



الائتلاف المدني للدفاع عن حقوق الفلسطينيين في القدس
The Civic Coalition for Defending the Palestinians' Rights in Jerusalem

Israeli Laws and Judicial System as Tools for Accomplishing Political Objectives in Jerusalem

**Main Stages in Consolidating Israeli Control over
Jerusalem Contrary to International Law**



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Palestinians' Rights in Jerusalem

ISRAELI LAWS AND JUDICIAL SYSTEM AS TOOLS FOR ACCOMPLISHING POLITICAL OBJECTIVES IN JERUSALEM

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over Jerusalem Contrary to International Law**

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The Coalition

The Civic Coalition for Defending the Palestinians' Rights in Jerusalem (CCDPRJ) is a non-profit non-governmental community coalition of institutions, societies, associations, and individuals with expertise and interest in human rights. The Civic Coalition was established in 2005 and currently consists of 18 organizations.

The Coalition's vision focuses on preserving the Palestinians' presence and fortitude in Jerusalem and protecting all their rights by mobilizing efforts, capacities and resources to protect the political, civil, economic, social and cultural rights on the basis of the international law and human rights law. Furthermore, the Coalition seeks to coordinate the efforts of human rights organizations in Jerusalem and reinforce Jerusalemites' awareness of laws, procedures and regulations governing the practices of the Israeli occupation's government in order to enable the Palestinians to confront human rights violations practiced by the occupying authorities on daily basis.

The Coalition's goals:

1. Promote Palestinians' awareness of their civil, political, economic and social rights and violations of these rights in Jerusalem.
2. Coordinate and activate advocacy and lobbying on individual and collective human rights issues in Jerusalem.
3. Build the organizational capacity of the Coalition towards achieving its vision and objectives.

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Introduction:

This paper deals briefly with the Israeli policies towards Arab East Jerusalem since 1967, with an emphasis on the utilization of Israeli laws and the judicial system as two basic tools for creating a "legal" framework for annexing it to Israel during the first years of occupation and for consolidating the annexation of Jerusalem later on with total disregard of the international laws and norms applicable to the occupied territories. Reference will be made here to relevant laws by reviewing major intervals, when such laws were enacted and/or used as a basis for interrelated administrative and political steps taken by the government to ensure a continuing Jewish dominance over the annexed areas. The first of these steps was to guarantee control over the city since its occupation on 7 June 1967 by bringing it under the "Israeli jurisdiction" and subsequently under the authority of the municipality of "West Jerusalem". To this end, thousands of dunums of land were confiscated for building "Jewish neighbourhoods" in the first years of occupation. The most recent steps in this direction were in the form of encircling the city with the "Separation Wall" which has isolated it from the rest of the occupied Palestinian territories and created new vulnerable groups of Palestinians, mainly those who found themselves on the "Palestinian side" of the Wall and are under the risk to forfeit their right to permanent residency in Jerusalem.

It is important to note that East Jerusalem remains an occupied territory even though some states try to overlook this fact and act as if its part of Israel.¹ We also confirm that Israeli measures aimed at annexing the city and maintaining it "complete and united, and the capital of Israel" are in contradiction with the provisions of the International Law, which requires Israel's withdrawal from the occupied territories, and until this takes place, requires Israel to respect its population's rights, particularly the right to self determination, and prohibits its annexation to the occupying state by a unilateral decision. We conclude that the issue of Jerusalem, like the entire Palestinian issue, has been since the 1947 UN Partition Plan awaiting a just and lasting solution. This fact cannot be changed by allegations on part of any party to the conflict that the Oslo Accords have expired or that "there is no partner to negotiate with."

¹ See: Paragraph 28 in a report by Professor John Dugard, UN Special Rapporteur for Human Rights in the Occupied Palestinian Territory issued in August 2005.

Stage 1: Occupation and annexation

“On the seventh of June 1967, the Israeli army completed the occupation of the eastern part of the city (East Jerusalem), which at that time was under the Jordanian rule. An Israeli military administration was formed for the city under the command of Shlomo Lahat, ex-mayor of Tel-Aviv, who took the Ambassador Hotel as the headquarters. The Israeli authorities immediately undertook a series of measures on the ground aiming at unifying the city – the Mandelbaum Gate, the crossing point between West and East Jerusalem, was removed, along with all other barriers previously separating both parts of the city along the Green Line, the line that was set forth by the truce signed between the Hashemite Kingdom or Jordan and Israel in April 1949.”²

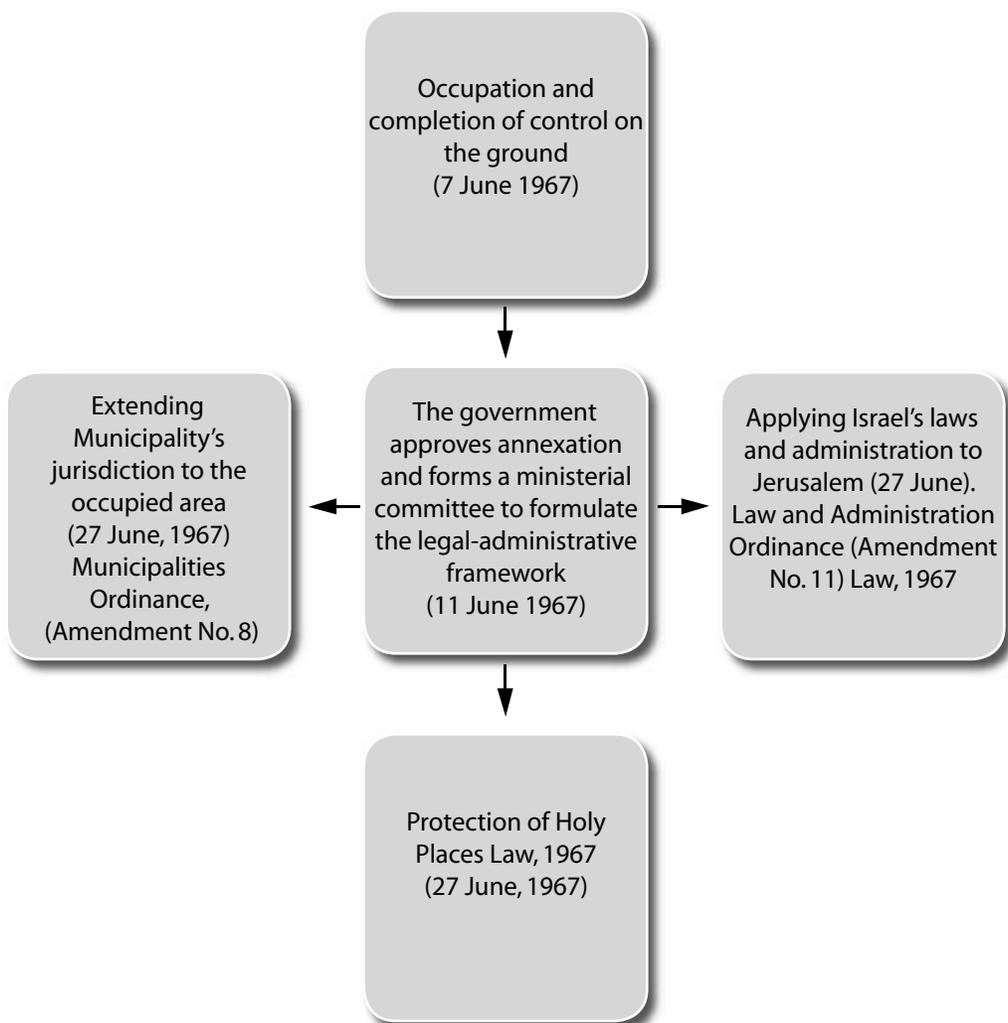
On 11th June 1967, the Israeli government convened to create a legal framework for the annexation according to the Israeli laws, which was done within the next two weeks. The government ratified three draft laws on the 25th of June 1967. Then a census of the population in the area to be annexed was carried out on 26th June 1967 and the Israeli parliament approved the three draft laws on the 27th. On the 28th of June, the government issued two decrees on the basis of these new laws, one of which delineated the boundaries of the annexed territory, whilst the second enabled the Municipality of West Jerusalem to extend its control to the new area. The previous Arab City Council and its Secretariat were disbanded on 29th June 1967.³

2 Osama Halabi, “The Spatial Boundaries and the Human Presence: the Geographic and Demographic Dimensions in Israel’s Policy towards East Jerusalem between 1967-2000.” Jerusalem Centre for Legal Aid and Human Rights, Ramallah, 2001, p. 9. (Arabic)

3 Osama Halabi, “The Arab Jerusalem Municipality.” Palestinian Academic Society for the Study International Affairs (PASSIA), 1993, pp.27-42. (Arabic)

Diagram 1

The creation of the legal framework for annexation – June 1967



Stage 2: 1968 – 1970, beginning of actual subduing of population and land to Israeli laws and interests

Immediately after the Israeli government decided to annex East Jerusalem, it began to implement a number of plans and activities to demonstrate Israeli control over the city and strengthen the Jewish presence in the occupied part of the city in order to create new realities on the ground that could be later utilized as the basis for declaring the “unified” Jerusalem as the “eternal capital of Israel”. To this end, the Israeli governmental and municipal authorities adopted a complex policy with flexible mechanisms that can change from time to time to suit the emerging conditions. These mechanisms included the following:

- a) Abolishing the Arab presence within the city literally (e.g. demolishing “Bab Al-Maghrabeh” neighbourhood which used to be near-by the “Wailing Wall”).
- b) Infiltrating and fragmenting the Arab presence, with government backing.
- c) Encircling the Arab presence with Jewish settlements, thus hindering continuity between Arab areas by building Jewish “neighbourhoods” and opening new roads connecting them and by preventing the natural urban development of the Palestinians.¹

To complete the circle of subduing the Jerusalemites to the Israeli law, the Legal and Administrative Matters Law, 1968, was enacted. As described in the explanatory text attached to it, this law came to complement the Law and Administration Ordinance (Amendment No. 11) Law, 1967, which laid the legal ground for applying the Israeli law and administration to East Jerusalem. The 1968 law (which was amended and promulgated in one merged text in 1970) aimed at ensuring that the annexed area and its population become subject to the Israeli law in certain aspects. For example, this law

¹ Osama Halabi, "The Spatial Boundaries and the Human Presence: the Geographic and Demographic Dimensions in Israel's Policy towards East Jerusalem between 1967-2000." Jerusalem Centre for Legal Aid and Human Rights, Ramallah, 2001, p. 19. (Arabic)

allowed self-employed businesses and companies functioning in the annexed area a grace period to arrange their status according to the relevant Israeli law. It also gave those who already obtained a building license but did not start or complete the building yet a period to proceed with the works, provided that they inform the Local Committee on Zoning and Building of their plan to proceed with the construction within one year from the date when the law came into effect.²

In this stage as well, the Israeli High Court of Justice issued rulings, where judges affirmed the annexation of East Jerusalem to Israel. For example, late Justice Agranat said that Israel, by means of the Law and Administration Ordinance (Amendment No. 11) Law, 1967, and the decree issued according to it defining areas where the Israeli law and administration apply, has taken a measure demonstrating control over these areas.³ In another case, justice Halevi said, "The unified Jerusalem has become an integral part of Israel."⁴

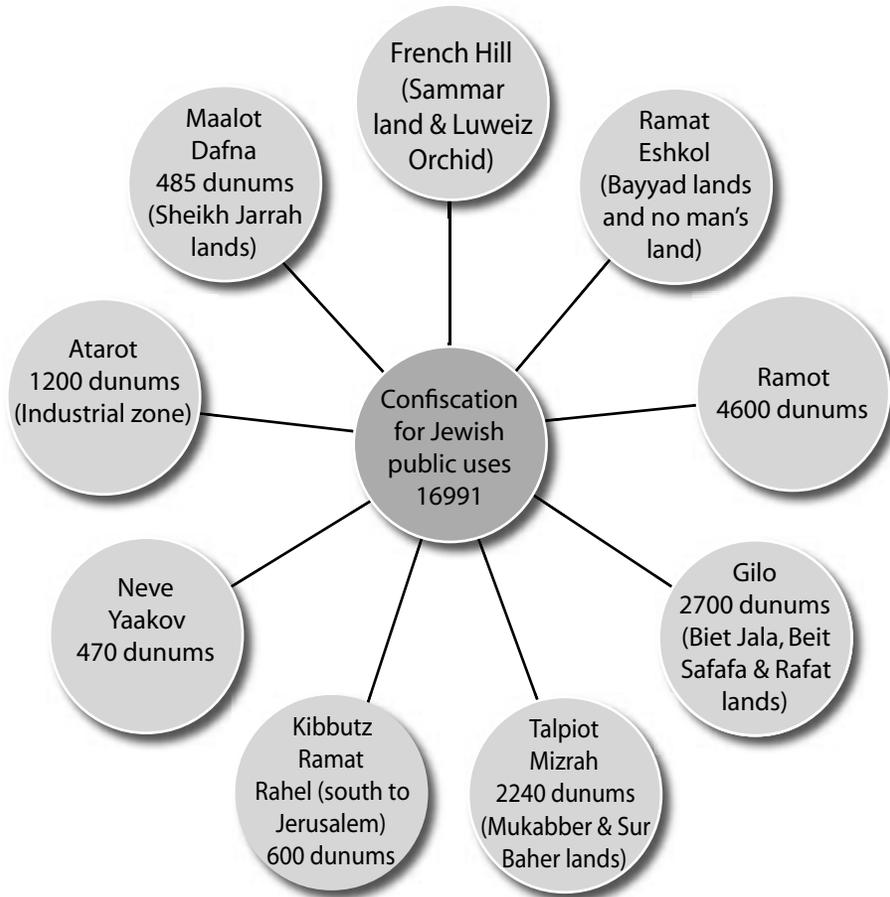
In order to make the annexation of East Jerusalem a matter of fact, the Israeli government gave explicit priority to control over land, resorting to various legal pretexts, mainly confiscating land for "public purposes" under the 1943 Land (Acquisition for Public Purposes) Ordinance, as demonstrated in diagram 2 below.

2 Osama Halabi, "The Legal Status of Jerusalem and Its Arab Population." Institute for Palestine Studies, Beirut, 1997, pp. 16-19. (Arabic)

3 H CJ 223/67 Ben Dov v. the Minister of Religious Affairs PD 22 (1) 440- 442.

4 H CJ 171/68 Hanzalis v. Ecclesiastical Court of the Greek Orthodox Church, PD 23 (1) 260, 269.

Diagram 2
Confiscation of land for “public purposes” 1968-1970



Sources:

1. Israel Official Gazette (Reshumot), No. 1435 (8.1.1968), p. 686, No. 1553 (14.4.1968), p. 1238, and No. 1656 (20.8.1970), p. 2808.
2. Osama Halabi, "The Legal Status of Jerusalem and Its Arab Population." Institute for Palestine Studies, Beirut, 1997, pp. 21-22.

Stage 3: The 1980s, continued land confiscation and Judaization; declaring Jerusalem as Israel's "eternal and indivisible" capital

This period is characterized by the confiscation of thousands of dunums of Arab lands, the building of new Jewish settlements and Israel's assertion that Jerusalem will remain "united" under its control.

On 30 July 1980, the Israeli Government issued the Basic Law: Jerusalem, Capital of Israel, where article 1 stipulated that "Jerusalem, eternal and indivisible, is the capital of Israel." According to the constitutional law in Israel, a basic law is supreme to ordinary laws and basic laws are presumed to be part of the constitution in the future. Hence, the enactment of this law reflects Israel's serious and explicit position, making no doubt that Israel considers East Jerusalem as an integral part of its capital. The enactment of this law has raised great international condemnation, which was culminated in the Security Council Resolution No. 478 on 20 August 1980, stating that "all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent "basic law" on Jerusalem, are null and void and must be rescinded forthwith."

The Israeli measures did not limit themselves to the declaration of Israel's intents through the aforementioned basic law. "Practical" steps continued to be made on the ground to weaken the Arab presence and nurture the Jewish presence within the city. In winter 1980, the Israeli government confiscated 4400 dunums of Shufat and Beit Hanina lands, where Pisgat Zeev settlement was built in a later time. In summer 1982, another 137 dunums were confiscated in order to be added to Atarot industrial zone, north to Jerusalem.¹

The Israeli High Court of Justice also played its role in ascertaining the annexation of the Arab East Jerusalem to Israel and explaining

¹ Israel Official Gazette (Reshumot), No. 2614 (1980), p. 1305. See also: Khalil Tafakji, "Judaization of Jerusalem: Facts and Figures." *Journal of Palestine Studies*, No. 22, Spring 1995, pp. 121 and 124.

the ramifications of this measure on the rights of its population, particularly the right to permanent residency. In the High Court of Justice case 282/88 Mubarak Awad v the Prime Minister and others,² Justice Barak stated: "In the decree on Administration and Law Regulations No 1 of 1967, the government decided that East Jerusalem is part of the Land of Israel and is subject to the application of the State's law and administration. This decision has created integrity between the area and its population on one hand and the law and administration system of the state on the other. East Jerusalem has been unified with Jerusalem; this is the meaning of annexing East Jerusalem to the State and declaring it part therein."³ (The highlight is by the author) Accordingly, the court rejected the appeal of Dr. Awad and ruled that his right to residency and the loss of this right are decided under the Entry into Israel Law of 1952 and the related regulations, which apply to East Jerusalem as the case with all other Israeli laws and regulations. Further, the Court ruled that since the appellant had left Jerusalem to the United States and obtained the US nationality, he therefore lost his right to "permanent residence in Israel" and became a foreigner. The Minister of Interior, thus, has the authority to deport him from the country. Being born in Jerusalem by itself does not entitle to obtaining a permanent residency and does not provide security against losing the right to residency or against deportation.

In mid 1980s, the Israeli Social Security Agency started to change its policy towards Palestinian Jerusalemites who have moved their residence to outside the "municipal boundaries". The agency viewed them as "residents of the area" (the West Bank) stopped paying the different social allowances to such persons, especially allowances for children born after the date of changing the residence. The grounds for taking this action were that the right to receiving these allowances, as well as health insurance benefits, is pursuant to the right to permanent residency in Jerusalem (in "Israel"). This change in policy didn't affect the rights of Jewish settlers living in the West Bank and Gaza, because as Israeli citizens they have been excluded from the definition of "resident of the area" = the West Bank).

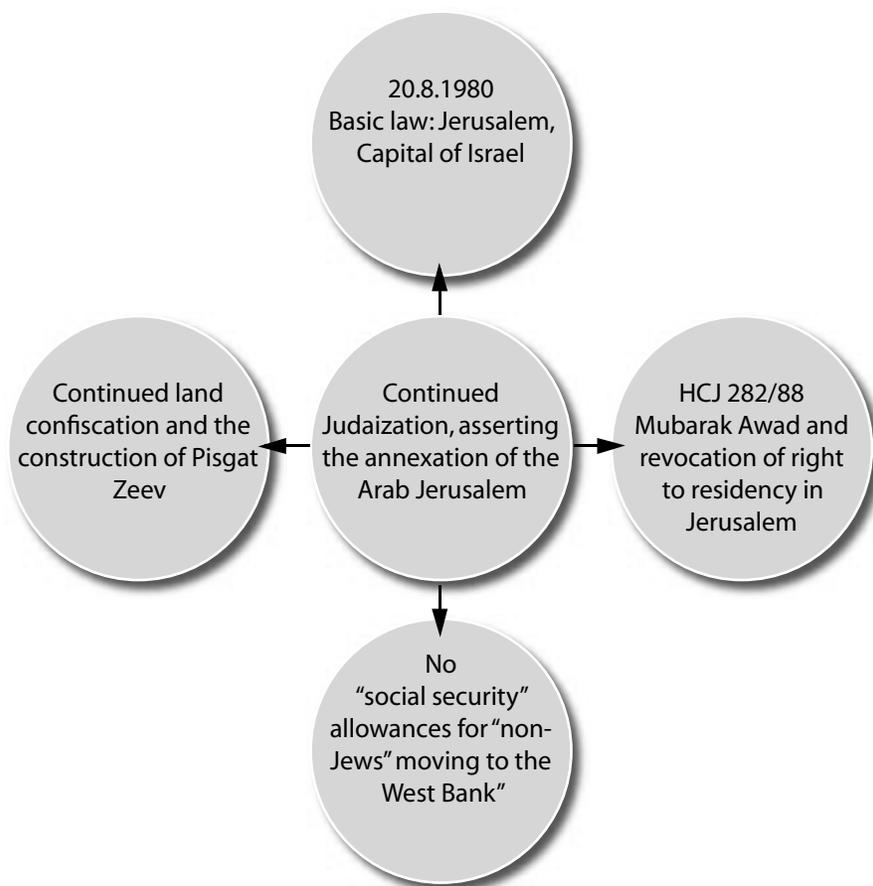
2 HJC 282/88 Mubarak Awad v. the Prime Minister PD 42 p. 424

3 Ibid p. 429

However, this period has not witnessed a rapid and considerable change in Israel's policy towards Palestinian Jerusalemites as the one that occurred in the 1990s (between mid 1995 and end of 1999), which was evident in the campaign of "ID card withdrawals" and revocation of the right to residency for thousands of Palestinians.

Diagram 3

Establishing and asserting the annexation – 1980s



Stage 4: The 1990s, Oslo Accords do not improve the situation for Palestinian Jerusalemites

Israel continued its policies and plans to change the situation in favour of the Jewish presence in Jerusalem at the expense of Palestinian Jerusalemites and their lands. To this end, the Israeli government continued to employ the different administrative structures and use different Israeli laws, both old and new ones.

Land confiscation campaigns continued. On 16 May 1991, the Minister of Finance declared the acquisition of 1850 dunums in Jabal Abu Ghneim area (Har Homa), including 420 dunums owned by Arabs. The “public purpose” this time was to construct a new Jewish neighbourhood with 6500 housing units in that area, southeast to Sur Baher town.¹ On 14 May 1995, the government made decision to confiscate 535 dunums, including 325 dunums of Beit Hanina lands, to build housing units in Ramot settlement, as well as 200 dunums from Beit Safafa lands. However, the decision was suspended due to the media outrage following its announcement and probably in an attempt to maintain a calm atmosphere for the negotiations that have been taking place with the Palestinian Authority (although not addressing the issue of Jerusalem).

The District Committee on Zoning and Building in Jerusalem approved a scheme for a 14 km route called “Kvish Hatab’at Hamizrahi” (the Eastern Ring Road) to connect settlements in Bethlehem area with Pisgat Zeev settlement to the north. The land area confiscated from Silwan, Ras Al ’Amud, Sawahreh and Jabal Al Mukabber for the purpose of this road was estimated to be about 1000 dunums.²

After the “Gaza, Jericho First” agreement was signed on 4 May 1994, the Israeli parliament passed the Law Implementing the Agreement on the Gaza Strip and the Jericho Area (Restriction on Activity), 1994.³ The name of this law was amended on 17

1 Israel Official Gazette (Reshumot), No. 3877 (1991), p. 2479. See also: Khalil Tafakji, “Settlement Activities in Jerusalem City: Goals and Results.” *Journal of Palestine Studies*, No. 22, Spring 1995, pp. 124 and 149.

2 Kol H’ir weekly newspaper published in Jerusalem, 21 July 1995.

3 Compilation of Israeli Laws, 1994 volume, p. 85

January 1997 following the signing of the interim agreement on 28 September 1995 to become the Law Implementing the Interim Agreement on the West Bank and Gaza Strip, 1996.⁴ This law prohibited the Palestinian Authority from opening a representative office or calling for a public meeting “inside Israel” unless after obtaining a written permission from the Israeli government. The law also authorized the government to prohibit PLO from carrying out similar activities. The Israeli legislature opted to mention Israel without any special reference to Jerusalem to exclude any implication that Jerusalem is different than any other Israeli city in terms of being part of Israel. This law constituted the legal basis upon which an order was issued to close down the Orient House on 10 August 2001.

At the same time, the Israeli authorities continued to neglect Palestinian Jerusalemites’ needs within its municipal plans and continued to issue and implement demolition orders for unlicensed houses. The number of administrative demolition orders issued by the Mayor by 2 June 1995 reached 41 orders and the number of orders issued by end of 1995 was 74 orders. It is noteworthy that Knesset members from the right wing appealed to the Israeli High Court of Justice in 1994 demanding the municipality and Ministry of Interior to implement the demolition orders issued against many houses in East Jerusalem.⁵ During that period, the Jerusalem Metropolitan Plan – Master Plan and Developmental Plan of 1994 was developed. This plan did not limit itself to the expanded boundaries of Jerusalem municipality following the annexation, and totally neglected the international law by planning not only for Jerusalem but also for surrounding areas located in the West Bank, such as Maale Adumim settlement.⁶

The participation of Jerusalemites in the Palestinian legislative elections of January 1996 did not change the situation in the city and did not affect Israel’s “sovereignty” over it, as maintained

4 Compilation of Israeli Laws, 1996 volume, p. 40

5 Usama Halabi, “The Spatial Boundaries and the Human Presence: the Geographic and Demographic Dimensions in Israel’s Policy towards East Jerusalem between 1967-2000.” Jerusalem Centre for Legal Aid and Human Rights, Ramallah, 2001, p. 26. (Arabic)

6 Ibid, pp. 27-28.

by Israeli leaders. The Israeli police authorities restricted the candidates' movement; banned electoral campaigns called by Fateh Movement and required obtaining a prior permission for each activity from the Central Committee for Elections, which in turn required to obtain such permission from the Israeli side through a subcommittee of the Civil Affairs Committee. On the other hand, a limited number of Jerusalemites participated in the voting within the city through five post offices only. Furthermore, Israel did not allow stamping Israeli ID cards by the electoral committees and insisted that the ballot count would take place in the "self rule" areas outside Jerusalem.

In this stage, neither the Palestinian residents nor the Palestinian land in Jerusalem have been spared from the Israeli policies, which treated Palestinian Jerusalemites as *personae non gratae*. In mid 1990s, the Israeli Ministry of Interior started to adopt successive administrative and legal procedures aiming at revoking the right to permanent residency for some thousands of Jerusalemites, using the pretext of their residence outside the city. The pretext used was that they have allegedly moved their "centre of life" to an Arab or foreign country even if they had left for a limited period for purposes of work or study. This policy signalled regression from the policy of "open bridges" adopted by the Israeli government in the aftermath of the occupation. Without prior notice, the Ministry of Interior carried out an intensive campaign of ID withdrawal and residency revocation affecting persons who attended to the office of Interior for a specific service, such as renewing their ID cards or applying for a visa whenever the Ministry finds that their "centre of life" has become outside Israel. Although complete data are not available, figures indicate that the residency right was revoked for at least 689 Jerusalemites in 1996, for 606 in 1997, for 788 in 1998 and for 394 in 1999.⁷ It should be noted that these numbers refer to adults (parents), not inclusive of the number of their children, while in many of the cases that have been dealt with by the author, a parent was notified in writing of the revocation of his/her residency status and informed that the decision

⁷ See Usama Halabi, *ibid*, p. 41. According to another source, the number of Jerusalemites, whose residency was revoked in 1997 was 1067 persons. See: "Al-Quds", a special issue published by the Palestinian Academic Society for the Study of International Affairs (PASSIA), Jerusalem, September 2000, p.6.

also applies to his/her children, whose names and ID numbers were listed. In result of this policy, a large number of Jerusalemites not only lost their right to residency in their city but also all other rights related to the aforementioned right, mainly the right to child allowances, old age pension and infirmity benefits from the Social Security Agency and the right to medical treatment. This situation has forced civil society organizations, notably the Orient House, to contact NGO hospitals, such as Makassed Hospital, to ask them to provide health services to this new group of Palestinians, who lost their rights in their city, and who are estimated to be about 15,000 individuals.⁸

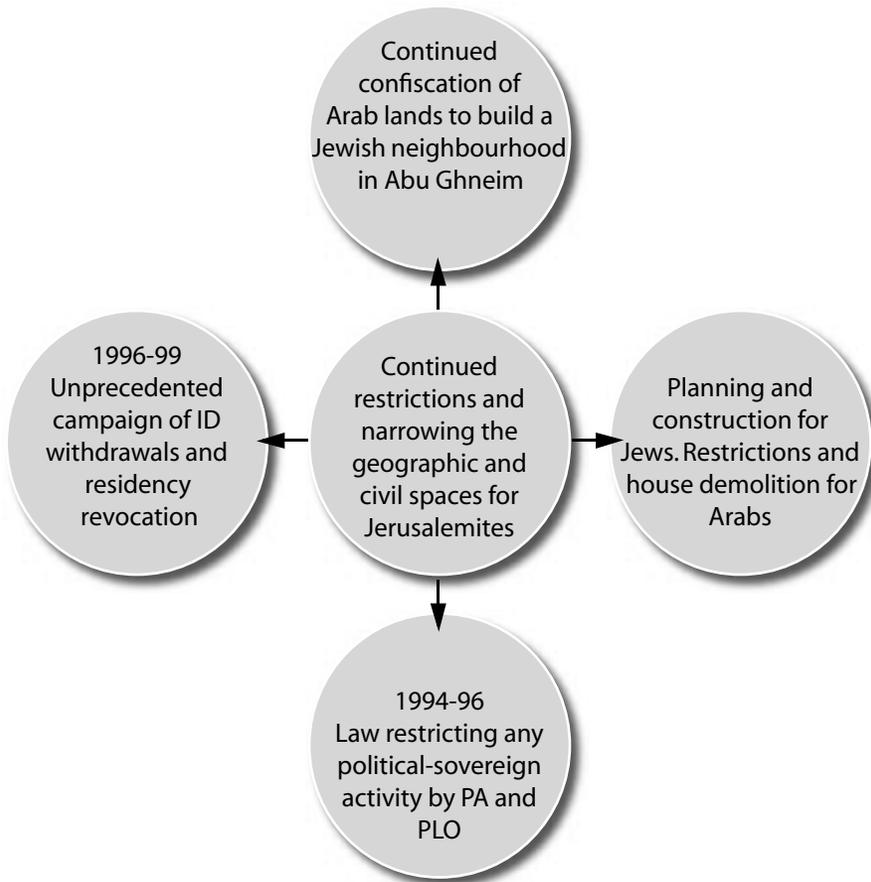
This critical situation facing thousand of Jerusalemites has not changed until early 2000, when a slight positive change was noticed on part of the Ministry of Interior, expressing readiness to restore residency right under certain conditions. These conditions required the applicants to prove that they entered Israel in a period when their "exit permit" was still in effect and that they have been residing in Israel at least for two years prior to submission of application. Nevertheless, a central element in the Israeli policy towards Jerusalemites remains unchanged: the Palestinian Jerusalemites are still required to provide the proofs that they meet these conditions.⁹

Thus, Palestinian Jerusalemites entered the third millennium suffering from consistent restriction of their geographic space due to continued Jewish settlement in their city, confiscation of their land and restrictions on its use, and lack of appropriate municipal urban plans to guarantee their future growth on one hand, and restriction of their civil space due to Israeli policies that jeopardize their presence in the city and negatively reflect on their civil rights on the other. These policies have been resumed at higher rates only two years after the above mentioned slight positive change. Once again, the security-demographic issue became at the forefront of all other issues raised by Israel in relation to Jerusalem.

⁸ According to the partial data cited above, the total number of persons, whose residency was revoked in the period 1996-99 was 2477. Based on the average number of 5.5 children per household, the total number would be 13,623 individuals. Taking into account the number of persons who lost their residency right in 1997 as indicated by PASSIA (1067 instead of 606), the number of adults would become 2938 and the total number of persons affected would be 16,159.

⁹ For a more detailed overview of the change in the Ministry of Interior's policy, see: Usama Halabi, "The Spatial Boundaries and the Human Presence", op. cit. pp.42-44.

Diagram 4
1990s, Oslo Accords do not improve the situation for Palestinian
Jerusalemmites



Stage 5: The 2000s, living between the pincers: Jerusalem Incubator encircles the City, constraints on family reunification and risks of losing residency increase

The period starting from the beginning of the third millennium has been characterized by continued implementation and intensification of Israel's policy, which seeks from the first day of the occupation of Jerusalem in June 1967 to realize the idea of "the largest possible land with the smallest possible population."¹ During this period, the Israeli policy has been embodied in a large number of steps and positions, the most prominent of which, in terms of the achieved and expected outcomes, are the enactment of the Nationality and Entry into Israel Law (Temporary Order) of 2003² and the start of the construction of Jerusalem Incubator, which is the part surrounding Jerusalem of the segregation Wall.³

However, Israel took these two steps only after the Israeli Parliament has taken another step with promotional, symbolic and political dimensions in relation to the position of Jerusalem and its boundaries as delineated by the Israeli government in June 1967. On 7 December, 2000, few months after the failure of negotiations in Camp David between the late Arafat, then the PA president, and Ehud Barak, then the Israeli Prime Minister, the Basic Law: Jerusalem, the Capital of Israel was amended and three articles were added. Article 5 stated that for the purpose of this law, the boundaries of Jerusalem "shall include, among others, the entire area described in the annex to the decree on expanding the jurisdiction of Jerusalem municipality of 28 June 1967, which was issued by the virtue of Municipalities law." Article 6 forbids the transfer of any power vested by the law in the Israeli Government or in Jerusalem Municipality in relation to Jerusalem jurisdiction to "any political or authoritative foreign element or to any similar

1 See: Meron Benvenisti, *Jerusalem : The Torn City*. Jerusalem: Isratypest Ltd., 1976, pp. 113-115.

2 Published in the *Compilation of Israeli Laws, 2003*, volume, No. 1901, p. 544.

3 For reasons of limited time and space, this paper does not address the local structural plan of Jerusalem 2000 initiated by Jerusalem municipality.

4 The amended law was published in the *Compilation of Israeli Laws, 2000* volume, No. 1760, p. 28.

foreign element whether permanently or for a limited period.” Article 7 provided that “the provisions of articles 5 and 6 cannot be amended except by a basic law enacted by the majority of Knesset members.”⁴ In other words, East Jerusalem or any part of it cannot be handed to the Palestinian even through a peace agreement unless 61 Knesset Members agree to amend the above mentioned Basic Law and authorize the Israeli Government to do so.

a) Nationality and Entry into Israel Law (Temporary Order):

This law was enacted to limit the possibility of family reunification for Palestinian Jerusalemites and their Palestinian spouses from the West Bank and Gaza Strip, even if this would lead (and it is in fact leading) to the break-up of “mixed” families. This temporary law prevented the minister of interior from issuing a permanent or even a temporary residency visa to those considered as “residents of the territory,” i.e., residents of the West Bank or Gaza. In addition, this law prevents the promotion of the non-Jerusalemite spouse from his/her status to a higher status under the entry to Israel law. For example, those whose application for family reunification was approved and obtained a visa for a stay in Israel (B visa), will not obtain – after the required 27 months – a permit for temporary residency (A/ 5 visa), which in addition to the right to work in Israel is accompanied by the right to receive allowances from the Israeli Social Security Agency under the Social Security Law and the right to receive health services under the Official Health Law. The provision halting the promotion from a visa to another was applied retroactively. Therefore, we see today large numbers of spouses from the West Bank holding the same visa since long years and do not know when they will have a chance to reach the end line in the tiring process of “family reunification” by obtaining a permanent residency.⁵

This law came to replace a governmental decision No. 1813 issued on 12 May 2002, which provided for suspending all decisions regarding family reunification and closing all the doors for any new applications, including the registration of babies born outside Jerusalem or in Jerusalem for a Jerusalemite mother and a West

⁵ The author has handled a large number of cases suffering from this problem

Bank or Gaza father. The pretext used to justify this decision is that perpetrators of some suicide bombings inside the Green Line have received assistance and guidance in reaching the place of the bombing from persons carrying an Israeli ID obtained through family reunification.⁶ In spite of this security-related justification used for this decision, which was also used for the subsequent temporary law, the main goal was to prevent large numbers of Palestinians (from outside Jerusalem) from entering to the City and to other cities in Israel through marriage, followed by family reunification. In this context, it should be noted that Eli Shai, then the Minister of Interior from Shas party, published a booklet attempting to prove that Palestinians consider the family reunification process “a realization of the right to return through the backdoor.”⁷ It is not coincidental that the title of the aforementioned governmental decision was “policy of family reunification regarding the Palestinian Authority population and foreigners of a Palestinian origin.” (The highlight is by the author)

The Nationality and Entry into Israel Law (Temporary Order) was amended on 27 July 2005,⁸ where slight changes were made to the positive side, opening the door for applications for family reunification of non-Jerusalemite husbands over the age of 35 years and of non-Jerusalemite wives over the age of 25.⁹ Additionally, the Minister of Interior was allowed to grant a permanent or temporary residency visa to children up to the age of 14. The Military Commander of the West Bank was bestowed the power to grant a permit to enter Israel for children over the age of 14. But the law still bans granting a residency visa in Israel to those considered as “residents of the territory” if the Minister decides, based on a recommendation from the competent security bodies, that the concerned person or a member of his/her family may pose a threat to Israel’s security. The effect of the temporary law has been extended from a time to a time for periods of six months,

6 In a summary presented before the court, the State Prosecutor indicated that the number of these Palestinians since 2001 was 26, whereas the number of those obtaining family reunification was several thousands.

7 The booklet was issued on 12 May 2002.

8 Published in the Compilation of Israeli Laws, 2005 volume, No. 2018 (on 1 August 2005), p. 544.

9 The explanation was that those involved in attacks inside Israel were within an age group below this age.

most recently on 17 July 2006 ending by 16 January 2007, when the Prime Minister issued a decree under the government's power according to article 5 of the temporary law.¹⁰

On 28 March 2007, the Knesset passed another amendment to the Nationality and Entry into Israel Law (Temporary Order).¹¹ This amendment expanded the list of persons, whose family reunification is subject to the aforementioned restrictions, to include, in addition to West Bank and Gaza residents, spouses from Iran, Syria, Lebanon and Iraq. Moreover, the second amendment added an article entitling the Ministry of Interior to grant a temporary residency permit or a permit of stay in Israel, for humanitarian reasons, to those who have a relative living legally in Israel. However, this is conditional to the recommendation of a special committee established for this purpose. The amendment explained that for the purposes of this article, the "relative" being the applicant's spouse or the couple having children shall not be considered a "humanitarian reason."¹² Not like in earlier extensions, the amended law extended the effect of the Nationality and Entry into Israel Law (Temporary Order) to 31 July 2008.¹³

It is worth noting here that the Israeli High Court of Justice has approved the constitutionality of the temporary law on 14 May 2006 with a majority of 6 justices out of 11. The majority of justices justified their decision to allow causing damage to the right to family life by the pretext of the security threats associated with the entry of Palestinians from the West Bank and Gaza to Israel and the inability of the Israeli security systems to examine all cases individually. The court rejected petitions filed by Arab and Israeli human rights organizations and Arab and Jewish Knesset members and kept the law as it is.¹⁴ On the next day following the hearing of the case (14 February 2006), Hebrew newspapers published a statement by the vice-president of the High Court

10 The decree was published in the Compilation of Regulations, 2006 volume, p. 657.

11 Published in the Compilation of Israeli Laws, 2007 volume, No. 2092 (on 28 March 2007), p. 295.

12 Article 3A1(5)(1).

13 Article 5.

14 HCJ 7052/03, 7102/03, 7642/03, 7643/03, 8099/03, 8263/03 and 1065/03, Justice and others v. Ministry of Interior and others (not published yet).

(currently retired) Mish'eil Hashin, who was among the majority approving the law, referring to couples who want to live together in Israel: "Nobody denied them the right to establish a family, but they can live in Jenin instead of Um Al-Fahm."¹⁵

Finally, the failure to obtain family reunification keeps the concerned person in an unbearable situation. On one hand, he/she is forced to leave "Israel", as his/her stay there is considered illegal. But on the other hand, he/she is linked and attached to a family: a spouse and children. If he/she does not abide by the law and leave, he/she will be arrested and taken to court, which may sentence him/her to imprisonment.¹⁶ If a decision is issued against the "violating" spouse, it will become later a "criminal deterrent" surely preventing the approval of family reunification application.¹⁷ A new worrying step in this regard was recently adopted by the Israeli authorities. On 19 July 2006, the Knesset passed in the first reading (out of three) a draft Entry into Israel Law (Amendment No. 19), which in summary stipulates that any person who stays in Israel without a legal justification for a period over 30 days shall not be able to obtain any status unless he/she leaves Israel for one or more years, even if he/she is a spouse or a relative of an Israeli citizen.¹⁸ Clearly, persons mainly affected by this draft law in regard to "family reunification" are Arabs, particularly families whose application for a family reunification for a spouse was rejected and he/she did not leave the country. Yet, this proposed amendment may also affect relatives of non-Jews who are married to Jews but who are not subject to the return law.¹⁹

¹⁵ Haaretz Newspaper, 15 February 2006.

¹⁶ The legal basis of such infringement lies in article 12 of the Entry into Israel Law. The author came to know about cases that cannot be accepted by any rationale or human conscience. One of such cases is related to a Jerusalemite husband, who was driving his car with his West Bank wife (who applied to family reunification) riding next to him in their way to the District Coordination Office in Bethlehem to apply for a permit for the wife to enter Israel, when he was stopped by the Israeli police. He was fined, his car was confiscated for 30 days and both the husband and the wife were subjected to interrogation. Later, the husband had to face charges of transporting a person "illegally staying" in Israel, referring to his wife.

¹⁷ Family reunification may be approved only under three basic conditions: actual and proved marriage, "centre of life" in Israel, and absence of "security or criminal deterrents."

¹⁸ See: Shazar Ellan, "A License for Love." Haaretz Newspaper, 27 July 2006, p. B2.

¹⁹ The return law grants the right to Israeli nationality to a non-Jewish person married to a Jew (born to a Jewish mother), including the spouse of a Jewish grandchild. Any person outside this protection circle cannot obtain a status in Israel (such as the mother of a non-Jewish spouse or the children of a non-Jewish spouse from a previous marriage).

b) Segregation Wall surrounding Jerusalem:

The other important and critical step in this period, which reflects Israel's position of keeping the expanded Jerusalem (up to Ma'ale Adumim in the east and Givat Zeev in the northwest) under its control is the decision to build a segregation Wall around the City, known by the Israelis as "Jerusalem Incubator," in order to isolate the City in its expanded boundaries from the West Bank.

The decision to build the Wall in Jerusalem area was made in the Ministerial Committee on National Security on 11 September 2002 and was approved again on 20 August 2003.²⁰ The segregation Wall in Jerusalem area is 88 km long, with 33 km completed so far. The Israelis hoped to complete additional 31 km, currently under construction, by the end of 1996. In addition, there are 24 km of the Wall pending to be decided in the High Court of Justice.²¹ Yet, the Wall has not been completed. This Wall separates Jerusalem from Bethlehem in the south, from Ramallah and the surrounding villages and suburbs such as Dahiet Al-Barid, Al-Ram, Bir Nabala, Beit Hanina village, Biddo, Beit Iksa, and Beit Surik in the north and northwest, and from Abu Dis and Bethany in the east. The Wall also separates parts of Jerusalem itself as the case with Shufat refugee camp, which is located within the municipal boundaries as delineated by Israel in 1967 but is, planned to become completely beyond the Wall to the east.

According to a research by Yesrael Kamhi from Jerusalem Institute for Israeli Studies, the number of Jerusalemites holding Israeli IDs who will remain outside the route of the segregation Wall is between 80,000 and 90,000.²² The same research indicates that Jerusalem will be turned from a central city to a border city and the Wall will invoke misery and rage among the affected Palestinians, which may increase their participation in "terrorist activities" against Israel in the future. The research also warns that the construction of the Wall may increase the unlicensed building in Arab neighbourhoods in an attempt to absorb Jerusalemites returning to live within the City and may increase the number of Arabs renting houses in Jewish

20 The website of Israel's security fence: <http://www.securityfence.mod.gov.il/Pages/Heb/matara.htm>

21 Haaretz Newspaper, 17 May 2006.

22 An overview of the study was published in Makor Rishon website: www.makorrishon.co.il

neighbourhoods for the same reason.²³

A joint survey conducted by BADIL Centre and the Palestinian Central Bureau of Statistics between 15 May and 10 June 2006 and published on 4 July 2006 clearly illustrates the impact of the Wall on the lives of Palestinians living around it. The survey sample included 981 Palestinian households (composed of 5148 persons) living in Jerusalem district. The survey found that 17.3% of the population have changed their previous place of residence due to “the Wall and its consequences”, i.e., to “keep their IDs”. In addition, it was found that 63.8% of individuals 16 years old and over are thinking of changing the current place of residence because of its location relative to the Wall or for other reasons related to the Wall. The survey also reveals the direct negative impact on people’s access to health services and education, as well as the separation from relatives.²⁴

It should also be noted in this regard that the Israeli government does not hide the fact that there is a political dimension for the Wall’s route in Jerusalem area, additional to the claimed security dimension. In its response to appeals against the Wall’s route in the north of Jerusalem, the State Prosecutor explained that the route within or on the municipal boundaries of the City has political meanings and implications as it passes through an area under the Israeli sovereignty. In the session held by Israeli Supreme Court on 21 May 2006, the then Court Chief-Justice Barak stated clearly and plainly that Israel has the right to build a security wall on the municipal boundaries within its sovereignty and, hence, the question whether the Wall is built there for security or political reasons is irrelevant²⁵. He then raised a rhetoric question: “What right do the residents of Al-Ram located in area B have to appeal against Israel’s right to build a Wall within its area of sovereignty”²⁶?

23 Another overview and analysis of the main conclusions of the aforementioned research (which was submitted in a report to the government and the army before being published in a book) were published in Haaretz Newspaper on 6 October 2005 (Nadav Sharga’i, “Wall Route in Jerusalem May Create Difficult Social Problems”).

24 The survey summary was published in a press release on 4 July 2006. For more details, see: Forced Displacement as a Result of the Construction of the Wall and its Associated Regime in Occupied East Jerusalem: A Pilot Study of BADIL Resource Center for Palestinian Residency and Refugee Rights in cooperation with the Palestinian Central Bureau of Statistics (PCBS), 4 July 2006

25 Yoav Yoaz, “The State Admits: The Aim of the Wall is Political and not Security.” Haaretz Newspaper’s website on 21 June 2005.

26 The author was present in the court at that time and confirms that this information is correct.

Hence it is not unreasonable to say that the Wall constructed around Jerusalem is a new delineation of the municipal boundaries with a wider geographic area (including Ma'ale Adumim) and a fewer number of Palestinians (excluding Shufat refugee camp). Anyway, this Wall is serving the goal of securing control over Palestinian land and people – the goal, for which Israel has employed its legislative and judicial systems in addition to the governmental administrative system. By creating an obvious physical barrier between what is in and what is out, the Wall will cause thousands of Palestinian Jerusalemites to lose their right to residency in case they continue to live outside the Wall and outside the municipal boundaries for seven years or more.²⁷

The most recent material in the media about the continued policy of Judaization and strengthening the Israeli control over East Jerusalem is the news about the decision by the Local Committee on Zoning and Building in Jerusalem Municipality to build 20,000 housing units in two areas beyond the Green Line but within the expanded municipal boundaries of 1967: Al-Waljeḥ in the south and the Qalandia-Airport ('Atarot') in the north.²⁸ According to Elli Pollack, the chair of the Committee and the Deputy Mayor, the aim is to create continuity between Jerusalem and Gosh Itzion (Bethlehem area) in the south and between Jerusalem and settlements in Beit Eil area in the north.

As some readers of this presentation may feel confused by the details provided so far, we will conclude by a diagram summarizing the network of laws that provide a background and foundation for any administrative or judicial decision aimed at restricting the geographic and civil spaces for Palestinian Jerusalemites since the time when their city has become under the Israeli law and administration.

For those asking about the legality of the aforementioned Israeli practices in the light of the international law, we respond by affirming that Jerusalem has been and remain an occupied area exactly as the case with the West Bank. Therefore, the occupying

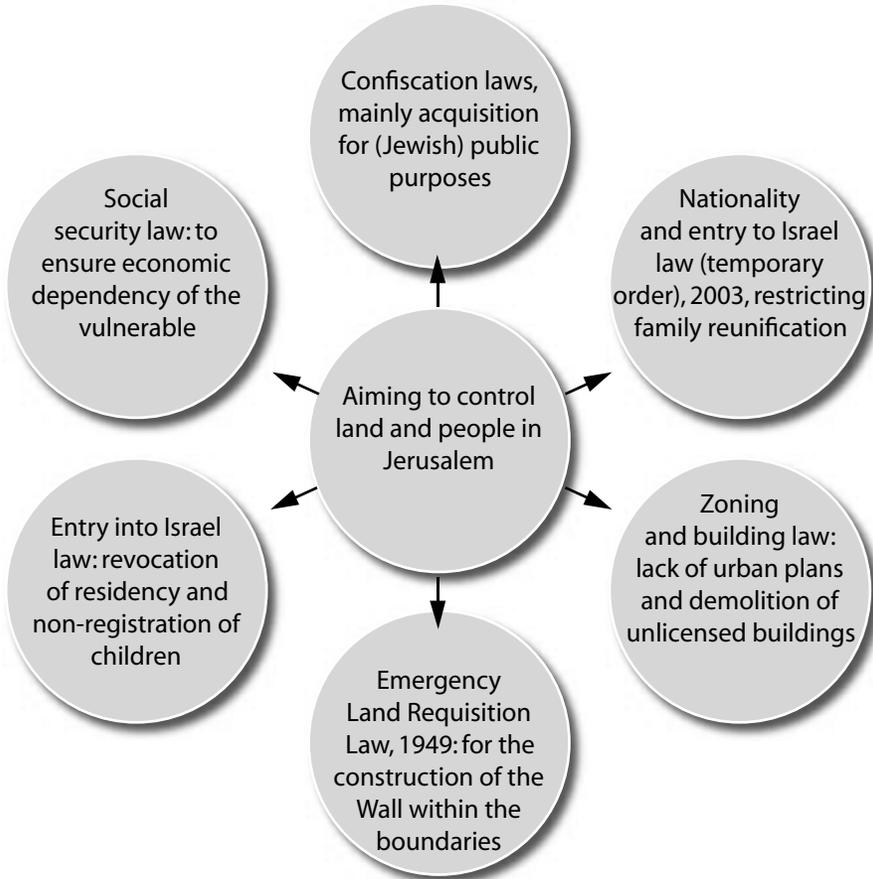
²⁷ This is one of the cases stipulated in article 11A of Entry into Israel Regulations of 1974.

²⁸ Haaretz Newspaper, 10 May 2007.

power is prohibited from changing the City's features and geography and imposing constraints on its population with the aim of forcing them out. The international law does not acknowledge unilateral annexation, nor does that occupation - no matter how long it lasts - grant the occupier sovereignty. The occupier may have the authority and administration but sovereignty remains in the hands of the occupied people. i.e., the Palestinian people living in the City, who also have the right to self-determination. In this regard we remind that the United Nations has issued numerous decisions stating that Jerusalem has been an occupied territory, and that Israel's annexation is null and void. Yet, in our opinion, as in that of many experts, it is worrying to see that many states deal with Jerusalem as a "regular" Israeli city, ignoring the realities of the occupation that started in 1967 and has not ended yet.²⁹

²⁹ Reference is made to the report of the UN Special Rapporteur for the Occupied Palestinian Territory, John Dugard, issued in August 2005.

Diagram 5
Israeli laws used to ensure control over people and land





الائتلاف المدني للدفاع عن حقوق الفلسطينيين في القدس
The Civic Coalition for Defending the Palestinians' Rights in Jerusalem

The Civic Coalition for Defending
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