the Soviet government could find a compromise to change Soviet view of Zionism and the negativity, including full of fallacies, discrimination, and assimilation in Russian society towards the Zionists.

Politically speaking, instead of activist radical nationalism of the thirties, in the fourties, diplomacy had been become significant by the British and the leaders of the neighbouring Arab states as the Palestinian leadership were far away from the political limelight (Haiduc-Dale, 2013, p. 167). Palestinian factionalism, based on family, kinship and clan were still a big obstacle, causing vertical cleavages, identities and divisions in politics and society (Haiduc-Dale, 2013, p. 168). In addition to this, Palestinians suffered from lacking of a strong leadership as their leaders had been killed, exiled, or detained during the Great Revolution. The populace also got exhausted. These were some reasons of why radicalism could not create a serious trouble for the administration during the war. Nevertheless, by 1943, the Istiqlal Party called for elections, and endeavoured to establish a new national leadership (Pearlman, 2011, p. 55). In 1944, the heads of Arab states commenced the groundwork for a new organisation, called "Arab League," which would be founded in Cairo one year later. Instead of the Mufti's HAC, a new Palestinian executive body was selected (Pearlman, 2011, p. 56).

Britain could not follow the constitutional recommendations of the White Paper, finding itself in lacking sustainability in terms of the will and capacity to determine Palestine's future by the end of the war (Bunton, 2013, p. 44). Although Britain's weakness was unveiled during the course of the war, the Zionists needed the British, and supported them against Germany (Bunton, 2013, p. 44). This did not mean that the Zionists accepted the White Paper. On the other hand, alike the Jews, the Arabs in Bayt al-Maqdis also did not dynamite the British forces as they were figting a global war (Reynold, 2014). The British reaped the fruits of the policy of appeasement of the Arabs, which served the British interests by not allowing the Arabs to gravitate into Nazi orbit during the war (Reynold, 2014). Thus, not much, but a few Arabs acted together with the Axis powers to defeat the Allies (Reynold, 2014). By the way, as a result of mass killing during the World War II, to establish an independent state became mandatory for the Jews. In 1942, a Zionist Conference was held at the Biltmore Hotel in New York, where the delegates declared a program, aiming to call for a Jewish commonwealth in Bayt al-Maqdis,

instead of creating a 'home' in part of it (Bunton, 2013, p. 45). This policy would last until 1947 (Bunton, 2013, p. 45). Meanwhile, on one hand, the Arab League was working for the establishment of an independent Arab Palestine (Pappé, 2006, p. 121), on the other hand, the Jewish Agency and the Hashemites in Transjordan were negotiating on the division of Palestine secretly as it was known that the main purpose of King Abdullah was to expend his rule to the land which was allocated to Palestinian Arabs in a future partition plan (Shlaim, 1988, 116).

The sheme of things showed that the pre-war British Empire was only a dream anymore, and war-weary and indepted Britain needed the United States more than ever in resolving the problem in Bayt al-Maqdis by maintaining its status as a great power (Gelvin, 2014, p. 122). Britain was uncertain and isolated related to Jewish terrorism and the ever-increasing illegal immigration (Nir, 2021, p. 427). There was an urgent need for an acceptable solution to the future of the Palestine problem (Nir, 2021, p. 427). It was provided a solution to the US President Harry Truman related to the relaxation of the 1939 White Paper, and to be allowed 100,000 Jewish immigrants into Bayt al-Maqdis outrightly (Gelvin, 2014, p. 124). British Prime Minister Clement Attlee saw the report, and suggested the establishment of an Anglo-American Commission of Inquiry (Gelvin, 2014, p. 124). Mr. Atlee stated that further Jewish immigration could be allowed on condition that illegal armies had been disbanded (Nir, 2021, p. 436). But, it was not recommended as it would need large scale military operations against the Yishuv (Nir, 2021, p. 436). The British was really reluctant to take the burden of the 100,000 immigrants unless the Americans bore their costs – but, it was a proposition the Americans opposed (Gelvin, 2014, p. 124). Thus, this initiative came to nothing.

The situation in Bayt al-Maqdis was getting worse. As a response to the Anglo-American Commission of Inquiry, Irgun blew up the British headquarters (HQ) in Bayt al-Maqdis at the King David Hotel where 93 people lost their lives in July 1946 (Nir, 2021, p. 437). In the White Paper of 1939, the Jewish immigration had been limited with maximum 75,000 Jews over the next five years (Cohen, 1982), but time expired, and nothing turned out the way the Palestinians wished. At the same time, it was also envisioned an independent Palestinian state to be established within ten years (Cohen, 1982). Accordingly, the Palestinians demanded the implemantation of the provisions of the White Paper of 1939, and the independence, just like the other surrounding Arab states in the region. The Arab attitude was very clear that they would never and ever accept "the invasion of Palestine by the Jews" (Avalon, n.d., August 26, 2022). The Arabs themselves were Semites, so the Arabs should not have been forced to pay for the sins of European anti-Semitics (Avalon, n.d., August 26, 2022). They had a great sympathy for

the persecution of the Jews in Europe, but it did not mean that all Palestine could be a place of en masse exodus. Meanwhile, there were another peace program which can be regarded as a hybrid one between partition and British control, prepared by the British, but all rejected (Pappé, 2006, p. 121). Jewish extremists' attacks and bombings against British authorities continued to increase. The most famous one towards top British officals was the assassination of Lord Moyne (The British Minister of State Resident in the West Asia) in November 1944 (Bunton, 2013, p. 45). These hostilities were harshly suppressed by 100,000 British troops and policemen with a highly widespread deployment (Bunton, 2013, p. 45).

By February 1947, Britain was about to come to an end in Bayt al-Maqdis. In 1946, the members of the dissolving League of Nations decided to continue the mandate system with an unanimous agreement they made between themselves (Baron, 1998, p. 6). This system would be maintained until "other arrangements could be made between the United Nations and the respective mandatory powers" (Baron, 1998, p. 6). Thus, the United Nations took the place of the League of Nations over the territories under mandate, and accordingly sovereignty over the holy city of Bayt al-Maqdis has been shared together with the United Nations and Great Britain (Baron, 1998, p.6). Beside the terror campaign conducted by Zionist extremists, bad winter conditions in 1946-47, and economic crisis forced Britain to commence the process of decolonization both in India and Bayt al-Maqdis (Pappé, 2006, p. 121). In the new world order, the cards were to be mixed again.

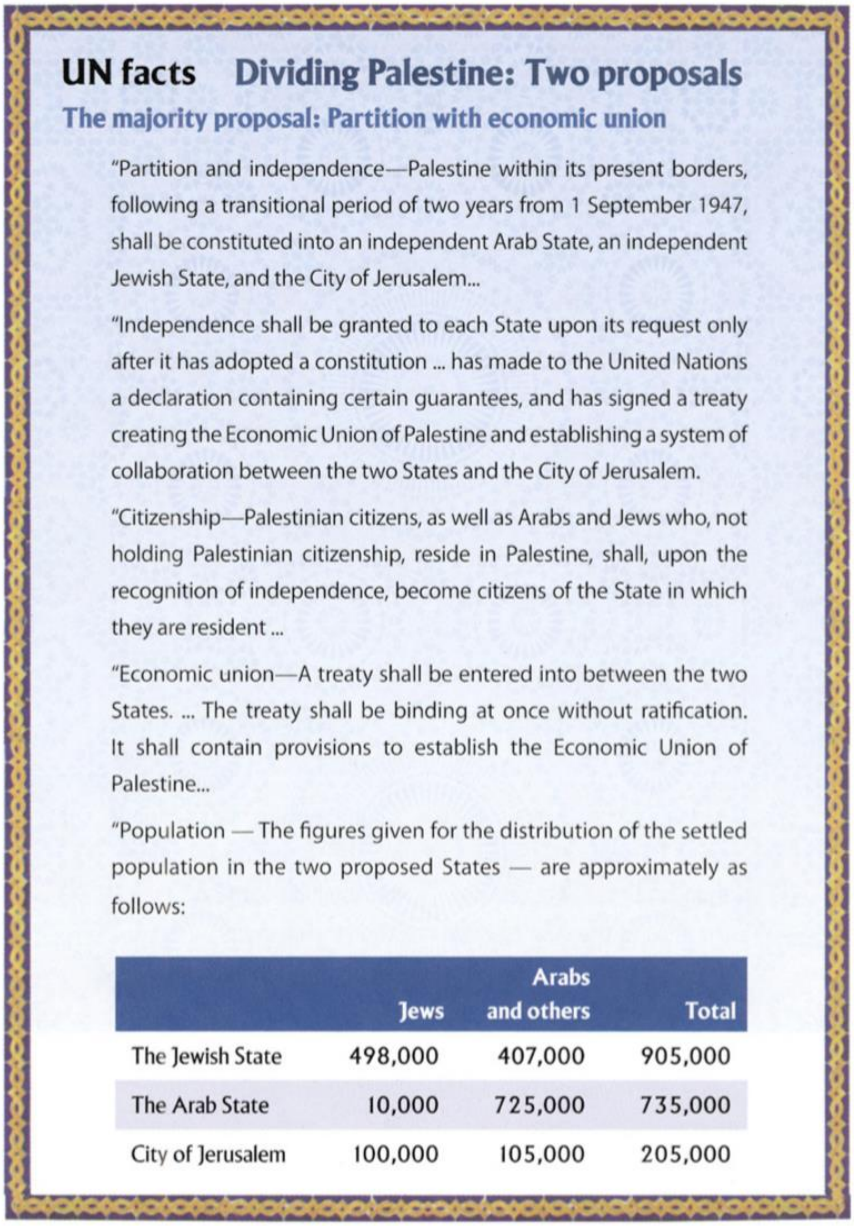
3.6. The United Nations Partition Of Bayt Al-Maqdis And The Division Of Quds

Britain's initiatives and proposed solutions were not enough to cease the conflict in Bayt al-Maqdis. There was no way except to hand the problem of Palestine over to the newly founded United Nations in February 1947. In terms of Article 10 of the United Nations Charter, the United Kingdom dispatched the question of Bayt al-Maqdis (Palestine) to the agenda of the United Nations General Assembly (Scobbie & Hibbin, 2009, p. 25). In accordance with the 1946 agreement, the United Kingdom asked for the consideration of the UNGA about the question of government of Bayt al-Maqdis (Baron, 1998, p. 6). The United Nations Special Committee on Bayt al-Maqdis was set up to investigate the British request by the United Nations General Assembly (Baron, 1998, p. 6). Bayt al-Maqdis issue became the first serious regional conflict which were brought before the General Assembly by the United Kingdom in 1947 (Pappé, 2006, p. 122). The Zionists claimed "historic rights" as well as the Zionist interpretations of the Balfour Declaration. The Palestinians highlighted the view that purpose

of the League of Nations Mandate System was to bring self-determination and independence to the existing inhabitants of Palestine. Having had a lack of knowledge on both Palestine and the situation over there, these officials had a great sympathy to the Jewish Holocaust survivors whom they saw them with their own eyes at the scene at camps (Pappé, 2006, p. 122). This unfair attitude and myopic vision led them to see Bayt al-Maqdis as a solution for European displaced Jews (Bunton, 2013). When the United Nations Special Committee visited Bayt al-Maqdis officially in June and July of 1947, Arab delegates refused to meet them as they were not pleased for the situation. Because, two superpowers, the Soviet Union and the USA had decided to divide Bayt al-Maqdis between the Zionist movement and the Palestinians (Pappé, 2006, p. 122). Two investigatory reports were issued by the The United Nations Special Committee (Baron, 1998, p. 7). However, as Pappé mentioned, the Palestinian objection was strong enough to halt an unanimous decision on partition, but even so, the majority took the side of the partition in accordance with majority report of the United Nations Special Committee (Pappé, 2006, p. 123). Therefore, in 1947, the United Kingdom and the United Nations Special Committee agreed that Palestine's Arabs and Jews, living under a British administered League of Nations mandate since 1922 was able to govern themselves in good earnest (Kattan, 2021, p. 2).

During the visit of the United Nations Special Committee, a refugee ship which smuggled in 4,500 Holocaust survivors, called the President Warfield – or the Exodus 1947 arrived to Haifa despite the great efforts of the British Empire to prevent its sailing from France to Bayt al-Maqdis (Nir, 2021, p. 417). Illegal immigrants were sent back to Germany, where they were persecuted in the Operation Oasis (Nir, 2021, p. 420) This was done on purpose by the Jewish Agency with the support of Haganah to create tensions on the ground and to prove the cruel behaviour of the British Government while the United Nations Special Committee officials were in there (Nir, 2021). An appeal from Exodus passengers to the United Nations Special Committee on Palestine was in such a way: "The British acted and still act according to all the Nazi methods. They insult, beat and shoot in cold blood on our ships which are crowded with women and children." (Nir, 2021). The perception that there were a direct connection between the Holocaust and the establishment of a Jewish state in Bayt al-Maqdis was created to direct the investigation in a way they wished at the very moment. Accordingly, on the 31th of August 1947, the United Nations Special Committee presented its recommendations in the minority and majority reports to the UN General Assembly (Pappé, 2006, p. 125). The majority report supported the idea of the partition of Palestine between Arab and Jewish communities whereas

the minority report advocated the idea of establishing a single federal state (Bunton, 2013, p. 48). According to the majority report, Jerusalem had been internationalised, and the two communities would be under an economic union (Gelvin, 2014, p. 125). As it was seen in the map, the coastal area, Western Galilee, and the Negev were within the boundaries of the aforementioned Jewish state. The rest part of Palestine would be the Palestinian state (Pappé, 2006, p. 125).



UN facts **Dividing Palestine: Two proposals**

The majority proposal: Partition with economic union

"Partition and independence—Palestine within its present borders, following a transitional period of two years from 1 September 1947, shall be constituted into an independent Arab State, an independent Jewish State, and the City of Jerusalem...

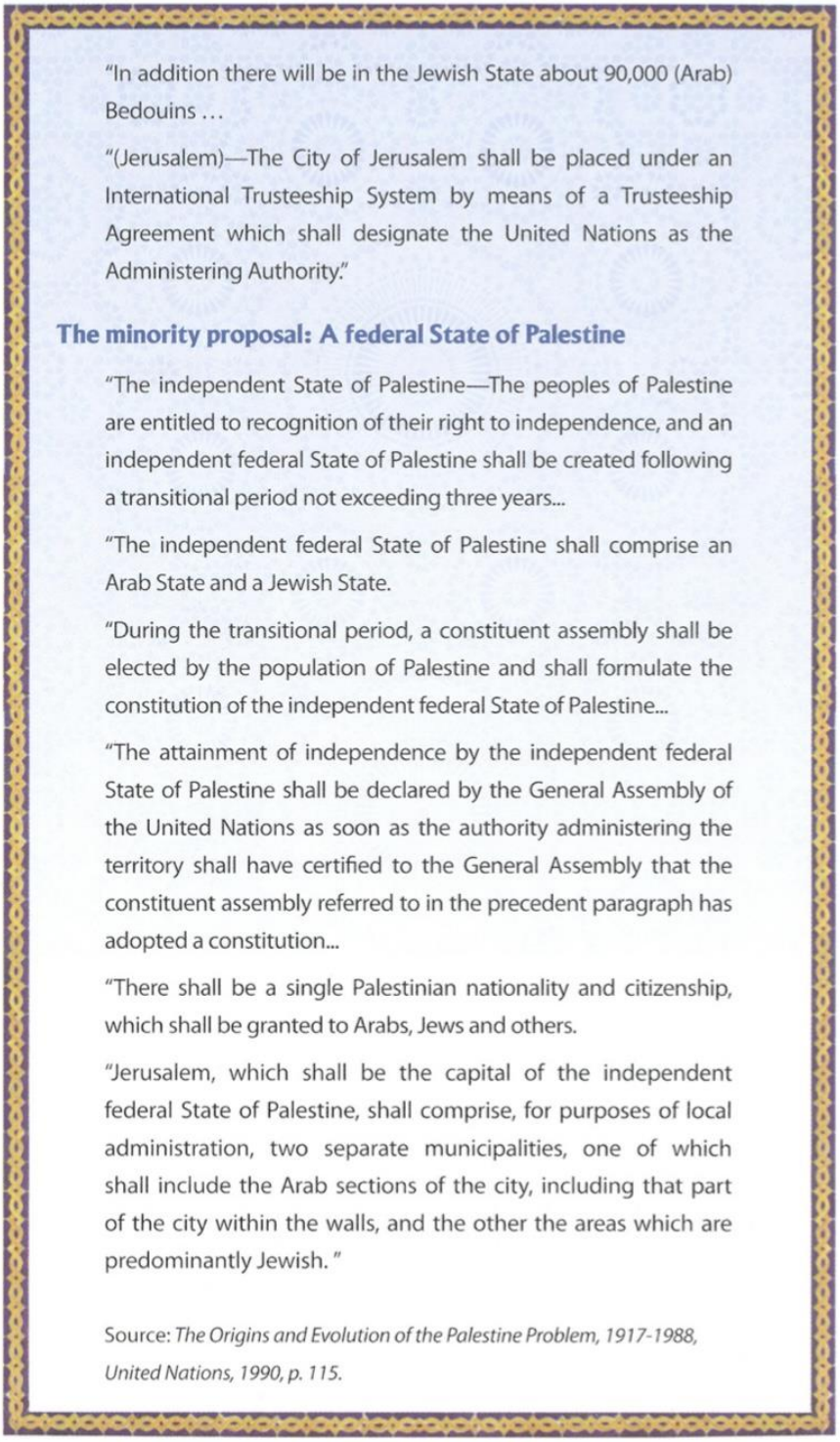
"Independence shall be granted to each State upon its request only after it has adopted a constitution ... has made to the United Nations a declaration containing certain guarantees, and has signed a treaty creating the Economic Union of Palestine and establishing a system of collaboration between the two States and the City of Jerusalem.

"Citizenship—Palestinian citizens, as well as Arabs and Jews who, not holding Palestinian citizenship, reside in Palestine, shall, upon the recognition of independence, become citizens of the State in which they are resident ...

"Economic union—A treaty shall be entered into between the two States. ... The treaty shall be binding at once without ratification. It shall contain provisions to establish the Economic Union of Palestine...

"Population — The figures given for the distribution of the settled population in the two proposed States — are approximately as follows:

	Jews	Arabs and others	Total
The Jewish State	498,000	407,000	905,000
The Arab State	10,000	725,000	735,000
City of Jerusalem	100,000	105,000	205,000



"In addition there will be in the Jewish State about 90,000 (Arab) Bedouins ...

"(Jerusalem)—The City of Jerusalem shall be placed under an International Trusteeship System by means of a Trusteeship Agreement which shall designate the United Nations as the Administering Authority."

The minority proposal: A federal State of Palestine

"The independent State of Palestine—The peoples of Palestine are entitled to recognition of their right to independence, and an independent federal State of Palestine shall be created following a transitional period not exceeding three years...

"The independent federal State of Palestine shall comprise an Arab State and a Jewish State.

"During the transitional period, a constituent assembly shall be elected by the population of Palestine and shall formulate the constitution of the independent federal State of Palestine...

"The attainment of independence by the independent federal State of Palestine shall be declared by the General Assembly of the United Nations as soon as the authority administering the territory shall have certified to the General Assembly that the constituent assembly referred to in the precedent paragraph has adopted a constitution...

"There shall be a single Palestinian nationality and citizenship, which shall be granted to Arabs, Jews and others.

"Jerusalem, which shall be the capital of the independent federal State of Palestine, shall comprise, for purposes of local administration, two separate municipalities, one of which shall include the Arab sections of the city, including that part of the city within the walls, and the other the areas which are predominantly Jewish."

Source: *The Origins and Evolution of the Palestine Problem, 1917-1988, United Nations, 1990, p. 115.*

Figure 3.1. Dividing Palestine: Two Proposals: Partition with Economic Union

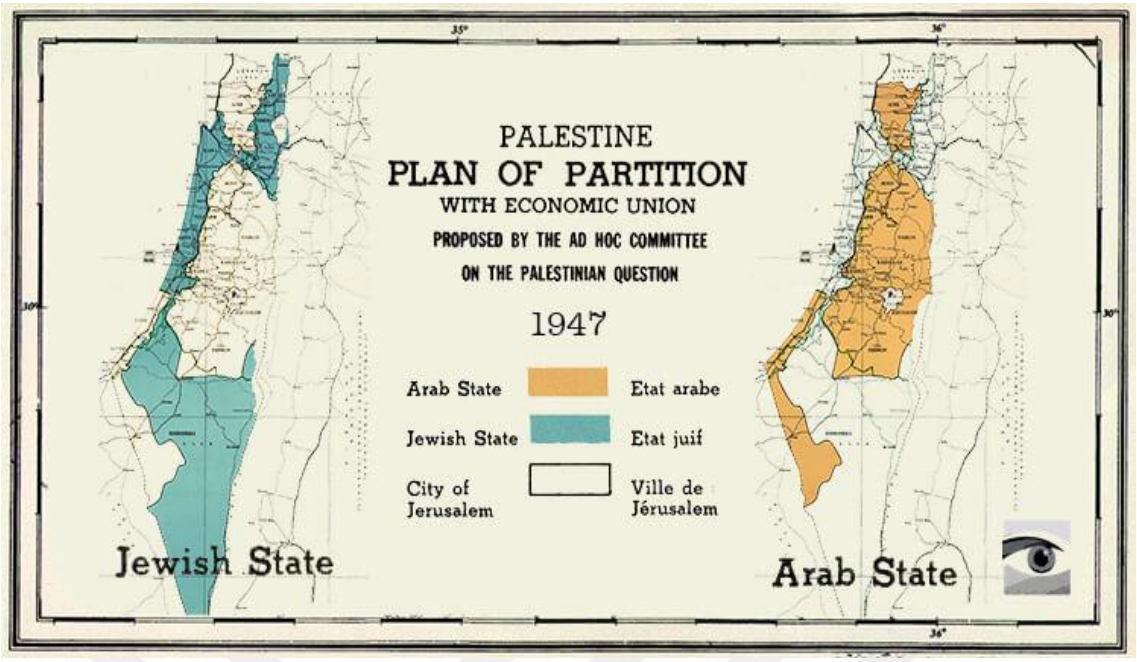


Figure 3.2. Palestine Plan of Partition With Economic Union, 1947

The announcement that the British troops would withdraw from Bayt al-Maqdis and terminate the Mandate by mid-May 1948 came before the voting phase in the UNGA (Gelvin, 2014, p. 125). In case of accepting the partition plan in the UNGA after voting, there would be no British administration to enforce it (Gelvin, 2014, p. 125). The UN Charter allowed a discretionary transfer of mandated territories to International Trusteeship system. The United Kingdom requested from the General Assembly the consideration of the future government of Bayt al-Maqdis (Scobbie & Hibbin, 2009, p. 27). As a response to this request, the United Nations Special Committee on Palestine was set up by the United Nations General Assembly with General Assembly Resolution 106 (S-I) on 15 May 1947. Therefore, Palestine issue became the first serious regional conflict which were brought before the General Assembly by the United Kingdom in 1947 (Pappé, 2006, p. 122). Thanks to the Zionist campaign/lobbying, taking the support of the Soviet and US, the UNGA decided to approve partition by gaining the necessary two-thirds majority, and voted in favor of the Committee's majority report on 29 November 1947 (Bunton, 2013, p. 49). This 1947 UN plan which was titled as 'Resolution 181 (II) Future Government of Palestine'[13] envisaged an inequitable distribution so that more than 55 per cent of Palestine's territory was allocated to the new Jewish state in a way to welcome hundreds of thousands Holocaust survivors (Bunton, 2013, p. 49). To this end,

[13] It was also called as "The Partition Resolution" (Baron, 1998, p. 7).

"The General Assembly,

Recommends to the United Kingdom, as the mandatory Power for Palestine, and to all other members of the United Nations the adoption and implementation, with regard to the future government of Palestine, of the Plan of Partition wih Economic Union set out below;

Request that

(a) The Security Council take the necessary measures as provided for in the plan for its implementation;

(b) The Security Council consider, if circumstances during the transitional period require such consideration, whether the situation in Palestine constitutes a threat to the peace. If it decides that such a threat exists, and in order to maintain international peace and security, the Security Council should supplement the authorization of the General Assembly by taking measures, under Articles 39 and 41 of the Charter, to empower the United Nations Commission, as provided in this resolution, to exercise in Palestine the functions which are assigned to it by this resolution;

(c) The Security Council determine as a threat to the peace, breach of the peace or act of aggression, in accordance with Article 39 of the Charter, any attempt to alter by force the settlement envisaged by this resolution;

(d) The Trusteeship Council be informed of the responsibilities envisaged for it in this plan;

Calls upon the inhabitants of Palestine to take such steps as may be necessary on their part to put this plan into effect;

Appeals to all Governments and all peoples to refrain from taking action which might hamper or delay the carrying out of these reccommendations." (The United Nations, n.d.).

As it was seen, Resolution 181 (II) of November 29, 1947 recommended the intended division of Palestine. It was envisaged a transfer of power from the United Kingdom to the independent Arab and Jewish states, putting them under various constitutional and economic obligations (Kattan, 2021, p. 4). After these states gained their independence, in accordance with Article 4 of the Charter of the United Nations, it was mentioned that their applications for admission to membership in the United Nations were to be welcomed sympathetically (The UN, n.d., October 12, 2022). Resolution 181 (II) contained a detailed plan of partition with economic union consisting of four parts, including all steps on the way to divide the territory into the Arab State and Jewish State elaborately. In the Part I (A) of the Plan of Partition with

Economic Union stated that the Mandate for Palestine would terminate as soon as possible by 1 August 1948 (not later to the given date). Part I (B) contains the preparatory steps to the independence of the two States. This plan envisaged the establishement of two states in the territory and a special international regime for the City of Jerusalem (Kattan, 2021, p. 2). In the Plan of Partition with Economic Union, the Special International Regime for the City of Quds was set forth in part III as such,

> "The City of Jerusalem shall be established as a *corpus seperatum* under a special international regime and shall be administered by the United Nations. The Trusteeship Council shall be designated to discharge the responsibilities of the Administering Authority on behalf of the United Nations" (The UN, n.d., October 25, 2022).

Quds would be demilitarized as a seperate entity in a way to be excluded from both States under the protection of the United Nations Trusteeship Council (The United Nations, 2008, p. 111). This status which was also called as a *corpus separatum* in international law had been recommended by 1947 Peel Commission and the 1947 the United Nations Special Committee on Palestine reports before. As to the boundaries of the City, the Partition Plan stated them in this way,

> "The City of Jerusalem shall include the present municipality of Jerusalem plus the surrounding villages and towns, the most eastern of which shall be Abu Dis; the most southern, Bethlehem; the most western, Ein Karim (including also the built-up area of Motsa); and the most northern Shu'fat" (The UN, n.d., October 25, 2022).

Statute of the City, including fourteen provisions had been added to the Partition Plan, stating that the Trusteeship Council would draft a detailed Statute of the City which would contain the substance of these provisions. Accordingly, special objectives of the Administering Authority would be to protect and preserve the unique spiritual and religious interests of the three monotheistic faiths, Christian, Jewish and Muslim, and to ensure order and peace, (particularly religious peace in Quds) it would support the peaceful development of the mutual relations between two Palestinian peoples (The UN, n.d., October 25, 2022). The Trusteeship Council would appoint a governor of the City of Jerusalem/Quds, whom he would represent the United Nations, and governor would have all powers of administration, including the conduct of external affairs (The UN, n.d., October 25, 2022). In addition, the Governor would submit a plan to Trusteeship Council for the establishment of special units by taking into consideration of the Arab and Jewish sections of new Jerusalem (The UN, n.d., October 25, 2022).

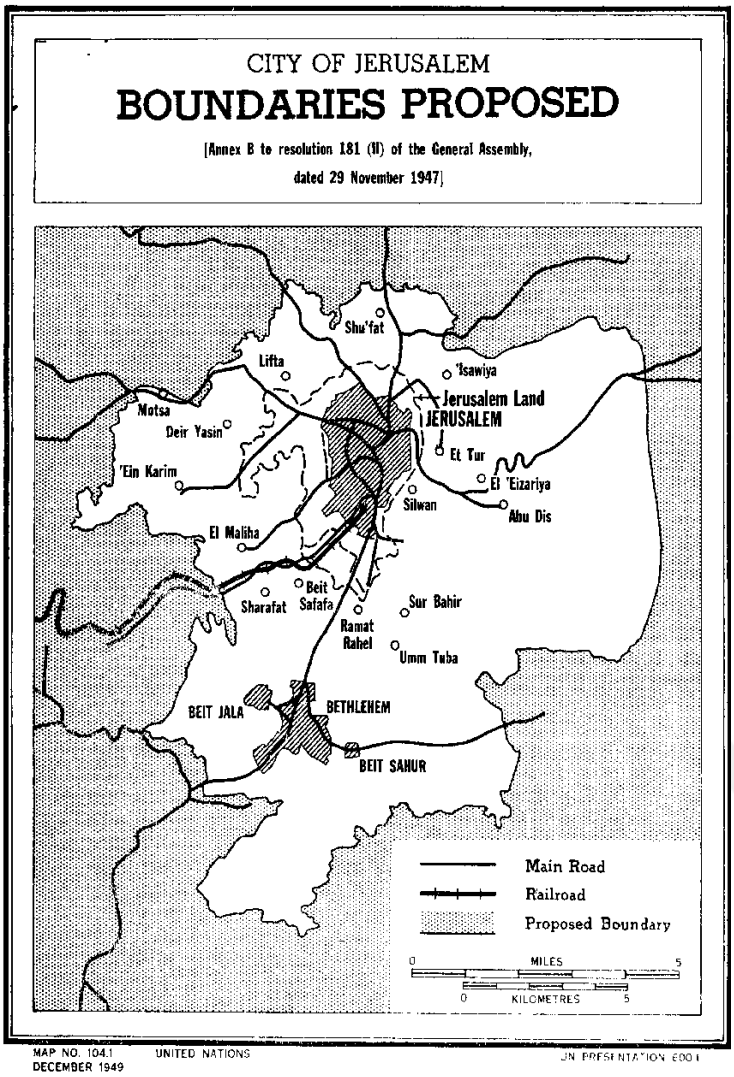


Figure 3.3. City of Quds / Jerusalem Boundaries Proposed by Resolution 181

In the demilitarized and neutral Jerusalem, para-military formations or activities would not have been permitted, and a special police force for the maintenance of internal law and order would be organized (The UN, n.d., October 25, 2022). A Legislative Council would have powers of legislation and taxation (The UN, n.d., October 25, 2022). The Statute would provide an independent judiciary system, containing all inhabitants of the City. The City also would be included in the Economic Union of Palestine, and the borders of the City would be guaranteed for the residents or citizens of the Arab and Jewish States (The UN, n.d., October 25, 2022). Representatives of the Jewish and Arab States would be accredited by the Governor of the City

(The UN, n.d., October 25, 2022). The official languages would be Hebrew and Arabic The UN, n.d., October 25, 2022). As to the consular protection, the Trusteeship Council would make arrangements about it (The UN, n.d., October 25, 2022). There would be no discrimination of any kind between the citizens of the City, and all persons would be entitled equal protection of laws (The UN, n.d., October 25, 2022). The family law and personal status of the various persons and communities and their religious interests, including endowments would be respected (The UN, n.d., October 25, 2022). Related to education, the City would ensure primary and secondary education for two communities in their own languages (The UN, n.d., October 25, 2022). In respect of the Holy Places, there would be free access and exercise of worship (The UN, n.d., October 25, 2022). These Holy Places and religious buildings or sites would be preserved, and in need of urgent repair, the Governor could call upon the community to carry out such repair (The UN, n.d., October 25, 2022). It would not be levied any tax on the Holy Places, religious buildings or sites. Governor who would have a special and particular responsibility would also have special powers in respect of these Holy Places (The UN, n.d., October 25, 2022). In cases of disputes which could arise between the different religious communities relating to the Holy Places, religious buildings and sites in Palestine, the Governor would make decisions based upon existing rights (The UN, n.d., October 25, 2022). When it comes to the duration of this special regime, this statute would remain in force in the first instance for ten years, and then, if the Trusteeship Council found it necessary, the whole sheme containing these provisions related to the regime of the City would be re-examined by the Trusteeship Council (The UN, n.d., October 25, 2022). Citizens of the City would be free to contribute to possible modifications of the whole sheme through referandum (The UN, n.d., October 25, 2022).

The Resolution 181 (II) was considered as a binding act of international law by the UN Secretariat, the Soviet Union, and the Jewish Agency (Kattan, 2021, p. 1). From international law perspective, the resolution is res inter alios acta – which means “an action by a third party which did not bind these two parties” (Scobbie & Hibbin, 2009, p. 43). These two parties were not members of the UN at that time. The terms of the resolution were just ‘recommended’ by the General Assembly, an organ of the UN. However, International Court of Justice, in its advisory opinion, briefly explained the situation in Palestine, stating that “Israel proclaimed its independence on the strenght of the General Assembly resolution 181 (II)” (ICJ, 2004). The Partition Resolution 181 was not accepted universally and completely among the people of Palestine (Baron, 1998, p. 7). In fact, the Jewish community approved the resolution 181

reluctantly whilst the Arabs in Palestine together with Arab countries rejected it (Baron, 1998, p. 7). Together with the historic claim of the Jewish people to Holy Land, their reliance on the resolution 181 became “Israel’s constant refrains” while claiming its title to territory (Scobbie & Hibbin, 2009, p. 47). However, Israel rejected to become a successor to the Government of Mandate Palestine in terms of treaties and debts (Scobbie & Hibbin, 2009, p. 52).

Figure 3.4. The United Nations Partition Plan, 1947

The British government also refused to implement the partition plan by justifying its refusal by both Arab and Jewish communities (Baron, 1998, p.7). The reason of Britain's reluctance to a gradual transfer of authority over Palestine to a UN commission was the concern that such transfer could lead to a "confusion and disorder" (Baron, 1998, p. 8). In addition, the reaction of the Arab states was also quite negative towards the Resolution 181 (II) as they supported to the idea that this was against "the right of self-determination of the Palestinian Arab people to establish a single unitary state over the whole territory" (Kattan, 2021, p. 1). That is why the Arab Higher Committee which was recognised as the representative of the Arab population of Palestine did not attend to the works of the UN Palestine Commission (Scobbie & Hibbin, 2009, p. 35). At that time, the UN's and particularly the General Assembly's responsibility for mandated territories were unclear (Scobbie & Hibbin, 2009, p. 27). Thus, there was an uncertainty regarding General Assembly's competence to deal with the question of Palestine among Arab States. Furthermore, those who were against the competence of the UN for Palestine issue supported to the idea that the mission of Mandate for Palestine had accomplished with the dissolution of the League. Unless the Mandatory negotiated a Trusteeship agreement which was approved suitable the UN organs to recommend any proposals for mandated territory, the UN would not automatically succeed to the League in the administration of Mandates (Scobbie & Hibbin, 2009, p. 27). According to them, the UN General Assembly could only recommend that "Palestine should be independent" (Scobbie & Hibbin, 2009, p. 27). Afterwards, the issue of what kind of governmental system would be followed by would be the decision of the people of Palestine (Scobbie & Hibbin, 2009, p. 27). Kattan also states that the main reason of why some of those were against the plan was derived from their totally against stance for the establishment of a Jewish state (Kattan, 2021, p. 2). According to Delegate of India, Sir Abdur Rahman (Judge), the right of self determination had been given to Palestine as an integral whole, and so the partition would not be compatible with this right (Kattan, 2021, p. 3). It was claimed that Resolution 181 violated the terms of the Mandate, the principles of Covenant and the principles of Charter of the UN, particularly in respect of self-determination (Scobbie & Hibbin, 2009, p. 28). Thus, from their perspective, Resolution 181 was ultra vires act without having a legal validity (Scobbie & Hibbin, 2009, p. 35). On the other hand, Kattan states that, in 1947, both Jewish and Arab communities were not sovereign entities of international law although each was entitled to self-determination. That is why their consent was not demanded. Rather, the Resolution 181 (II) was formed as an agreement between the UN and the mandatory power. Additionally, the International Court of Justice commented in its Advisory Opinions in a series of cases as to the UN's competence in

relation to the mandated territories. One of these cases was on the international status of South West Africa in 1950. At the request of the General Assembly, International Court of Justice gave its Advisory Opinion. It was stated that although the League of Nations had disappeared, together with its functions with respect to mandated territories, the mandates did not come to an end (Scobbie & Hibbin, 2009, p. 29). Sovereignty over mandated territories would not be transfered to Mandatory States, or ceded to them (Scobbie & Hibbin, 2009, p. 29). In its advisory opinion regarding the status of the South West Africa, given on 11 July 1950, the ICJ stated that "the dissolution of the League of Nations and its supervisory machinery had not entailed the lapse of the mandate" (ICJ, n.d. October 27, 2022). Thus, the Court decided that "the mandatory power was still under an obligation to give an account of its administration to the United Nations, which was legally qualified to discharge the supervisory functions formerly exercised by the League of Nations" (ICJ, n.d. October 27, 2022). According to the jurisprudence of the International Court, the General Assembly was competent "to determine the modalities of the termination of the Mandate for Palestine" (Scobbie & Hibbin, 2009, p. 32). Therefore, it can be deduced that the legal effect of the partition resolution was seen in reaching a concurrence as to the termination of the Mandate (Scobbie & Hibbin, 2009, p. 39). However, in terms of procedure to follow in Palestine to secure and guarantee termination and its aftermath, the power of the General Assembly is limited only with recommendation (Scobbie & Hibbin, 2009, p. 39). On the other hand, the General Assembly reserved the right as being a persuasive force. Moreover, the States administering Trust Territories had no right to absolve from discharging its reponsibilities of good government of the territory, if these territories were disregarded, the state would explain the reasons behind this decision on behalf of the General Assembly (Scobbie & Hibbin, 2009, p. 41). What happened on the following decades in Palestine led the Palestine Liberation Organization accept Resolution 181 (II) as from 1988. It served as "an evidence of their right of Palestinians to establish an independent Palestinian state of their own, besides Israel" (Kattan, 2021, p. 2).

The implementation of the Resolution 181 could not be possible because of the ensuing hostilities and war (The United Nations, 2008, p. 111). In the first monthy process report of the UN Palestine Commission to the Security Council dated on January 30, 1948, it was asked the consultations of the representative of the Mandatory Power (The United Kingdom). It was stated that "in the present circumstances, the Jewish story that the Arabs are the attackers and the Jews the attacked is not tenable" (The UN Documents, n.d., October 27, 2022). That is why it was clearly explained by the Arabs that they would "resist with all the forces at their disposal

the implementation of the partition plan" (The UN Documents, n.d., October 27, 2022). It was also accepted that "Violent conflict between the two communities had been intensified." (The UN Documents, n.d., October 27, 2022). There were a fear in the government of Palestine that the conflict would be greatly increased when the mandate is terminated (The UN Documents, n.d., October 27, 2022). Moreover, Britain also did not allow the members of the United Nations Special Committee on Palestine to enter the country because of the increasing disorder (Baron, 1998, p. 8). Under those conditions, the Palestine Commission could not discharge its responsibilities without backed by non-Palestinian armed force (Scobbie & Hibbin, 2009, p. 36).

As Pappé mentioned, the abnormal situation due to the British leaving from Palestine without transitional period or substitude regime served the interests of the Zionists (Pappé, 2006, p. 123). Jerusalem was divided de facto. The western part was occupied by Israel whilst the eastern part, including the walled Old City was taken by Jordan (The United Nations, 2008, p. 111). In addition to this, the UN Partition plan gave them legitimacy to expulse the local population within the areas allocated for the Jewish state. As the boundaries of a new designated Jewish state were not enough for the Yishuv leaders, an overall war on the horizon seemed inevitable to seize the rest of Palestine. As a result, the period of Mandate was over, leaving the UN helpless as to how best to replace it with a completely smooth transition. In that anarchy atmosphere, two conflicting sides were totaly left to fight for their own cases. Therefore, the Palestine War commenced in the wake of the acceptance of the United Nations resolution on the partition of Palestine in November 1947 (Rogan & Shlaim, 2007, p. 1).

Resolution 42, called "The Palestine Question" had been accepted by United Nations Security Council on 5 March 1948. The Security Council requested from the permanent members of the Council some recommendations regarding the situation with respect to Palestine to give the Palestine Commission with a view to implementing the General Assembly Resolution 181 (II) of 29 November 1947 on Palestine (UNSCR, n.d., October 27, 2022). A brief report was made by the permanent members of Security Council stating that;

> "The Palestine Commission, the Mandatory Power, the Jewish Agency and the Arab Higher Committee have indicated that the partition plan cannot be implemented by peaceful means under present conditions." (UNSCR, n.d.-a, October 27, 2022).

On 19 March 1948, during the Security Council's 270th meeting, it was continued to the discussion of the Palestine question (UNSCR, n.d.-a, October 27, 2022). The respresentative of the United Kingdom stated that "There were any moditifications in detail which would make

the plan acceptable both to the Jews and Arabs of Palestine." (UNSCR, n.d.-a, October 27, 2022). It was impossible to form a provisional council of government for the proposed Arab State by 1 April 1948 even though small steps had been taken for forming that of Jewish council (Scobbie & Hibbin, 2009, p. 37). On 1 April 1948, Resolution 43 and 44 were released by the Securiy Council. Resolution 43 emphasized "the increasing violence and disorder in Palestine," and requested "an immediate truce between the Arab and Jewish communities of Palestine" (UNSCR, n.d.-b, October 27, 2022). Resolution 44 called upon a convocation of a special session of the General Assembly to discuss the future government of Palestine (UNSCR, n.d.-b, October 27, 2022). On 17 April 1948, resolution 46 was accepted in the Security Council. It was stated that so long as the United Kingdom remained as the Mandatory Power, the maintenance of peace and order in Palestine would be under its responsibility. Thus, all steps must have been taken by the Mandatory Power with the help of all the members of the United Nations. The resolution 46 called upon "all activities of a military or paramilitary nature to be ceased as well as violence, terrorism, and sabotage, and to be refrained any action which would endanger the safety of the Holy Places in Palestine" (UNDL, n.d., October 27, 2022). In accordance with the resolution 46, the Security Council passed resolution 48 on 23 April 1948. A Truce Commission for Palestine was established to assist the Security Council by supervising the implementation of its resolution 46 by the related parties (UNDL, n.d.-a, October 27, 2022). The Commission would keep the Security Council informed about the situation in Palestine (UNDL, n.d.-a, October 27, 2022). On 24 April 1948, Resolution 185 was adopted by the General Assembly related to the protection of the city of Jerusalem and its inhabitants. The Trusteeship Council was asked to cooperate with the Mandatory Power and the interested parties to take suitable measures for the protection of the city and its inhabitants, and submit proposals to the General Assembly in this urgent question which concerns the United Nations as a whole (UNDL, n.d.-b, October 27, 2022).

On May 14, 1948, the United Nations Special Committee on Palestine was abolished (Baron, 1998, p. 8). On the other hand, the United States, whose premier concern as to the Israel-Palestine conflict had always been strategic, not humanitarian was not willing to accept the UN existence in the decision-making process in the West Asia (Bennis, 1997, p. 50). The United States also was not eager to send troops to enforce the Resolution 181 (II) by filling the shoes of the United Kingdom, which was adamant to withdraw from Palestine. This resulted in increasing violence and disorder on the ground. As a result of the conflict, well-organized 600,000 Jewish defeated Arab majority, and the State of Israel was proclaimed. In reaction to

this, the surrounding Arab states, including Egypt, Transjordan, Syria, Lebanon, Iraq, Saudi Arabia, and Yemen entered with their armies to Palestine under the pretence of defending the Palestinian people (Bunton, 2013, p. 55). Thus, following a conflict, between the Yishuv and Palestinian Arab society from November 1947 to May 1948, a regional war between the newly proclaimed State of Israel and its neighbors commenced on the 15 May 1948 (Bunton, 2013, p. 54).

On 14 May 1948, by the UNGA Resolution 186, a United Nations Mediator was empowered in Palestine, and the Palestine Commission was relieved from its further responsibilities under Resolution 181 (II) (UNDL, n.d.-b, October 27, 2022). This demonstrated that the Partition Plan in its original text form could not be implemented by the United Nations as the Palestine Commission had not been in existence anymore (Scobbie & Hibbin, 2009, p. 38). The morning of the 14th of May 1948, the Palestinian Mandate has unilaterally been terminated by the United Kingdom (Baron, 1998, p. 8). That afternoon on the same day (14 May 1948), David Ben Gurion declared the establishment of the State of Israel in the Hall of the Tel-Aviv Museum (Sager, 1978, p. 91). In response to this, six neighboring Arab states attacked the new proclaimed state of Israel (Baron, 1998, p.9).

As the previous the UNSC resolution related to Palestine had not been duly implemented, military operations had continued in Palestine. Thus, the Security Council accepted resolution 49 on 22 May 1948 (The UNDL, n.d.-c, October 27, 2022). It called upon all government and authorities to issue a cease-fire order to their military and paramilitary forces within forthy-eight hours (The UNDL, n.d.-c, October 27, 2022). It was also requested all parties and the Truce Commission to give particular importance to establish and maintain a truce in the city of Jerusalem (The UNDL, n.d.-c, October 27, 2022). Afterwards, resolution 50 passed on 29 May 1948. The Security Council called upon to be ordered a cessation of all acts of armed force for a period of four weeks, and urged all governments and authorities to take precaution for the protection of Holy Places and of the City of Jerusalem (The UNDL, n.d., October 28, 2022). It was decided that if this resolution were violated or not implemented, the situation in Palestine would be reassessed under Chapter VII of the Charter of the United Nations (The UNDL, n.d., October 28, 2022).

According to the telegram coming from the UN Mediator, the Security Council passed on resolution 53 of 7 July 1948, and requested the prolongation of the truce for some time to be decided with the Mediator (The UNDL, n.d.-a, October 28, 2022). One week later, resolution 54 of 15 July 1948 was accepted by the Security Council. It was stated that the request of

prolongation of the truce, mentioned in resolution 53 was rejected by the Arab League whilst it was accepted by the Provisional Government of Israel (The UNDL, n.d.-b, October 28, 2022). The Security Council called upon all governments and authorities concerned to continue to contact with the Mediator (The UNDL, n.d.-b, October 28, 2022). It was decided that the truce would remain in force until peceful adjustments in Palestine was reached (The UNDL, n.d.-b, October 28, 2022). In addition, the urgent necessity for an immediate cease-fire in the city of Jerusalem with the help of the Truce Commission was reiterated (The UNDL, n.d.-b, October 28, 2022). The Security Council instructed the Mediator to continue to do his best for the demilitarization of the city of Jerusalem "without prejudice to the future political status of Jerusalem and to assure the protection of the Holy Places, religious buildings, and sites in Palestine" (The UNDL, n.d.-b, October 28, 2022).

After communicating with the Mediator concerning the situation in Jerusalem, resolution 56 of 19 August 1948 was accepted by the Security Council. The governments and authorities concerned were informed that it was their obligation to prevent actions violating the truce by individuals or groups who were subject to their authorities or in territory under their control (The UNDL, n.d.-c, October 28, 2022). It was stated that each party had the obligation to bring those who were involved in a breach of the truce to trial within their jurisdiction (The UNDL, n.d.-c, October 28, 2022). Nearly one month later, on 17 September 1948, Count Folke Bernadotte and Colonel André Sérot had been assassinated in Jerusalem. One day later, Resolution 57 of 18 September 1948 was passed pursuant of a tragic death of the UN Mediator Bernadotte and Colonel Sérot in Palestine by a group of terrorists, while carrying out his peace-seeking mission (The UNDL, n.d.-d, October 28, 2022). Although one month had passed after the tragic murder, no report had been submitted by the Provisionel Government of Israel. Thus, by resolution 59 of 19 October 1948, the Security Council requested a report regarding the investigation process (The UNDL, n.d.-e, October 28, 2022). It was also determined that the Governments and authorities had to take all measures to ensure the safety the truce supervision équipe (The UNDL, n.d.-e, October 28, 2022).

On 29 October 1948, Security Council passed on resolution 60. Accordingly, it was decided to be established a sub-committee to prepare a revised draft resolution in consultation with the Acting Mediator (The UNDL, n.d.-f, October 28, 2022). On 4 November 1948, the Security Council accepted resolution 61, and stated that the truce would remain in force in accordance with previous resolutions 50 and 54 until a peaceful adjustment was reached on the ground (The UNDL, n.d.-g, October 28, 2022). It was mentioned that the Members of the

United Nations could take the position of some peaceful adjustments which were proposed in this resolution of the Security Council in the General Assembly (The UNDL, n.d.-g, October 28, 2022). It was also called upon all interested Governments to withdraw their forces as they had advanced beyond the positions held on 14 October (The UNDL, n.d.-g, October 28, 2022). In this sense, it was stated that the Acting Mediator had an authority to establish provisional lines (The UNDL, n.d.-g, October 28, 2022). Another proposal was to establish permanent truce lines and neutral or demilitarized zones to be able to observe the truce in the area through negotiations (Either directly between the parties or via the intermediaries of the UN) (The UNDL, n.d.-g, October 28, 2022). In case of failing of this negotiations, it was mentioned that these lines and zones would be established by the Acting Mediator (The UNDL, n.d.-g, October 28, 2022). In the last pharagraph, it was stated that in case all initiatives had failed, together with the help of an appointed committee of the Council, consisting of five permanent members, Belgium and Colombia, the Acting Mediator would report the Council related to the measures to be taken under Chapter VII of the Charter (The UNDL, n.d.-g, October 28, 2022).

On 16 November 1948, the Security Council adopted resolution 62 (The UNDL, n.d.-h, October 28, 2022). It was decided in all sectors of Palestine to be established an armistice, including the delineation of permanent armistice demarcation lines to transite from truce to permanent peace in Palestine (The UNDL, n.d.-h, October 28, 2022). To this end, as a provisional measure under Article 40 of the Charter, the Security Council called upon all related parties to seek an agreement by negotiations either direct or via the Acting Mediator (The UNDL, n.d.-h, October 28, 2022). On 30 November 1948, Transjordan and Israel signed the UN Cease-Fire Agreement, delineating the military positions in Jerusalem (Baron, 1998, p. 9). On 3 April 1949, when an armistice agreement was sign between the two in Rhodes, these military positions were to be incorporated as armistice lines (Baron, 1998, p. 9). Upon the hostilities broke out in southern Palestine on 29 December 1948, the Security Council passed resolution 66 and called upon the Governments concerned to declare an immediate cease-fire (The UNDL, n.d., October 30, 2022). It was called upon to implement resolution 61 and instructions of the Acting Mediator as well as facilitating the supervision of the truce by the UN observers (The UNDL, n.d., October 30, 2022).

Throughout the Mandate years, Arabs whose ancestors had lived in Palestine in Ottoman times were majority of the population, and the non-Jewish population at that time was double the Jewish population (McCarthy, 1990, p. 34). As a result of the extensive immigration in 1947, Jewish population reached nearly one-third of the population of Palestine (McCarthy,

1990, p. 37). At the beginning of 1948, Arabs formed two-thirds of the population of Palestine (Rogan & Shlaim, 2007, p. 12). According to McCarthy, "For the unrecorded immigration to have had a significant effect on the ethnic composition of Palestine, it would have had to have been immense" (McCarthy, 1990). Such a significant effect on the etnic composition of the country came true through war. Its indigenous population was replaced with immigrant one, setting Palestine apart (McCarthy, 1990, p. 38). In fact, this led to a conflict which broke out between the Yishuv and Palestinian Arab society from November 1947 to May 1948. The war caused to be destroyed of the Arab Palestine. During these intercommunal clashes in 1947-48, as part of Plan Dalet, Haganah destructed and occupied Arab villages. The most known one happened in April 1948, Irgun and Stern Gang extremists killed over a hundred Palestinian residents in the village of Deir Yassin (Bunton, 2013, p. 57). In return, the Arab fighters attacked a convoy and killed almost eighty Jews near Jerusalem (Bunton, 2013, p. 57). This kind of massacres forced more Arabs to flee their homes from territories under Jewish control (Bunton, 2013, p. 58). As Pappé stated that these catastrophes were "a warning to all Palestinians that a similar fate awaited them if they refused to abandon their homes" (Pappe, 2011).

On 11 December 1948, the UN General Assembly passed Resolution 194 (III) near the end of the 1947-49 Palestine War. Accordingly, the UN Conciliation Commission for Palestine (UNCCP) which consisted of three states; France, Türkiye and United States of America was established to carry out specific functions and directives given by the General Assembly or Security Council (Refworld, 2023). The principle of internationalization and rights of the refugees to return to their homes were reaffirmed once again (The United Nations, 2008, p. 112). Article 7 stated that the Holy Places in Palestine should be protected in accordance with existing rights and historical practice, and it was resolved that the UN Conciliation Commission to present its detailed proposals for a permanent international regime for the territory of Jerusalem, including its recommendations the Holy Places in that territory (Refworld, 2023). To this end, a Special Committee on Jerusalem and its Holy Places was established by the Commission to carry out preparatory works as a result of negotiations with both the representatives of the Arab and Jewish governments and local authorities (Abdelrazek, 2011, p. 160). Article 8 highlighted that the Jerusalem area should be treated special and separate from the rest of Palestine under an effective UN control (Refworld, 2023). By the way, in Resolution 194 (III), it was included the area of Jerusalem to the then municipality: the surrounding villages and towns, the most eastern, Abu Dis; the most southtern, Bethlehem; the

most western, Ein Karim, including Motsa; and the most northern Shu'fat (The UN Documents, n.d., December 17, 2022). In addition, the request of being ensured the demilitarization of Jerusalem at the earliest possible date with the efforts of the Security Council was reiterated (Refworld, 2023). It was aimed to reach a final settlement and return Palestinian refugees to their homes. To this end, Article 11 resolved that,

> "The refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible." (Refworld, 2023).

The Arab States that had refused to recognise Israel did not accept the resolution 194 (III) while Israel ignored it by moving its jurisdiction and its parliament to the occupied west part of Palestine (The United Nations, 2008, p. 112). Israel had already established the Supreme Court in Jerusalem in September 1948 (The UN, n.d., November 1, 2022).

The 1948 war had a very serious and devastating consequences. The State of Israel was born during the war. Israel expanded its boundaries, taking 78 per cent of Mandate Palestine (Bunton, 2013, p. 55). Jordan controlled the West Bank, including East Jerusalem (The areas in the west of the Jordan River) while Egypt seized the parts which were adjacent to its borders around Gaza (Rogan & Shlaim, 2007, p. 12). It was also significant in terms of determining both the destiny of the Arabs and the Jews. For Palestinians, the establishment of the state of Israel became al-Nakba (The disaster). It has been one of the most analyzed and discussed in the conferences, writings, publications etc. in terms of military, political and social Nakba. It was the catastrophic situation that befell the Palestinians. In this chaos period, the number of those who were driven from or fled their homes was more than half of the nearly 1.4 million Palestinian Arabs, and the rest of the Palestinians who could not flee remained as a minority within the new founded State of Israel (Rogan & Shlaim, 2007, p. 12). On the other hand, from the eyes of the Israelis, the same day was of the Day of Independence (In Hebrew, Yom Ha'Atzmaut). Particularly, the emphasis of the heroic moralistic version of the war of 1948 in Israeli propaganda took part in Jewish literature bombastically. In short, it can be said that there is still no concurrance on the war which took place 75 years ago. As Shlaim said, "History, in a sense, is the propaganda of the victors" (Pappé, 1999, p. 172).

The war came to a conclusion with the final armistice agreement signed between Israel and Syria in July 1949 (Rogan & Shlaim, 2007, p. 1). Israel also signed armistice agreements

with Egypt, Jordan, Lebanon, but no peace accords were signed, or even discussed (Peters & Newman, 2013, p. 2). The Armistice Agreements were made in compliance with the Security Council resolution 62 of 16 November 1948 (The UN Peacemaker, n.d. November 7, 2022). Especially, one agreement which was signed at Rhodes between Israel and Jordan on 3 April 1949 is important as the Armistice demarcation lines were defined in Articles V and VI of it (The UN Peacemaker, n.d., November 7, 2022). In this agreement, Article VI.9 it stated that,

> "The Armistice Demarcation Lines defined in Articles V and VI of this Agreement are agreed upon by the Parties without prejudice to future territorial settlements or boundary lines or to claims of either Party relating thereto" (The UN Peacemaker, n.d., November 7, 2022).

The aforementioned article reflected the understanding of the related Parties' demarcation lines which were provisional and made in accordance with de facto international frontiers (Scobbie & Hibbin, 2009, p. 59). This also meant that the armistice agreements would not affect sovereignty or final status of territory. Accordingly, although the armistice agreements were signed in 1949, Israeli sovereignty was not recognized by these Arab states as they refused to sign peace treaties with Israel (Gelvin, 2014, p. 127). In line with the Israel-Jordan Armistice Agreement, Article V.b provided,

> "In the Jerusalem sector, the Armistice Demarcation Lines shall correspond to the lines defined in the 30 November 1948 Cease-Fire Agreement for the Jerusalem area." (The UN Peacemaker, n.d., November 7, 2022).

It was also argued that Israel's armistice agreements with the neighbouring states were different from the other armistice agreements because they were made pursuant to the UN Security Council resolutions under negotiations together with the continuous supervision of the UN Secretariat (Scobbie & Hibbin, 2009, p. 61). The 1949 Armistice Lines (The Demarcation Lines) between Israel and its Arab neighbors were designated as the Green Lines (Due to the color used for it on maps). Today, the international community accepts these borders in accordance with Green Line as the State of Israel's recognized borders under applicable international law in line with the 4th Geneva Convention. As part of the division of Jerusalem, Israel-Jordan General Armistice Agreement of 1949 confirmed the de facto division of Jerusalem as the armistice line, but it must be stated that it had no effect on the legal status of the city (Ergün, 2018, p. 8). Neither Israel nor Jordan conferred de jure sovereignty over Jerusalem (Akram & Lynk, 2013, p. 58). The Palestine Liberation Organisation also accepted the existence of Israel within these borders of the 1949 Armistice which actually did not fix de jure boundaries of the Jewish State according to Palestine Partition Resolution. These de facto borders are often referred to as the "1967 borders," which actually means the first half of 1967.

Amidst the General Armistice Agreements made with Egypt, Lebanon, Jordan and Syria from February to July 1949, on 11 May 1949, by Resolution 273 (III), Israel was admitted to membership in the UNGA after taking into consideration of the recommendation of the Security Council and of the recommendation of the Ad Hoc Committee in favor of the admission of Israel to membership in the UN (The UNDL, n.d., November 1, 2022). Israel also undertook to implement General Assembly Resolutions 181(II) and 194(III) which took place in the center of the Palestine issue in the UN. During the discussions in the General Assembly 207th plenary meeting on 11 May 1949, the representative of Israel claimed there is the right of self determination of their entity as they had already met all requirements of being state by the time the Mandate had terminated, but it could not be named as a state at that time (The Procon Website, 2007). After voting phase (37 in favour, 12 against, and 9 abstentions, including the United Kingdom), Israel became a member of United Nations by obtaining the required two thirds majority, and unreservedly accepted obligations of the UN Charter (The UNDL, n.d., November 1, 2022).

On 11 August 1949, by resolution 73, the Security Council had declared its satisfaction arising from the several Armistice Agreements made in Palestine in compliance with its resolution 62 of 16 November 1948. It was also decided the abolishment of the functions of the UN Mediator in Palestine, and the responsibility of the Acting Mediator was relieved. It was expressed the hope to achieve an agreement on the final settlement of all questions at an early date, by starting with the extention of the scope of the armistice negotiations (Turkish Palestine Platform, 2012, p. 44-45). It was noted that "execution of the various Armistice Agreements would be supervised by mixed armistice commissions" (Turkish Palestine Platform, 2012, p. 45). On 12 August 1949, the Conciliation Commission set up the Economic Survey Mission for West Asia. They aimed to examine the economic situation of the states that participated in the 1948 war. In addition, another aim was to make available for the refugees' repatriation and resettlement together with their rehabilitation from the economic and social aspects (Tovy, 2014, p. 77). However, let alone allowance the vast majority of Arabs to their homes in Palestine, Israel explained that it would be best to settle only a limited number of refugees – 100,000 in the territory of the Arab states, not in Israel and the repatriation issue was ceased completely on the eve of 1950 (Tovy, 2014, p. 79). The majority of Palestinians displaced in 1948 continue to languish in refugee camps in West Asia to this day. Solving the refugee problem in the framework of a peace settlement could not be possible under the security and economic approaches of the state of Israel.

Although the Resolutions 181(II) and 194(III) had not been accepted by the Arab states and the Arabs of Palestine, on 9 December 1949, the UN General Assembly adopted Resolution 303(VI) "Palestine: Question of an International Regime for the Jerusalem Area and the Protection of the Holy Places" (The UN Documents, n.d. December 17, 2022). After referring to the previous Resolutions 181 (II) of 29 November 1947 and 194 (III) of 11 December 1948, the Assembly reiterated that Jerusalem was to be placed under a permanent international regime, including a guarantee for the protection of the Holy Places within and outside Jerusalem, and confirmed the provisions of the UNGA Resolution 181(II), in a way to include the *corpus separatum* status in accordance with the complete territorial internationalization for the City of Jerusalem (The UN Documents, n.d. December 17, 2022). Israel rejected the *corpus seperatum* / internationalization plans that were envisaged for Jerusalem, and immediately demonstrated its rejection with the illegal acts. Although the existence of the resolutions regarding the legal status of Jerusalem, the illegal acts of Israel continued. In December 1949, the Israeli Knesset was moved from Tel-Aviv to Jerusalem, and the Israeli President took the oath of office there. Moreover, ministrial services as well as public services were established within the area which should have been to a permanent international regime (The United Nations, n.d., November 1, 2022). According to the UN Trusteeship Council, all these actions were againsts the General Assembly resolutions, and it should have been revoked by Israel (Abdelrazek, 2011, p. 164). Israel declared Jerusalem as its own capital on 23 January 1950, and also after the war, ministries and government departments/agencies of Israel were carried in the western part of the city (The United Nations, 2008, p. 112). Moreover, Israel applied its domestic law to the western sector of the City (Baron, 1998, 9). Today, the issue of the sovereignty of Israel over western part of Jerusalem is still disputable among international community, because not all of them admitted the sovereignty of Israel over there (Ergün, 2018, p. 8). It should be stated that only de facto control of Israel over western Jerusalem was admitted (Ergün, 2018, p. 8).

Following the complaints stemmed from the procedures established in the Armistice Agreements, resolution 89 on 17 November 1950 was adopted. In response to the complaints from Egypt, Jordan, Israel, the Chief of Staff of the Truce Supervision Organization, the Security Council called upon the parties to consent to the handling of all complaints in accordance with the procedures written in the Armistice Agreements (Turkish Palestine Platform, 2012, p. 47). Accordingly, it was requested the Egyptian-Israel Mixed Armistice Commission to pay particular attention on the Egyptian complaint of expulsion of thousands of

Palestine Arabs (Turkish Palestine Platform, 2012, p. 47). It was also asked the Chief of Staff of the Truce Supervision Organization to recommend some advices to Israel, Egypt and such other Arab States related to the control of the movement of nomadic Arabs (Turkish Palestine Platform, 2012, p. 47). It was clearly stated the governments not to take action relating the transfer of persons across international frontiers or armistice lines without consultation of the Mixed Armistice Commissions (Turkish Palestine Platform, 2012, p. 47).

On April 24, 1950, in accordance with the Unity Declaration between the Hashemite Kingdom of Jordan and the Palestinian leadership of the West Bank, the territories in the West Bank, including Quds/Jerusalem officially united with the Hashemite Kingdom of Jordan. (RISSC, 2010, p. 22). In this way, Jordan formalized its control of the Old City, adding an annotation that this would not damage the final settlement of the Palestinian issue (The United Nations, 2008, p. 112). Later in 1950, the United Nations attempted to revive the idea of internationalization for the City of Jerusalem, but it was not sufficiantly supported by neither the Jews nor the Arabs (Baron, 1998, p. 10). The Soviet Union also left this idea. Therefore, between 1952-1967, the principle of internationalization could not have been implemented (Baron, 1998, p.10). The outcome of the 1948 war triggered the other Arab-Israeli wars, which had been continued during the following decades: the 1956 Suez Crisis, the Six Day/June War of 1967, the Yom Kippur/October War of 1973, and the Lebanon Wars of 1982, and 2006. In addition to these wars, the eruption of two Palestinian Intifadas in 1987 and 2000 were of inevitable results of the instability by shaping the political visage in the region.

In 1951, fighting broke out in and around the demilitarized zone established in the Israel-Syrian General Armistice Agreement of 20 July 1949 (Turkish Palestine Platform, 2012, p. 47). The turmoil continued despite the cease-fire order of the UN Truce Supervision Organization in Palestine (Turkish Palestine Platform, 2012, p. 47). Thereupon, resolution 92 of 8 May 1951 was adopted by the Security Council (Turkish Palestine Platform, 2012, p. 47). It was called upon the related parties or persons to cease fighting by compliying with their obligations and commitments arising from previous resolutions and agreements (Turkish Palestine Platform, 2012, p. 47). The complaints between Israel and Syria continued.

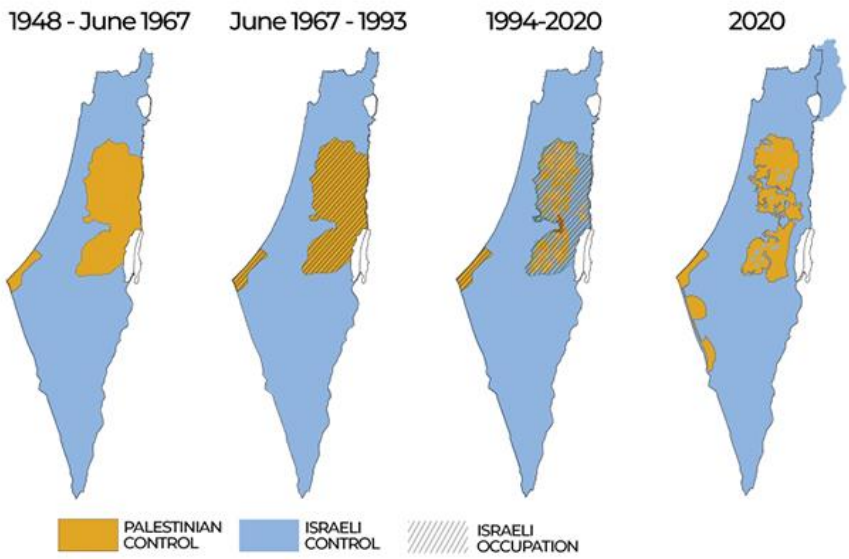


Figure 3.5. Palestine Land Loss Since 1948

On 18 May 1951, resolution 93 was adopted by the Security Council. It was declared that to observe faithfully the General Armistice Agreement of 20 July 1949 made between Israel and Syria is essential to return to permanent peace in Palestine (Turkish Palestine Platform, 2012, p. 50). Specifically, it was stated that aerial action taken by the forces of Israel on 5 April 1951 was deemed as a violation of the cease-fire. In this sense, it was highlighted any aggressive military action in and around the demilitarized zone was a violation of cease-fire in terms of the Armistice Agreement, the UNSC resolution 54 (1948), and the obligations under the UN Charter (Turkish Palestine Platform, 2012, p. 51). Another issue which was worth to mention was the evacuation of Arab residents from the demilitarized zone. In this matter, it was decided that "Arab civilians who have been removed from the demilitarized zone by Israel should have been permitted to return to their homes (Turkish Palestine Platform, 2012, p. 52). In addition, it was stated that there would be no action related to transfer of persons across international frontiers, and armistice lines, or within the demilitarized zone without decision of the Chairman of the Mixed Armistice Commission (Turkish Palestine Platform, 2012, p. 52). Another concern which was mentioned in the resolution was the problem of refusal of observers and officials of the Truce Supervision Organization to enter areas in dispute (Turkish Palestine Platform, 2012, p. 52). It was mentioned that they should have been permitted such entry to be able to fulfill their missions (Turkish Palestine Platform, 2012, p. 52). On 1 September 1951, resolution 95 was adopted following Egypt interfered with the passage through the Suez Canal of goods destined for Israel (Turkish Palestine Platform, 2012, p. 54). The Security Council pointed out that such practice was "an abuse of the exercise of the right of visit, search and seizure," and

would not camouflage in the name of self-defence (Turkish Palestine Platform, 2012, p. 54). It was stated that the interference of Egypt to the passage of goods through Suez Canal to Israel ports was against the rights of nations to navigate the seas and to trade freely one another (Turkish Palestine Platform, 2012, p. 54). The Council called upon that this practice of Egypt should have been terminated forthwith.

Although the four years passed to the sign of the Armistice Agreements of 1949, infiltrations and border clashes between Israel and neighbouring states had continued from both sides. The massacre that occured in the village of Qibya, located in Jordanian occupied West Bank in October 1953 went down as one of the saddest in Israeli history. Sixty-nine Palestinian Arabs were killed. On that incident, the Security Council adopted resolution 100 of 27 October 1953, and 101 of 24 November 1953. This retaliatory action at Qibya taken by armed forces of Israel on 14-15 October 1953 was regarded as a violation of the cease-fire under the General Armistice Agreement between Israel and Jordan and the Charter of the UN (Turkish Palestine Platform, 2012, p. 56). This action was expressed in the strongest censure. It was called upon Israel to take effective measures to prevent all such actions in the future (Turkish Palestine Platform, 2012, p. 56). On the other hand, it was requested from Jordan to strongly control and prevent the crossings of the demarcation line by unauthorized persons (Turkish Palestine Platform, 2012, p. 56). It was reiterated that in order to achieve a lasting and permanent settlement of the conflicting issues, the related parties should have abided by their obligations under the General Armistice Agreement and the resolutions of the Security Council (Turkish Palestine Platform, 2012, p. 57).

The attacks to break the cease-fire continued. A pre-arranged and planned attack by Israel regular army forces against Egypt took place in the Gaza Strip on 28 February 1955 (Turkish Palestine Platform, 2012, p. 58). Following this incident, the Security Council adopted resolution 106 of 29 March 1955, condemning this attack as a violation of the cease-fire provisions of the UNSC resolution 54 (1948), and against the obligations under the General Armistice Agreement between Egypt and Israel. Israel was called upon to stop its illegal actions by taking all necessary measures (Turkish Palestine Platform, 2012, p. 58). As a result of the tension between Egypt and Israel on the armistice demarcation line, resolution 107 of 30 March 1955 was adopted. In order to preserve security in the area, it was requested from the Chief of Staff of the UN Truce Supervision Organization in Palestine to continue his consultations regarding Egypt and Israel by keeping the Council informed of his discussions (Turkish Palestine Platform, 2012, p. 59). Unfortunately, outbreak of violence in the area along the

armistice demarcation line established between Egypt and Israel on 24 February 1949 caused to adoption of another UNSC resolution 108 on 8 September 1955 (Turkish Palestine Platform, 2012, p. 60). It was approved to be accepted by both parties of the appeal of the Chief of Staff for an unconditional cease-fire (Turkish Palestine Platform, 2012, p. 60). As it was very essential to bring about order to the area, both parties were called upon to take all steps deemed necessary (Turkish Palestine Platform, 2012, p. 60).

Violations of the provisions of the General Armistice Agreements continued. On the Syrian complaint that an attack was committed by Israel in the Syrian territory on 11 December 1955, the Securtiy Council adopted resolution 111 on 19 January 1956 (Turkish Palestine Platform, 2012, p. 61). The attack was condemned. Both sides, particularly Israel were called upon to comply with their obligations under article V of the General Armistice Agreement establishing rules related to the armistice demarcation line and the demilitarized zone (Turkish Palestine Platform, 2012, p. 62). As the grave concern on the enforcement of the Armistice Agreements and the compliance to the related resolutions were continuing, the Security Council passed resolution 113 of 4 April 1956 and resoution 114 of 4 June 1956. In the resolution 113, to reduce the tensions along the armistice demarcation lines, it was requested withdrawal of the related parties' forces from the armistice demarcation lines and full freedom of movement for UN observers along the armistice demarcation lines and in the both demilitarized zones and defensive areas (Turkish Palestine Platform, 2012, p. 64). Because of the fact that the measures taken in the previous resolutions could not have been put into effect, the Security Council passed resolution 114 on 4 June 1956. It was stated that progress in settlement would only be made by consolidating the gains stemmed from the Secretary-General's mission and implementing the Armistice Agreements between the parties (Turkish Palestine Platform, 2012, p. 65). To this end, it was also requested from the Secretary-General to continue his mediation initiative with the parties (Turkish Palestine Platform, 2012, p. 65). In addition, full freedom of movement of UN observers as stated in the aforementioned resolution 113 was reiterated anew (Turkish Palestine Platform, 2012, p. 65).

The scene was quite tense. In July 1956, Egypt had nationalized the Suez Canal (The United Nations, 2008, 15). On 13 October, the Security Council adopted resolution 118, proposing clear requirements, such as free and open transit through the Canal without discrimination, respect of the sovereignty of Egypt, insulated position of the Canal from the politics of any country etc. (Refworld, 2023a). The tension between Egypt and Israel turned into an armed conflict on 29 October 1956 (The United Nations, 2008, 15). Israel occupied

Sinai and Gaza Strip. Later, France and the United Kingdom also joined to the Suez Canal zone in the military operations launched by Israel (The United Nations, 2008, 15). Due to the vetoes of France and the United Kingdom, the Security Council could not take a decision. Thus, the General Assembly handled the subject, and was convened at an emergency special session in accordance with the UNGA resolution 377 ("Uniting for Peace" resolution) (The UN Peacekeeping, n.d., November 3, 2022). After the calling for a cease-fire by the General Assembly, invading forces were withdrawn from occupied territories. The first United Nations peacekeeping force; the United Nations Emergency Force (UNEF I) was deployed to secure the cease-fire (The UN Peacekeeping, n.d., November 3, 2022). UNEF I brought to the area a relative peace until 1967, when UNEF was withdrawn from Egytian territory and Gaza at the request of the Egyptian Government (The UN Peacekeeping, n.d., November 3, 2022).

After the Suez Crisis, the Palestinian Diasporas whose founders Yasser Arafat, Salah Khalaf, Khalil al-Wazir and Khaled al-Yashruti founded Fatah or Palestine National Liberation Movement (Harakat al-Tahrir al-Watani al-Filastini) in 1959. As the first Palestinian guerrilla group, the Fatah adopted the doctrine of the armed struggle to "liberate Mandatory Palestine in its entirety" (Singh, 2014, p. 772). Egypt President Nasser, who was a pioneer of the idea of "Palestine Entity" called to establish a new organisation to resist against the Israeli occupation in a more efficient and comprehensive way (Singh, 2014, p. 772). At the same time, more than four hundreds delegates met in East Jerusalem to discuss the idea of "Palestine Entity". In accordance with negotiations, in 1964, the Arab States founded the Palestine Liberation Organisation (PLO). They declared it would be an umbrella organisation of the Palestinian resistance, providing institutional, monetary and military assistance for Palestinian resistance group (Singh, 2014, p. 772). The doctrine of the "armed struggle" also took place in the National Charter of the PLO in 1968 (Singh, 2014, p. 772). The PLO started to hold power under Yasser Arafat.

As it was stated before, the Armistice Agreements which was signed in 1949 had demonstrated *de facto* partition of mandate Palestine (Bunton, 2013, p. 70). The internationally recognised borders, known as the Green Lines had seperated Israel, the Jordanian-annexed West Bank, and the Egyptian-ruled Gaza strip until 1967 war (Bunton, 2013, p. 70). Meanwhile, from 1948 until 1967 Israel occupied and annexed some part of territories which was given to the Arabs in the 1947 UN Partition Plan. As to Quds/Jerusalem, the international community closed their eyes to the de facto partition of it as an eastern sector by Jordan and western sector by Israel until 1967. Israel and Jordan exercised sovereignty in the territories under their

control. In fact, this fragile modus vivendi on the partition of Jerusalem was stemmed from the requisite in order to continue to the life in a normal way there as far as possible (Baron, 1998, p. 10). However, the annexation tableaux stained with blood revealed "a flagrant violation of international law carried out by Israel, an occupying power, against the will of the original inhabitants" (Cattan, 1981, p.10). According to Israel, the hostility and bloodshed in Jerusalem from 1948 to 1967 were because of the refusal of the Jordanian regime to give due acknowledgement to universal religious concern (Gov.il, 1967).

3.7. The 1967 War and The Mılıtary Occupatıon Of Bayt Al-Maqdıs

Israel declared war on Egypt, Jordan, and Syria on 5 June 1967, known as the 1967 "Six-Day War" (Omar, 2021, p. 163). It caused a very disastrous earthquake in the region by changing the nature of the conflict. As a result of the war, Israel occupied the West Bank, Gaza Strip, and other territories under Egypt, Syria, and Jordan control, including the Egyptian Sinai, part of the Syrian Golan Heights (Paffenholz, 2010, p. 208). All these territories became known as the Occupied Palestinian Territories, lying at the heart of the conflict even today. (Paffenholz, 2010, p. 208). Israel accused of the Jordanian forces to launch "a destructive and unprovoked armed assault on 5 June 1967 on the part of Jerusalem outside the walls" (Gov.il, n.d, November 3, 2022). Jerusalem had been divided aftermath of the 1948 war, and the city remained so until June 1967, when Israel conquered East Jerusalem (Peters & Newman, 2013, p. 124). Since then, one of the most sensitive and complicated issues within Palestine issue has been the future of Jerusalem (Saleh, 2006, p. 414).

The territories acquired by Israil at war quadrupled, together with the Sinai Peninsula, Golan Heights, West Bank, and Gaza (Bunton, 2013, p. 70). Particularly, the capture of West Bank was very important in terms of strategic depth for Israel (Peters & Newman, 2013, p. 3). That is why from the very beginning, Israel, as an occupier, started building settlements for Jews in defiance of international law which adopted that occupiers could not settle their people on the land they captured. From the end of the 1990's until now, Israeli settlements in the West Bank and Gaza are still sustaining growth. This has happened in spite of the opposition of the international community (Peters & Newman, 2013, p. 3). In the process of time, Israel's new geopolitical and demographic realities made Palestinians come under direct Israeli military rule (Peters & Newman, 2013, p. 2). For many Israelis, particularly those who are from the right wing and religious part of society, the West Bank is part of the Greater Land of Israel, the Biblical lands of Judea and Samaria. They claim historic and religious rights, not only over the

West Bank, but also over whole Bayt al-Maqdis. Gaza is regarded as a part of the territory under military occupation by Israel since the Six Day War of 1967. Although Israeli settlers and troops were withdrawn from Gaza in 2005, it is still accepted as an occupied territory under international law because Israel still controls the lives of the inhabitants of Gaza. Israel maintains a blockade by land and sea on three sides. Egypt controls a small portion of Gaza's border, to the South, in cooperation with Israel. As a result, the victory of 1967 Six-Day War triggered Israel's expansionist acts nourished by Biblical ambitions turned the conflict into a much more complicated scene. Since then, radical changes effecting the demographic and physical appearance in the region have occurred although all Israeli illegal acts were declared null and void in the related UNSC and UNGA resolutions (The United Nations, 2008, 112).

On 7 June 1967, the occupation of East Jerusalem was completed by the Israeli army (Halabi, 2000). Since that day, the Old City has been in occupation. It was implied that the intervention of the Israeli forces to the acts of violence put an end to disunity by asserting that "Since 7 June, the entire city of Jerusalem has experienced peace and unity." (The Israeli Government Website, n.d., November 3, 2022). Israel greatly extended the city of Bayt al Maqdis' municipal borders, and then claimed that the entire area is its capital. This illegal occupation had been realised in defiance of the resolutions of the United Nations, the international community and international law. After the cease-fire was made, the Security Council adopted resolution 237 on 14 June 1967. It was stated "the urgent need to spare the civil populations and the prisoners of the war in the area of conflict." (Turkish Palestine Platform, 2012, p. 74). Israel was called upon to ensure the safety, welfare and security of the inhabitants of the conflict areas and to facilitate the return of displaced inhabitants (Turkish Palestine Platform, 2012, p. 75). Humanitarian principles towards the treatment of prisoners of war and the protection of civilian persons in time of war mentioned in the Geneva Convention of 12 August 1949 were recommended by the Council (Turkish Palestine Platform, 2012, p. 75).

Immediately after the occupation of the City, the statement of then-Israeli Defense Minister Moshe Dayan demonstrated that Israel would not accept a divided jurisdiction in Jerusalem.

> "This morning, the Israel Defense Forces liberated Jerusalem. We have united Jerusalem, the divided capital of Israel. We have returned to the holiest of our holy places, never to part from it again. To our Arab neighbours we extend, also at this hour – and with added emphasis at his hour – our hand in peace. And to our Christian and Muslim fellow citizens, we solemnly promise full religious freedom and rights. We did not come to Jerusalem for the sake of other peoples' holy places, and not to interfere with the

> adherents of other faiths, but in order to safeguard its entirety, and to live there together with others, in unity." (George Town University Berkley Center, 2023).

Contrary to the words or pledges, the situation in East Jerusalem were deteriorating. In June 1967, the entire 770 year-old Magharibah (Moroccan) Quarter of the Old City, adjacent to the Buraq (Wailing, Western) Wall of the al-Aqsa in the al-Haram al-Sharif had been demolished in order to broaden the narrow alley to create a plaza/courtyard for Jewish worshipers in front of the Wall (Tibawi, 1980, p.183). The motivation of those in charge was neither a security concerns nor town planning, but some mysterious feeling. They believed that in this way Jewish sovereignty was resurrected over their most sacred place (Tibawi, 1980, p. 184-185). This was a flagrant violation of the Fourth Geneva Convention related to the Protection of Civilian Persons in Time of War (1949) (Shahwan, 2020). Accordingly, Article 53 provided;

> "Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations." (ICRC, n.d., November 10, 2022).

On 25 June 1967, a decision regarding annexation of the occupied East Jerusalem was made unilaterally by the Israeli government (Halabi, 2000). However, international law and the covenant of the United Nations did not allow the occupying forces to infringe upon the liberty civil rights of the Palestinians of East Jerusalem (Saleh, 2006, p. 414). On 27 June 1967, the Knesset adopted amendments to two existing laws. Jerusalem was incorporated by the administrative and municipal spheres. Thus, public utility services and municipal and administrative facilities expanded to all parts of the City. This meant that the Israeli regime unilaterally unified East and West Jerusalem under the umbrella of their civil administration (Saleh, 2006, p. 414). Amendment No. 11B of the Law and Administration Ordinance Law (5708-1948) clearly provided;

> "The law, jurisdiction and administration of the State shall extend to any area of Eretz Israel (mandatory Palestine) designated by the Government by order" (Gov.il, n.d., November 6, 2022).

The Israeli Government was not content itself with these amendments. The next day, new boundaries for the city of Jerusalem, including East Jerusalem[14] which previously was under Jordanian administration was proclaimed (Scobbie & Hibbin, 2009, p. 66). Thus, Israel claimed

[14] The term "East Jerusalem" means the annexed land by the State of Israel after the 1967 war.

a full sovereignty over the whole Jerusalem (Ergün, 2018, p. 8). However, the UN consistently refused and did not recognize this sovereignty claims over territories acquired through use of force (Ergün, 2018, p. 9). The threat or use of force against the territorial integrity or political independence of any state were prohibited by Article 2(4) of the United Nations Charter (The UN, n.d., October 12, 2022).

Israel did not stop to take the illegal steps to change the status of the holy city. At its fifth emergency special session, General Assembly adopted resolution 2253 on 4 July 1967 related to the measures taken by Israel to change the status of the City of Jerusalem (The UN Documents, n.d., November 4, 2022). Accordingly, the General Assembly stated its concern at the situation in Jerusalem because of the measures taken by Israel to change the status of this holy city. (The UN Documents, n.d., November 4, 2022). These measures were regarded as "invalid" (The UN Documents, n.d., November 4, 2022). Israel was called upon to rescind all these illegal measures and to desist from any action which would result with the alteration of the status of Jerusalem (The UN Documents, n.d., November 4, 2022). In response to the resolution 2253 on 4 July 1967, Israeli Foreign Minister Abba Eban wrote a letter to the UN Secretary-General U Thant on Jerusalem on 10 July 1967. It was the official Israeli reaction to Resolution 2253. The term "annexation" used by the supporters of the resolution 2253 was refused by Israel. The Israeli government stated that "The measures adopted relate to the integration of Jerusalem in administrative and municipal spheres, and furnish a legal basis for the protection of the Holy Places in Jerusalem." (Gov.il, n.d., November 4, 2022). In accordance with the report submitted by the Secretary-General to the Assembly, ten days later, resolution 2254 (ES-V) was adopted in the General Assembly on 14 July 1967. It was pointed out the deepest regret and concern of the non-compliance by Israel with resolution 2253 (ES-V) (The UN Documents, n.d.-a, Retrieved November 4, 2022). It was reiterated what had been requested in the previous resolution 2253, such as rescinding all measures taken by Israel and desisting from taking any action which would alter the status of Jerusalem (The UN Documents, n.d.-a, Retrieved November 4, 2022).

On 22 November 1967, the Security Council unanimously adopted resolution 242. The text of United Nations Security Council Resolution 242 (1967) is as follows;

"The Security Council,

Expressing its continuing concern with the grave situation in the Middle East,

Emphasizing the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security,

Emphasizing further that all Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter,

1. Affirms that the fulfillment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

(i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;

(ii) Termination of all claims or states of belligerency and respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;

2. Affirms further the necessity

(a) For guaranteeing freedom of navigation through international waterways in the area;

(b) For achieving a just settlement of the refugee problem;

(c) For guaranteeing the territorial inviolability and political independence of every State in the area, through measures including the establishment of demilitarized zones;

3. Requests the Secretary-General to designate a Special Representative to proceed to the Middle East to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this resolution;

4. Requests the Secretary-General to report to the Security Council on the progress of the efforts of the Special Representative as soon as possible.

Adopted unanimously at the 1382nd meeting." (Turkish Palestine Platform, 2012, p. 76).

Resolution 242 has been a very important cornerstone of the Israeli-Palestinian peace process as it referred to the principles for a peaceful settlement in West Asia (The United Nations, 2008, p. 16). There are dicussions on whether it has a characteristic of

recommendation, or not. Resolution 242 was adopted within Chapter VI of the UN Charter, titled "Pacific Settlement of Disputes". Accordingly, Security Council can call upon the parties to settle their disputes by peaceful means, such as negotiation, enquiry, mediation, judicial settlement etc. Although there has been no mandatory force to make the UNSC resolutions implement by the parties within Chapter VI of the Charter, it was accepted that these Security Council resolutions had a power of cogency (Duran, 2001, 125). On the other hand, Article 25 also states that the Members of the UN agree to accept and carry out the UNSC resolutions (The UN, n.d., October 12). Therefore, all resolutions, including resolution 242 adopted by the UNSC are binding upon all Members of the UN. Counter arguments about the issue was also dealt with in terms of resolution 338 later in a detailed way.

The aim of the resolution 242 is to encourage the parties to negotiate in order to achieve of secure and recognised frontiers on the basis of the rights of the Parties under international law (McHugo, 2000). To do this, one of the given principles mentioned in the resolution 242 was withdrawal of Israel from territories it had occupied in the 1967 war, and the other one was a termination of the state of belligerency between the States in the region (Scobbie & Hibbin, 2009, p. 69). In this sense, the resolution 242 is also widely known as land for peace principle as a way to resolve Arab-Israeli conflict. Israel refused to turn back to its 4 June 1967 borders, namely the armistice lines by seeking to territorial changes which would acquire its "secure" frontiers (Scobbie & Hibbin, 2009, p. 70). For Israel, the reference to "secure and recognised boundaries" had never been interpreted as a return to the armistice lines that were not regarded as "boundaries" (Scobbie & Hibbin, 2009, p. 79). However, for the parties who are concern with their security in accordance with the 1949 armistice lines, what the Security Council resolution 242 says were quite clear; "An adjustment to these lines can only happen by an agreement of the parties in order to achieve secure and recognised frontiers." (McHugo, 2000). The USSR criticised Israel arguing that its disposition was neither in line with the UN nor in the aim of reaching a swift political settlement in West East (The UNDL, n.d., November 6, 2022).

Israel, Egypt, Jordan, and Lebanon accepted the resolution, but with divergent interpretations (Bunton, 2013, p. 73). In this respect, Bunton argues that the acceptance of resolution 242 by Egyptian President Gamal Abd al-Nasser and Jordan's King Husayn implied informal acceptance of Israel (Bunton, 2013, p. 73). Israel stated that while the first principle can be fulfilled with a precise action, the other non-belligerency was a imprecise action needed to be taken by the Arab States (Scobbie & Hibbin, 2009, p. 69). According to Israel, if the direct

negotiations with the Arab States could be ensured, only then, the settlement of the issues regarding withdrawal and refugees would be possible (The United Nations, 2008, p. 18). This would also pave the way for a comprehensive peace treaty. On the other hand, Syria rejected the resolution stating that withdrawal issue could not be subject to the concessions demanded from Arab States (The United Nations, 2008, p. 18). Syria criticised the lack of Palestinian representative around the Council table during the deliberations, stating that the Arab people of Palestine as a party directly concerned to the conflict should themselves have been the first speakers to be heard, but they were absent from the picture (Scobbie & Hibbin, 2009, p. 82). Accordingly, Scobbie & Hibbin saw the Security Council resolution 242 as a res inter alios acta for Palestinian Arabs, who were not invited during the process of its adoption (Scobbie & Hibbin, 2009, p. 82). In fact, they could be involved in the meetings, but to create an autonomous Palestinian State on the West Bank was not envisaged at that time (Scobbie & Hibbin, 2009, p. 81). Besides, according to the official stand of Jordan, the West Bank, including East Jerusalem was seen as occupied Jordanian lands since officially united with Jordan since 1950 (Saleh, 2006, p. 418).

Egypt and Jordan read the resolution in a way that Israel should have been withdrawn "all" of the occupied land whilst Israel claimed that being no definite article (the) or "all" before the word "territores," (the territories) referred to "some" occupied territories (Scobbie & Hibbin, 2009, p. 69). Mchugo argues that despite the ommission of "the" or "all" before "territories", whoever read the text clearly understands that it means "territories occupied in the recent conflict" (McHugo, 2000). Besides, in the French version of the text in order to convey the meaning of the English, "the" took place as the French definite article "des," which means "from the"; "Retrait des forces armées israéliennes des territoires occupés lors du récent conflit." In addition, McHugo also underlies that it was understood all secure and recognized boundaries, not some even though it was not added "all" before "secure and recognised boundaries" (McHugo, 2000). Scobbie and Hibbin argues that the ommission was made to gain the assent of the majority of the Council without alienating Israel (Scobbie & Hibbin, 2009, p. 80). As a result, ten out of fifteen voting members expressed their opinions "Israel had no right to acquire any of the territories it occupied during the Six Days War, and thus it had to withdraw from all these territories." (Scobbie & Hibbin, 2009, p. 80).

McHugo points out that since the 1920's, a state's acquiring title to territory by conquest or war no longer recognised by international law. The Security Council Resolution 242 emphasizes the inadmissibility of the acquisition of territory by war. Therefore, it is not tenable

the claim that Israel had acquired sovereignty over territories which it occupied in 1967 (McHugo, 2000). Moreover, one of the other ways which sovereignty could have been acquired is through unilateral acquisition of the territories which are deemed as terra nullius by other powers (McHugo, 2000). However, this is not the case for the territories occupied by Israel in 1967. There were inhabitants living there who did not consent to leave their territories at the hands of occupant. Thus, even at that time, international law did not allow Israel to acquire sovereignty over these territory irrespective of the status of the territories in East Jerusalem, West Bank and Gaza strip before the seizure by Israel (McHugo, 2000).

As it was realised, even the word "Jerusalem" or the status of Jerusalem was not mentioned in the resolution 242. Scobbie and Hibbin states that the fact that no reference to Jerusalem was made consciously, because even at the time of the attempts of annexation of Jerusalem in 1967, the Israeli Government did not officially accept the claims that Jerusalem had been made part of Israeli territory (Scobbie & Hibbin, 2009, p. 67). However, in reality, even though it was officially rejected the word "annexation," what the Israeli government did was exactly annexation of the East part of Jerusalem. All measures taken by Israeli government reflected its understanding of legitimizing its own legal asset, not only in Jerusalem, but whole Bayt al-Maqdis. Thus, in this sense, it can be argued that resolution 242 fails to mention the Palestinians' national rights over their own land Bayt al-Maqdis and "makes reference to the Palestinians only within the context of 'achieving a just settlement to the refugee problem.' " (Peters & Newman, 2013, p. 2). It was also mentioned "The rights of all states in the region to live within secure and recognized borders and the return of territories captured by Israel in the war in exchange for peace" (Peters & Newman, 2013, p. 2).

"Not surprisingly, the Palestinians, represented by the Palestine Liberation Organisation (PLO), at first refused to accept the validity of the resolution because it did not refer to Palestiniaans as one of the principles in dispute. For the PLO, this was a far cry from the recognition of Palestinian national rights. Thus, the PLO did not formally accept Resolution 242 as a basis of negotiations until 1988 because it reduced the question of Palestine to a refugee problem (The United Nations, 2008, p. 18). Even then, the PLO placed its acceptance within the context of a demand for Palestinian statehood" (Gelvin, 2014, p. 178). On the other hand, the Soviet Union and the United States could not demonstrate a will to be enforced resolution 242. According to Bunton, this also ensues from the asymmetry in the positions of the parties. Israel had an overwhelming superiority among Arab countries which were not willing to negotiate from weakness position at that time (Bunton, 2013, p. 74). That was the

another reason of why the peace settlement within "land for peace" formula envisaged in resolution 242 did not come true as desired. As of 2018, Israel has refused to comply with this UN Security Council resolution for more than fifty years. Israeli settlers and troops were withdrawn from Gaza in 2005, but Gaza is still considered occupied territory under international law because Israel still controls the lives of the inhabitants of Gaza. Now, Gaza is "the largest open-air prison in the world", which means the most densely populated areas on earth by reason of Israel's maintenance a blockade by land and sea on three sides.

3.8. Post-1967 Period Under The Selected UN Resolutions

The defeat of the Arabs in the 1967 Six-Day War and the failure of the Gamal Abdel Nasser's national policy caused the Palestinian refugees not to believe that the Arab armies was able to liberate Palestine from Israel, and so they decided to carry out their own armed struggle (Omar, 2021, p. 163). To this aim, Palestinian organisations, such as Fatah movement led by Yasser Arafat (from 1965 to 2004) started attacks and military operations from Jordan against Israel (Omar, 2021, p. 164). In the beginning of the 1968, these attacts against Israel continued from the bases in Jordan. In response to this, Israel carried out revenge operations, or mostly known as "reprisal operations" against Fedayeens (Palestinian fighters) (Omar, 2021, p. 164). On 21 March 1968, the Israeli Defense Forces (IDF) attacked to the town of Al-Karameh where there were Palestinian military presence (Omar, 2021, p. 172). The battle which resulted in a partial success for Israeli forces was not expected at all. In this battle, the PLO and Arafat's Fatah movement came into prominence along with Palestinian courage and valor (Omar, 2021, p. 173). From the eyes of Arab countries and Palestinians, the battle of Al-Karameh demonstrated that Israel could be defeated (Omar, 2021, p. 173). The then-Israeli Foreign Ministry Gideon Rafael said;

> "The operation gave an enormous lift to Yasser Arafat's Fatah movement and irrevocably implanted the Palestinian problem onto the international agenda, no longer as a humanitarian issue of homeless refugees but as a claim to Palestinian Statehood." (Omar, 2021, p. 173).

Following the battle of Al-Karameh, the Security Council adopted resolution 248 on 24 March 1968. Israel's military action was condemned, and deemed as a flagrant violation of the United Nations Charter and the cease-fire resolutions (Turkish Palestine Platform, 2012, p. 78). It was stated that such military reprisal actions would not be tolerated, and mentioned that in case of repetition of such acts, the Security Council would take a further and more effective steps, as envisaged in the Charter (Turkish Palestine Platform, 2012, p. 79). The Council also

called upon Israel to desist from acts and activities in contravention of resolution 237 (1967) (Turkish Palestine Platform, 2012, p. 79).

The invalidity of the measures taken by Israel in Jerusalem was readopted by the General Assembly and Security Council in dozens of resolutions since now. Each illegal action was leading to pass another resolution by the UN. On 27 April 1968, the Security Council adopted resolution 250. Israel was asked not to hold of a military parade in Jerusalem which was contemplated on 2 May 1968 (Turkish Palestine Platform, 2012, p. 80). However, Israel held the military parade on purpose by aggravating tensions in the area. In response to this, in another resolution 251 on 2 May 1968, the Council expressed its deep regret that Israel held the military parade in Jerusalem (Turkish Palestine Platform, 2012, p. 78).

Immediately after the annexation of East Jerusalem, an extensive excavations commenced at south and southwest of al-Aqsa (Saleh, 2006, p. 414). Illegal actions, including confiscations and destructions of Muslim houses and endowments continued in the glare of publicity (Saleh, 2006, p. 414). As Israel continued to take further actions in contravention of the previous resolutions, the Security Council adopted resolution 252 on 21 May 1968 (Turkish Palestine Platform, 2012, p. 81). It was stated that all legislative and administrative measures and actions taken by Israel, such as expropriation of land and properties in Jerusalem were invalid (Turkish Palestine Platform, 2012, p. 81). Israel was called upon to rescind all these actions which tended to change the status of Jerusalem (Turkish Palestine Platform, 2012, p. 81). On 27 September 1968, the Council passed the resolution 259. It was explained the deep sorrow stemmed from the conditions being set by Israel to receive a Special Representative of the Secretary-General (Turkish Palestine Platform, 2012, p. 85). The Council asked the Secretary-General urgently to dispatch a Special Representative to the Arab territories under military occupation by Israel following the 1967 war (Turkish Palestine Platform, 2012, p. 85). In addition, it was requested from the government of Israel to receive the Special Representative of the Secretary-General and facilitate his work (Turkish Palestine Platform, 2012, p. 85).

On 3 July 1969, the Security Council adopted resolution 267 related to the concerns on the status of Jerusalem. The language of the text is quite clear on the subject. In the first paragraph, the previous the UNSC resolution 252 (1968), the UNGA resolutions 2253 (1967) and 2254 (1967) were recalled concerning measures and actions by Israel related to the status of the City of Jerusalem. Then, it was noted although the existence of these resolutions, Israel continued to take further measures tending to change the status of the City of Jerusalem. In this

sense, it was reiterated that "acquisition of territory by military conquest is inadmissible." Accordingly,

> "The Security Council,
>
> 1. *Reaffirms* its resolution 252 (1968));
>
> 2. *Deplores* the failure of Israel to show any regard for the resolutions of the General Assembly and the Security Council mentioned above;
>
> 3. *Censures* in the strongest terms all measures taken to change the status of the City of Jerusalem;
>
> 4. *Confirms* that all legislative and administrative measures and actions taken by Israel which purport to alter the status of Jerusalem, including expropriation of land and properties thereon, are invalid and cannot change that status;
>
> 5. Urgently calls once more upon Israel to rescind forthwith all measures taken by it which may tend to change the status of the City of Jerusalem, and in future to refrain from all actions likely to have such an effect;
>
> 6. *Requests* Israel to inform the Security Council without any further delay of its intentions with regard to the implementation of the provisions of the present resolution;
>
> 7. *Determines* that, in the event of a negative response or no response from Israel, the Security Council shall reconvene without delay to consider what further action should be taken in this matter;
>
> 8. *Requests* the Secretary-General to report to the Security Council on the implementation of the present resolution.
>
> Adopted unanimously at the 1485th meeting." (Turkish Palestine Platform, 2012, p. 88-89).

As it was stated, the UNSC resolution 267 called on Israel to rescind all annexation attempts of East Jerusalem by changing the status of the City of Jerusalem. However, Israel continued its flagrant violation. Despite all the UN resolutions and opposition of international community, Israel's illegal attempts to judaize and zionise the city along with faits accomplis went on affecting adversely not only to the City, but also whole future of Palestine (Saleh, 2006, 414). On 21 August 1969, the ancient Al-Aqsa Mosque was set fire by an extremist Australian Christian, Dennis Michael Rohan. The Palestinians believed that the arson of al-Aqsa was a deliberate attempt to establish a Third Jewish Temple. The extent of the damage was highly

tragic; in the Mihrab area (Prayer niche), invaluable the 900-year-old wood and ivory pulpit gifted by Salah al-Din was destroyed, and the ceiling of the South Eastern part of the Mosque, and the mosaics and ornamental works of the dome of al-Aqsa were badly burnt (Saleh, 2006, 414). The reactions to the attempt of the arson of al-Aqsa grew like an avalanche in the Muslim World. It was made a call for Jihad to liberate al-Aqsa, Jerusalem, and Palestine (Saleh, 2006, 414). There were also rumors about that this incident could be an "Israeli sabotage" among outraged Muslim leaders (Saleh, 2006, 417). Saleh states that because of the lack of taking an immediate action to call for a Security Council meeting among the delegates of Muslim countries caused not to be able to start the discussions on the fire of al-Aqsa until 9th of September 1969 (Saleh, 2006, 421). Following the discussion lasting from 9th to 15th September, most Muslim countries, the Soviet Union, Spain linked the fire with Israel (Saleh, 2006, 422).

On 15 September 1969, the Security Council passed resolution 271. It has been expressed grievance for the extensive damage caused by arson to al-Aqsa Mosque on 21 August 1969 under the occupation of Israel (Turkish Palestine Platform, 2012, p. 90). Previous the UNSC resolutions 252 (1968), 267 (1969), and the earlier UNGA resolutions 2253 (1967) and 2254 (1967) regarding measures and actions by Israel affecting the status of Jerusalem were recalled, and resolutions 252 (1968) and 267 (1969) were reaffirmed (Turkish Palestine Platform, 2012, p. 91). It recognized that any such acts of destruction could seriously endanger international peace and security (Turkish Palestine Platform, 2012, p. 91). It emphasized the immediate necessity of Israel's desisting from acting in violation of the related resolutions and rescinding forthwith all measures and actions to alter the status of Jerusalem (Turkish Palestine Platform, 2012, p. 91). Israel was called upon to observe the provisions of the Geneva conventions and international law governing military occupation (Turkish Palestine Platform, 2012, p. 91). In addition, Israel was issued a call for refraining from causing any obstacle to the discharge of the functions of the Supreme Muslim Council of Jerusalem, including any cooperation requested from Muslim communities about its plans for the maintenance and repair of the Islamic Holy Places in Jerusalem (Turkish Palestine Platform, 2012, p. 91). Moreover, Israel was condemned because of not complying with the aforementioned resolutions, and was called upon to implement them (Turkish Palestine Platform, 2012, p. 91). In case of a negative response or no response, it was reiterated that the Security Council would convene without delay to consider what further action should be taken in this matter (Turkish Palestine Platform, 2012, p. 91).

Despite the decision of the retreat of Israel from Sinai as from 19 June 1967, the decision to annex the Gaza Strip made a possible agreement difficult between Egypt and Israel (Golan, 2015, p. 29). In the years following the 1967 war, relations between Egypt and Israel went from bad to worse. In March 1969, Egypt launched the War of Attrition against Israel to prevent the 1967 ceasefire line along the Suez Canal from turning to a de facto border (Bunton, 2013, p. 74). However, Egypt suffered more than Israel. The Egyptian President Gamal Abdel Nasser agreed to a ceasefire in August 1970 before dying of a heart attack in September of the same year (Peters & Newman, 2013, p. 3). With the efforts of the Soviet Union and the United States to end the war, both sides softened their positions (Golan, 2015, p. 29). After the death of Nasser, Anwar al-Sadat came to power. As he was inherited economic and diplomatic problems, his ultimate goal was of relieving of its military burden in order to improve his country's economy. In February 1971, he made the Suez Canal withdrawal proposal, including an Egyptian force to be allowed on the Eastern bank + a timetable for full implementation of the UNSC resolution 242 (Golan, 2015, p. 29). Israel rejected this proposal because of its security needs and the mistrust to its enemy, Egypt (Golan, 2015, p. 31). The Americans understood that any proposal on the idea of returning to the 4 June 1967 borders would not be acceptable for Israel (Golan, 2015, p. 31). Retention of the Gaza Strip and the control of the Sharm el-Sheikh for the freedom of Israeli shipping were utmost important in terms of Israel's security concerns (Golan, 2015, p. 31). By the way, "Hafez al-Assad took power in a 1970 coup and was elected Syrian president in a referendum a year later; he ruled the country until he died in 2000. Relations with Israel remained hostile" (Peters & Newman, 2013, p. 3).

As Israel's attempts towards changing the Status of Jerusalem continued, on 25 September 1971, the Security Council adopted resolution 298. It was recalled the previous resolutions 252 (1968), and 267 (1969), and the earlier General Assembly resolutions 2253 (1967) and 2254 (1967) related to measures and actions by Israel to change the status of the Israeli-occupied section of Jerusalem (Turkish Palestine Platform, 2012, p. 94). The Council reaffirmed the principle that the acquisition of territory by military conquest is inadmissible (Turkish Palestine Platform, 2012, p. 94). It noted that although the adoption of the above mentioned resolutions, Israel had taken further measures designed to change the status and character of the occupied section of Jerusalem (Turkish Palestine Platform, 2012, p. 94). It was expressed that Israel's measures and actions purporting to affect the status of the City of Jerusalem caused a deep sorrow (Turkish Palestine Platform, 2012, p. 94). It was confirmed "in the clearest possible terms that all legislative and administrative actions taken by Israel to

change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations and legislation aimed at the incorporation of the occupied section, are totally invalid and cannot change that status" (Turkish Palestine Platform, 2012, p. 94). In addition, the Council urgently called upon Israel to rescind all previous measures and actions and to take no further steps in the occupied section of Jerusalem which could result to change the status of the City or which would prejudice the rights of the inhabitants and the interests of the international community (Turkish Palestine Platform, 2012, p. 94).

Early 1973, Sadat supported a broader peace proposal, concentrating on the territories lost in 1967; withdrawal from Sinai, UN peace-keepers for Sharm el-Sheikh and freedom of navigation (Golan, 2015, p. 30). However, Sadat's second initiative also failed. Thus, he came to the conclusion that only a limited war would strengthen Egypt's negotiating position (Bunton, 2013, p. 74). Thus, the war broke out. By the way, King Hussein of Jordan had ordered the expulsion of PLO forces from Jordan in 1970 and rejected calls by Egypt and Syria to join their war against Israel in 1973. After years of secret talks, Jordan signed a peace treaty with Israel in 1994. Putting Jordan aside, Egypt and Syria launched a surprise attack against Israel from two fronts on 6 October 1973; one was in Sinai and west of the Suez Canal and the other was on the Golan Heights (east of the cease-fire line) (Hartley, 2006, p. 80). The attack day coincided with Yom Kippur, the Day of Atonement in the Jewish calendar when all public services were suspended (Hartley, 2006, p. 80). That is why the Israelis could not react rapidly. This situation provided an initial advantage to Egypt and Syria, but at the end of the war, Israeli forces gained an advantage. At the critical stage of the war, the Soviet Union and the United States called upon an urgent meeting of the Security Council (The United Nations, 2008, p. 18). Resolution 338 was adopted on 22 October 1973, and called for a cease-fire. Accordingly, the text provided:

> "The Security Council,
>
> 1. Calls upon all parties to the present fighting to cease all firing and terminate all military activity immediately, no later than 12 hours after the moment of the adoption of this decision, in the positions they now occupy;
>
> 2. Calls upon the parties concerned to start immediately after the cease-fire the implementation of Security Council resolution 242 (1967) in all of its parts;

> 3. *Decides* that, immediately and concurrently with the cease-fire, negotiations shall start between the parties concerned under appropriate auspices aimed at establishing a just and durable peace in the Middle East" (Turkish Palestine Platform, 2012, p. 105).

As it was stated, in resolution 338, the Security Council reaffirmed the principles of resolution 242, and called for negotiations aimed at a just and durable peace in West Asia (The United Nations, 2008, p. 18). The resolution laid the groundwork for the Geneva Peace Conference. Along with resolution 242, it was adopted by the PLO in 1988, and has served as a basis for many later peace initiatives, such as the Oslo Process, the Arab Peace Initiative, the Road Map for peace and the Geneva Initiative.

In the interpretation of the resolution 338, there are arguments that this resolution makes resolution 242 binding thanks to the use of the word "decides" in the third paragraph (Scobbie & Hibbin, 2009, p. 84). According to Scobbie & Hibbin, this interpretation does not seemed much tenable in two ways. First of all, the language of the second paragraph is not mandatory. Secondly, if the resolution 338 makes the resolution 242 binding, then it should have been debated on that issue, but it did not (Scobbie & Hibbin, 2009, p. 84). According to Article 25 of the UN Charter, "The members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter" (The UN, n.d., October 12, 2022). Along with the fact that there is no constitutional debate related to the application or interpretation of Article 25 neither in the Security Council nor in the General Assembly, Scobbie and Hibbin came to such conclusion; the resolution 242 is recommendation released by the Security Council which should be implemented by the parties concerned (Scobbie & Hibbin, 2009, p. 84). Resolution 242, which was adopted under Chapter VI of the UN Charter contained a legal principle which was binding in themselves. Namely, the obligatory force comes from the affirmation of the related principle that territory cannot be acquired through the use of force (Scobbie & Hibbin, 2009, p. 84). By the way, as to the interpretation of the Security Council resolutions, Edvartsen states that it is hard to find specific general rules of interpretation (Edvartsen, 2003, p. 14). The issue of interpretation of the Council resolutions is particulary important in terms of the situations related to the use of force (Edvartsen, 2003, p. 15). First of all, it was determined whether there is an authorization to use force in a Security Council resolution (Edvartsen, 2003, p. 15). Then, in accordance with the purposes and objectives which took place in the resolution itself in an implicit or explicit way, the authorization is carried out (Edvartsen, 2003, p. 15). In this sense, the wording is important,

because vague language can lead to justify actions by Member States that were not intended when the resolution was adopted (Edvartsen, 2003, p. 15).

On 23 October 1973, the Security Council passed resolution 339. In accordance with its previous resolution 338, the Council called for a cease-fire, confirming its decission on an immediate cessation of all military action (Turkish Palestine Platform, 2012, p. 106). The two sides were urged to return to the positions they occupied at the moment the cease-fire became effective (Turkish Palestine Platform, 2012, p. 106). It was requested from the Secretary-General to dispatch of the United Nations observers to supervise the observance of the cease-fire between the forces of Egypt and Israel, using for this aim the personnel of the UN in West Asia, and firsty the personnel in Cairo (Turkish Palestine Platform, 2012, p. 106). Two days later, on 25 October, during the Yom Kippur War, in consequence of the repeated violations of the cease-fire, at the request of Egypt, the Security Council reconvened, and resolution 340 was adopted. As the military observers had not been able to place themselves on both sides of the cease-fire line, it was requested from the Secretary-General to increase the number of the UN military observers (The Turkish-Palestine Platform, 2012, p. 106). In addition, it was decided to be set up United Nations Emergency Force (UNEF II) as a new peacekeeping force (The Turkish-Palestine Platform, 2012, p. 106). By the way, in October 1973, the Arab petroleum-producing states acted in concert by showing an unexpected unity against the supporters of Israel, and made an agreement to reduce output (Hartley, 2006, p. 81). This had a big effect on the governments of Western Europe. On 6 November 1973, the Nine Governments of the European Community declared their views on West Asia in a declaration of European Economic Community. They underlined the importance of the United Nations for a just and lasting peace in the region. They asserted that the Security Council and the Secretary-General had a special role in making peace via the application of Council resolutions 242 and 338 (Hartley, 2006, p. 390). It was clearly mentioned that the legitimate rights of Palestinians should take into account in the establishment of a just and lasting peace (Hartley, 2006, p. 391).

In the wake of the 1973 war, Assad's attempt to take back the Golan Heights in the 1973 war became unsuccessful, and Assad refused any peace deal which did not include the return of Syrian territory (Peters & Newman, 2013, p. 3). However, it can be said that even though Israel gained a military victory, the Arabs obtained what they want politically; "The myth of Israeli invicibility had been broken." (Bunton, 2013, p. 75). This was a breakthrough paving the way for diplomatic initiatives, focusing primarily on resolving the wider Arab-Israeli conflict under the UN auspices. On 21 December 1973, a peace conference was convened with

the participation of Egypt, Israel, Jordan, the USA and the USSR in Geneva, Switzerland (Hartley, 2006, p. 81). As a result of the conference, they were agreed on the continuance of the process of dialogue. In fact, the USA's inconvenience stemmed from the embargo made by the Arab states on the export of Arab petroleum towards the West made the emergence of disengagement agreements appear with the help of US Secretary of State and National Security Adviser H. Kissinger's 'shuttle diplomacy' (Bunton, 2013, p. 75). These agreements were made between Egypt and Israel (signed on 18 January 1974) and between Syria and Israel (signed on 30 May 1974). (Hartley, 2006, p. 81). UNEF II supervised redeployment of the forces of Egypt and Israel, and a new established the United Nations Disengagement Observer Force monitored the agreements between Israel and Syria (The United Nations, 2008, p. 19).

The issue of Palestinians' right to self determination and statehood (national independence) re-emerged in the 1970's on the global agenda. On 21 September 1974, the General Assembly voted on whether 'the Palestine Question' would have been included on its agenda for the first time since the establishment of the state of Israel in 1948 (Hartley, 2006, p. 82). The proposal was accepted, except these countries; Israel, the USA, the Dominican Republic and Bolivia. Accordingly, on 13 October, the PLO was invited to a debate which would have been made one month later (Hartley, 2006, p. 82). On 13 November 1974, the PLO leader, Yasser Arafat made a landmark speech before the General Assembly in New York. He said: "Today I have come, bearing an olive branch and a freedom-fighter's gun. Do not let the olive branch fall from my hand." (The United Nations, 2008, p. 24). The PLO was gaining an international support, "especially from Third World states, which identified the Palestinian cause with their own post-colonial struggles for independence" (Peters & Newman, 2013, p. 3). On 22 November 1974, the General Assembly passed resolution 3236 (XXIX) on the Question of Palestine. It was stated that the problem of Palestine continued to endanger international peace and security (The UN Documents, n.d., November 18, 2022). The Council expressed its concern that the Palestinians could not enjoy their inalienable rights, the right to self-determination (The UN Documents, n.d., November 18, 2022). The inalienable rights which the Palestinian people possessed in Palestine was reaffirmed, including the right to self-determination without external interference, the right to national independence and sovereignty, the right to return to their homes and property from which they have been displaced and uprooted (The UN Documents, n.d., November 18, 2022). It was stated that these rights were indispensable for the solution of the question of Palestine, and recognised that the Palestinian people was a principle party in the establishment of a just and lasting peace in West Asia (The

UN Documents, n.d., November 18, 2022). It was clearly stated that there was the right of the Palestinians to regain their rights by all means in accordance with the purposes and principles of the Charter of the UN (The UN Documents, n.d., November 18, 2022). All States and international organizations were called for extending their support to the Palestinian people in their struggle to restore their rights in accordance with the Charter (The UN Documents, n.d., November 18, 2022). At the same day, on 22 November, the General Assembly also adopted resolution 3237 (XXIX) "Observer Status for the Palestine Liberation Organization". The PLO was invited to attend to the sessions and the work of the General Assembly together with to the sessions and the work of all international conferences convened under the auspices of the General Assembly in the capacity of observer (The UN Documents, n.d.-a, Retrieved November 18, 2022). The PLO was entitled to participate as an observer in the sessions and the work of all international conferences convened (The UN Documents, n.d.-a, November 18, 2022). Thus, in 1974, the PLO was granted observer status in the United Nations, and Yasser Arafat was invited to take part in all future UN debates about West Asia (Hartley, 2006, p. 85). On 10 November 1975, the UNGA adopted resolution 3379 (XXX) "Elimination of All Forms of Racial Discrimination" by 72 affirmative, 35 against, and 32 absentations votes (The UN Documents, n.d.-b, November 18, 2022). The Third World coordination in international affairs were rising in those years. Together with the introducing of the Palestinian self-determination issue to the UN agenda, states directing their way to the Arab position and criticising Israel hoped to gain Third World support in their own issues at the Assembly (Santos & Uziel, 2015, p. 88). As it was stated by Santos and Uziel, most resolutions on West Asia conflict had been expected to be adopted by a much more majority (Santos & Uziel, 2015, p. 88), but the total number of abstention (32) and against votes (35) were very close to those of affirmatives (72). As a result, the resolution 3379 passed with the support of the Soviet Bloc, many Arab and Afican countries, and a few others. In this resolution, after recalling its previous resolution 1904 (XVIII) of 20 November 1963, it was stated that "any doctrine of racial differentiation or superiority is scientifically false, morally condemnable, socially unjust and dangerous" (The UN Documents, n.d.-b, November 18, 2022). The resolution also noted "common features of the racist régimes of occupied Palestine and Zimbabwe and South Africa as having a common imperialist origin, the same racist structure and being linked in their policy aimed at repression of the dignity and integrity of human being,"[15] (The UN Documents, n.d.-b, November 18,

[15] This understanding took place in resolution 77 (XII) adopted by the Assembly of Heads of Sate and Government of Organization of African Unity in 1975.

2022). In addition, the decision condeming "zionism as a threat to world peace and security,"[16] was noted in resolution 3379 (The UN Documents Website, Retrieved November 20, 2022). In line with this understanding, Ataöv highlights three 'ism's intervowen link: racism, imperialism and zionism. Zionism as anti-Arab in nature had been developed in a total dependency on imperialist states (Ataöv, 2015, p. 79-80). European colonial settlements in Africa and elsewhere were the source of inspiration to the Zionists in Palestine. Although Zionism was an alien on the Palestinian soils, European countries and later of the United States provided full support for the establishment of the state of Israel (Ataöv, 2015, p. 79). One of the other support came from the white racists of South Africa to the Zionists of Israel. Thus, racism, imperialism and zionism met in Palestine. From the very beginning, the close tie between South Africa and Israel was seen in the League of Nations, and later the United Nations (Ataöv, 2015, p. 91). Throughout the years, the UN had expressed its concern over the increasing relations between the Zionist entity and the apartheid régime in South Africa (Ataöv, 2015, p. 91). The 1967 war, and following 1973 war added new dimensions to the relations between the two governments (Ataöv, 2015, p. 91). That is why, in the resolution 3379, the pronouncement that Zionism was "a form of racism and racial discrimination" can be read as a formal expression stemmed from a reaction to the increasing recognition of the racist nature of the political zionism (Ataöv, 2015, p. 79).

Efforts for the maintenance of the peace process continued at various levels from 1974 to 1977 (The United Nations, 2008, p. 19). Control of the Sinai peninsula was still at the hands of the Israelis. Anwar Sadat[17] who wanted to distmantle the psychological barriers prioritized Egypt's own interests, and then went to Jerusalem on 19 November 1977 (Bunton, 2013, p. 75). Among the Arabs, this visit created disunity and mostly furious resentment although there were scattered expression of optimism (Hartley, 2006, p. 90). From the eyes of Arabs, it was understood that Anwar al-Sadat withdrew his support to the Arab world to make peace with Israel in 1977 (Peters & Newman, 2013, p. 3). They argued that the visit of President Sadat revealed the limited objective of an Israeli-Egyptian peace treaty. Thus, the initiative was perceived as an indicator of despair in terms of achieving an overall settlement in the region (Hartley, 2006, p. 90). On the other hand, thanks to this visit, Israeli-Egyptian peace negotiations paved the way for signing two documents which provided a framework for peace in West Asia at the American presidential retreat at Camp David in 1978 (Hartley, 2006, p. 92).

[16] This stance took place in a declaration adopted at the Conference of Ministers for Foreign Affairs of Non-Aligned Countries held at Lima in 1975.

[17] Anwar al-Sadat was assassinated by Egyptian Islamist extremists at a military parade in Cairo in 1981.

One accord was related to bilateral problem between Egypt and Israel, such as the issue of the Israeli withdrawal from Sinai, and the establishment of normal relations between the two countries while the other accord dealt with the issue of the wider question of the future of the West Bank and Gaza (Hartley, 2006, p. 92). Accordingly, it had been envisaged transitional arrangements for the status of these places that would lead to full authonomy for its inhabitants as a result of a peace treaty between Israel and Jordan (Hartley, 2006, p. 92). In March 1979, Israeli-Egyptian peace treaty was signed. On 25 April 1982, the withdrawal from Sinai was accomplished (Hartley, 2006, p. 92). The 1978 Camp David Accords and the 1979 Israeli-Egyptian peace treaty covered provisions for talks on authonomy for the Palestinians in the West Bank (Peters & Newman, 2013, p. 3). Talks fell through due to the lack of the representation of the Palestinians (Peters & Newman, 2013, p. 3). Refusing to talk to the PLO, Israel saw it as a terrorist organization, which was adamant on Israel's destruction (Peters & Newman, 2013, p. 3). Israel also received full support from the USA. In addition, the European Community were in support of Palestinian national self-determination by issuing of the Venice Declaration in April 1980, although the Europeans abstained from explicitly calling for Palestinian statehood (Peters & Newman, 2013, p. 3).

3.9. Israel's Settlement Policy And Internatıonal Position

Zionism had achieved its aims gradually. The first one was to establish a state, whether it be large, or small. Once the state of Israel was established in accordance with the 1947 UN plan, and after the 1948 war, the armistice line was drawed, then these borders did not satisfied the expectations of the Zionists as the ancient lands of Israel lied beyond the scope of the then-borders of Israel. Thus, Israel conquested all Bayt al-Maqdis in the 1967 war. This constituted a new beginning of a next phase for the Jewish settlement policy. As it was mentioned before, the Jewish settlement had already metarialised in the plains and valleys of mandate Palestine. However, at that time, as the indigenous Arab population were stayed around the religious sites, these areas had been descoped in the UN plans for an envisaged Jewish state. Following 1967 war, General Moshe Dayan's words demonstrated to the extend of the Jewish expansionism;

> "Our fathers had reached the frontiers which were recognized in the Partition Plan. Our generation reached the frontiers of 1949. Now, the six-day generation has managed to reach Suez, Jordan and the Golan Heights. That is not the end. After the present cease-fire lines, there will be new ones. They will extend beyond Jordan – perhaps to Lebanon and perhaps to central Syria as well." (Lilienthal, 1978, p. 142).

It was an environment in which the groundless beliefs regarding Israel as a small David duelling (with God's help) giant and all mighty Arab Goliath could spread among the Jewish society (Ataöv, 2015, p. 92). During the decade following 1967, even in the time of the Labour-led government which were in support of "land for peace" formula, the settlement policy continued significantly in the occupied territories (Bunton, 2013, p. 79). Particularly, after 1967, as a result of a systematic settlement policy, the construction of a ring of Jewish suburbs surrounded Jerusalem (Bunton, 2013, p. 79). When Menachem Begin and the Likud Party came to the power in 1977 elections, settlement activity increased dramatically to be able to force the future governments to hold in control over the occupied territories (Bunton, 2013, p. 79). To this aim, immediately after his return from the Camp David meeting in 1978, Begin declared Israel would not abided by the arrangements for Palestinian authonomy at Camp David 'under any conditions or in any circumstances' by creating new settlements on the West Bank and maintaining armed presence there even after a transitional period (Hartley, 2006, p. 92).

On 20 July 1979, resolution 452 was adopted by the UN Security Council. It was stated that there was no legal validity of Israel's settlement policy in the occupied Arab territories in which was a violation of the Geneva Convention relative to the Protection of the Civilian Persons in Time of War, of 12 August 1949 (Turkish Palestine Platform, 2012, p. 138). The concern arising from the practices of Israel in the occupied Arab territories, including Jerusalem and its consequences was expressed (Turkish Palestine Platform, 2012, p. 139). After being reminded the specific status of Jerusalem and previous resolutions related to it, "the need to protect and preserve the unique spiritual and religious dimension of the holy places in that city" was underlined (Turkish Palestine Platform, 2012, p. 139). The Council called upon the goverment of Israel and the Israelis to cease establishing, building, and planning of settlements in the occupied Arab territories since 1967, including Jerusalem (Turkish Palestine Platform, 2012, p. 139).

On 1 March 1980, resolution 465 was passed on Israeli settlement policies in the occupied territories. The Council strongly deplored Israel as it refused to cooperate with the Security Council Commission and regretted Israel's formal rejection of resolutions 446 (1979) and 452 (1979) (Turkish Palestine Platform, 2012, p. 145). The Council determined "all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of Palestinians and other Arab territories occupied since 1967, including Jerusalem had no legal validity" (Turkish Palestine Platform, 2012, p. 146). It was appealed to the Israeli government to rescind those measures and to dismantle the existing settlements (Turkish

Palestine Platform, 2012, p. 146). The Council called upon all states not to provide Israel with any assistance specifically related to settlements in the occupied territories (Turkish Palestine Platform, 2012, p. 146). Moreover, Israel's military occupation were damaging economic life in the occupied territories (Bunton, 2013, p. 80). Agricultural lands was expropriated by Israeli settlements, and accordingly water resources were badly affected, but army officers did not permit the digging of wells (Bunton, 2013, p. 80). Israeli agricultural products were sold in the occupied territories. This led Palestinian farm workers leave home to find work, either in Israel or in the oil-rich Gulf countries (Bunton, 2013, p. 80). In resolution 465, upon the reported serious depletion of natural resources, particularly water resources of the territories under occupation, the Council requested the Commision to continue to examine the situation to be able to protect those important natural resources (Turkish Palestine Platform, 2012, p. 146).

Israel continued to display arbitrary behaviours in the occupied territories. Mayors of Hebron and Halhoul, and the Sharia Judge of Hebron were expulsed. The UNSC, in its resolutions 468, adopted on 8 May 1980, stated its deeply concern about the expulsions by the Israeli military occupation authorities in Hebron and Halhoul (Turkish Palestine Platform, 2012, p. 151). It was called upon to rescind these illegal measures and also make available to return of the expelled Palestinian Leaders (Turkish Palestine Platform, 2012, p. 151). As Israel refused to implement this resolution, the UNSC resolution 469 was adopted on 20 May 1980. After recalling related parts (Art. 1 and Art. 49) of the Geneva Convention of 12 August 1949, the Council strongly deplored Israel's failure to observe resolution 468 (Turkish Palestine Platform, 2012, p. 151). Thus, the Council called upon Israel to rescind illegal deportations of Mayors of Hebron and Halhoul, and the Sharia Judge of Hebron and to facilitate the return of the deported Palestinian leaders (Turkish Palestine Platform, 2012, p. 151). Finally, it was requested from the Secretary-General to continue his efforts to ensure the implementation of this resolution (Turkish Palestine Platform, 2012, p. 151).

On 5 June 1980, resolution 471 was passed by the Security Council. The assassination attempts against the Mayors of Nablus, Ramallah and Al Bireh was condemned, and it was called for the prosecution of the perpetrators of these crimes (Turkish Palestine Platform, 2012, p. 155). The Council recalled the previous resolutions 468 (1980) and 469 (1980), together with the Geneva Convention relative to the Protection of Civilian Persons in Time of War (12 August 1949) (Turkish Palestine Platform, 2012, p. 155). It was reaffirmed that Israel violated the aforementioned convention in the Arab territories occupied by Israel since 1967, including Jerusalem, and therefore it was requested from Israel to respect and comply with the provisions

of the Geneva Convention (12 August 1949) as well as the related UNSC resolutions (Turkish Palestine Platform, 2012, p. 155-156). The Council expressed deep concern that Israel as an occupying power, did not provide an adequate protection to the civilian population in the occupied territories. Thus, it was called upon Israel to compensate for the damages stemmed from these crimes (Turkish Palestine Platform, 2012, p. 155). All states were called upon once again not to assist Israel in settlements in the occupied territories (Turkish Palestine Platform, 2012, p. 156). In conclusion, the urgent necessity to end the occupation of Arab territories occupied by Israel since 1967, including Jerusalem was reaffirmed (Turkish Palestine Platform, 2012, p. 156).

On 30 June 1980, the UNSC resolution 476 was adopted. It was reaffirmed that "the acquisition of territory by force is inadmissible" (Turkish Palestine Platform, 2012, p. 147). It was reminded the specific status of Jerusalem and the need to preserve the Holy Places in the City. The previous resolutions 252 (1968), 267 (1969), 271 (1969), 298 (1971) and 465 (1980) which were related to the character and status of the Holy City of Jerusalem were reaffirmed (Turkish Palestine Platform, 2012, p. 147). It was stated deplorement by reason of "the persistance of Israel in changing the physical character, demographic composition, institutional structure and the status of the Holy City of Jerusalem" (Turkish Palestine Platform, 2012, p. 147). It was reaffirmed the urgent necessity to end the occupation of Arab territories occupied by Israel since 1967, including Jerusalem (Turkish Palestine Platform, 2012, p. 147). The Council gravely concerned about the legislative steps taken by the Israeli Knesset to change the character and status of the Holy City of Jerusalem (Turkish Palestine Platform, 2012, p. 147). It was reconfirmed these steps had no legal validity and constitute a flagrant violation of the Geneva Convention, and also an impediment to achieving a comprehensive, just and lasting peace in West Asia (Turkish Palestine Platform, 2012, p. 148). It was reiterated that all such measures which had altered the geographic, demographic and historical character and status of the Holy City of Jerusalem were null and void, and must have been rescinded (Turkish Palestine Platform, 2012, p. 148). Israel was urgently called on to abide by the resolutions and desist from the policy and measures affecting the character and status of the Holy City of Jerusalem (Turkish Palestine Platform, 2012, p. 148). Finally, the Council reaffirmed its determination to examine practical ways and means according to the provisions of the UN Charter if Israel continued not to comply with this resolution (Turkish Palestine Platform, 2012, p. 147).

In 1980, a bill named "Basic Law: Jerusalem, Capital of Israel" was presented to the Knesset by MK Geula Cohen from right wing opposition party "Tehiya" which was against the

peace initiatives of Begin, resulted in Camp David Accords in 1978. (Naor, 2016, 37). Naor states that Begin found such a bill unnecessary, but had to approve under pressure coming from inside. Noar also reveals that while presenting the bill, the intention of Cohen was to "safeguard the status of Jerusalem as the capital of Israel in constitutional terms" (Naor, 2016, 37). The timing of the bill had coincided with the negotiations on autonomy arrangements for the Palestinians. From the Egyptian side, there were demands for the participation of the residents of East Jerusalem (Jerusalemite Palestinians) in the elections for a projected administrative authority which would deal with matters of the Palestinians on West Bank and Gaza Strip (Naor, 2016, 37). The fear and non confidence to Begin and his Government arising from the possibility of making concessions on Jerusalem under external pressure led to be presented the relevant bill to the Knesset which were seemed as 'vital' by the opponents (Naor, 2016, 37). The first three clauses are as such;

> "1.The complete and united Jerusalem is the capital of Israel.
>
> 2. Jerusalem is the seat of the President of the State, the Knesset, the Government, and the Supreme Court.
>
> 3. The Holy Places shall be protected against desecration, and any other violation, and against anything that is liable to violate the freedom of access of members of the various religions to the places sacred to them, or to offend their feelings towards those places.
>
> 4. (a) The Government shall pursue the development and prosperity of Jerusalem, and the welfare of its inhabitants, by allocating special resources, including a special annual grant to the Municipality of Jerusalem (Capital City Grant), with the approval of the Knesset Finance Committee.
>
> (b) Jerusalem shall be granted special priorities in the activities of the State authorities for the development of Jerusalem in market and economic issues, and in other issues.
>
> (c) The Government shall set up a special body or bodies to implement this article." (The Official Website of the Knesset, n.d., November 22, 2022).

This enactment claimed exclusive Israeli sovereignty over Jerusalem. However, as resolution 478, adopted on 20 August 1980, reaffirmed, "the acquisition of territory by force is inadmissable." (Turkish Palestine Platform, 2012, p. 159). In resolution 478, the Council deeply concerned over this enactment declaring a change in the character and status of the Holy City of Jerusalem (Turkish Palestine Platform, 2012, p. 159). The Council censured this enactment of "basic law" on Jerusalem and its refusal to respect to the relevant the UNSC resolutions in the strongest terms (Turkish Palestine Platform, 2012, p. 159). It was also affirmed that the so

called basic law was a violation of international law and did not affect the application of the Geneva Convention (12 August 1949) in the occupied Arab territories since 1967, including Jerusalem (Turkish Palestine Platform, 2012, p. 159). It was also stated that together with Israel's other legislative and administrative illegal measures and actions, the so called "basic law" on Jerusalem also were null and void, and had to be abolished immediately (Turkish Palestine Platform, 2012, p. 159). It was decided not to recognize the "basic law," and other illegal actions towards altering the character and status of Jerusalem by unilateral acts of Israel (Turkish Palestine Platform, 2012, p. 159). All member states were requested to accept the resolution 478, and demanded from those states that had established diplomatic missions in Jerusalem to withdraw such missions (Turkish Palestine Platform, 2012, p. 159). By the way, the Hashemite Kingdom of Jordan nominated of the old city of Jerusalem and its walls for inscription on the World Heritage List in September 1980, and it was decided to inscribe the Old City of Jerusalem and its Walls on the World Heritage List at the first extraordinary session of the World Heritage Committee (UNESCO, n.d., November 25, 2022).

On 28 October 1981, the UN General Assembly adopted resolution 36/15 by virtue of the occupying power, Israel's persistence in excavating and transforming the historical, cultural and religious sites in Jerusalem. The Assembly determined that Israel's excavations and transformations of the historical, cultural and religious sites of Jerusalem constituted a "flagrant violation of the principles of international law and the relevant provisions of the Geneva Convention of 12 August 1949" (Palestine MFA, 2019). Such acts, the resolution mentioned, "constitute a serious obstruction to achieving a comprehensive and just peace in the Near East" (Palestine MFA, 2019). Thus, the Assembly demanded Israel to desist from all excavations and transformations, particularly around the Muslim Holy Sanctuary of Al-Haram Al-Sharif (Al Masjid Al Aqsa and the Sacred Dome of the Rock) as they were in danger of collapse. In case of Israel's refusal to comply with this resolution, the Assembly would request the Security Council to deal with the situation, because such violations were a threat to international peace and security. As it was stated, Israel sought to alter the character and status of Jerusalem.

One year later, World Heritage Committee inscribed the "Old City of Jerusalem and its Walls" on the List of World Heritage in danger by 14 votes for, 1 against and 5 abstentions (World Heritage Convention Unesco, n.d., December 5, 2022). The delegate of Switzerland explained the reason of the absentation. It was due to the special status of Jerusalem which is *corpus seperatum* according to the 1947 partition plan of the UN (World Heritage Convention Unesco, n.d., December 5, 2022). On the other hand, the delegates of Argentina, Nepal and

Zaire explained the reason of their support. It was stemmed from this site's outstanding cultural and historical significance, but also stated that inscription on the list had no political implications which could lead to sovereignty claims by any state (World Heritage Convention Unesco, n.d., December 5, 2022).

Israel annexed Quds/Jerusalem by claiming a historic and biblical right in order to revive the capital of the Jewish Kingdom of David and Solomon, which was built some thirty centuries ago (Cattan, 1981, p. 11). Cattan argues that this claim is wrong because the Jews who emigrated to Palestine both during the British mandate or the creation of the State of Israel were not descendants of biblical Israelites (Cattan, 1981, p. 11). According to Cattan, those immigrants converted to Judaism by exploiting religion for political and nationalistic purposes. Secondly, there cannot be such a claim that Israel is a successor to the Kingdom established by David thirty centuries ago. Since, "there exists no rule of international law that recognized a right of succession by a state like Israel, which was established in the twentieth century, to a state that existed thirty centuries earlier" (Cattan, 1981, p. 11). However, from the perspective of Jews on the status of Jerusalem, there is no basis in international law for the position supporting a status of *Corpus Seperatum* (Seperate Entity) for the city of Jerusalem. The Jewish claimed that Resolution 181 was non-binding. The Jewish Agency, which was the other name for the World Zionist Organization, expressly accepted the UN Partition Plan (UNGA Resolution 181), and then, one year later, declared its independence relying upon the Resolution 181 which envisages an Arab State and a Jewish State. "Israel also specifically recognized the legal effect of the resolution 181 on Jerusalem in the assurances it gave to the General Assembly in 1949 in support of its application for membership of the United Nations" (Cattan, 1981, p. 10).

From 1967 to 1987, West Bank and Gaza had been under unbearable occupation. Instead of powerless Tunisian central leadership, a younger generation gained strenght on the ground (Bunton, 2013, p. 85). In that time, even a small spark sufficed for a big explosion in Palestine. On 8 December 1987, an Israeli army lorry crashed into a car in Gaza, causing 4 Palestinians to death (Hartley, 2006, p. 131). A few people believed that it was an accident. A wave of demonstrations erupted in Gaza strip, and spreaded to East Jerusalem and the West Bank (Peters & Newman, 2013, p. 3). Palestinian civilians were killed, many wounded, and several hundred arrested in these confrontations (Hartley, 2006, p. 131). This incident turned to the intifada (uprising), a mass demonstrations against Israeli rule (Hartley, 2006, p. 131). The deteriorating situation in Palestine and other Arab territories occupied by Israel since 1967, including

Jerusalem alarmed the UNSC. On 22 December 1987, the UNSC resolution 605 was adopted. The Council strongly deplored the policies and practices of Israel which violated the human rights of the Palestinian people in the occupied territories (Turkish Palestine Platform, 2012, p. 237). The Council regretted because of the fact that defenceless Palestinian civilians killed and wounded as a result of the opening of fire by the Israeli army (Turkish Palestine Platform, 2012, p. 237). It was reaffirmed that the Geneva Conventian (12 August 1949) is applicable to the Palestinians and other Arab territories occupied by Israel since 1967, including Jerusalem, and thus it was requested from Israel to abide by it (Turkish Palestine Platform, 2012, p. 237). In short, the resolution called upon Israel, an occupying power to desist from doing illegal acts violating the establishment of peace.

Intifada became the next significant transition in the Israeli-Palestinan conflict. As a result of intifada, an underground leadership (the Unified National Leadership of the Uprising – UNLU) came into existence in 1988. The UNLU comprised of the various PLO factions organised strikes and demonstrations (Hartley, 2006, p. 132). When it was compared with the exiled political leadership of the PLO, this was an emerging grassroots leadership (Peters & Newman, 2013, p. 4). The PLO's aim was to make the occupation "an immoral and unaffordable burden" on Israeli society via co-ordinated acts of civil disobedience (Bunton, 2013, p. 88). The 'iron fist' response of the Israeli state from the very beginning of intifada led to the snowballing reactions both abroad and at home (Bunton, 2013, p. 89). Although the Israelis knew that the status quo was not sustainable anymore, the State of Israel continued to challenge international law and the related UN resolutions. On 5 January 1988, the Security Council passed resolution 607 related to the ongoing situation in the occupied Palestinian territories. After recalling its resolution 605 (1987), and being informed of the decision of Israel to continue the deportation of Palestinian civilians in the occupied territories, the Council reaffirmed the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (12 August 1949) (UNSCR, n.d., February 11, 2023). The resolution called upon Israel to end the deportations of Palestinian civilians, and strongly requested from Israel to abide by the Fourth Geneva Convention. In addition, it was decided to keep the situation under review (UNSCR, n.d., February 11, 2023). As Israel refused to abide by resolution 607 (1988) and continued to deport Palestinian civilians, on 14 January 1988, by the UNSC resolution 608, the Council called upon Israel to ensure the return of those who were already deported (UNSCR, n.d.-a, February 11, 2023). Israel also was requested to stop

deportations of any other Palestinian civilians from the occupied territories (UNSCR, n.d.-a February 11, 2023).

There were a tension between the local leadership of UNLU and the outside PLO leaders, but after the successful negotiations, the way to Yasir Arafat, and his fellow Fatah was opened. On the other hand, another religious resistence movement Hamas (Harakat al-Muqawama al-Islamiyya), which was an offshoot of the Gaza branch of the Muslim Brotherhood in Egypt was founded, gaining the widespread popularity during the intifada (Bunton, 2013, p. 88-89). Hamas, whose aim was to establish a state of Islam on the whole territories of Mandate Palestine was totally against the existence of the state of Israel (Bunton, 2013, p. 89). On July 1988, King Hussein severed Jordan's administrative and legal links with the West Bank, explaining that his actions were taken in accordance with the wishes of the PLO and the Arab League. In that conjuncture, Arafat had no time to wait for the establishment of an independent Palestinian state in the West Bank and Gaza while there were a risk that his rivals, such as Hamas might endanger his power (Özkoç, 2009, p. 174). The PLO policy was overaffected from the mass popular participation in grass-roots organizations in the West Bank and Gaza. The struggle on the Palestinian side had begun to bear fruit. When Israeli state institutions started to be abrogated in the occupied territories, Palestinian intellectuals encouraged to produce new ideas for the establishment of a provisional government for an independent Palestinian state (Hartley, 2006, 138). Finally, in the 19th session of the Palestinian National Council (PNC), held in Algeria on 12-15 November 1988, the Palestine National Council declared the independent State of Palestine on 15 November 1988 (Hartley, 2006, 138). The city of Bayt al-Maqdis (Quds) was envisaged to be capital of the new Palestinian State. In addition, at the 19th session, Arafat and others from Fatah, who aimed to appease and encourage the USA accepted resolution 242 in isolation (Hartley, 2006, p. 139). One month later, on 15 December 1988, the UNGA adopted resolution 43/177 "Question of Palestine". After referring the UNGA resolution 181 (II) in which envisaged Arab State and Jewish State in Palestine, and in line with the exercise of the inalienable rights of the Palestinian people, the Assembly acknowledged the proclamation of the State of Palestine by the Palestine National Council (The UN Documents, n.d., December 27, 2022). It was affirmed the Palestinian people to exercise their sovereignty over their territory occupied since 1967 (The UN Documents, n.d., December 27, 2022). In addition, it was decided to be used the name "Palestine" instead of "Palestine Liberation Organisation" in the UN system in accordance with relevant UN resolutions and practice (The UN Documents, n.d., December 27, 2022).

The cycle of repression in the occupied territories continued in turmoil. Once again, acting in defiance of the previous resolutions, Israel deported eight Palestinian civilians on 29 June 1989. In response, the Security Council adopted resolution 636 of July 1989. It was expressed concern what was going on in the occupied Palestinian territories (UNSCR, n.d.-b, February 11, 2023). Once again, Israel was called upon to ensure the return of the deported Palestinian civilians, and to terminate deporting any other Palestinian civilians (UNSCR, n.d.-b, February 11, 2023). The Fourth Geneva Convention (12 August 1949) was recalled, and reaffirmed that it was applicable to the occupied Palestinian territories since 1967, and to the other occupied Arab territories (UNSCR, n.d.-b, February 11, 2023). After being apprised of Israel deported five Palestinian civilians in the occupied territories on 27 August 1989, by resolution 641, adopted in 30 August 1989, the Security Council deplored the continuing deportation of Palestinian civilians by Israel, and called upon Israel to ensure the return of those who were deported (UNSCR, n.d.-c, February 11, 2023). It was reaffirmed that the Fourth Geneva Convention was applicable to the Palestinian territories occupied by Israel since 1967 (UNSCR, n.d.-c, February 11, 2023).

On 2 August 1990, Iraq invaded Kuwait. In return, the US led coalition, including the UK, France, Saudi Arabia, Syria, and Egypt dislodged Iraq's forces from Kuwait (Bunton, 2013, p. 89). During the war, the Israelis felt an utmost threat over the West Bank and Gaza when scud missiles was lauched by Iraq (Bunton, 2013, p. 89). At the same time, the possibility of the US's termination of the Israeli occupation of Palestinians rose the tension in Israel. By the way, international community, and particularly the Security Council continued to follow with concern the developments, affecting the question on Palestine. On 8 October, the acts of violence occured at the Haram al-Sharif and other Holy Places of Jerusalem. It resulted the deaths of over twenty Palestinians and the injury of more than one hundred and fifty people. After this violence that took place in Jerusalem at Haram Al-Sharif, where the al-Aqsa Mosque is situated, the Security Council adopted resolution 672 on 12 October 1990. The tragic event was condemned by the Council. Israel was called upon to obey 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 was applicable to all the territories occupied by Israel since 1967 (The United Nations, 2008, p. 113). Finally, the Council requested the Secretary-General to send a mission to the region, and accordingly submit a report to the Security Council before the end of October 1990 (UNSCR, n.d.-d, February 11, 2023). However, the Council learned that Israel rejected resolution 672, and did not accept the Mission of the Secretary-

General. Thus, on 24 October 1990, resolution 673 was adopted by the Council. It was stated that the Israeli government needed to reconsider its decision of refusal the mission of the Secretary-General to the region (UNSCR, n.d.-e, February 11, 2023). The Council insisted the Israeli government to comply fully with resolution 672 (1990), and permit the mission (UNSCR, n.d.,-e, February 11, 2023).

The Palestine Liberation Organization (PLO), as an official representative of the Palestinian people in the peace talks that began in the 1990's, also accepted the existence of Israel within the borders of the 1949 Armistice[18] which was dictated exclusively by military, not political considerations. Specific borders for two states in Palestine had been stipulated by the UNGA resolution 181. Therefore, after reaffirming the principle of the inadmissibility of the acquisition of territory by war, the UN Security Council resolution 242 of 1967 urged Israel to withdraw from territories occupied in the 1967 war (Hartley, 2006, p. 138). However, Israel did not implement the obligations of the resolution 242 in the occupied Palestinian territories. The refusal of the implementation of the resolution 242 did not mean that the Security Council abandon it. On 20 December 1990, after receiving the report of the Secretary-General Javier Pérez de Cuéllar submitted in accordance with resolution 672 (1990), the General Assemby passed resolution 681 of 20 December 1990, and reaffirmed the obligations of member states under the UN Charter as well as the principle of the inadmissibilty of the acquisition of territory by war, as it was stated in resolution 242 (1967) of 22 November 1967 (UNSCR, n.d.-f, February 11, 2023). The Council also expressed its concern arising from Israel's rejection of resolutions 672 (1990) and 673 (1990), and once again, by resolution 681, the decision of Israel to deport of Palestinians from the occupied territories was condemned (UNSCR, n.d.-f, February 11, 2023). Accordingly, the Council urged Israel to accept the de jure applicability of the Fourth Geneva Convention of 1949 to all the territories occupied since 1967, and abide by it (UNSCR, n.d.-f, February 11, 2023). It was requested the Secretary-General to observe the situation, keeping the Security Council regularly informed, and to work in cooperation with the International Committee of the Red Cross to produce new ideas which could contribute to the goals of the Convention (UNSCR, n.d.-f, February 11, 2023). One year later, on 24 May 1991, the Security Council passed resolution 694 related to Israel's act of deporting four Palestinians on the 18th of May (UNSCR, n.d.-g, February 11, 2023). This time, the Council learned the incident, violating the Geneva Convention and relevant Security Council resolutions, not only with deep concern, but also with "consternation" (UNSCR, n.d.-g, February 11, 2023). The

[18] It is called the Rhodes Armistice as it had been signed in Rhodes, Greece.

Council deplored the action which was the detriment of just and lasting peace in West Asia, and, reiterated that Israel had to make ensure their safe and immediate return of all those deported (UNSCR, n.d.-g, February 11, 2023).

Following the 1991 victory of the coalition in the Gulf War, the US prepared to convene an international peace conference in Madrid where all states in the region to be invited (Bunton, 2013, p. 90). Arafat's position to side with Saddam Hussein had caused crisis among oil-rich Gulf countries. Besides, Israel was against the participation of the PLO officially to the peace conference (Bunton, 2013, p. 90). However, it was not reasonable for the PLO not to attend a process which could pave a way to end the occupation of the West Bank and Gaza (Hartley, 2006, p. 159). In September 1991, the PNC reiterated the principle of auhonomy, but the PLO felt the pressure from the USA and the Arab states to accept the US proposals by the end of September (Hartley, 2006, p. 160). Finally, a joint delegation with Jordan, which had been formed under the PLO authority assured Arafat that the Palestinian rights would be upholded, and attended to the conference (Hartley, 2006, p. 160). On the other hand, the attempted coup in the USSR took away any hopes of the Palestinians that the USSR would formed a counter balance in West Asia (Hartley, 2006, p. 160). Moreover, the possible framework of a peace conference led to a tension between Israel and the US. "In June 1991, Israeli prime minister Yitzhak Shamir expressed its reservation over the UN participation in such a conference" (Manor, 2010). In this sense, Manor opposes to the claims that Shamir accepted the UN involvement in the peace conference in return of the revocation of 3379 (Manor, 2010). The peace conference, held in Madrid, Spain, on 30 October 1991, drew a great attention of the media as it was the first peace conference made face to face between Arab leaders and Israeli counterparts (Hartley, 2006, p. 160). However, the two side's views on the Palestinian case was very different. The Israeli side never accepted the withdrawal from the occupied territories while the Arabs and Palestinians were supporting to the idea that it would be no peace without territorial compromise (Hartley, 2006, p. 161). But, at least, the Madrid Conference opened the door to bilateral negotiations for all parties (Bunton, 2013, p. 90).

After the Madrid Conference, on 16 December 1991, at the 74th plenary meeting of the UNGA, by resolution 46/86 "Elimination of Racism and Racial Discrimination," the Assembly decided "to revoke the determination contained in its resolution 3379 (XXX) of 10 November 1975". (The UN Documents, n.d., December 3, 2022). The revoked resolution 3379, which had equated zionism with racism was rescinded without further explanation in resolution 46/86. In fact, during the time period from the adoption of the resolution 3379 (XXX) of 1975 to the

revocation of it, the Zionists fought with the resolution 3379 to overturn it as they argued that it turned the Jewish state into an illegimate one (Manor, 2010). Following a lot of international, regional and national conferences in Israel, the United States, Europe and Latin America, an international petition to the UN was signed by over a thousand worldwide personalities to dismiss the resolution 3379 (Manor, 2010). The repeal of the resolution 3379 was achieved with the help of the US. Then-US President Bush spoke the issue of repeal directly at the opening of the UN General Assembly. He stated that to equate Zionism with racism meant the rejection of Israel by challenging Israel's right to exist (Manor, 2010). Indeed, what President Bush did was to apply pressure by warning the countries through his ambassadors to vote for revoking the resolution.

On 6 January 1992, upon the deportation of twelve Palestinian civilians from the occupied Palestinian territories, the Security Council, by resolution 726 of 6 January 1992, strongly condemned the decision of Israel, the occupying power, by requesting Israel to refrain from deporting any Palestinian civilian from the occupied territories (UNSCR, n.d.-h, February 11, 2023). It was also called upon Israel to ensure the safe return of the all deported Palestinians (UNSCR, n.d.-h, February 11, 2023). The Council reaffirmed that the Fourth Geneva Convention was applicable to all the Palestinian territories occupied by Israel since 1967, including Jerusalem (UNSCR, n.d.-h, February 11, 2023). However, Israel continued to act against the related resolutions of the UN. On 17 December 1992, hundreds of Palestinian civilians from the territories under occupation of Israel since 1967 were deported to Lebanon. One day later, 18 December 1992, the Security Council adopted resolution 799. The Security Council strongly condemned the action of Israel, and expressed its opposition to such actions (UNSCR, n.d.-i, February 11, 2023). After reaffirming the applicability of the Fourth Geneva Convention of 1949 to all the Palestinian territories occupied by Israel since 1967, it was stated that Israel was acted in contravention of its obligations under the Convention (UNSCR, n.d.-i, February 11, 2023). The Council demanded Israel to ensure the return of all those deported people to the occupied territories, and requested Secretary-General to send a representative to the area to observe the Israeli Government and report to the Security Council (UNSCR, n.d.-i, February 11, 2023).

The end of the Cold War, the 1991 Gulf War, and the Madrid Conference in 1991 led to a political shift that ended up in the breakthrough between Israel and the PLO, and the two signed of the Declaration of Principles on Interim Self Government Arrangements (DOP) in Washington, DC, on 13 September 1993 (Peters & Newman, 2013, p. 4). Financial crisis within

the PLO, together with the rumours of corruption and mismanagement of the Organisation created tension, and led to the erosion of Arafat's leadership. By the way, in Israel, Yitzhak Rabin came to power as Israeli prime minister in 1992, with the principle of 'land for peace'. From the second half of the 1980's, Israel's class structure had been deeply affected by Israel's attempts to integrate into the neo-liberalism (Özkoç, 2009, p. 167). This new class took sides with a sustainable peace in the region. Among other things, taking into account all of these, Israel and the PLO engaged in secret negotiations in the Norwegian capital, Oslo in 1993 (Hartley, 2006, p. 176).

The Oslo Accords which was aimed to transfer land and authority to the Palestinians had been comprised of a set of interim measures, providing a basis for the end of Israeli occupation and the signing of a peace treaty. Accordingly, the critical issues, known as the 'final status issues', such as the future of Jerusalem, borders and status of a Palestinian state, the claims and repatriation of the Palestinian refugees, and the future of the Jewish settlements, water etc. would have been negotiated at the end of all talks (Peters & Newman, 2013, p. 4; Bunton, 2013, p. 91). Oslo did not provide a solution for these issues. The difference of Oslo from the 1979 Camp David was that it established a formal mutual recognition between the PLO and Israel (Bunton, 2013, p. 91). In return for renouncing the use of violence and recognising Israel's right to live in peace and security, the PLO was regarded as the representative of the Palestinian people (Bunton, 2013, p. 91). However, the implementation of the Oslo Accords was not easy as the process was deprived of sufficient mechanisms to guarantee the compliance by the parties. Thus, commitments were not fulfilled and the agreements were not implemented in good faith (Bunton, 2013, p. 91). As Bunton stated, the delay played into the hands of extremists on both sides (Bunton, 2013, p. 92).

Oslo drew a framework for peaceful co-existence and mutual dignitiy and security via the agreed political process, but for Palestinians, during whole Oslo period, the continued expansion of the Israeli settlement building in the occupied territories even increased in intensity (Peters & Newman, 2013, p. 4). From 1993 to 2003, the number of Israeli Jews rose from nearly 250,000 to almost 400,000 in the occupied territories (Bunton, 2013, p. 92). Daily life of Palestinians was fraught with difficulties, including economic hardships, restrictions on movement, roadblocks, and security closures (Peters & Newman, 2013, p. 4). On the other hand, Israelis also tried to continue their lives under attacks and bombings. Oslo II Agreement, signed between Israel and the PLO in 1995 was an interim agreement, which divided the Palestinian territory into three zones – 'A', 'B', 'C'. While zones 'A' and 'B' were envisaged

for the Palestinian population, zone 'C' would be under the control of Israel (Bunton, 2013, p. 92). Particularly, Israeli control zone 'C', where mostly water supply was placed, dragged the Palestinian economy into a deadlock (Bunton, 2013, p. 92). Following Oslo II, it was also made additional agreements under the umbrella of the Oslo Accords, which would not come to a final peace agreement.

Oslo process showed the strong opposition towards Arafat's leadership in the new Palestinian authority in which he became president in 1996 (Bunton, 2013, p. 92). The younger leadership in West Bank and Gaza was born during the intifada, but was perceived as a threat by 'the Tunisians' (Arafat together with Fatah exiles) in the new Palestinian Authority (Bunton, 2013, p. 94). On the other hand, according to Hamas, their resistence unrightfully served well to Arafat, and thus, Hamas rejected the Oslo records, making everything to sabotage the process (Bunton, 2013, p. 94). When Arafat could not halt the violence of Hamas against civilians in Israel, his Palestinian leadership came under question. By the way, Israeli religious groups also opposed the Oslo process, labelling it as "an abandonment of God's mandate" (Bunton, 2013, p. 94). In 1995, Israeli prime minister Rabin was assassinated by a religious extremist in Tel Aviv. One year later, in 1996, the Likud leader Benjamin Netanyahu, presented himself as "Mr Security," was elected as prime minister (Bunton, 2013, p. 95). He opposed the Oslo Accords, and continued to build settlements in the territories under the occupation. Above all, neither the Israeli administration nor that of Palestinian were eager to prepare their respective publics for the "hard choices and compromises" to achieve a just, lasting and comprehensive peace settlement, particularly the question on Jerusalem and the refugees (Peters & Newman, 2013, p. 4).

On 24 September, 1996, a new entrance via an archaeological tunnel[19] adjacent to al-Aqsa Mosque was opened in Jerusalem (Baron, 1998, p. 1). The excavation was made for devout Jews to make a place of reverence by Israel's Religious Affairs Ministry (Baron, 1998, p. 2). However, Muslims felt anxious, because the digging had been done on Muslim property by undermining the structural integrity of Islamic holy sites (Baron, 1998, p. 2). This anxious sparked to protests. After receiving a letter sended from a representative of Saudi Arabia on behalf of the League of Arab States related to the action of Israel to open an entrance to a tunnel in the surrounding of the Al-Aqsa Mosque, the UNSC adopted resolution 1073 on 28 September 1996 (UNSCR, n.d.-j, February 11, 2023). The Council expressed its deep concern about tragic

[19] It is a 400-yard water conduit from the Herodian period, passing from the Buraq Wall and exiting onto the Via Dolorosa, a holly aveue for Christians.

events in Jerusalem, Nablus, Ramallah, Bethlehem, and the Gaza Strip, and also concerned the clashes between the Israeli army and the Palestinian police (UNSCR, n.d.-j, February 11, 2023). Taking into consideration the difficulties in West Asia peace process, the Council urged the parties to fulfill their obligations of the existing agreements (UNSCR, n.d.-j, February 11, 2023). It was recalled the UN resolutions on Jerusalem and other relevant the UNSC resolutions. Following the concern stemmed from the developments at the holy places of Jerusalem was stated, the Council called for the immediate termination and reversal of all illegal acts affecting the West Asia peace process negatively (UNSCR, n.d.-j, Retrieved February 11, 2023). It was requested the protection of Palestinian civilians to be guaranteed. In addition, it was called for resurgence of negotiations within West Asia peace process and implementation of agreements (UNSCR, n.d.-j Retrieved February 11, 2023). This resolution also did not work. As a result of the unrest, fifty-one people died. The Hashemite Kingdom of Jordan claimed that Israel acted without consult to Jordan and violated Art. 9 of the Jordan-Israel Peace Treaty by directly or indirectly taking action relating to the Al-Aqsa Mosque (Baron, 1998, p. 3). In response to this, Israel said that the tunnel just skirted the Wall. Thus, it did not mean a violation of the Jordan-Israel Treaty (Baron, 1998, p. 3). Baron evaluated that these arguments were important in terms of the question of sovereignty over Jerusalem, including the Old City. According to him, if Israel Prime Minister Benjamin Netanyahu had accepted to close the tunnel by listening Jordan, Palestinian Arabs and the US, this would have understood that the Israelis ceded to sovereignty over Jerusalem (Baron, 1998, p. 3). For Palestinians, this act was regarded as a "crime and an attempt to judaize the city" (Baron, 1998, p. 4). As Baron stated, the Palestinians deemed this act as an infringement of their sovereignty over Jerusalem (Baron, 1998, p. 4). After all, on 27 November 1996, Israel's opening of an entrance to a tunnel near Al-Aqsa Mosque (running along the Buraq Wall of al Haram ash-Sharîf and extending as far as the area of Bâb al-Fawâghr) was considered as an "act which has offended religious sensibilities in the world" by UNESCO (Unesco Documents, n.d., December 5, 2022).

During Netanyahu's term (1996-1999), military control and closures in Area C made the life unbearable for those living in the occupied territories (Bunton, 2013, p. 95). In addition, Netanyahu's demands from Arafat to curb Hamas' acts led Arafat to be seen as being Israel's policeman in the eyes of most of the Palestinians (Bunton, 2013, p. 95). To revive the Oslo process, hosted by US President Bill Clinton, Arafat and Netanyahu attended at the Wye Summit in Wye River, Maryland in September 1998 in which would result in signing the Wye River Memorandum on 23 October 1998 (Unsco-Unmissions Website, Retrieved December 5,

2022). In return of the Palestinian Authority's security commitments, including taking actions to combat terrorism, "Israel would withdraw its troops from 13 per cent of West Bank land and transfer 14.2 per cent of West Bank land from joint Israeli-Palestinian control to Palestinian control." (The United Nations, 2008, p. 35). In addition to this, the final status negotiations would have been launched under the terms of memorandum (Muhaisen, 1999, p. 30). However, the concessions made by Netanyahu caused to bring down of his government without fulfilling the commitments, including the promised redeployments (Bunton, 2013, p. 96).

The main aim of the Israelis was to expand the Israeli settlements before final status negotiations on the permanent border (Muhaisen, 1999, p. 31). Muhaisen stated that Israeli policy was to make Jerusalem unnegotiable when it comes to the final status negotiations (Muhaisen, 1999, p. 31). To this aim, Israel was expanding the city's boundaries as well as reducing the number of Palestinians living there (Muhaisen, 1999, p. 31). There were Jerusalem identity cards (ID) which both providing municipal services, health insurance, and building permits and giving the right to live and work. The ID cards of 4,000 Palestinians had been confiscated between 1967 and 1999 (Muhaisen, 1999, p. 31). Muhaisen argued that this policy was for ethnically cleansing the Palestinians from Jerusalem. The Oslo period was not apart from this confiscation policy, even contributed to its acceleration (Muhaisen, 1999, p. 31). The fact that Israel's refusal to grant building permits as a result of restrictive zoning law for Palestinians affected the growth of population creating overcrowding problem in Palestinian areas (Muhaisen, 1999, p. 32). Moreover, Metropolitan Jerusalem Plan related to the annexation of more land around Jerusalem and formalizing "Greater Jerusalem" under municipality of local councils was approved on June 11th, 1998, and accordingly there would be three borders for Jerusalem – the municipal border, the Greater Jerusalem border, and the Metropolitan border (Muhaisen, 1999, p. 32). The Metropolitan Jerusalem would cover 40 per cent of the West Bank, including Ramallah and Bethlehem while Greater Jerusalem would be within Israel's pre-1967 border, including the illegal Jewish settlements of Givat Ze'ev and Ma'ale Adumim together with other areas inside the Green Line (Muhaisen, 1999, p. 32). The aim of the plan was "to keep Palestinian minority down to a population level not exceeding 30 per cent of the total" (Muhaisen, 1999, p. 32). Greater Jerusalem was very important to consolidate Israeli sovereignty and to constitute Jewish majority in Palestine (Muhaisen, 1999, p. 32). Finally, as East Jerusalem is crucial to Palestinian development in the West Bank and Gaza Strip, the completion of this plan would enclose the Palestinians into cantons by cutting off each other without any possibility of economic expansion (Muhaisen, 1999, p. 32).

In accordance with 1993 Oslo Agreements, a last-ditch effort to produce a final settlement of the Israel-Plaestine conflict made by three leaders; the US President Bill Clinton, Israeli Prime Minister Ehud Barak, and Palestinian Authority (PA) Chairman Yasir Arafat on 24 July 2000 at Camp David (Rosenberg, 2011, p.2). As the negotiations which took place at the same presidential retreat where the Oslo Accords were signed, it came to be known as Camp David II (Bunton, 2013, p. 96). However, it could not have been reached a permanent deal. The demands of the parties did not meet each other. The distrustful came out such a point that Palestinian side had been suspicious that the US and Israel were colluding against them (Bunton, 2013, p. 96-97). On 19 December 2000, the parties met in the White House. Clinton proposed his plan for a peace settlement. According to the plan, in return for leaving 6 per cent of the occupied land, including the major West Bank Israeli settlements, the Palestinian state could build on 94 per cent of the occupied territories (Bunton, 2013, p. 97). When it comes to Jerusalem, sovereignty would be divided in such a way that Arab neighbours would be given to the Palestinian state while Jewish areas, including the Jewish quarter of the Old City would become part of Israel (Bunton, 2013, p. 97). While Barak was accepting the plan, Arafat's silent response shocked the world, he just walked away (Rosenberg, 2011, p. 2). The hope to achieve a sustainable peace through the Israeli-Palestinian negotiations collapsed once again.

During the Oslo peace process, Palestinian discontent continued, even deepened. From 1993 to 2000, the Israeli occupation continued increasingly in the West Bank and Gaza Strip. (Pressman, 2003, p. 114). Bunton stated that the Palestinian uprisings that would last a few years derived from the "disillusionment of Palestinians", particularly the youngers who were tired of the daily humiliations of the occupation lasted for years (Bunton, 2013, p. 98). On 28 September 2000, when the then leader of the Israeli opposition, Ariel Sharon visited al-Haram al-Sharif (the Noble Sanctuary), a site in East Jerusalem where the Golden Dome of the Rock and al-Aqsa Mosque is located, the accumulated hatred exploded, and the second intifada broke out (Bunton, 2013, p. 98). A small spark turned to a great fire. Sharon's visit to al-Haram al-Sharif was perceived as a provocation, and turned into tragic events by spreading at other Holy Places and in other areas throughout the territories occupied by Israel since 1967, and these illegal acts had resulted in over 80 Palestinian deaths together with many casualties (Turkish Palestine Platform, 2012, p. 309). On 7 October 2000, the UNSC resolution 1322 was adopted at its 4205th meeting. The Council stated its deep concern due to the tragic events since 28 September 2000 (UNSCR, n.d.-k, February 11, 2023). It was reaffirmed that a just and lasting peace could be possible with a solution to the conflict based on the UNSC resolutions 242

(1967) and 338 (1973) via an active negotiation process (UNSCR, n.d.-k, February 11, 2023). It was underlined the need for full respect to the holy sites in Jerusalem 2000 (UNSCR, n.d.-k, February 11, 2023). The Council deplored the provocation that took place on 28 September 2000, and condemned acts of violence, especially against Palestinians (UNSCR, n.d.-k, February 11, 2023). Once and again, Israel was called upon to abide by its legal obligations and its responsibilities under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (UNSCR, n.d.-k, February 11, 2023). The immediate termination of violence was requested by taking all necessary steps and avoiding the new provocative actions (UNSCR, n.d.-k, February 11, 2023). The Council underlined the importance of building up a mechanism for inquiry to prevent the repetition of this kind of tragic events (UNSCR, n.d.-k, February 11, 2023). It was requested the resumption of negotiations within the West Asia peace process to achieve an early final settlement, and accordingly decided to follow the situation (UNSCR, n.d.-k, February 11, 2023).

On 28 February 2001, General Assembly adopted resolution 55/130. Taking into consideration of the impact of the intifada on the Palestinians, the General Assembly standed firmly on that "occupation itself represented a gross violation of human rights" (UN Documents, n.d. February 11, 2023). The Assembly stated its grave concern about the situation in the Occupied Palestinian Territory, including Jerusalem, as a result of excessive use of force by the Israeli occupying forces against Palestinian civilians ended in numerious deaths and injuries in Jerusalem since 28 September (UN Documents, n.d., February 11, 2023). In this sense, Israeli practices and measures which led to more than one hundred and sixty Palestinian deaths and thousands of injuries were condemned (UN Documents, n.d., February 11, 2023). Thus, the Assembly requested from the Special Committee to continue to "investigate Israeli practices affecting the human rights of the Palestinian people and other Arabs of the occupied territories", and accordingly demanded Israel to cooperate with the Special Committee in implementing its obligations (UN Documents, n.d., February 11, 2023). It was also requested from the Special Committee to continue to investigate the treatment of prisoners in the Occupied Palestinian Territory, including Jerusalem (UN Documents, n.d., February 11, 2023). It was asked for the Secretary-General to provide the aforementioned Special Committee with all necessary facilities, where necessary, to be able to make visits while following the investigation on the ground (UN Documents, n.d., February 11, 2023).

One year later, on 12 March 2002, the Security Council passed resolution 1397, recalling all its previous resolutions, especially those of 242 (1967) and 338 (1973). A vision for Palestine

where two States, Israel and Palestine, live together side by side within secure and recognised borders was affirmed (UN Documents, n.d.-a, February 11, 2023). As the Intifada continued, the Council expressed its grave concern because of the tragic and violent events lasting since September 2000 (UN Documents, n.d.-a, February 11, 2023). The need to respect the universally accepted norms of international humanitarian law, particularly in terms of the safety of civilians were underlined (UN Documents, n.d.-a, February 11, 2023). The Council welcomed the diplomatic efforts of the countries to reach a just and permanent peace in West Asia (UN Documents, n.d.-a, February 11, 2023). Additionally, it was demanded to be terminated all acts of violence, including terror, provocation, incitement, and destruction, calling upon both the Palestinian and Israeli sides to cooperate in implementation of the Tenet work plan and Mitchell report recommendations (UN Documents, n.d.-a, February 11, 2023). Finally, the Security Council expressed its support for the efferts of the Secretary-General and other concomitants to end in violence and resume peace process (UN Documents, n.d.-a, Retrieved February 11, 2023).

On 8 December 2005, the UN General Assembly adopted resolution 60/104. It was commended the Special Committee to investigate Israeli practices affecting the human rights of the Palestinian people and other Arabs of the Occupied Territories (UN Documents, n.d.-b, February 11, 2023). It was also reiterated the Assembly's demand from Israel to cooperate with the Special Committee in implementing its mandate (UN Documents, n.d.-b, February 11, 2023). The Assembly deplored Israel's policies and practices, violating the human rights of the Palestinian people and other Arabs of the occupied territories (UN Documents, n.d.-b, February 11, 2023). It was expressed grave concern about the critical situation in consequence of unlawful Israeli acts, including East Jerusalem, since 28 September 2000 (UN Documents, n.d.-b, February 11, 2023). It was requested from "the Special Committee, pending complete termination of the Israeli occupation, to continue to investigate Israeli policies and practices in the occupied by Israel since 1967, especially Israeli violations of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949" (UN Documents, n.d.-b, February 11, 2023).

On 8 January 2009, the Security Council passed resolution 1860 at its 6063rd meeting. It was underlined that the Gaza Strip constituted an integral part of the occupied territory since 1967, and would be a part of the Palestinian state (UN Documents, n.d.-c, February 11, 2023). It was emphasized the significance of the safety of all civilians. It was expressed grave concern at humanitarian crisis in Gaza, stating that "a lasting solution to the Israeli-Palestinian conflict

can only be achieved by peaceful means" (UN Documents, n.d.-c, February 11, 2023). The Council called for an immediate ceasefire that would result in a full withdrawal of Israeli forces from Gaza (UN Documents, n.d.-c, February 11, 2023). All violence acts against civilians and terrorism were condemned (UN Documents, n.d.-c, Retrieved February 11, 2023). The Council called upon to increase efforts to provide arrangements and guarantees in Gaza in order to sustain a ceasefire (UN Documents, n.d.-c, February 11, 2023).

On 23 September 2011, Mr. Abbas, as the President of Palestine and chairman of the Executive Committee of the Palestine Liberation Organisation (the PLO) sent a letter to the Secretary General for admission to membership in the United Nations (The UN Unispal, n.d., December 27, 2022). This submission was made in accordance with the UNGA resolution 181 (II) of 29 November 1947 as well as the Declaration of Independence of the State of Palestine of 15 November 1988 and the acknowledgement by the General Assembly of this Declaration as it was stated in resolution 43/177 of 15 December 1988 based on Palestinian people's natural, legal and historic rights (The UN Unispal, n.d., December 27, 2022). The State of Palestine, as a peace-loving nation, expressed its commitment for the achievement a just, lasting and comprehensive agreement in the Israeli-Palestinian conflict based on the vision of two-States, living side by side in peace and security (The UN Unispal, n.d., December 27, 2022).

The General Assembly adopted resolution 67/19 "Status of Palestine in the United Nations" on 29 November 2012 (The UN Documents, n.d., December 28, 2022). It was confirmed the right of the Palestinian people to self-determination, including the right their independent State of Palestine (The UN Documents, n.d., December 28, 2022). It was also decided to acknowledge Palestine's non-member observer State status in the United Nations, in harmony with its acquired rights, priviledges and role of the PLO in the UN as the representative of the Palestinian people, according to the relevant resolutions and practice (The UN Documents, n.d., December 28, 2022). It was expressed the hope that "the Security Council will consider favourably the application submitted on 23 September 2011 by the State of Palestine for admission to full membership in the United Nations" (The UN Documents, n.d., December 28, 2022). It was stated the hope that the determination of the Assembly, by pursuing the inalienable rights of the Palestinian people, and struggling the achievement of a peaceful settlement in West Asia that would end the occupation continued since 1967, would last until obtaining an independent, sovereign, democratic, contiguous and viable State of Palestine living side by side with Israel in peace and security on the basis of the pre-1967 borders (The UN Documents Website, n.d., December 28, 2022). The urgent need for the revival of the peace

process in West Asia based on the relevant UN resolutions, the Madrid Conference, including the principle of land for peace, the Arab-Peace initiative, and the Quartet Road map to a permanent two-State solution to the Israeli-Palestinian conflict for the achievement of a just, lasting and comprehensive peace settlement that would resolve all core issues between the two conflicting sides was highlighted (The UN Documents Website, n.d., December 28, 2022).

On 9 December 2015, the General Assembly adopted resolution 70/89. The Assembly reaffirmed that "the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan are illegal and an obstacle to peace and economic and social development" (UN Documents, n.d.-d, February 11, 2023). Israel was called upon to accept the de jure applicability of the Geneva Convention (12 August 1949) to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan (UN Documents, n.d.-d, February 11, 2023). It was highlighted the importance of a complete cessation of all Israeli settlement activities which is essential for salvaging the two-State solution on the basis of the pre-1967 borders. (UN Documents, n.d.-d, February 11, 2023). It was also stated the responsibility of Israel to investigate settler violence against the Palestinian civilians and their properties (UN Documents, n.d.-d, February 11, 2023). All states and international organizations was encouraged to continue to pursue the necessary policies with regard to all illegal Israeli acts in the Occupied Palestinian Territories, including East Jerusalem (UN Documents, n.d.-d, February 11, 2023).

On 23 December 2016, the Security Council passed resolution 2334. Once again, all measures aimed at altering the demographic composition, character, and status of the Palestinian territory since 1967 were condemned (UN Documents, n.d., February 12, 2023). These illegal measures were annunciated as "the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes, and displacement of Palestinian civilians" (UN Documents, n.d., February 12, 2023). It was also stated that illegal Israeli settlement activities put at risk the two state solution based on 1967 lines. The Council clearly stated that the status quo was not sustainable. Thus, it was requested from Israel to cease all settlement activities in the Occupied Palestinian Territory, including East Jerusalem (UN Documents, n.d., February 12, 2023). It was underlined that it would not be recognised any changes to the 4 June 1967 lines with regard to Jerusalem, except those agreed by the parties via negotiations (UN Documents, n.d., February 12, 2023). It was recalled the obligations under the Quartet Roadmap for the Palestinian Authority Security Forces to maintain effective operations (UN Documents, n.d., February 12, 2023). Finally, the Council urged regional

diplomatic efforts and initiatives to achieve a comprehensive, just and lasting peace in West Asia based on the relevant UN resolutions, the Madrid terms of reference, the principle land for peace, the Arab Peace Initiative, and the Quartet Roadmap and the termination of Israeli occupation since 1967 (UN Documents, n.d., February 12, 2023).

An increase of violence in the Israeli-Palestinian conflict started in the autumn of 2015, and continued until the first half of 2016. This uprising was a reaction coming from "the youth movement launched by the generation born after the Oslo agreements that has witnessed the impasse of negotiations" (Khalaf, 2016, p. 1). Young Palestinians became organised within minutes via Facebook, Twitter and WhatsApp, but older generations who were witness of the first (1987) and second (2000) intifadas were not keen on the new demonstrations as they believed that it would not result in the creation of a Palestinian state, but rather more death and destruction (Leurent & Makler, 2016). Israel's response to the attacks appeared in the form of demolishing homes of the militants, increasing military patrols in Jerusalem and the West Bank, more arrests and surveillance cameras and checkpoints (Leurent & Makler, 2016). On the other hand, the Palestinian Authority did not endorse the uprising, and saw it as a threat to its own existence, as it was the case for Hamas and Fatah (Khalaf, 2016, p. 1).

On 30 November 2017, the General Assembly adopted Resolution 72/14 "Peaceful Settlement of the Question of Palestine". It was recalled the two state solution adopted by the Security Council where Israel and Palestine could live side by side peacefully (UNDPR, 2018, p. 7). To achieve a just, lasting and comprehensive settlement of the question of Palestine, the principle of equal rights and self-determination of peoples were highlighted (UNDPR, 2018, p. 7). Inadmissibility of the acquisition of territory by war was emphasised (UNDPR, 2018, p. 7). In addition, the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem was reconfirmed (UNDPR, 2018, p. 7). It was stated to bear in mind "its resolution 70/1 of 25 September 2015, entitled 'Transforming our world: the 2030 Agenda for Sustainable Development', in particular Sustainable Development Goal 16" (UNDPR, 2018, p. 8). The importance of safety, protection, and well-being of all civilians in West Asia was emphasised (UNDPR, 2018, p. 11). It was reiterated the necessity of achieving a peaceful settlement of the question of Palestine based on two State solution of Israel and Palestine, living side by side in peace and security within the recognized pre-1967 borders, by resolving all final status issues justly (UNDPR, 2018, p. 12). Thus, the full cessation of all acts of violence was demanded. It was urgently demanded once again, the withdrawal of Israel from the Palestinian

territory occupied since 1967, including East Jerusalem and the exercise of the inalienable rights of the Palestinian people, primarily the right to self-determination. In addition, the need for a just solution to the dire situation of the Palestinian refugees in accordance with its resolution 194 (III) of 11 December 1948 (UNDPR, 2018, p. 15). It was encouraged to undertake the renewed international peace initiatives based on the relevant UN resolutions, the Madrid Conference, including the principle of land for peace, the Arab Peace Initiative[20], the Quartet[21] road map to a permanent two-State solution to the Israeli-Palestinian conflict, and the existing agreements between the two sides (UNDPR, 2018, p. 13). It was asked all member States for facilitating the provision of economic, humanitarian and technical assistance to the Palestinian people and the Palestinian Government in such a critical period in the Occupied Palestinian Territory, including East Jerusalem, and also in Gaza Strip (UNDPR, 2018, p. 15). Additionally, it was demanded from all member States to contribute to the Palestinian State-building efforts in preparation for independence by supporting the development of Palestinian institutions and by rehabilitating the Palestinian economy for the country's well-being (UNDPR, 2018, p. 15).

At the same day, on 30 November 2017, the General Assembly also adopted resolution 72/15 "Jerusalem". The Assembly recalled its resolution 181 (II) and its special provision for the City of Quds/Jerusalem. After referring its relevant resolutions, the Assembly recalled that all legislative and administrative measures and actions taken by Israel aimed to alter the character and status of the Holy City of Quds/Jerusalem were null and void and must be rescinded forthwith (UNDPR, 2018, p. 16). Furthermore, the Security Council resolution 478 (1980) which did not recognise Israel's Basic Law on Quds/Jerusalem was reminded, and the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory was recalled (UNDPR, 2018, p. 16). Israel's continuing illegal settlement activities, including its E-1 Plan, its construction of a wall in and around East Jerusalem, the isolation of the City from the rest of the Occupied Palestinian Territory, all of which led to retard a final status agreement on the City of Quds/Jerusalem (UNDPR, 2018, p. 16). The Assembly expressed its grave concern about the continuing Israeli demolition of Palestinian homes in and around East Jerusalem, Israel's revocation of residency rights, the eviction and displacement of numerous Palestinian families from East Jerusalem neighbourhoods (UNDPR, 2018, p. 16). In addition, the Assembly

[20] It was adopted the Council of the League of Arab States at its fourteenth session.
[21] Members of the Quartet are the United Nations, the Russian Federation, the European Union, the United States of America.

expressed its concern about the Israeli excavations undertaken in the Old City of Quds/Jerusalem, including in and around religious sites and tensions and also provocations in and around the Holy Places of the Quds/Jerusalem (UNDPR, 2018, p. 16). It was stated that internationally guaranteed provisions needed to be included for a free and unhindered access to the holy places by people of all religions and nationalities (UNDPR, 2018, p. 17). It was called for respect to the historic status quo in the Holy Places of Quds/Jerusalem, and all sides were encouraged to cooperate each other to defuse tensions and prevent all provocations and violence in the Holy sites of the City (UNDPR, 2018, p. 17).

Although all the UNSC and UNGA resolutions were clearly drawing what the real picture was on the ground, on December 6, 2017, the previous President of the USA, Trump formally recognised Jerusalem as the capital of Israel, and decided to move the US Embassy from Tel-Aviv to Quds/Jerusalem. Whereas this decision boosted Trump's popularity at the first stage, the fragile balance between the Israelis and the Palestinians was totally shaken to the foundation. This demonstrated that the USA cannot play a mediatory role anymore in the Palestinian-Israeli conflict (Aljazeera, 2017). When it was considered the US peacemaker attempts, it is clear that they have not been successful since 1993 Oslo Accords. During the peace negotiation, Arafat's silence and dignified response explained the things that were beyond words. Even at that time, on one side, whereas the USA was trying to be a mediator in the conflict, on the other side, in 1995, the US Congress was passing the 'Jerusalem Embassy Act' in order to relocate the American Embassy from Tel-Aviv to Jerusalem, and to recognise Jerusalem as the State of Israel (Aljazeera, 2017). Among the other US Presidents, Mr. Trump was the first one who brought the law into the view after years, and implement it without taking care of the fragile balance in the region.

The Embassy was opened on May 14, 2018. At the same time, it was coincided with the 70th anniversary the date of the Nakba for the Palestinians, and independence day for the Israelis (El-Awaisi & Ataman, 2019, p. 134). The Embassy's move received widespread media coverage linking its deliberate opening date with the massacre (the Nakba) (El-Awaisi & Ataman, 2019, p. 134). It showed that the USA is not a right partner in the way going for peace. Because, the USA's stance for the status of Quds/Jerusalem has not been compatible with international law, including the UNSC and UNGA resolutions. International community, including Western countries did not support the decision of the White House, aside from Israel (El-Awaisi & Ataman, 2019, p. 135). These illegal and dangerous attempts aiming the escalation of violence are nothing more than putting at risk of peace process. As the Israelis

were celebrating the relocation of the US Embassy to Jerusalem, more than 50 Palestinians were killed by Israeli forces because of trying to cross the border fence. More than 2,700 Palestinians injured (Halbfinger et al., 2018). Since 2006, the Gaza Strip has been under a land, sea, and air blockade. This caused to the limited movement of people, goods, and services in and out Gaza (Wispelwey & Abu Jamei, 2020, p. 179). Gaza, as the third most densely populated in the world with more than 2 million Palestinians, is regarded as "the world's largest open-air prison, where the prison guard is Israel" (NRC, 2018). By the way, the US also decided to defund of the United Nations Relief and Works Agency for Palestinian Refugees (UNRWA) in 2017 (Wispelwey, Abu Jamei, 2020, p. 180). When conditions in the Gaza Strip came to a state of unlivable, in March 2018, large-scale demonstrations, known as the 'Great March of Return' (the GMR) started, and lasted until December 2019 in Gaza (Wispelwey & Abu Jamei, 2020, p. 180). They demanded the end of the Israeli blockade and the right of return to their homelands, as stated in resolution 194 (Wispelwey & Abu Jamei, 2020, p. 180). This large scale protests backing by the international support regreened the hope among the Palestinians. One of the protesters' comment was quite striking: "We stood against all the powers telling us to break and die in silence and decided to march for life … we are fighting back peacefully with our bodies and our love for life, appealing to the justice that remains in the world." (Wispelwey & Abu Jamei, 2020, p. 181).

On 6 December 2018, the UNGA resolution, titled "73/89. Comprehensive, just and lasting peace in the Middle East," was adopted by 156 affirmative votes (including all of the EU). It was called for "the achievement of a comprehensive, just and lasting peace in the Middle East on the basis of the relevant UN resolutions, including Security Council resolution 2334 (2016) of 23 December 2016, the Madrid terms of reference, including the principle of land for peace, the Arab Peace Initiative and the Quartet Road Map, and an end to the Israeli occupation that began in 1967, including of East Jerusalem, and reaffirms, in this regard, its unwavering support, in accordance with international law, for the two-State solution of Israel and Palestine, living side by side in peace and security within recognized borders, based on the pre-1967 borders" (The UN Documents, n.d., January 2, 2023). When the year 2018 was about to finish, Israel became the most condemned country in the UN with at least 20 resolutions, passed by the General Assembly, because of Israel's human rights abuses, illegal settlements on the Occupied Palestinian Territory, and its ongoing occupation of East Jerusalem (Anadolu Agency, 2018).

On 3 December 2019, the UN General Assembly resolution 74/11. “Peaceful settlement of the Question of Palestine” was adopted by the votes of 147 in favour, 7 against, 13 abstaining (The UN Unispal Website, n.d., January 2, 2023). It was reiterated the achievement of a comprehensive, just and lasting peace in West Asia on the basis of the relevant UN resolutions, the Madrid terms of reference, the Arab peace initiative, and the Quartet road map, and the Assembly called once more for the intensification of efforts by the parties towards the conclusion of a final peace settlement (The UN Unispal Website, n.d., January 2, 2023).

“The Assembly called for:

(a) The withdrawal of Israel from the Palestinian territory occupied since 1967, including East Jerusalem;
(b) The realization of the inalienable rights of the Palestinian people, primarily the right to self-determination and the right to their independent State;
(c) A just resolution of the problem of Palestine refugees in conformity with its resolution 194 (III) of 11 December 1948” (The UN Unispal Website, n.d. January 2, 2023).

“The Assembly called upon all States (in accordance with their obligations under the UN Charter and relevant resolutions):

(a) Not to recognize any changes to the pre-1967 borders, including with regard to Jerusalem, other than those agreed by the parties through negotiations, including by ensuring that agreements with Israel do not imply recognition of Israeli sovereignty over the territories occupied by Israel in 1967;
(b) To distinguish, in their relative dealings, between the territory of the State of Israel and the territories occupied since 1967;
(c) Not to render aid or assistance to illegal settlement activities, including not to provide Israel with any assistance to be used specifically in connection with settlements in the occupied territories;
(d) To respect and ensure respect for international law, in all circumstances, including through measures of accountability, consistent with international law” (The UN Unispal Website, n.d., January 2, 2023).

The Assembly urged all States and the UN to continue humanitarian, economic and technical assistance to the Palestinian people and the Palestinian Government by strengthening of Palestinian institutions and Palestinian State-building efforts in preparation for independence (The UN Unispal Website, n.d., January 2, 2023). On 18 December 2019, the Assembly passed the resolution “74/139. The right of the Palestinian people to self-determination” by the 147 affirmative votes. It was stated that the relations among nations was based on respect for the principle of equal rights and self-determination of peoples, recalling previous declarations, such as the Universal Declaration of human rights, the United Nations Millennium Declaration (The UN Unispal Website, n.d., January 2, 2023). It was also highlighted the importance of

preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory (The UN Unispal Website, n.d., January 2, 2023). It was reaffirmed the right of the Palestinian people to self-determination, including the right to their independent State of Palestine (The UN Unispal Website, n.d., January 2, 2023).

When the calender showed 2020, the United Nations adopted resolutions that condemned Israel in various topics; such as human rights abuses of Israel, Israeli illegal settlements in the Occupied Palestinian Territories, assistance to the Palestinian people, the right of self-determination of the Palestinian people, permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem (The UN Unispal Website, n.d., January 3, 2023). One of these resolutions was adopted on 10 December 2020 by the Assembly titled "75/97. Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem and the occupied Syrian Golan" (The United Nations Documents, n.d., January 2, 2023). It was reaffirmed the inadmissibility of the acquisition of territory by force, and clearly stated that the transfer of the occupying power's own population into the territory it occupied was a breach of the Fourth Geneva Convention (The United Nations Documents, n.d., January 2, 2023). After noting the detrimental impact of Israeli settlement policies, decisions and activities on the regional and international efforts to the peace process in accordance with two-State solution of Israel and Palestine, it was reaffirmed that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem and in the occupied Syrian Golan was illegal (The United Nations Documents, n.d., January 2, 2023). It was demanded from Israel to accept de jure applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967, together with the occupied Syrian Golan. In this regard, it was stated that Israel needed to implement these Security Council resolutions; resolutions 446 (1979), 452 (1979), 465 (1980), 476 (1980), 478 (1980), 1515 (2003), and 2334 (2016) (The United Nations Documents, n.d., January 2, 2023). Accordingly, the occupation of territory should have been temporary because "the occupying power can neither claim possession nor exert its sovereignty over the territory it occupies" (The UN Documents Website, n.d., January 2, 2023). Therefore, all settlement activities in the Occupied Palestinian land, such as the confiscation of land, the disruption of the livelihood of protected persons, the forced transfer of civilians, and the annexation of land were condemned (The United Nations Documents, n.d., January 2, 2023). It was highlighted Israel had a responsibility to investigate all acts of settler violence against Palestinian civilians and their properties. In

addition, the Assembly called upon all states and international organizations to follow policies under international law in the face of all illegal Israeli practices and measures in the Occupied Palestinian Territory, including East Jerusalem (The United Nations Documents, n.d., January 2, 2023).

When it comes to 2021, the United Nations passed various resolutions on the different aspects of the Palestinians' problems being faced every day because of the occupation of their lands since 1967. In a resolution among those, 76/12. Jerusalem, adopted on December 1, 2021, the General Assembly referred to previous resolutions which were seemed highly important to achieve a just, lasting and comprehensive peace; such as the UNGA resolutions 181(II), 36/120 and 56/31 (The United Nations Documents, n.d. January 2, 2023). It was stated that all legislative and administrative measures and actions taken by Israel including so called "Basic Law" on Quds/Jerusalem and the proclamation of Quds/Jerusalem as "the capital of Israel" in order to alter the character and status of the Holy City of Jerusalem were null and void (The United Nations Documents, n.d., January 2, 2023). The Security Council resolutions related to Quds/Jerusalem; such as resolutions 250 (1968), 251 (1968), 252 (1968), 267 (1969), 271 (1969), 298 (1971), 476 (1980), 478 (1980), 672 (1990), 1073 (1996), 1322 (2000), 2334 (2016) were recalled (The United Nations Documents, n.d., January 2, 2023). The Assembly expressed its concern about restrictions on Palestinian access to and residence in East Jerusalem, together with Israeli excavations undertaken in the Old City of Jerusalem (The United Nations Documents, n.d., January 2, 2023). When all was taken into consideration, it was stated that any actions taken by Israel were illegal and had no validity (The United Nations Documents, n.d., January 2, 2023). Israel was called to respect for the historic status quo of the Holy Places in Quds/Jerusalem, and then, it was asked for all sides to prevent all provocations, incitement and violence at the holy sites in the City (The United Nations Documents, n.d., January 2, 2023).

Table 3.3. The United Nations Resolutions on Bayt al-Maqdis

	Status of Quds/Jerusalem	Refugees Issue	Settlers Issue	The Issue of Territorial Integrity
The UNSC Resolutions	250,251,252,267, 271,298,476,478, 672,1073,1322,2334	89,93,242,237	446, 452, 465, 471,904	242,252,267,271,298 476,478,681,1397, 1515,1850, 1860,2334

Israeli political landscape in 2022 was quite vivid, started with Bennet, then moved on Lapid, and lastly ended with premier Netanyahu, known as 'Bibi,' who established the country's most religious and hard-line government in its history (Bassist, 2022). The path for regional peace was opened with the Abraham Accords,[22] which aimed to normalise diplomatic relations between Israel and the United Arab Emirates, Bahrain, Sudan, and Morocco. It was mediated by the United States. Accordingly, the United Arab Emirates and Bahrain recognised Israel's sovereignty. The time will show whether the cooperation spirit in the region will provide any benefit for the just struggle of the Palestinians. At the end of the year, on 30 December 2022, the 193 member-United Nations General Assembly asked an advisory opinion on the legal consequences of Israel's occupation of the Palestinian territories. Accordingly, the Assembly adopted a resolution by a vote of 87 to 26 with 53 abstentions, titled "Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem," requesting an advisory opinion from the International Court of Justice on the legal consequences and implications of Israel's illegal occupation of Palestinian territories, and its settlement activities affecting the rights of the Palestinian people (Al Mayadeen, 2022). According to Art. 4(2) of the UN Charter, the admission of a state to membership in the UN will be activated by a decision of the General Assembly upon the recommendation of the Security Council (The UN Legal, n.d., January 9, 2023). When it was considered the miserable situation of the peace process which was not regarded as a frame of reference, Palestinian Liberation Authority and President Mahmoud Abbas adopted a new strategy for his aim to establish a state through obtaining full membership of the UN (Aral, 2019, 138). On 23 September 2022, President Mahmoud Abbas called for his appeal to become full-fledged member of the UN, and referred to the fading of the peace process in his speech to the General Assembly (The UN Unispal Website, 2022). He admitted that "Israel is ignoring the international resolutions and undermining agreements and is no longer a partner in the peace process" (The UN Unispal Website, 2022). He highlighted the doubled standards applied on Palestinians. He honestly said that "our trust and the possibility of achieving peace based on justice and international law is regressing" (The UN Unispal Website, 2022). He finished his words stating that "The State of Palestine is looking forward to peace. Let us make this peace to live in security, stability, and prosperity for the benefit of our generations and all the people in the region" (The UN Unispal Website, 2022).

[22] The name comes from Abraham as a patriarch accepted by Abrahamic religions; Islam, Christianity and Judaism.

CONCLUSION

Today modern Bayt al-Maqdis has a long historical background which is full of importance in terms of religious, cultural and political aspects. Perhaps, that is why, power struggles and bloody wars have not been missing in its history. How the author would wish to conclude her thesis with a nice sentence telling a piece of good news of a peace treaty on the basis of a just, lasting and comprehensive solution. However, as Churchill said in his speech to House of Commons of the Parliament of the United Kingdom in 1940 during the Second World War, what it is found in this sacred territory for more than hundred years was "blood, toil, tears and sweat". In the depths of history, one can find the traces this one of the long-lasting conflict at the end of the nineteenth century when the first Jewish immigration to the region commenced after 1898, the date the Palestinian-Israeli conflict was triggered. It can be deduced from the study that long before the question of Palestine, there were question of Jewish in the world.

As it is well known, law blooms values and traditions of the society, and lives like an organism in that environment within which operates. In a world full of increasing virulent anti-semitism, when the Jews bitterly understood that true assimilation would not be possible in central and eastern Europe, they began to search for a "home" in a new homeland, particularly in the non-European places. In accordance with this choice, the nineteenth and twentieth century witnessed to emerge and flourish of two conflicting nationalisms; Zionist and Palestinian. Particularly, the Palestinian intellectuals' nationalist ideas which began to appear as a political power in the 19th century gathered momentum in the face of the Zionists' colonial aims in the region. Therefore, in the formation of contemporary Palestine, Zionism and Palestinian nationalism played a significant role.

The situation of the Jews was an exception in such a way that they were living as a minority under different ruling nations throughout the world. Neither they shared the same religion, language, culture, nor the sense of belonging. Herzl was well aware of that. Thus, without a systematic plan and the support of great powers (*Düvel-i Muazzama*), the search for home could not reach to the level of establishing a state. At that stage, the Jews inspired from a settler colonial Project of Western (Settler Colonialism). The Zionists acted along with the motto "A land without a people for a people without a land," to the detriment of the native inhabitants. However, the region could not be regarded in the status of terra nullius. It was not an empty land. There were people (*The Asharaf*) living under the Ottoman rule in the region,

and the Ottoman administration did not let the Zionist Project flourish on its own land without allowing the mass migration of the Jews under such a movement on its territories.

A Jewish Settler Colonialism as a movement of Jewish into the non-European areas where they hoped not to be persecuted, or not to be discriminated based on cultural, economic or political reasons took place with the help of the Western countries and the Zionists from the end of the nineteenth century. The success of Zionism lied at its capacity to manipulate the Jewish society scattered from all over the world about the belief that they needed to return their ancient homeland, just like what their ancient ancestors did, by making a journey for independence from their slavery in Egypt to the land of Palestine three thousand years ago. Zionism saw the native Palestinians as the aliens while seeing themselves as the real eternal owner of the whole land of Palestine. The Zionists did not only occupy the land, but also occupied the minds of the Jewish people with a lot of propaganda, fabrication, misunderstanding about the background of the Israel-Palestinian conflict. In this sense, the existing literature on the Israel-Palestinian problem/conflict should not be read only from one sided and prejudiced views, nourished by the victimised past of the Jewish, reviving the Biblical connection between the Jewish religion and Palestine. From the very beginning, the strategy of the Zionist movement was to acquire as much of the land as possible until completing the phase of the colonisation of whole Bayt al-Maqdis by either removing or expelling the native people from their own land. Now, the Jews are existential threat towards the existence of the Palestinians. However, it should be known that Bayt al-Maqdis is an inclusive land which is given barakah for everyone in the universe, not only for the Jews!

When the attempts of Herzl to make the dream of *Eretz Israel* come true in Palestine with the hands of Ottoman Empire could not be successful as they wished, the First World War led to turn their face to the then one of the most powerful colonial empire, the Great Britain. After the World War I, Britain had subjugated to Bayt al-Maqdis, and from 1922 to 1947, the region had been a mandated territory with a class "A" under the auspices of the League of Nations. In this regard, Britain played an important role in establishment of the State of Israel. At that stage, the Jews inspired from a settler colonial Project of Western / Settler Colonialism. Thus, this study came to the conclusion that the establishment of State of Israel is an example of settler colonialism as a result of colonial Project of Western.

From the time when Bayt al-Maqdis changed hands from the Ottomans to the British, an organic tie between Jewish state and Western colonial states had been developed. It was the British who fuelled to the fire of the conflict between the two communities. The pledge of the

British made to the Zionist movement related to transforming Palestine into a Jewish homeland demonstrated itself in the Balfour Declaration in 1917. The Zionists wanted to make the British statement into a commitment. In this thirty year period, Israel underlay the structure of its projected Zionist state. As a reaction to this, Palestinian national movement came into existence. Palestinian nationalism was positioned itself in the opposition to Zionism. Therefore, the clashes between the two communities became inevitable during the Mandate period. All protests were repressed harshly by the British. It must be highlighted that the Mandate period should be known very well in the way of consolidating a new state of Palestine.

Given the importance of the Israel-Palestinian conflict, establishing peace and reaching a just, durable and sustainable solution to the conflict should be a requisite in the region. Modern States of the 21st Century should not recognise Israel's unlawful territorial acquisition. Conquest was an old phenomenon that could only acceptable in the previous centuries. The threat or use of force were prohibited in international law, as in the case of Art. 2(4). In the context of the Israel-Palestinian conflict, two norms; the right to self-determination and the prohibition against the acquisition of territory by war is very important to the way of achieving a fair and just solution to the conflict. When the UN resolutions have been examined elaborately, these two norms were clearly reiterated in the UN documents to find a solid implication to the resolution of the problem. In the case of Israel-Palestinian conflict, international community accepted the right of self-determination in a variety of contexts when it was examined nearly 100 UN resolutions in this study. In the peaceful settlement of the Question of Palestine, the realization of the inalienable rights of the Palestinian people, primarily the right to self-determination and the right to establishing their independent State have been highlighted in these resolutions. This shows that the international community, having a common sense makes its own voice heard before "the United Nations" which is regarded as an exclusive world club and affirmed that Israel, as an occupying Power, occupied the whole Palestine in 1967, and now Israel is pursuing the expans(z)ionist policies in the Occupied Palestinian Territories. In this sense, all actions and measures of Israel in these occupied territories cannot be regarded as legal, and non-recognition of Israel's illegal position and action is a primary duty of international community under contemporary international law. The General Assembly resolutions, referring the norms 'the prohibition of the use of force' and 'self-determination' had a highly authoritative and decretory.

Another claims to prove a basis of the occupation and annexation of Israel had been inspired from the doctrine of *terra nullius.* However, this was not the case even in the time of

the Ottoman. In today's world there is no territory left to the acquisition by any State. A territory is either under a sovereign or under occupation. In the latter scenario, the indigenous people have a right to self-determination in their own country. Because, the principle of self-determination in international law, as a jus cogens rule and a fundamental right demonstrated that all peoples had an ability to determine their political status and develop its own economic, social and cultural existence without pressure. The occupation does not give the occupant to right to annex the territories under its occupation. Art. 43 in the Hague Convention IV Laws and Customs of War on Land reflects pratical consequences of the occupation which only provides to pass the authority of the legitimate power into the occupant. However, in the case of Palestine, Israel, as the occupant, cannot claim sovereignty over the territories occupied since 1967. Instead, as the occupying power, Israel is under the responsibility of the Hague regulations 1907 and the Fourth Geneva Convention. As long as Israel refused to comply with its international obligations stated in the UN resolutions, its unlawful state will be alienated in international community which would result in taking a much more serious sanctions.

On 15 November 1988, the Palestine Liberation Orgnisation (PLO) declared the State of Palestine. In the light of the Montevideo Convention, today's State of Palestine is not a genuine state represented as a full fledged member of the UN. It is because of the West, that determines the fate of peoples drawing arbitary maps without taking into consideration of the indigenous people living there. The diplomatic initiatives of the Palestinian Authority to be admitted as a member of the UN, although the existing State of Palestine does not require the qualifications of being 'State' is an important step in the way going for peace. In this regard, to establish a territorial integrity by bridging West Bank and Gaza is highly significant. Otherwise, the dicephalous state of affair will only suit the book of the hardline Jewish administration as in the case of today's Bayt al-Maqdis right now.

Since 1993, there have been made a number of agreements for the transfer of power and responsibilities to military and administrative authorities in the Occupied Palestinian Territories, but they were limited in scope. The Palestinians could not acquire their legitimate and inalienable rights and an their ultimate goal of establishing an independent sovereign state for 30 years since the start of the peace process. When the peace day comes, and the two conflicting sides sit at the table for signing a peace treaty – not for an agreement, it must be under equal conditions, not in an asymmetric way. Only then, a dignified and full peace can be maintained. Additionally, the rejection of Israel to the Fourth Geneva Convention, asserting that it is inapplicable to the Occupied Palestinian Territory is deprived of legal basis, and did

not help to the peace process. The territories placed between the Green line and the former eastern boundary of Palestine in the time of Mandate were occupied by Israel in 1967 during the armed conflict between Israel and Jordan. Thus, from that time until today, these territories, including East Jerusalem are regarded as occupied territories in which Israel had the status of occupying power. According to the Article 49(6) of the Convention, the occupying power should not deport or transfer its own civilian population into the territory under its occupation. Israeli daily practices to place civilian or quasi civilian settlements to the territories under occupation are exactly an example of an arbitrary illegal administration which always breaches rules of international law. It should bear in mind that the politicians come and go, but Palestinians' rights in their own country will always stand right there without lost.

In the light of the preceding considerations, it is clear that the most long-lasting Israeli Palestinian conflict has been virtually turned into a Moebius strip because of the so-called great men giving names to the events and intervening in the internal affairs of the other societies. The day of establishing a Jewish State, known as the day of 'al-Nakba' for Palestinians, led to drastically a radical change against the lives of the Palestinians creating varieties of Nakba's militarily, politically and socially. However, none of them was of a huge effect, not only on the lives of the Palestinians, but also those of the whole Muslims in the world as much as Intellectual Nakba which means crisis in minds that their roots could be dated back to the turn of the twentieth century. Unless there is a close relation between knowledge and power in Muslim countries, the occupation of the land and the Muslims' minds by the West with the whole complex of knowledable manipulations will continue by making the lives of Muslims worse than now. What is needed to fight this intellectual Nakba is to produce a new knowledge which is beneficial and serious conscious minds (scholars) to contribute to this knowledge. Specific to the issue of Palestine, all Muslims should use every means available to develop right policies for Bayt al-Maqdis in the light of the motto "*Knowledge Drives Change*" and with the aim of fighting the Intellectual Nakba related to the region. Before ending the words, it should be stated that the author feels honoured to be a part of this righful struggle with the Palestinian sisters and brothers if she could drip even a tiny drop of oil into the lamps of al-Quds/Bayt al-Maqdis.

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