

**PALESTINE LIBERATION ORGANIZATION
NEGOTIATIONS AFFAIRS DEPARTMENT
NEGOTIATIONS SUPPORT UNIT**

**ISRAELI SEIZURES IN OCCUPIED EAST JERUSALEM:
A LEGAL ANALYSIS**

August 16, 2001

During the early morning of August 10, 2001, Israeli occupation forces in Occupied East Jerusalem raided and occupied nine Palestinian buildings, most notably the privately-owned Orient House. Dozens of occupation forces stormed Orient House, confiscated documents, disabled web servers and closed access from surrounding streets. Israeli occupation forces also re-occupied the District Governor's Compound and other Palestinian Authority offices in the neighboring village of Abu Dis currently under Palestinian civil rule pursuant to signed agreements.

As outlined below, the seizure and occupation of these buildings constitute direct violations not only of applicable international law but of signed agreements between the Government of Israel ("GOI") and the Palestine Liberation Organization ("PLO"). Despite unfounded Israeli claims that such measures were necessary for security purposes, the measures are intended to make political gains and to prejudice final status negotiations.

STATUS OF JERUSALEM

I. ISRAEL ILLEGALLY OCCUPIES EAST JERUSALEM AND ACCORDINGLY MAY NOT TAKE ANY ACTIONS ALTERING THE STATUS OF THE CITY.

A. Israel's Actions Violate United Nations Security Council Resolutions

UN Security Council Resolution 252 (1967), specifically addressing Jerusalem, states that "all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status." UN Security Council Resolution 267 (July, 1969), also on Jerusalem, reaffirms UNSCR 252 and censures "in the strongest terms all [Israeli] measures taken to change the status of the City of Jerusalem" and "urgently call[s] once more upon Israel to rescind forthwith all measures taken by it which may tend to change the status of the City of Jerusalem."

In August 1980, the Israeli Parliament adopted the "Basic Law" declaring that "Jerusalem, complete and united" was "the capital of Israel." In response, the UN Security Council adopted Resolution 478 determining 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." The UN General Assembly adopted a similar message in its Resolution 35/169(E) (1981).¹

¹ Indeed, Israel even lacks legitimate sovereignty over West Jerusalem given that West Jerusalem was not part of the Jewish State envisioned by the United Nations Partition Plan of 1947 and was taken by force by Israel in 1948. Most states regard Israel as exercising only *de facto* authority over West Jerusalem. At present, no states maintain embassies in Jerusalem.

B. Israel's Actions Violate the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (August 12, 1949) ("Fourth Geneva Convention")

Article 137 of the Fourth Geneva Convention defines "appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" as a grave breach.

C. Palestinian-Israeli Agreements do not Supersede Prior Claims.

The Palestinian-Israeli Interim Agreement (September 28, 199) (the "Interim Agreement") provides that nothing in the Interim Agreement "shall prejudice or preempt the outcome of the negotiations on permanent status to be conducted pursuant to the [Declaration of Principles]. Neither Party shall be deemed, by virtue of having entered into this Agreement, to have renounced or waived any of its existing rights, claims or positions".² Consequently, the Interim Agreement does not supersede Palestinian claims based on international law that define East Jerusalem as Occupied Territory and which require Israel to withdraw from such territory in accordance with the norms of international law and applicable UN Resolutions, in particular UN Security Council Resolutions 242 and 338.

D. Israel's Actions Violate United States of America Letter of Assurance.

In its *Letter of Assurances to the Palestinians*, dated October 18, 1991, and given in advance of the 1991 Middle East Peace Conference, the USA confirmed that it is "opposed to the Israeli annexation of East Jerusalem" and encouraged "all sides [to] avoid unilateral acts that would exacerbate local tensions or make negotiations more difficult or preempt their final outcome."

ORIENT HOUSE

II. ISRAEL'S ACTIONS VIOLATE THE PALESTINIAN-ISRAELI INTERIM AGREEMENT (SEPTEMBER 28, 1995).

A. PLO has the Right to Conduct Specified Foreign Relations Activities

Article IX.5.b of the Interim Agreement authorizes the PLO to exercise specified foreign relations activities: the PLO may "conduct negotiations and sign agreements with states or international organizations" in the areas of culture, science, education, economics, donor country assistance, and regional development implementation.

Consequently, the PLO has legally exercised its rights to conduct certain foreign relations activities from Orient House. In full compliance with the Interim Agreement, PLO officials have used Orient House to initiate and establish various projects with foreign donors aimed at preserving the economic, social, educational and cultural interests of the Palestinian community. Indeed, various European donors have assisted Orient House in second-track negotiations with Israeli policy institutions and non-governmental organization for the purpose of formulating future arrangements to ensure peaceful coexistence in the city of Jerusalem. Such negotiations fall clearly within the PLO's right to conduct negotiations with respect to regional development.

B. PLO has the Right to Operate in Jerusalem

² Article XXXI(6)

The GOI argues that “official Palestinian offices” located in Orient House violate Article 1.7 of the Interim Agreement³ which states that the “offices of the [Palestinian] Council, and the offices of its [President] and its Executive Authority and other committees, shall be located in areas under Palestinian territorial jurisdiction in the West Bank and Gaza Strip.”

To date, Israel has not produced any evidence to support its claim that Palestinian Council or related offices have been located in Orient House. Under the Interim Agreement, PLO officials, as opposed to Palestinian Authority (“PA”) officials, are not banned from legally using Orient House. In compliance with the Interim Agreement ban on PA offices operating in Jerusalem, the late Mr. Faisal Husseini never held a PA position during his entire tenure as director of Orient House. Instead, Mr. Husseini was a member of the PLO executive committee responsible for the Jerusalem file. As such, Mr. Husseini’s diplomatic activities at Orient House were in full compliance with the PLO’s obligations under the Interim Agreement.

III. ISRAEL’S ACTIONS VIOLATE ISRAELI LETTER OF SECRET ASSURANCES (OCTOBER 11, 1993)

Since its establishment, Orient House has acted as the headquarters of the Arab Studies Association. As such, it benefits from the protection pledged by Israel to encourage the activity of all Palestinian institutions in East Jerusalem. Under the *Letter of Secret Assurances concerning East Jerusalem (October 11, 1993)*, sent by Mr. Shimon Peres, foreign minister of Israel, to Mr. Johan Holst, foreign minister of Norway, and dated October 11, 1993, Israel has committed itself to encourage “all the Palestinian institutions of East Jerusalem, including the economic, social, educational and cultural [institutions and] not to hamper their activity.”

IV. ISRAEL’S ACTIONS EXCESSIVE.

Even if Israeli arguments were valid, a complete seizure and closure of Orient House is excessive and punitive. Israeli Occupation Authorities would at most be entitled to forbid only those activities which allegedly violate agreements, while allowing Orient House to continue carrying out activities clearly within its rights.

DISTRICT GOVERNOR’S COMPOUND IN ABU DIS

I. THE PALESTINIAN AUTHORITY HAS ACTIVELY COMBATED TERRORISM TO THE BEST OF ITS ABILITY.

The GOI argues that the seizure of the District Governor’s Compound and related offices in Abu Dis to punish the PA for its alleged failure to “combat terrorism and violence” and its alleged refusal to “renounce the use of terrorism and other acts of violence”.⁴ Such arguments are baseless.

³ *Israeli Measures in the Jerusalem Area in Response to Palestinian Terrorism – Legal Aspects*, August 10, 2001.

⁴ *Israeli Measures in the Jerusalem Area in Response to Palestinian Terrorism – Legal Aspects*, August 10, 2001.

The Interim Agreement and subsequent bilateral agreements require Palestinian police to “act systematically against all expressions of violence and terror.” These obligations however, are only to be carried out “in areas which come under Palestinian security responsibility,” meaning only Areas A.⁵ Although the Israeli Parliament voted last year to change Abu Dis’ status from Area B into Area A (meaning full Palestinian civil and security control), the previous and current Israeli government’s have refused to implement the transfer. Consequently, Abu Dis remained, until its recent re-occupation, Area B and therefore the PA has neither the ability nor the responsibility for security in Abu Dis.

II. ISRAEL LIMITS PALESTINIAN SECURITY EFFORTS.

The jurisdictional limitations on the PA have been compounded by a GOI refusal to resume security cooperation with Palestinian forces. The GOI ceased all security cooperation with the district coordinating offices in October of 2000 and even built walls between Palestinian and Israeli offices in the buildings. Although the Tenet Workplan requires Israel to remove these walls and resume cooperation, the GOI has refused renewed security cooperation, despite its public acceptance of the plan. Furthermore, Israel refuses to conduct joint patrols with Palestinians in which both forces would be able to coordinate security operations in Areas A and B. Finally, Israel continues to refuse to allow Palestinian police to travel from one Area A canton to another, further limiting Palestinian security efforts.

The GOI policy seems to be to argue that the PA is not doing enough to combat criminal activity, so therefore Israel must continue to limit and circumscribe the authority of the Palestinian security and governmental services. In fact, Israeli policy creates the very lack of control about which it complains.

Furthermore, the PLO has repeatedly requested the immediate resumption of negotiations on permanent status issues and the implementation of past agreements. Israel has refused to resume negotiations until there is a complete halt to all acts of resistance to the occupation, legitimate or otherwise. Ironically, the mayor of West Jerusalem, Ehud Olmert, has recently argued that no government in the world has the ability to limit all criminal activity, justifying Israeli lapses in internal security. Yet, the same Israeli officials continue to argue for such totalitarian control from the PA, even in areas where the PA does not have security responsibility.

III. THE ABU DIS COMPOUND WAS NOT USED FOR ANY ILLEGAL OR VIOLENT ACTIVITY.

The GOI has argued that the seizures in Abu Dis are justified because the occupied offices were in “buildings used for terrorist activity”.⁶ Tellingly, the GOI has failed to produce any evidence in support of such claim, nor, and consistent with the GOI’s pattern throughout the current crisis, has not allowed any independent verification or investigation of such claim. Consequently, the GOI assertion of terrorist activity cannot legally be given any weight.

The Israeli arguments are completely spurious. Whereas the Interim Agreement and subsequent bilateral agreements require Palestinian police to “act systematically against all expressions of violence and terror,” these obligations are only to be carried out “in areas

⁵ Interim Agreement, annex 1, art. 2, para. 1. In the Interim Agreement, only 17.2% of the West Bank is considered “Area A”; i.e. areas in which the PA has full responsibility for internal security and public order. Around 23.8% of the West Bank is defined in the Interim Agreement as “Area B”; i.e. areas in which the PA has responsibility for civil affairs but in which Israel retains security control.

⁶ Israeli Measures in the Jerusalem Area in Response to Palestinian Terrorism – Legal Aspects, August 10, 2001.

which come under Palestinian security responsibility,” meaning only Areas A.⁷ Abu Dis is Area B and therefore the Palestinian Authority has neither the ability nor the responsibility for security in Abu Dis.

IV. ISRAEL IS NOT ACTING IN “SELF-DEFENSE” BUT INSTEAD TRYING TO MAKE POLITICAL GAINS.

The GOI has argued that its actions, even if not otherwise justified, fall under the rubric of legitimate self-defense. The only way that any Israeli measures such as those taken in Abu Dis (or anywhere else in the Occupied Palestinian Territories) can be considered legitimate is if the occupation itself is considered legal. Self-defense for a state or a people, as an international norm, is allowed only when one is attacked in violation of international law. Israel’s occupation of Palestinian territory acquired by force is illegal. Palestinian resistance to that occupation, within the boundaries set by international law, is legitimate.

Furthermore, Israeli leaders have made it clear that the actions taken in East Jerusalem and Abu Dis are not related to security measures but to sending a political message to the PA and to Palestinians in general. Raanan Gissin, a spokesman for Ariel Sharon, said that the seizure of Abu Dis is intended to send “a very clear signal to Yasser Arafat: not only are you not getting anything through violence and terror but you’ll actually pay a price – you’ll lose assets”. Israeli Interior Minister, Uzi Landau, stated that the seizures were justified because the buildings “had been challenging Israel’s sovereignty over Jerusalem”. In other words, the recent Israel seizures in East Jerusalem and Abu Dis are not related to stopping criminal activity occurring in Israel itself but to making political gains and prejudicing the outcome of permanent status negotiations.

⁷ Interim Agreement, annex 1, art. 2, para. 1.