

# The Status of Jerusalem

UNDER INTERNATIONAL LAW  
AND UNITED NATIONS RESOLUTIONS

HENRY CATTAN\*

## HISTORICAL OUTLINE

Founded by the Canaanites around 1800 B.C., captured by David eight centuries later, destroyed by the Babylonians in 587 B.C., Jerusalem was then successively occupied by the Persians, the Greeks, the Romans (both pagan and Christian), the Arabs and the Turks. It is unique among the cities of the world because of its association with the three monotheistic religions, which have their Holy Places within its precincts. As a result, it is of profound religious and spiritual significance to a billion Christians, seven hundred million Muslims and fourteen million Jews. All three ruled the city at one time or another: the Jews for almost five centuries in biblical times, the Christians for over four hundred years in the fourth to the seventh and the twelfth centuries, and the Muslims (Arabs and Turks) for twelve centuries from 638 until 1917 continuously, with the exception of the period when the city was the capital of the Latin Kingdom of Jerusalem.

During Turkish times, Jerusalem enjoyed a special administrative status. The Administrative Regulations of 1877-1888 recognized the city and its environs as possessing an "autonomous" or "independent" status. This, however, did not involve any autonomy in the real sense, but meant only that it was linked directly to Constantinople, the capital of the Turkish

\* 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*. This paper was presented to the Seminar on Jerusalem held by the Organization of the Conference of Islamic States in Paris on December 1-2, 1980.

Empire, instead of being under the jurisdiction of the governor of the province.<sup>1</sup>

Towards the end of the First World War, Jerusalem was captured by British troops on behalf of the Allies. In accordance with the peace settlement which ended the war, Palestine was detached from the Turkish Empire to be administered by the British Government under a mandate granted by the League of Nations. During the Mandate (1922-1948), Jerusalem was the capital of Palestine.

Before the Mandate came to an end, on 29 November 1947, the General Assembly of the United Nations adopted a resolution for the creation of Arab and Jewish states in Palestine and for the internationalization of Jerusalem. Upon the termination of the Mandate the Jews proclaimed a Jewish state under the name of Israel, but no Arab state came into existence by reason of Arab opposition to the partition of Palestine. As for the internationalization of Jerusalem, it was disregarded by both Jews and Arabs during the war which then broke out between Israel and the Arab states. Jerusalem was militarily occupied by Israel and Jordan, the former seizing its modern section and the latter seizing the Old City. This situation lasted until June 1967, when Israel captured the Old City.

Despite the fact that Israel has at all times been a military occupier, it has acted in 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 historic character and taken several other measures in violation of the city's legal status, of international law and of United Nations resolutions. The succession of illegalities which Israel has committed in Jerusalem culminated in the adoption on July 30, 1980 of a law which proclaimed the city its eternal capital. This action, which was condemned by the Security Council in its resolution 478 of August 20, 1980, by the Conference of Islamic States at Fez on September 20, 1980 and by world opinion generally, has created a highly explosive situation which threatens world peace and security.

It is appropriate, therefore, to examine the legal status of Jerusalem under international law and under United Nations resolutions, and to determine whether Israel's actions have affected its status. In this examination of the legal status of Jerusalem, it is incumbent to consider the juridical effect of three facts: the right of sovereignty of the people of Palestine over Jerusalem; the internationalization of Jerusalem by the General Assembly of the United Nations in 1947, and the occupation and annexation of the city since 1948.

<sup>1</sup> A. Heidborn, *Manuel de droit public et administratif de l'Empire Ottoman* (Vienna and Leipzig: Stern, 1908-1909), p. 7.

## THE RIGHT OF SOVEREIGNTY OF THE PEOPLE OF PALESTINE OVER JERUSALEM

Prior to its occupation in 1917, Palestine was part of Turkey and the Palestinians, like other Arabs who lived in the Turkish Empire, enjoyed equal rights with the Turks and shared sovereignty with them over all the provinces of the Empire, whether Arab or Turkish.

The peace settlement which ended the First World War envisaged, *inter alia*, the recognition of the independence of the Arab provinces which until then had formed part of Turkey. The fourth paragraph of Article 22 of the Covenant of the League of Nations stated:

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 to the selection of the Mandatory.

As a result, five new states come into existence: Iraq, Lebanon, Palestine, Syria and Transjordan (which later changed its name to the Hashemite Kingdom of Jordan). In execution of Article 22 of the Covenant, the League of Nations placed these new states under mandates: Lebanon and Syria under a French mandate, and Iraq, Palestine and Transjordan under British mandates. Iraq, however, rebelled and proclaimed its independence.

Under international law, the legal effect of the detachment of Palestine from Turkey and the recognition by Article 22 of the Covenant the League of Nations of the existence of its inhabitants as "an independent nation" was to make of Palestine a state under the law of nations in which was vested sovereignty over the country.<sup>2</sup>

The fact that Palestine was placed under a mandate did not affect the statehood of Palestine nor divest its people of sovereignty over their country.

The concept of mandates was one of a temporary arrangement having as its aim, in the words of Article 22 of the Covenant, the rendering to the peoples of the mandated territory of administrative advice and assistance by a Mandatory until such time as they were able to stand alone. It is obvious that the Mandatory did not acquire title or sovereignty over the mandated territory.

The legal status of Palestine as one of the "A" mandated territories had close similarity to that of a protected state.<sup>3</sup> Palestine possessed an

<sup>2</sup> Regarding the concept of national independence and sovereignty contained in Article 22 of the Covenant of the League of Nations, see R. Erlich, "La Naissance et la reconnaissance des états," *Recueil de La Haye* (1926), XIII (III), 450; H. Duncan Hall, *Mandates, Dependencies and Trusteeships* (Washington: Carnegie Endowment for International Peace, 1948), p. 80.

<sup>3</sup> Earl of Birkenhead, *International Law*, 6th ed. (London, Stevens & Sons, n.d.), p. 99.

international personality which was distinct from that of the British government as Mandatory power. The Government of Palestine, as representative of the people and territory of Palestine, concluded agreements with the Mandatory power and treaties with third states through the instrumentality of Great Britain. The possession by Palestine of an international personality of its own thus distinguished its status from that, for example, of the territory of South West Africa. In the case of the latter, the Supreme Court of South Africa held that since German sovereignty over it was extinguished, and the territory survived only as a geographical entity and did not become an international person in its own right, its juristic personality had terminated.<sup>4</sup> This clearly was not the case of Palestine.

On the other hand, the Mandate did not divest the state or the people of Palestine of their sovereignty over the country. Professor Pic was one of the first writers to proclaim the principle that sovereignty lies in the inhabitants of the mandated territory. He said:

Les rédacteurs du Traité de Versailles, s'inspirant avant tout d'un droit pour les peuples de disposer d'eux-mêmes, ont formellement proclamé qu'il n'y aurait aucune annexion des territoires sous mandat par une puissance quelconque, pas plus par la collectivité des États ayant nom Société des Nations et siégeant à Genève, que par tel ou tel État particulier. Ces territoires appartiennent virtuellement aux populations ou communautés autochtones, dont la Société des Nations s'est constituée le défenseur, et au regard desquelles elle joue un peu le rôle d'un conseil de famille. Or, en droit interne, un conseil de famille n'a pas plus que le tuteur qu'il désigne, et dont il contrôle les actes, de droit privatif sur les biens du pupille.<sup>5</sup>

Stoyanovsky has correctly argued that the people of a mandated territory are not deprived of the right of sovereignty but are temporarily deprived of its exercise.<sup>6</sup>

Pélichet has advanced the view that communities under mandate enjoy real, not only virtual, sovereignty: "La jouissance des droits de souveraineté est détenue réellement, et non point virtuellement, par les collectivités."<sup>7</sup>

In fact, there now exists a fairly general consensus that sovereignty lies in the people of the mandate territory.<sup>8</sup>

There can be no doubt, therefore, that sovereignty over Jerusalem as an integral part of Palestine was at all times vested in the people of Palestine,

<sup>4</sup> D.P. O'Connell, *International Law*, 2nd ed. (London: Stevens & Sons, 1970), I, 333.

<sup>5</sup> P. Pic, "Le Régime du mandat d'après le Traité de Versailles," *Revue générale de droit international public* (Paris, 1923), XXX, 334.

<sup>6</sup> J. Stoyanovsky, *La Théorie générale des mandats internationaux*, (Paris: les Presses universitaires, 1925), p. 83.

<sup>7</sup> E. Pélichet, *La Personnalité internationale distincte des collectivités sous mandat* (Paris: Rousseau, 1932), p. 100.

<sup>8</sup> See various authorities cited in Henry Cattan, *Palestine and International Law*, 2nd ed. (London: Longman, 1976), pp. 116-20.

both during Turkish times when the Palestinians were citizens of an independent and sovereign country and also specifically after the detachment of Palestine from Turkey. Although the war of 1948 and the military occupation of Jerusalem prevented the Palestinians from exercising their sovereignty effectively on the termination of the Mandate, their sovereignty was not lost, as we shall see, either by reason of the United Nations resolution which internationalized Jerusalem or as a result of its occupation and annexation.

In view of the continued existence of a Palestinian right to sovereignty, one cannot help but feel amazed at the inanity of the Camp David Accords of September 1978, which aim at securing a grant by the occupying power of some kind of "autonomy" to the Palestinians, including the Arab inhabitants of the Old City of Jerusalem, when, in fact, the essence of the problem is not the acquisition by the Palestinians of autonomy or even of sovereignty, which they have at all times possessed, but simply the restoration of its exercise by its legitimate owners.

#### THE INTERNATIONALIZATION OF JERUSALEM BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS IN 1947

By its resolution 181 of November 29, 1947 the General Assembly of the United Nations recommended that the City of Jerusalem be established as a *corpus separatum* under a special international regime and administered by the Trusteeship Council on behalf of the United Nations. The area of the *corpus separatum* was defined to include the then existing municipality and environs of Jerusalem comprising Bethlehem and Ain Karem. In this connection it may be necessary to correct an error made by some persons: Professor Rousseau, for example, states that the internationalization of Jerusalem in 1947 was limited to a part of the city which comprised the Holy Places.<sup>9</sup>

Resolution 181 envisaged the appointment by the Trusteeship Council of a Governor to administer the City and to conduct its external affairs. The Governor would be assisted by an administrative staff chosen, whenever practicable, from the residents of the City and the rest of Palestine. Local autonomous units on the territory of the City, such as municipalities, were to enjoy wide powers of local government and administration. The City would be demilitarized and its neutrality declared and preserved. A Legislative Council elected by the residents of the City would have powers of legislation and taxation.

The resolution declared that its provisions relating to Holy Places and to

<sup>9</sup> Charles Rousseau, *Droit international public*, (Paris: Sirey, 1974), II, 446.

religious, minority and property rights "shall be under the guarantee of the United Nations, and no modifications shall be made in them without the consent of the General Assembly of the United Nations" (Chapter 4 of Part I).

The resolution further embodied a Statute for the City which provided that the Trusteeship Council should elaborate and approve a detailed Statute of the City. This was to contain, *inter alia*, the substance of the provisions set forth in the resolution. However, influenced by developments on the ground, the Statute which was prepared by the Trusteeship Council deviated from resolution 181 and was accordingly ignored by the General Assembly, which restated its intention in resolution 303 of December 9, 1949, that Jerusalem should be placed under a permanent international regime, and requested the Trusteeship Council to prepare and approve a Statute of Jerusalem on the lines of resolution 181 and to proceed with its implementation regardless of actions taken by any government or governments. On April 4, 1950 the Trusteeship Council approved a Statute for the City of Jerusalem which substantially followed that embodied in resolution 181, though it differed from it in substituting a system of communal election to the Legislative Council by Christians, Muslims and Jews in lieu of universal suffrage and proportional representation. Being unable to implement it by reason of the opposition of Israel and Jordan to internationalization, the Trusteeship Council transmitted the Statute to the General Assembly. Attempts were then made in a debate at the General Assembly in December 1950 to modify the scope and nature of the internationalization of Jerusalem, but none of the proposals secured the approval of the General Assembly.

The effect of resolution 181 was to endow Jerusalem with an international legal status compatible with its historical character and religious significance to the world.

The question which now needs to be considered is whether the internationalization of Jerusalem by resolution 181 has conferred sovereignty on the United Nations or the Trusteeship Council, or affected the sovereignty of the people of Palestine over Jerusalem. The answer is that the resolution did not have either of these two effects.

The resolution did not confer sovereignty over Jerusalem on the United Nations or the Trusteeship Council. The fact that the resolution attributed to the Trusteeship Council the power to administer Jerusalem on behalf of the United Nations did not have the effect of vesting sovereignty over the City in the Trusteeship Council or in the United Nations. The power of administration of a territory and the right of sovereignty over such territory are two different matters. Just as the British Government did not, according to the generally accepted opinion, acquire sovereignty over Palestine during

the period of the Mandate, though vested by the League of Nations with full powers of legislation and administration, so the giving to the Trusteeship Council of powers of administration only, but not of legislation and taxation, did not confer on it sovereignty over the City of Jerusalem.

On the other hand, the resolution did not divest the Palestinians of their sovereignty over Jerusalem either. The powers of legislation and taxation as well as the judiciary which are attributes of sovereignty were reserved for the inhabitants. Not only did resolution 181 not divest the Palestinians of their sovereignty, but it could not have done so had it intended such a result, for one does not see how the United Nations possesses the competence to extinguish Palestinian sovereignty.

The internationalization of Jerusalem was not abrogated by reason of its occupation in 1948 by Israel and Jordan. In fact, such internationalization was reaffirmed by the General Assembly in resolution 194 of December 11, 1948 and resolution 303 of December 9, 1949, significantly *after* Israel's occupation of modern Jerusalem and Jordan's occupation of the Old City. The non-implementation — or even the violation — of resolution 181 did not entail its lapse or abrogation, just as the various resolutions of the United Nations which have called for the repatriation of the Palestine refugees or the rescission of the measures taken by Israel contrary to the status of Jerusalem have not lapsed or been abrogated by Israel's refusal to implement them. There exists no principle in legal theory which would support the view that a resolution of the United Nations is abrogated by reason of its violation.

More importantly, in several resolutions adopted since 1967, the legal status of Jerusalem has been invoked by the General Assembly and the Security Council to condemn Israel's occupation and annexation of the City and to proclaim the nullity of all measures it has taken in violation of such status. In these resolutions, the General Assembly and the Security Council speak of "the status of Jerusalem," or "the legal status of Jerusalem" (Security Council resolution 252 of May 21, 1968 and General Assembly resolution 32/5 of October 28, 1977), or "the specific status of Jerusalem" (Security Council resolutions 452 of July 20, 1979, 465 of March 1, 1980 and 476 of June 30, 1980). The only "status" or "legal status" or "specific status" which Jerusalem possesses is that laid down in resolution 181 of November 29, 1947.

Some resolutions of the Security Council, namely, 267 of July 3, 1969, 271 of September 15, 1969 and 298 of September 25, 1971 and General Assembly resolution 2253 of July 4, 1967 refer to the status of "the City of Jerusalem." The appellation "City of Jerusalem" is derived from resolution 181, which defined the *corpus separatum* of Jerusalem.

United Nations' reliance on the status of Jerusalem to invalidate the

measures taken by Israel is significant in two respects. On the one hand, it means that though internationalization has not been effectively implemented on the ground, its legal consequences are recognized and full effect is given to them in order to invalidate all measures taken by Israel in the City which are contrary to its status. On the other hand, it also means that the legal consequences of internationalization apply to the entirety of the *corpus separatum* which comprises both the Old City and modern Jerusalem. No difference in fact or in law exists between them and it is not conceivable that one part should be treated differently from the other. The illegality of Israel's presence and actions in Jerusalem is indivisible since Jerusalem's international legal status encompasses its two sections, old and new.

Moreover, Israel is prevented from disputing the legal status of Jerusalem because it expressly accepted resolution 181, and relied upon it to proclaim a Jewish state in 1948. It also specifically recognized the legal effect of the resolution on Jerusalem in the assurances it gave to the General Assembly in 1949 in support of its application for membership of the United Nations. Abba Eban, Israel's representative then declared to the General Assembly that "the legal status of Jerusalem is different from the territory in which Israel is sovereign."<sup>10</sup>

The consequences of Israel's violation of the legal status of Jerusalem were drawn by the United Nations in a number of resolutions which have (a) proclaimed the illegality of the City's occupation and annexation; (b) called for Israel's evacuation of the City, and (c) affirmed the nullity and called for the rescission of all measures, legislative, administrative, demographic and proprietary, which it has taken that tend to change the status of the City.

#### OCCUPATION AND ANNEXATION OF JERUSALEM

It remains to be examined whether the occupation and annexation of Jerusalem have affected the legal status of Jerusalem. In this regard, two periods may be distinguished: the period from 1948 to 1967 and the period from 1967 until the present day.

From 1948 until 1967 Jerusalem was occupied by Israel, which held modern Jerusalem, and by Jordan, which held the Old City. Both states annexed the section which they controlled. These two annexations, however, cannot be equated. Israel's annexation was a flagrant violation of international law carried out by an occupying power against the will of the original inhabitants. Jordan's action was not, strictly speaking, an annexation by an occupying power, but was, in fact, the result of the union of Jordan

<sup>10</sup> Documents officiels de la 3<sup>me</sup> session de l'Assemblée générale, 2<sup>me</sup> partie, Commission politique spéciale, 1949, pp. 286-87.

and Palestine which was carried out in accordance with a resolution adopted on April 24, 1950 in Amman by a national assembly composed of an equal number of Palestinians and Jordanians. In June 1967, Israel captured and annexed the Old City and since that date it has been in occupation of the entire City of Jerusalem.

Israel's annexation of Jerusalem, whether its modern section or the Old City, was made under the pretext of a historic or biblical right to restore the capital of the Jewish kingdom of David and Solomon which existed some thirty centuries ago. This claim is fallacious. First, the Jews of the twentieth century who emigrated to Palestine during the British Mandate or since the establishment of Israel are in many cases not the descendants of the biblical Israelites, but are converts to Judaism who have exploited religion for political and nationalistic purposes. Joseph Reinach, a French politician of Jewish origin, has explained that very few of today's Jews have any connection with Palestine and that the great majority of Russian and Polish Jews — who incidentally constituted the majority of immigrants to Palestine during the British Mandate — descend from the Khazars, a Tartar people of southern Russia who were converted in a body to Judaism at the time of Charlemagne.<sup>11</sup>

Second, an ancient historical connection like that of the Jews with Jerusalem in biblical times — even if one were to assume that present-day Jews are descendants of the Israelites — gives them no right under international law or practice to claim a city or a territory. The Arabs ruled Spain for a much longer time and more recently than the Jews ruled Jerusalem, but this fact does not give them a right to lay a claim to Spanish territory. The King-Crane Commission, appointed in 1919 at the suggestion of President Wilson to ascertain the wishes of the Arab inhabitants of Palestine under Article 22 of the Covenant of the League of Nations, summed up the legal position by declaring that "the initial claim, often submitted by Zionist representatives, that they have a 'right' to Palestine based on an occupation of two thousand years ago, can hardly be seriously considered."<sup>12</sup> Israel cannot claim to be the successor to the kingdom established by David and Solomon. State succession exists in international law when a state, as a result of cession, conquest or dismemberment *follows* its predecessor in the possession of its territory. But the monarchy established by David thirty centuries ago disappeared with its people in the dust of history. There exists no rule of international law that recognizes a right of succession by a state like Israel, which was established in the twentieth

<sup>11</sup> *Journal des Débats*, March 30, 1919, cited by Philippe de Saint Robert in *Le Jeu de la France en Méditerranée* (Paris: Julliard, 1970), p. 222.

<sup>12</sup> J.C. Hurewitz, *Diplomacy in the Near and Middle East* (Princeton: Van Nostrand, 1956), II, 70.

century, to a state that existed thirty centuries earlier. Hence, no legal basis whatsoever exists for Israel's annexation of Jerusalem and its proclamation as Israel's capital. Israel's claim to Jerusalem on the basis of a biblical right is just unmitigated nonsense.

Third, Jerusalem was founded and inhabited for centuries by the Canaanites, the ancestors of the Palestinians. The latter inhabited Jerusalem throughout the centuries, even after David's capture of the city. After the deportation of the Jews by the Romans following their second revolt in A.D. 132-135, no Jews were left in Jerusalem. From that time, Jerusalem was exclusively Arab in population and character for the following eighteen centuries until the modifications brought about in its demography during this century as a result of the Balfour Declaration and the British Mandate, both of which were undemocratically imposed upon the people of Palestine.

Not only do Israel's occupation and annexation of Jerusalem lack any legal basis; they also violate international law, the resolutions of the United Nations and the rights of the Palestinians.

Israel's occupation of Jerusalem, whether in 1948 or in 1967, was an aggression and a flagrant violation of international law. Israel's excuse that its forces occupied modern Jerusalem during the war which broke out in 1948 between itself and the Arab states is completely baseless because Jewish forces had seized and occupied the Arab quarters of modern Jerusalem in 1948 *before* the end of the Mandate and before any Arab armies penetrated Palestine. Similarly, in 1967, Israel captured the Old City in what it sought to make the world believe was a defensive war when, in fact, it was clearly aggression on its part. But regardless of whether Israel seized Jerusalem by way of aggression or in the course of a war, its occupation gives it no right to usurp and annex the city.

Furthermore, Israel's occupation and annexation of Jerusalem violate the resolution of the United Nations which laid down an international regime for Jerusalem. Israel cannot validly claim any territorial and political rights or benefits by violating a resolution of the United Nations — and, in particular, the very resolution to which it owes its existence.

Finally, Israel's occupation and annexation of Jerusalem violate the sovereignty of the Palestinians. Such occupation and annexation do not, and cannot, affect or extinguish the inalienable rights of the Palestinians over Jerusalem. The sovereignty of the Palestinians is of a nature that cannot be legally lost or destroyed. As the French Constitution of September 3, 1791, pointed out, "sovereignty is one, indivisible, inalienable and imprescriptible."

Israel has not, as a result of its occupation and annexation, acquired sovereignty over Jerusalem. Its status is that of a military occupier. The United Nations has invariably referred to Israel as "the occupying power." This description was emphasized in the last two resolutions of the Security

Council, namely, resolutions 476 of June 30, 1980 and 478 of August 20, 1980 which have condemned Israel's actions in Jerusalem. It is a settled principle of the law of nations that an occupying power does not acquire sovereignty over the occupied territory, nor does its occupation destroy or extinguish the sovereignty of the legitimate sovereign. Belligerent occupation does not result in the transfer of sovereignty in favour of the military occupier,<sup>13</sup> who merely acquires a temporary right of administration.<sup>14</sup> Speaking of military occupation of territory, Professor Gaston Jèze said:

Cette prise de possession, qui repose exclusivement sur la force, n'entraîne pas au profit du vainqueur l'acquisition du territoire occupé... Supposons d'abord que l'État dont le territoire est envahi se refuse à traiter, et que le vainqueur maintienne son occupation. La domination de l'État victorieux sera une souveraineté de fait et non de droit... Tant que des protestations se feront entendre, il y aura bien une domination de fait, mais non un état de droit.<sup>15</sup>

The rule is stated today in these terms: "Conquest has ceased to constitute a mode of acquisition of territory since the general prohibition on recourse to force" (Pact of Paris of 1928, Charter of the United Nations, Art.2, para. 4).<sup>16</sup>

The rule that conquest does not destroy the title of the legitimate sovereign is not an entirely new concept. It was on the basis of the concept of the legitimacy of title that the pre-Napoleonic sovereigns were restored to power in 1815. It was on the basis of the same concept that the nationhood of Poland was preserved during the *interregnum* between 1795 and 1919, and its sovereignty restored despite the occupation and annexation of its territory. It was on the same basis that the sovereignty of several countries was restored after occupation and annexation: Ethiopia after Italy's conquest and annexation in 1936, Poland after the Russo-German conquest of 1939, Austria after its forced union with Germany in 1938, Czechoslovakia and Albania after their conquest and annexation during the Second World War. In all these cases, the legitimate sovereign retained "residual" sovereignty. The concept of legitimacy of title is a practical application of the principle of inadmissibility of the acquisition of territory by war.

Thus, Palestinian sovereignty over Jerusalem has not been lost or destroyed. D.P. O'Connell observes that "there can be no loss of territory

<sup>13</sup> Nguyễn Quốc Dinh, P. Daillier et A. Pellet, *Droit international public*, 2nd ed. (Paris: Librairie générale de droit et de jurisprudence, 1980), p. 406.

<sup>14</sup> Oppenheim, *International law*, 7th ed. (London: Longman, 1952), II, 436.

<sup>15</sup> Gaston Jèze, *Etude théorique et pratique sur l'occupation comme mode d'acquérir les territoires, en droit international* (Paris: V. Giard et E. Brière, 1896), pp. 44-46.

<sup>16</sup> Translation from Nguyễn Quốc Dinh, *op. cit.*, p. 438.

without the intention of abandonment...."<sup>17</sup> Similarly, G. Schwarzenberger remarks: "In present day international law it is by itself not sufficient to transform wartime occupation into a transfer of sovereignty. Even in the relations between belligerents, not to speak of third States, the title requires to be consolidated by positive acts of recognition or consent or, at least, by acquiescence of the former territorial sovereign."<sup>18</sup> The Palestinians have not abandoned their right to Jerusalem, nor consented to the acquisition of any rights by Israel over the city.

On the other hand, lapse of time does not legitimize Israel's occupation and annexation of Jerusalem. Professor Giraud observes that, in contrast to private law, no prescription is envisaged by international law to regularize irregular situations.<sup>19</sup>

\* \* \*

In the light of the preceding considerations, Israel's occupation and annexation of Jerusalem do not confer any rights on it, as the occupying power, and do not impair the legal status of the city, which falls to be determined in accordance with international law and the resolutions of the United Nations.

At first sight, however, some difficulty might arise if the status of Jerusalem were to be determined by international law exclusively or in accordance with United Nations resolutions alone. In accordance with international law, the status of 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. But in accordance with United Nations resolutions, the status of Jerusalem is that of a city which possesses a special international regime.

Hence, the problem of determining the status of Jerusalem becomes inextricable if it is to be resolved by one to the exclusion of the other of these two criteria. However, there is no inconsistency in having recourse to both international law and United Nations resolutions in this matter. The concept of internationalization is not uniform in its applications, for in some instances the sovereignty of a State may coexist with the internationalization of a city or territory. Professor Charles Rousseau points out that internationalization does not require the effective exercise of sovereignty by the international community: "C'est ainsi qu'il n'apparaît pas, comme certains

<sup>17</sup> D.P. O'Connell, *International Law*, 2nd ed. (London: Stevens & Sons, 1970), I, 444.

<sup>18</sup> G. Schwarzenberger, *International Law*, 3rd ed. (London: Stevens & Sons, 1957), p. 302.

<sup>19</sup> E. Giraud, *Le droit international et la politique, Recueil des cours* (La Haye: Académie de droit international, 1963), III, 425.

auteurs l'ont pensé... que les régimes d'internationalisation constituent une catégorie juridique impliquant l'exercice effectif de la souveraineté... par la communauté internationale."<sup>20</sup>

An example of such internationalization was that of Tangiers which, despite its internationalization, remained under the sovereignty of Morocco.

It follows, then, that the internationalization of Jerusalem by the United Nations in 1947 and the various resolutions it has adopted since then concerning its status are not incompatible with, and do not exclude, the sovereignty of the people of Palestine. These resolutions are of two kinds:

1. Those which have proclaimed the nullity and invalidity of the measures taken by Israel contrary to the legal status of the City and have called for its evacuation, the repatriation of the Palestine refugees and the rescission of all measures taken to change the character and status of the City, including all legislative and administrative measures, transfers of population,<sup>21</sup> confiscations and expropriations of property, and the dismantling of settlements. The implementation of these resolutions does not prejudice the right of sovereignty of the Palestinians, but on the contrary helps to restore the historic character of Jerusalem. It goes without saying that the implementation of these resolutions is a condition precedent to the internationalization of the City.

2. The second set of resolutions are those which established the special international regime, namely, resolutions 181, 194 and 303. These resolutions embody three elements: (i) the principle of internationalization; (ii) the provision for the administration of the City by a Governor appointed by the Trusteeship Council and assisted by residents of Jerusalem and the rest of Palestine; (iii) the reservation of the powers of legislation and taxation to a Legislative Council elected by the residents of the City.

In conclusion, therefore, the legal status of Jerusalem rests upon a special international regime applicable to the *corpus separatum* of the City of Jerusalem as defined in resolution 181 of 1947, which envisages its administration by the United Nations but leaves other attributes of sovereignty, mainly the powers of legislation, taxation and the judiciary, vested in the inhabitants.

<sup>20</sup> Rousseau, *op. cit.*, p. 413.

<sup>21</sup> Since 1948 Israel has transferred to Jerusalem 200,000 settlers thus radically altering its demographic structure. The Jewish population of Jerusalem, which stood in 1948 at less than 100,000 according to United Nations figures, has now reached the figure of 275,000. Such transfer of population by the occupying power is prohibited by the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949, and has been repeatedly condemned and declared null and void by the United Nations.